

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CASE NO. 04-68797-JB
)	
ROBERT B. SEAMON,)	
)	CHAPTER 13
Debtor)	
_____)	
ROBERT B. SEAMON,)	CONTESTED MOTION
)	
Movant)	
)	
v.)	
)	
GEORGE H. SEAMON,)	JUDGE BIHARY
)	
Respondent.)	

ORDER

On July 31, 2004, the debtor, Robert Bruce Seamon, filed a pleading which he styled as an "Emergency Motion" asking the Court to enjoin a foreclosure by the respondent, his brother, or in the alternative, to reimpose the automatic stay under 11 U.S.C. § 362(a). Debtor filed this motion shortly after the Court entered an Order on July 26, 2004 granting a motion for relief from the automatic stay filed by debtor's brother, George H. Seamon. That Order followed a hearing held on July 20, 2004, at which the debtor appeared *pro se* and Mr. Ronald Debranski appeared on behalf of George H. Seamon. As stated in the July 26, 2004 Order, counsel represented that George H.

Seamon had obtained a writ of possession in a dispossessory proceeding against the debtor on May 31, 2004, in a case filed in the Magistrate Court of Fulton County. Counsel further represented that debtor had filed an appeal of that ruling. The Bankruptcy Court granted the motion for relief from stay to allow the parties to proceed to exercise their state law rights and litigate their claims in the courts of Fulton County, Georgia.

Debtor's emergency motion states that he has now converted this Chapter 7 case to a case under Chapter 13 and that he desires to pay the amounts required by the Magistrate Court of Fulton County through a Chapter 13 plan. After carefully reviewing the record of this case and debtor's previous bankruptcy filings, the Court concludes that debtor's emergency motion must be denied.

This is debtor's fourth bankruptcy case. Debtor filed his first case, Case No. 02-63612, under Chapter 13 on April 1, 2002 through counsel Richard K. Valldejuli. The Chapter 13 Trustee filed two sets of objections to confirmation, which objections included a failure to file tax returns and the fact that the plan payments were not current. The case was dismissed at the confirmation hearing and an order of dismissal was entered on June 14, 2002. One week later, debtor filed another Chapter 13 case, Case No. 02-66775. Again, the Chapter 13 Trustee filed objections to confirmation, and again the case was dismissed prior to confirmation. The order of dismissal was entered on October 13, 2002. One month later, on November 19, 2002, debtor filed a third Chapter 13 case, Case

No. 02-73539. In that case, the Chapter 13 plan filed by the debtor was confirmed on February 11, 2003, with a strict compliance order. However, Homecoming Financial Network filed a motion for relief from the automatic stay to obtain permission to foreclose on debtor's property at 5511 Preserve Circle, Alpharetta, Georgia 30005 (the "Property"). The Court held a hearing on the motion on April 1, 2003, and granted relief from the automatic stay in an Order entered on May 6, 2003. At this hearing, counsel for Homecoming Financial Network announced that there was a \$40,000.00 arrearage pre-petition on the mortgage. The Chapter 13 Trustee filed a supplemental report showing that the debtor had not strictly complied with the terms of the plan and that the plan was delinquent. Accordingly, on May 12, 2003, the Court entered an Order dismissing the case with the determination that the debtor would be ineligible to file any other bankruptcy for a period of one hundred eighty (180) days pursuant to 11 U.S.C. § 109(g).

The debtor then filed the instant case, his fourth bankruptcy case, on May 28, 2004. He filed this case under Chapter 7 through counsel, Robert B. Silliman. Debtor's brother, George H. Seamon, filed a motion for relief from the automatic stay. As stated above, the Court held a hearing on this motion on July 20, 2004. It appears from the statements and representations made at the hearing as well as the emergency motion filed by the debtor that the debtor transferred his interest in the Property to his brother in January of 2004. The brother then sought possession and obtained a writ of possession from the Magistrate Court of Fulton County. It is apparent that the two

brothers dispute their respective interests in the Property, but this dispute is pending in the State Court system. A review of the debtor's schedules indicates there is no other significant debt and no bankruptcy purpose to be served. Debtor takes issue with the issuance of the writ of possession by the Magistrate Court, but the Bankruptcy Court is not an appellate court. Debtor claims that his home "was stolen by his own brother through fraud and misrepresentation," but this claim should be addressed in the state court proceedings.

In conclusion, debtor has had three previous Chapter 13 cases in which he was represented by counsel, and none of them has been successful. Under the facts and circumstances of this case, there is no authority for "reimposing" the automatic stay as requested by the debtor or for invoking any relief under § 105 of the Bankruptcy Code. Accordingly, debtor's motion must be and is hereby DENIED.

IT IS SO ORDERED, this 12th day of August, 2004.


JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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