

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 04-94398
	:	
KENNETH R. HUNT,	:	
	:	
Debtor.	:	CHAPTER 7
	:	

ORDER

On September 15, 2004, this Chapter 7 case came before the Court on a continued hearing on motions for relief from the automatic stay filed by Provident Consumer Financial Services ("Provident"), Federal National Mortgage Association ("FNMA"), and Washington Mutual Bank, F.A. ("Washington Mutual"). Paula Murray appeared on behalf of FNMA, Lara Armstrong appeared on behalf Provident and Washington Mutual, and the debtor appeared *pro se*. Debtor did not file written responses to any of these motions. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). These motions are moot, however, as the debtor has now received a discharge, the estate has no interest in the real properties at issue, and the case is ready to be closed.

Provident filed its motion for relief from the automatic stay as to debtor's real property located at 2298 Abner Place, Atlanta, Georgia on June 18, 2004. Washington Mutual filed motions for relief from the automatic stay as to debtor's real property located at 610 Brandenburg Way, Roswell, Georgia on June 28, 2004 and as to debtor's real property located at 409 Morgan Place, Atlanta, Georgia on July 12, 2004. Neither

Provident nor Washington Mutual attached any documents to their motions supporting their claims on debtor's real properties. FNMA filed its motion for relief from the automatic stay as to debtor's real property located at 240 Booker Street, Atlanta, Georgia on June 23, 2004 and attached a copy of the deed to secure debt on the subject property.

The Court held an initial hearing on these motions on August 24, 2004. Paula Murray appeared on behalf of FNMA, Lara Armstrong appeared on behalf of Washington Mutual and Provident, and debtor appeared *pro se*. At the initial hearing, debtor stated that although he had indicated an intention to surrender the subject properties in his schedules, he was now challenging the standing of these creditors and requesting that he be able to review the original security instruments. Counsel for Provident and Washington Mutual did not bring any loan documents supporting their claims to the initial hearing. Counsel for FNMA announced that she had copies of the security deed and note but did not have the executed loan assignment from Washington Mutual to FNMA and requested a two week continuance to obtain that document. The request was granted, and the hearing on all four motions was continued to September 15, 2004.

Provident and Washington Mutual filed amendments to their motions for relief from the automatic stay on September 13, 2004, attaching copies of recorded deeds to secure debt on the subject properties, and FNMA introduced copies of the promissory note, deed to secure debt, and the assignment of the loan from Washington Mutual to FNMA as exhibits at the September 15, 2004 hearing. Debtor appeared to oppose the motions, but he did not file any responses to the motions and did not offer any credible evidence that he

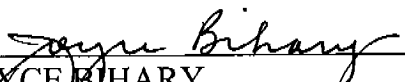
made any of the payments which the creditors contended had been missed. Debtor argued only that he has “adversarial claims” against these creditors and wants to see the original notes that he signed.

In the meantime, on August 31, 2004, the Chapter 7 Trustee (“Trustee”) Martha Miller filed a report stating that the estate has been fully administered and that there are no assets. The Trustee filed another pleading on September 13, 2004 in which she states that she has investigated the value of the properties referenced in all the motions for relief from stay and concludes that the estate has no interest in any of the subject properties. In addition, the deadline for filing objections to the debtor’s discharge has passed and no objections were filed. The debtor has now paid the final \$59.00 installment of his filing fee, and he received his discharge under 11 U.S.C. § 727 on September 17, 2004.

Under 11 U.S.C. § 362(c), the automatic stay of an act against property of the estate continues only until the property is no longer property of the estate, and the stay of any other act under § 362(a) continues only until the earliest of the time the case is closed, dismissed, or the debtor receives a discharge. The debtor has now received his discharge, and the case is ready to be closed. The subject properties are listed in debtor’s schedules, and the Trustee states that the estate has no interest in the properties. Thus, pursuant to 11 U.S.C. § 554(c), the properties will be deemed abandoned and will not be property of the estate. Accordingly, the stay under § 362(a) will terminate shortly, and it is unnecessary to rule on the motions for relief from the automatic stay.

Finally, debtor's argument that he has some claims or defenses against these creditors cannot be addressed in the context of the motions for relief from stay. *See Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33-34 (1st Cir. 1994); *Johnson v. Righetti (In re: Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985).

IT IS SO ORDERED, this 20th day of September, 2004.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Kenneth Hunt

610 Brandenburg Way
Roswell, Georgia 30075

Alice Blanco

McCalla, Raymer, Padrick, Cobb, Nichols & Clark, LLC
1544 Old Alabama Road
Roswell, Georgia 30076-2102

Lara Armstrong

McCalla, Raymer, Padrick, Cobb, Nichols & Clark, LLC
1544 Old Alabama Road
Roswell, Georgia 30076-2102

Paula Murray

Shapiro & Swertfeger
Duke Building - Suite 100
2872 Woodstock Boulevard
Atlanta, Georgia 30341