

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CASE NO. 07-71190-JB
: :
JOHN DURRELL STREETER : :
: :
Debtor. : CHAPTER 13
_____ :

ORDER

This Order is intended to clarify the rather unusual posture of this Chapter 13 case and what can and cannot be accomplished given the bankruptcy of the creditor whose actions precipitated this filing.

On November 2, 2009, the Court held a status conference in this Chapter 13 case. Harold B. Brown appeared for the debtor. John Andrie announced that he was appearing for RoundPoint Mortgage Servicing, although he had previously appeared in the case for Taylor, Bean & Whitaker Mortgage Corporation ("TBW"). Mary Ida Townson, the Chapter 13 Trustee, and the debtor were also present. Counsel discussed the status of debtor's case and the procedural posture of two outstanding matters: (1) debtor's objections to the claim of secured creditor TBW in which debtor objects to the balance of TBW's claim and the amount of the prepetition arrearages (Docket Nos. 26 and 37); and (2) TBW's motion for relief from the automatic stay (Docket No. 27) relating to debtor's real property located at 5610 Hampton Court in College Park (the

“Property”). Debtor has consistently maintained that he made all required payments and that TBW or its assigns had and have no right to foreclose on the Property.

On August 24, 2009, TBW filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Florida (Case No. 09-7047-jaf). At the November 2, 2009 conference in Mr. Streeter’s Chapter 13 case, the Court advised counsel that the automatic stay under 11 U.S.C. § 362(a) went into effect when TBW filed its petition and that the stay prevents TBW’s creditors, including Mr. Streeter, from commencing or continuing judicial proceedings against TBW without obtaining relief from the stay. 11 U.S.C. § 362(a)(1). Section 362 provides a procedure for a party to seek relief from the stay. The Court advised debtor’s counsel that if Mr. Streeter wishes to pursue litigation or seek affirmative relief against TBW, he must obtain relief from the automatic stay in TBW’s bankruptcy case in Florida or he can file a claim in the TBW case.

Debtor’s attorney stated that his primary objective was to obtain a writing to submit to credit reporting agencies detailing the reason debtor was forced to file this bankruptcy. Mr. Andrlé stated that his client had given him approval to begin drafting a letter to the credit reporting agencies; he also stated that the FDIC had taken over the bank that had an interest in TBW. Mr. Andrlé further indicated that he needed ninety (90) days for the FDIC to evaluate its position with respect to Mr. Streeter’s loan. The Court gave the parties time to negotiate language for such a writing, but advised the

parties that if they could not agree on language, debtor's counsel could file a motion proposing appropriate language. On February 12, 2010, counsel for the debtor filed a document styled "Memorandum in Support of Pretrial Court Order" (Docket No. 83). This pleading does not include proposed language for any writing and instead seeks affirmative relief including a finding that TBW committed fraud against Mr. Streeter, rescission, and debtor's attorneys fees and costs. The Court cannot grant debtor this relief, as TBW is a debtor in a Chapter 11 bankruptcy case and Mr. Streeter has not presented this Court with any ruling from the Florida bankruptcy court granting relief from the automatic stay.

Since neither debtor nor Mr. Andrie has filed any document proposing language for a writing to submit to the credit reporting agencies, this Order provides the facts which debtor or his counsel may use in any submission.

Debtor filed this Chapter 13 case on July 16, 2007. Debtor scheduled TBW with a contingent and disputed \$114,000.00 first mortgage on the Property. The Court confirmed Debtor's amended Chapter 13 plan on September 27, 2007 under which debtor proposed paying TBW \$539.73 per month to satisfy TBW's estimated prepetition arrearage claim of \$11,070.00. TBW did not object to debtor's plan. Two proofs of claim were filed on behalf of TBW: (1) an unsigned proof of claim (Claim No. 8) showing a secured claim of \$114,396.77 with a prepetition arrearage of \$11,070.00; and (2) a second proof of claim (Claim No. 9) showing a secured claim of \$114,596.77 with

a much larger prepetition arrearage of \$31,114.00. TBW's counsel stated that debtor's counsel filed proof of claim number eight (8).

Debtor filed two objections to TBW's claims, arguing that the alleged amounts of both the overall claim and the arrearage were excessive, that debtor missed no payments, and that his monthly payments should have been \$535.00 rather than \$1,025.00. TBW filed a response stating that debtor's current payment under the loan was comprised of principal and interest in the amount of \$753.52 and property taxes and insurance in the amount of \$271.48. On February 1, 2008, TBW filed a motion for relief from the automatic stay on the Property, alleging a postpetition deficiency of \$5,875.00.

Debtor's objections to TBW's claim and TBW's motion for relief came on for an evidentiary hearing on March 30, 2009 at which attorney Ralph Goldberg appeared for the debtor and John Andrie appeared for TBW. TBW associate counsel John Lippincott and debtor's prepetition attorney Marc Golder testified. A number of facts surrounding TBW's loan to the debtor were presented. TBW funded a \$116,176.00 loan to debtor on August 18, 2003 through its related entity Home America Mortgage, Inc. for debtor to purchase the Property. Debtor signed a \$116,176.00 note and security deed to TBW. The note showed debtor's monthly principal and interest payments were in the amount of \$753.52 and scheduled to begin on October 1, 2003.

As part of the closing, debtor and Andre Richards, the seller of the Property, entered into a "buydown agreement" on August 18, 2003. The document was

drafted by TBW. Mr. Lippincott testified that a buydown agreement involves an agent, broker or builder placing a sum of money in escrow with the lender and the lender disbursing the funds on a monthly basis to lower the borrower's payments for some temporary period under the loan. The buydown agreement in this case called for \$8,447.52 to be paid by the seller Andre Richards and placed in escrow with TBW. Debtor's starting principal and interest payment under the loan was \$753.52 per month, but the buydown agreement reduced debtor's principal and interest payments from \$753.52 to \$373.67 during the first year of the loan, and from \$753.52 to \$429.41 during the second year of the loan. While the language obligated the seller to fund the buydown agreement, TBW failed to collect the funds from the seller at the closing but completed the closing. TBW was obligated to act as the escrow agent and to apply the funds pursuant to the payment schedule in the buydown agreement. TBW failed to notice that the buydown agreement was not funded at the closing, and TBW assigned and sold the loan to Washington Mutual on September 4, 2003.

Washington Mutual audited the loan in 2004 and discovered that the buydown agreement was not funded. On March 17, 2004, Washington Mutual sent TBW a document informing it of the problem with the buydown agreement. TBW eventually repurchased the loan, although counsel could not identify the date of the repurchase. TBW failed to notify debtor of any problem with the buydown agreement until May 20, 2004 when a Hemat R. Ramsagar, identified as TBW's "Director - Investor Services",

sent a letter to the debtor with a reference line that reads "Ref: Loan No: 454233 Incorrect Buydown" enclosing two copies of a new buydown agreement. Neither party contends that the new or second buydown agreement has any operative effect, and Mr. Streeter contends that any signature of his on that document was forged. Mr. Lippincott testified that the loan's payment history shows a May 2004 partial funding of the buydown agreement in the amount of \$2,676.48, leaving \$5,771.04 in funding still due. Mr. Lippincott did not identify the source of the buydown agreement's partial funding.

Mr. Golder testified that debtor hired him in 2005 to stop a foreclosure on the Property. The record is unclear on the entity that attempted to foreclose on the Property. Mr. Golder testified that the foreclosure of the Property was advertised in August of 2005. Mr. Golder drafted letters and a complaint to stop the foreclosure, and he transmitted the letters and complaint to the attorneys handling the foreclosure. The foreclosure advertisements were withdrawn, and Mr. Golder agreed not to pursue the complaint; Mr. Golder could not recall whether he filed the complaint. Mr. Golder testified that his fee for handling the matter was \$5,000.00 which debtor paid.

Before concluding the evidentiary portion of the hearing on debtor's objections to TBW's claims, the parties discussed settlement and on April 7, 2009, Messrs. Andrie and Goldberg appeared in open court to announce the terms of a settlement. Following the announcement, counsel for TBW sent the Court and debtor's counsel an email stating that settlement discussions with the debtor had reached an

impasse. On August 4, 2009, TBW filed a motion to enforce the settlement agreement, but withdrew the motion after TBW filed its bankruptcy.

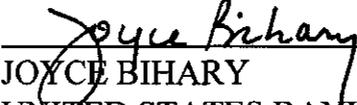
The facts as presented at the March 30, 2009 hearing and the record in this case show that: (a) debtor was not the party obligated to fund a buydown agreement at the closing; (b) TBW did not receive the \$8,447.52 payment to fund the buydown agreement at the closing; (c) TBW did not notify the debtor of a problem with the buydown agreement until May of 2004; and (d) debtor would likely not have faced foreclosure or had to file bankruptcy if not for the problems surrounding the buydown agreement which were no fault of the debtor.

This Order is entered without prejudice to debtor's rights to seek relief in the TBW bankruptcy case including relief from the automatic stay. However, debtor's claims for affirmative relief against TBW cannot be addressed in debtor's Chapter 13 case as the Court explained in detail at the November, 2009 status conference.

Given TBW's bankruptcy filing, Mr. Andrle's announcement that he now represents RoundPoint Mortgage Servicing, and his request that the FDIC have 90 days to evaluate its position with respect to the loan at issue, the Court cannot tell what entity actually holds Mr. Streeter's note and security deed. Accordingly, Mr. Andrle is directed to provide to the Court, debtor's counsel, and the Chapter 13 Trustee the name, address and authorized agent of the entity that currently holds this loan on or before **April 15, 2010**.

Finally, the record reflects that debtor's counsel has given the Chapter 13 Trustee directions with respect to some or all of the outstanding unsecured claims. A status conference will be held on **April 20, 2010 at 10:00 a.m.** so that the Court can hear from counsel and the Chapter 13 Trustee (1) whether there is any additional administration to be completed in this case and (2) whether debtor should be granted a Chapter 13 discharge or whether this case should be dismissed.

IT IS SO ORDERED, this 11th day of March, 2010.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

John Durrell Streeter
5610 Hampton Ct.
College Park, GA 30349

Howard B. Brown
Bush & Miller, Attorney at Law, P.C.
PO Box 492293
Atlanta, GA 30349

John Andrie
McCurdy & Candler, LLC
250 E. Ponce de Leon Ave., Suite 600
Decatur, GA 30030

Mary Ida Townson
Chapter 13 Trustee
Suite 2700 Equitable Bldg.
100 Peachtree Street, NW
Atlanta, GA 30303



Stephanie A. Mayberry
Judicial Assistant for
Chief Judge Bihary

Mailed: 03/11/2010