

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
WINSTON L. GREEN, JR.,) CASE NO. 15-54077 - MHM
)
Debtor.)

DEUTSCHE BANK NATIONAL)
TRUST COMPANY, AS TRUSTEE)
FOR INDYMAC INDX MORTGAGE)
LOAN TRUST 2004-AR10,)
MORTGAGE PASS-THROUGH)
CERTIFICATES SERIES 2004-AR10,)
)
Movant,)
v.) **CONTESTED MATTER**
)
WINSTON L. GREEN, JR.,)
)
Respondent.)

ORDER GRANTING MOTION TO ANNUL AUTOMATIC STAY

This case is before the court on Movant's *Supplemental Motion for Relief from Stay*, filed March 4, 2015, seeking an order annulling the automatic stay *nunc pro tunc* to the beginning of the case (Doc. No. 7) (the "Second Motion"). Debtor filed a skeletal¹

¹ Section 521(a) and Bankruptcy Rule 1007(b) require a debtor to file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs (the "Schedules"). Section 521(a) also requires the filing of Debtor's pay advices. When the bankruptcy petition is not accompanied by the Schedules, it is termed a "skeletal" petition.

petition under Chapter 7 of the Bankruptcy Code, initiating this case March 3, 2015 (the “Petition Date”). On the Petition Date, Movant filed an *Emergency Motion for Relief from Stay*, seeking modification of the automatic stay to allow Movant to cry out the foreclosure sale scheduled that day with respect to Debtor’s real property at 105 Highland Forest Lane, Oxford, Georgia 30054 (the “Property”) (Doc. No. 4) (the “First Motion”).

Due to Georgia’s foreclosure procedures, which include noticing the auction and publishing advertisements for four consecutive weeks prior to a foreclosure sale, a lender who misses an opportunity to conduct a foreclosure auction on the first Tuesday of the month may not be able to foreclose until two months later. This gives debtors an opportunity to file a bankruptcy case just prior to the scheduled foreclosure auction, invoking the automatic stay just briefly to halt a foreclosure for long periods of time, without ever intending to prosecute their case. To balance the potential harm to creditors against the protections of the bankruptcy code, courts in this district have occasionally seen fit to grant emergency, limited relief to allow the foreclosure auction – but only the foreclosure auction – to proceed as scheduled when a creditor makes a *prima facie* showing of the Debtor’s abuse of the bankruptcy code. *E.g.*, *In re Pullen*, 2011 WL 6846444 (Bankr. N.D. Ga. Dec. 23, 2011) (Murphy, J.); *In re Darlington*, 2009 WL 6498171 (Bankr. N.D. Ga. Sept. 11, 2009) (Drake, J.); *In re Olsen*, 2007 WL 7138345 (Bankr. N.D. Ga. Jan. 8, 2007) (Diehl, J.). The court may then conduct a hearing to determine whether the filing was abusive, and either allow the foreclosure sale to be

consummated, *In re Olsen*, 2007 WL 7138345 (finding that the bankruptcy filing was abusive), or disallow consummation, *In re Pullen*, 2011 WL 6846444 (vacating the order granting limited relief from stay because the allegations contained in the Motion were false), *aff'd by In re Pullen*, 524 Fed.Appx. 545 (11th Cir. 2013).

The First Motion alleged that this case was filed as part of an improper scheme to hinder and delay Movant's legitimate efforts to exercise its state-law rights; specifically, that Debtor has filed nine bankruptcy cases since December 2009, six of which were Chapter 13 cases dismissed for Debtor's failure to pay the filing fee, the seventh of which was a Chapter 7 case filed November 26, 2013 in which Debtor received a discharge, rendering Debtor ineligible for relief under Chapter 7 until November of 2021, and the eighth of which was another Chapter 13 case, which was ultimately dismissed with a two-year bar to refiling as a result of Debtor's abusive behavior. The First Motion demonstrated that Debtor was barred from filing cases under Chapter 13 until August 19, 2016, by order of this court, was ineligible for relief under Chapter 7 by operation of 11 U.S.C. § 727(a)(8), and yet filed this case on the eve of Movant's scheduled foreclosure sale to hinder Movant's state-law rights. Accordingly, the First Motion sought emergency modification of the automatic stay only to the extent necessary to cry out the foreclosure sale, but not to record the deed under power following such sale until further order of the court. The First Motion alleges that Movant's attorney spoke to Debtor via

telephone, informing him of the First Motion prior to filing it. The First Motion was granted by order entered March 3, 2015 (Doc. No. 6).

Movant now seeks an order annulling the automatic stay to allow Movant to consummate the foreclosure sale and assert its state law rights against Debtor and the Property. Movant also seeks *in rem* relief barring any bankruptcy case from affecting the Property for the next two years. Hearing was held March 24, 2015, at which Debtor and counsel for Movant appeared and were heard. Because Debtor appeared unable to articulate an argument against granting the relief Movant seeks, the parties were given an opportunity to file supplemental arguments following the hearing. Movant filed a supplemental brief April 7, 2015 (Doc. No. 20), but Debtor failed to file a statement. Prior to the hearing, Debtor was dismissed from this case for failing to pay the fee required to file a petition under Chapter 7 of the Bankruptcy Code.

Debtor has failed to demonstrate any legitimate purpose for filing the instant case. He is ineligible for a discharge under 11 U.S.C. § 727(a)(8). Presumably, the only reason Debtor filed a Chapter 7 case was because he is barred from filing cases under Chapter 13 by order of this court. Notably, Debtor failed to prosecute this case: he did not file Schedules or pay the filing fee. At the hearing, the court opined that Debtor appears to have filed this case to abuse the bankruptcy system; Debtor responded, "Well, I'm not saying it wasn't abusive, Your Honor." All indicia demonstrate that Debtor filed this case not to prosecute it in good faith, but instead to frustrate and delay the efforts of

Debtor's creditors. That behavior constitutes an abuse of the Bankruptcy Code, and will not be sanctioned by this court. Accordingly, it is hereby

ORDERED that the Motion is **granted**: the automatic stay of 11 U.S.C. § 362 is annulled *nunc pro tunc* to the beginning of this case. It is further

ORDERED that the automatic stay of § 362 shall not apply with respect to the Property in any case filed before the earliest of Movant completing the foreclosure sale of the Property and six months from the date of entry of this order.

IT IS SO ORDERED, this the 27th day of April, 2015.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE