

4-11-06

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBER
	:	
LARRY BARKLEY	:	05-12644-WHD
LARRITA BARKLEY,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTORS.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Relief from Automatic Stay Pursuant to Consent Order Entered on February 14, 2006, filed by Washington Mutual Bank (hereinafter "WMB"). For the reasons stated, the Motion is denied without prejudice.

On February 14, 2006, the Court entered a consent order denying WMB's motion for relief from stay with regard to real property known as 1418 Jackson Street, Griffin, Spalding County, Georgia (hereinafter the "Property"). Pursuant to the consent order, the Debtors agreed to make certain payments on a strict compliance basis for six months. The consent order further provides that, upon the Debtors' default of payments under the consent order, WMB would be entitled to send a notice of default to the Debtors and their attorney, after which, the Debtors would have ten days to cure the default. If the Debtors failed to cure the default, WMB would then have the right to seek relief from the automatic stay without further hearing by submitting an affidavit of default to this Court. However, the consent order also required WMB to provide notice of the default to the Chapter 13 Trustee and provided that the Chapter 13 Trustee would have twenty days to

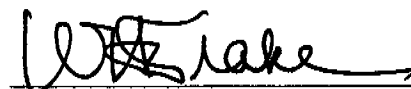
file a motion to convert the Debtors' bankruptcy case to one under Chapter 7.

According to the affidavit of WMB's counsel, the Debtors defaulted on payments required under the consent order for February, March, and April of 2006. The affidavit also indicates that WMB notified the Debtors of the default by letter mailed on March 15, 2006 and that the Debtors failed to cure the default. However, the affidavit does not state that WMB notified the Chapter 13 Trustee of the Debtors' default, and the ten-day letter, which WMB sent to the Debtors, does not indicate that the letter was copied to the Chapter 13 Trustee. Accordingly, the Court cannot conclude that the Chapter 13 Trustee has been given the requisite twenty-days' notice and an opportunity to file a motion to convert.

For this reason, the Motion is **DENIED** without prejudice.

IT IS SO ORDERED.

At Newnan, Georgia, this 11 day of April, 2006.

A handwritten signature in black ink, appearing to read "W. Drake", written over a horizontal line.

W. HOMER DRAKE, JR.

UNITED STATES BANKRUPTCY JUDGE