UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 06-62628
Know Thy Self, Inc.,	CHAPTER 11
Debtors.	JUDGE MASSEY

ORDER ANNULLING AUTOMATIC STAY RETROACTIVE TO THE FILING OF THIS CASE, VALIDATING ANY FORECLOSURE SALE INVOLVING PROPERTY OF ESTATE AFTER THE PETITION WAS FILED, PROVIDING FOR IN REM RELIEF PURSUANT TO 11 U.S.C. § 362(d)(4), AND GRANTING WASHINGTON MUTUAL BANK'S MOTION FOR RELIEF FROM AUTOMATIC STAY

Acting as the "Authorized Representative" of "Know Thy Self, Inc.," Curtis Leon Stuart filed the petition in the name of Know Thy Self, Inc. initiating this case on March 7, 2006. The petition includes a section entitled "Type of Entity," in which Mr. Stuart checked the box for individual and for "Other" after which he wrote "Trade Name & Transmilities (sic-illegible) Corp. Entity."

On March 9, 2006, the United States Trustee moved to dismiss this case, arguing that if Debtor is a corporation, it should be represented by an attorney, and if it is not a corporation, it should be dismissed because Mr. Stuart is barred from filing a bankruptcy petition by an order entered in cases he filed in 2005.

Debtor has not filed schedules or other documents required by section 521(a)(1) of the Bankruptcy Code as of the date of this Order. The address of Debtor stated in the petition is

"1906 Glenn Echo Drives (sic), Decatur, Georgia." Attached to the petition is what purports to be a creditor matrix listing only Washington Mutual Bank. Mr. Stuart executed a Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership as Debtor's "representative."

On March 10, 2006, Washington Mutual Bank filed a Motion for Relief from Automatic Stay, to Annul Automatic Stay Ab Initio, to Validate Foreclosure Sale and for in Rem Relief in which it asserts that it conducted a foreclosure sale of real property located in DeKalb County, Georgia known as 1906 Glen Echo Drive, Decatur, Georgia (the "Property") less than an hour after the petition of Know Thy Self, Inc. was filed.

The Court held a hearing on Washington Mutual's motion on March 16, 2006. Its counsel repeated what the motion states. Mr. Stuart was the debtor in four other cases in this Court since 2004, filed under case numbers 04-97234, 05-90742, 05-95809, and 05-96715. This case for Know They Self, Inc. is thus the fifth involving Mr. Stuart, who has made himself well known to this Court. The Court takes judicial notice of the documents and pleadings filed in Mr. Stuart's bankruptcy cases.

In the last two cases filed by Mr. Stuart personally, which were assigned to Chief Judge Bihary, the Court entered an Order on December 19, 2005, dismissing those cases with prejudice and prohibiting Mr. Stuart "from filing a bankruptcy petition for any relief under any chapter of Title 11 of the United States Code for a period of one year from the entry of this Order." That Order is final and not subject to appeal.

Only in the last two of these cases did Mr. Stuart file schedules and a statement of financial affairs. In those documents, he revealed that his only creditor is Washington Mutual Bank, although he improperly listed himself as his own creditor, citing "UCC

Financing Statement." These prior cases and the present case concern only the dispute between Mr. Stuart and Washington Mutual Bank. The Court asked Movant's counsel whether Debtor has any interest in the Property, and counsel responded that no such interest had been discovered as of just prior to March 7, 2006, but that recording of deeds in Dekalb County is about a month behind.

Prior to permitting Mr. Stuart to respond to the motion, the Court asked him whether Know Thy Self, Inc. is a corporation. He responded that Know Thy Self, Inc. is a "trade name" he uses for "conducting business." The Court pressed Mr. Stuart on the question what sort of entity Know Thy Self, Inc. is, and he ultimately responded that it is not incorporated and is "fictional" because it is not an individual. Over and over, when the Court asked Mr. Stuart what sort of entity Know Thy Self, Inc. is, he repeated the same answer: "it is a trade name."

Mr. Stuart's description of Know Thy Self, Inc. as merely a "trade name" and the statement on the petition that it is a "trade name" raise the preliminary question of whether Know Thy Self, Inc. is eligible to be a debtor in a case under title 11 of the United States Code. The answer to this question is highly relevant to the relief sought by Movant.

If Know Thy Self, Inc. is merely the alter ego of Mr. Stuart, as the motion of the U.S. Trustee suggests, it is not eligible to be a debtor because he is banned from filing a petition in this Court until December 19, 2006. If Debtor is not Mr. Stuart, it must be a "person" in order to be eligible to file a petition under Chapter 11. Eligibility in a Chapter 11 is governed by section 109(d) of the Bankruptcy Code, which provides:

> (d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates,

> or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title.

Know Thy Self, Inc. is a not banking institution and hence would be eligible to file the petition only if it is a "person that may be a debtor under chapter 7." Section 109(b) provides that only a "person" may be a debtor in a Chapter 7 case, except for a railroad and certain financial institutions. Thus, the eligibility of Know Thy Self, Inc., assuming it is not the alter ego of Mr. Stuart, depends on whether it is a "person."

Section 101(41) of the Bankruptcy Code provides in relevant part that "[t]he term 'person' includes individual, partnership, and corporation, but does not include governmental unit" with some exceptions for specified types of governmental units. Section 102, entitled "Rules of Construction," provides that "[i]n this title, . . . (3) "includes" and "including" are not limiting." Hence, a "person" could include an entity other than an individual, partnership or corporation.

Based on Mr. Stuart's description of Know Thy Self, Inc. as a trade name and as fictitious at the March 16 hearing, the Court infers that the Debtor does not exist. It is fictitious, not in the sense of a legal fiction such as a corporation, but is fictional because Mr. Stuart made it up, like Charles Dickens made up the firm of Scrooge and Marley. A trade name is not an entity of any kind but is merely a "name under which a business operates," Black's Law Dictionary, 8th ed., p. 1533, just as Mr. Stuart described it. His insistence that Know Thy Self, Inc. is a "trade name" for the business he conducts is an admission that it has no legal existence. Therefore, it cannot be a "person" for bankruptcy purposes. Otherwise, an individual could file a bankruptcy petition as the representative of Superman or the White Rabbit in *Alice in Wonderland*.

Nor would it benefit Mr. Stuart to contend that Debtor is the trade name of a sole proprietorship that he owns. A proprietorship is not a person apart from the individual who owns it and cannot file bankruptcy in its own name.

> [B]ankruptcy law is clear with respect to whether a sole proprietorship can file for bankruptcy without its proprietor also doing so. A sole proprietorship is not a "person" for purposes of the Bankruptcy Code because it is neither an individual, nor a partnership, nor a "corporation." 11 U.S.C. § 101(41). Since it is not a "person," a sole proprietorship is ineligible to be a debtor in bankruptcy. 11 U.S.C. § 109(a)-(b). *Gilliam v. Speier (In re KRSM Props., LLC*), 318 B.R. 712, 717 (9th Cir. BAP 2004); *see also In re Drimmel*, 108 B.R. 284, 287 (Bankr.D.Kan.1989) ("Quite simply, the reason there is no separate legal definition for a sole proprietor's interest in his or her business is that none is necessary where only one person owns a business. As the debtors put it, 'the business and the proprietor are one.' "); *In re T.W. Koeger Trucking Co.*, 105 B.R. 512, 515 (Bankr.E.D.Mo.1989) (holding that "because the sole proprietor has no powers beyond that of an individual," it was ineligible to file solely as a business entity).

In re Christenberry, 336 B.R. 353, 356 (Bankr. E.D.Tenn. 2005).

So, regardless of whether the Debtor is a figment of Mr. Stuart's imagination, a sole proprietorship or Mr. Stuart, it is ineligible to be a debtor in a bankruptcy case. This fact alone justifies the annulment of the automatic stay, as does the pattern of abuse of the bankruptcy process in which Mr. Stuart has engaged, as described in this Order, separate and apart from Washington Mutual's motion.

Mr. Stuart made several arguments at the March 16 hearing in opposition to Washington Mutual's motion. His first argument was in effect that the automatic stay barred a foreclosure sale, implying that Know Thy Self, Inc. had an absolute right to rely on the automatic stay. Mr. Stuart is wrong and not only because Debtor is ineligible.

Even if the automatic stay applied to the Property and even though actions taken in violation of the automatic stay are normally considered to be void, section 362(d)(4) of the

Bankruptcy Code creates an exception that permits a bankruptcy court to annul the stay retroactively and thereby erase its effects altogether. That section provides:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay–
>
> . . .
>
> (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either--
>
> (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
>
> (B) multiple bankruptcy filings affecting such real property.
>
> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

In *In re Albany Partners, Ltd.*, 749 F.2d 670 (11th Cir. 1984), the debtor filed bankruptcy on the eve of a foreclosure of a motel. Prior to the filing of its petition, however, the debtor had not asserted an interest in the motel, despite the fact that it knew of litigation in state court between the mortgagee and a different partnership involving the motel. The debtor filed its bankruptcy petition on the eve of foreclosure, claiming that it owned the motel. The bankruptcy court determined that there was no equity in the motel and that debtor had no means to finance a reorganization. The court held that the filing was in bad faith and annulled the automatic stay, notwithstanding that the mortgagees had been notified

of the bankruptcy filing prior to the sale. On appeal, the district court affirmed, and on further appeal, the Eleventh Circuit Court of Appeals affirmed, stating, "we hold that § 362(d) permits bankruptcy courts, in appropriately limited circumstances, to grant retroactive relief from the automatic stay." *Id*. at 675. (The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 amended section 362(d), and that amendment is applicable to this case. But the amendment did not alter the language that forms the basis of the Eleventh Circuit's opinion in *Albany Partners*.)

Washington Mutual indicated in its motion that it conducted a foreclosure sale of the Property at 10:55 a.m. on March 7, 2006. Mr. Stuart did not file the petition for Know Thy Self, Inc. on the eve of foreclosure; he filed the petition at 9:41 a.m. on March 7, which was 19 minutes before the earliest time that a foreclosure could be conducted. A fair inference is that he delayed the filing to prevent Washington Mutual from obtaining a hearing on a motion for stay relief.

Mr. Stuart has a pattern of such conduct. He filed case no. 04-97234 on the eve of foreclosure by Washington Mutual. In case no. 05-90742, Washington Mutual filed a motion for stay relief, which was granted in an Order entered on April 4, 2005, to permit the parties to litigate their differences in state court. That case was dismissed because Mr. Stuart did not pay the filing fee. Mr. Stuart filed case no. 05-95809 on September 6, 2005, once again to stop a foreclosure. Washington Mutual moved for an order annulling the stay to validate the foreclosure sale. That motion was denied in the December 21, 2005 Order, which dismissed the case, along with case no. 05-96715 that Mr. Stuart filed while case no. 05-95809 was pending, and barred him from filing another petition for a year.

The record here is silent as to whether Debtor has an interest in the Property. If not, then the automatic stay would not have affected Washington Mutual's foreclosure or its right to evict any occupant of the property. If, on the other hand, Mr. Stuart has transferred the Property or an interest in the Property to Know Thy Self, Inc., in the last six months, the filing of this case by Know Thy Self, Inc. would have been merely an effort to get around Mr. Stuart's inability to file a new case and hence would constitute a bad faith filing, even if it were a legal entity.

Mr. Stuart has engaged in a pattern of bankruptcy abuse. He has filed four personal bankruptcy cases in the last year and a half and failed to prosecute each one. He took no meaningful action in any of those cases to attempt to reorganize his financial affairs. He then filed this case for a non-existent debtor after having been barred himself from filing bankruptcy.

These cases have had no legitimate bankruptcy purpose. The "notice" that he filed in this case on March 7, 2006, purporting to be a copy of a writ of mandamus, rants about

> an un-verified, self-imposed obligation "**DEBT**" instrument – evidencing an adhesive contract that has been **"CHARGED OFF,**" - "**BREACH OF CONTRACT**," tendered in Full Payment –by a proper "**BILL OF EXCHANGE**" and "**DISCHARGED**" ; as an attempt to enforce or have enforced or compelled and **"ENFORCEABLE DEBT INSTRUMENT**" that has **NO basis** {i.e., **No STANDING** before these courts], in reality or law, and currently does not exist, and is therefore, **VOID**.

In other words, Mr. Stuart denies he owes anything to Washington Mutual. There is no contention that Know Thy Self, Inc. owes any entity anything. Bankruptcy exists to discharge or rearrange and restate debt and other debtor-creditor rights. It follows that this case was filed in bad faith because it has no legitimate bankruptcy purpose.

Approving the dismissal of a Chapter 11 case involving a dispute between a debtor and a single creditor, the Eleventh Circuit stated:

> The bankruptcy court's finding of bad faith is well supported by the record. The court held that many of the circumstantial factors which have been identified by the courts as evidencing a bad faith filing are present in this case:
>
> > (i) The Debtor has only one asset, the Property, in which it does not hold legal title;
> >
> > (ii) The Debtor has few unsecured creditors whose claims are small in relation to the claims of the Secured Creditors;
> >
> > (iii) The Debtor has few employees;
> >
> > (iv) The Property is the subject of a foreclosure action as a result of arrearages on the debt;
> >
> > (v) The Debtor's financial problems involve essentially a dispute between the Debtor and the Secured Creditors which can be resolved in the pending State Court Action; and
> >
> > (vi) The timing of the Debtor's filing evidences an intent to delay or frustrate the legitimate efforts of the Debtor's secured creditors to enforce their rights.

In re Phoenix Piccadilly, Ltd., 849 F.2d 1393 (1988), 1394 -1395 (11th Cir. 1988)(citations omitted.).

In this case, Know Thy Self, Inc. has failed to show that it has any asset, it has listed only one creditor in connection with its petition, it has no employees (because it is only a trade name), the property about which this case was filed was the subject of a foreclosure action based on an alleged arrearage, Debtor's "representative" claims there is no debt at all and there is no showing that Debtor as opposed to the "representative" has any potential liability to the creditor, the dispute can be resolved in state court, and the timing of the filing "evidences an intent to delay or frustrate the legitimate efforts" of the creditor to enforce its rights. If ever there was a bankruptcy case filed in bad faith, this one is it. Debtor's bad faith

in filing this case justifies annulling the automatic stay so as to validate any foreclosure sale conducted after the filing of the petition.

Because the automatic stay is retroactively annulled, Washington Mutual Bank is free to file its deed under power and to take whatever actions under state law are appropriate to obtain possession of the Property.

Mr. Stuart raised four other defenses to the motion, none of which has merit. First, he asserts that there is no proof of a debt held by Washington Mutual or even proof of a note. Second, he contends that no foreclosure sale took place. Third, he contends that the Court lacks jurisdiction because of a writ of mandamus he says he filed in the U.S. Court of Appeals for the Eleventh Circuit. Finally, he contends that 5 U.S.C. § 556(d) is relevant to this proceeding and bars the Court from granting the relief demanded by Washington Mutual.

Washington Mutual is not asserting that it holds a debt against Know Thy Self, Inc. It asserts that it holds a consensual lien against the Property to secure a debt owed by Mr. Stuart. The Court need not find a debt owed by Know Thy Self, Inc. or even an interest in the Property held by Know Thy Self, Inc. to grant relief from the stay. It was Mr. Stuart who named Washington Mutual in an attachment to the petition in this case, thereby admitting that Washington Mutual may have an interest in the Property. He has thus caused Know Thy Self, Inc. to assert that its filing somehow affects rights of Washington Mutual. The implication that Washington Mutual's rights may be affected by this case, where Washington Mutual is not alleged to have any relationship whatsoever with Know Thy Self, Inc., constitutes "cause" for stay relief under section 362(d). Washington Mutual is not required to prove anything with regard to a debt owed by Mr. Stuart. Otherwise, that would turn this

case into Mr. Stuart's case, but Mr. Stuart is not eligible to be the Debtor. In short, Mr. Stuart lacks standing to complain about stay relief in this case.

Mr. Stuart contends that no foreclosure sale took place. If he is correct, annulling the stay would not adversely affect Know Thy Self, Inc. with respect to a sale that did not happen.

Mr. Stuart says this Court lacks jurisdiction to proceed because he filed a writ of mandamus in the Court of Appeals. If so, he did not prove that he filed such a writ in the Court of Appeals. It would not matter even if he had, because he is incorrect that a petition for a writ of mandamus in a case deprives this Court of jurisdiction to adjudicate disputes in this case or to determine whether Debtor is eligible to be a debtor in a bankruptcy case. Indeed, a writ of mandamus "is not to be used as a substitute for an appeal, or to control the decision of the trial court in discretionary matters." *Plekowski v. Ralston-Purina Co.,* 557 F.2d 1218, 1220 (5th Cir. 1977).

Mr. Stuart's last defense is that the 5 U.S.C. § 556(d) somehow bars the relief granted by this Order. Again, Mr. Stuart is mistaken. 5 U.S.C. § 556 is applicable in litigation before administrative law judges in disputes involving federal agencies. It has nothing to do with bankruptcy.

Because this case is the fifth one filed by Mr. Stuart with respect to the same property and because his actions constitute abuse of the bankruptcy process, Washington Mutual is entitled to record this Order pursuant to 11 U.S.C. § 362(d)(4) so as to be binding on any future case involving the Property filed not later than two years after entry of this Order.

The pattern of abuse described in this Order also justifies eliminating the stay of this Order pursuant to Fed. R. Bankr. P. 4001(3), which provides:

> An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.

To stay this Order, even for 10 days, would reward the behavior of Mr. Stuart and continue his abuse of the bankruptcy process. There is no likelihood whatsoever that Know Thy Self, Inc. could prevail on an appeal of this Order. Hence, this Court would deny a motion to stay this Order pursuant to Fed. R. Bankr. P. 8005, unless Know Thy Self, Inc. posts an appropriate bond, which would likely be at least in the amount of the debt that Washington Mutual asserts that Mr. Stuart owes.

To the extent that Debtor makes a motion for a stay of this Order, Washington Mutual Bank should be prepared to state promptly the amount of its total claim, including attorney's fees, as of such time such a motion is made.

For these reasons, it is

ORDERED that Washington Mutual Bank's Motion for Relief from Automatic Stay, to Annul Automatic Stay Ab Initio, to Validate Foreclosure Sale and for in Rem Relief is GRANTED. It is

FURTHER ORDERED that the automatic stay is annulled as of the moment the petition in this case was filed. It is

FURTHER ORDERED that any foreclosure sale conducted by Washington Mutual Bank or by any other entity with respect to property in which Know Thy Self, Inc. claims an interest conducted after the filing of the petition in this case is valid to the extent otherwise valid under state law and that Washington Mutual Bank and any other such entity may record a deed under power and take any appropriate action under state law to obtain possession of

its collateral, including the property commonly known as 1906 Glen Echo Drive, Decatur, Georgia. It is

FURTHER ORDERED that Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is not applicable to this Order, which is not stayed; and it is

FURTHER ORDERED that so long as Washington Mutual Bank complies with the recording requirement of 11 U.S.C. § 362(d)(4), this Order shall be binding in any future case under title 11 of the United States Code purporting to affect 1906 Glen Echo Drive, Decatur, Georgia filed not later than 2 years after the date of the entry of this Order, but subject to the right of a debtor in any such subsequent case to move for relief from this Order.

Dated: March 17, 2006.

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE