

ENTERED ON
AUG 14 2009

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DOCKET

IN RE: : CHAPTER 11
: :
MICHAEL A. GREGORAKOS, : CASE NO 09-78940-MHM
: :
Debtor. : :

ORDER DENYING MOTION FOR STAY PENDING APPEAL

By order entered August 3, 2009 [Doc. No. 16], the motion of GRP Loan, LLC ("GRP"), for *in rem* relief was granted as to the real property located in Cobb County, Georgia known as 3184 Robinson Rd., Marietta, GA 30068 (the "Property"). Debtor filed a notice of appeal of that order August 12, 2009 [Doc. No. 26]. Debtor also filed a motion for stay pending appeal. Pursuant to 11 U.S.C. §102, no further notice or hearing are necessary.

Debtor filed this case to avoid a dispossessory proceeding to evict him from residential real property located in Cobb County, Georgia known as 3184 Robinson Rd., Marietta, GA 30068 (the "Property"). The Property has been involved in three other bankruptcy filings:

- Michael A. Gregorakos filed **Case No. 08-62286-MHM**, a chapter 11, February 5, 2008. GRP filed a *Motion for Relief from Stay and Request to Validate the Foreclosure Sale* February 11, 2008 [Doc. No. 12]. An order

granting that motion was entered March 24, 2008 [Doc. No. 23]. The case was subsequently dismissed by consent October 9, 2008 [Doc. No. 53].

- Michael E. Jones, the purported cook for the Gregorakos family, filed Chapter 7 **Case No. 08-76049-MHM**, August 19, 2008. GRP filed a *Motion for Relief* September 5, 2008 [Doc. No. 11]. An order granting that motion was entered September 30, 2008 [Doc. No. 14]. The case was dismissed March 9, 2009 [Doc. No. 21].
- Mary Gregorakos, the mother of Michael, filed Chapter 13 **Case No. 09-72614-MHM** May 15, 2009. GRP filed an *Emergency Motion for Relief* May 15, 2009 [Doc. No. 4] and amended that motion to include a brief in support thereof, June 1, 2009 [Doc. No. 13]. An order granting that motion was entered June 24, 2009 [Doc. No. 15]. Having filed neither Schedules¹ nor a Chapter 13 plan, Mary Gregorakos then moved to voluntarily dismiss her case July 30, 2009 [Doc. No. 20].
- Michael A. Gregorakos filed the instant proceeding, Chapter 11 **Case No. 09-78940-MHM** July 22, 2009.

The debtors in the four cases described above appear to have filed those cases to litigate an alleged wrongful foreclosure by GRP. As discussed in more detail in the order entered June 24, 2009 [Doc. No. 15] in Case No. 09-72614, the substance of the issues surrounding the foreclosure by GRP should be addressed in the state courts.

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").

Pursuant to Bankruptcy Rules 7062 and 8005,¹ where the appellant fails to offer to post a supersedeas bond, the granting of a stay pending appeal is discretionary with the court. That discretion is by design a flexible tool which permits the bankruptcy court to tailor relief to the circumstances of the particular case. *Gleasant v. Jones, Day, Reavis & Pogue*, 111 B.R. 595 (Bankr. W.D. Tex. 1990).

The four criteria for a stay pending appeal are:

- (1) Whether the movant has made a showing of likelihood of success on the merits;
- (2) Whether the movant has made a showing of irreparable injury if the stay is not granted;
- (3) Whether the granting of the stay would substantially harm the other parties; and
- (4) Whether the granting of the stay would serve the public interest.

¹ Bankruptcy Rule 7062, based on FRCP 62, (d) states:

Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Bankruptcy Rule 8005 states (in part):

Stay Pending Appeal. A motion for a stay of the judgment, order, or decrees of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 ..., the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest.

In re First South Savings Association, 820 F.2d 700 (5th Cir. 1987) ("*First South*"); *In re Grand Jury Proceedings*, 689 F.2d 1351 (11th Cir. 1982); *Ruiz v. Estelle*, 666 F.2d 854 (5th Cir. 1982) ("*Ruiz II*"); *Pitcher v. Laird*, 415 F.2d 743 (5th Cir. 1969). The most significant of the four criteria is the likelihood of success on appeal. *In re Bilzerian*, 264 B.R. 726(Bankr. M.D. Fla. 2001).

Debtor alleges without discussion that he is likely to succeed on the merit of his appeal. The facts do not support a conclusion that Debtor is likely to succeed. The multiple filings by Debtor, his mother and his employee – without reasonable efforts to make the mortgage payments before foreclosure or to make *quantum meruit* payments since, and without any reasonable prospect for reorganization – illustrate Debtor's scheme to delay, hinder, and postpone GRP and other creditors.¹ Hundreds of cases are filed daily in this district by debtors making a legitimate, good faith effort to reorganize to keep their homes and cars. The bankruptcy court is a forum for the honest but unfortunate debtor to obtain breathing space to allow dealing with creditors rationally and equitably. The bankruptcy court is not a forum to rescue debtors from unpleasant decisions in state court. Debtor's schedules filed in this case show he has no realistic possibility or intention of a successful reorganization. The pattern of multiple filings involving the Property shows that only *in rem* relief will protect GRP from further delay and expense resulting from Debtor's abuse of the Bankruptcy Code.

¹ See Motion of Cobb Electric Membership Cooperative filed August 10, 2009 [Doc. No. 22].

Additionally, Debtor alleges he will suffer irreparable injury if GRP is allowed to exercise its state law rights as owner of the Property to dispossess Debtor from the Property. Debtor, however, no longer has any title in the Property and only a bare possessory interest. Any injury that occurs as a result of the dispossession would be amendable to a remedy by payment of money. An injury compensable by a money judgment does not constitute an irreparable injury. *JSG Trading Corp. v. Tray-Wrap, Inc.*, 917 F.2d 75, 79 (2d Cir.1990). As Debtor states, GRP cannot dispose of the Property due to a *lis pendens* filed in connection with Debtor's Wrongful Foreclosure action currently pending in Superior Court of Cobb County. As Debtor has failed to show either likelihood of success on the merits or irreparable injury, Debtor is not entitled to a stay pending appeal unless he posts a supersedeas bond in an amount equal to the fair market value of the Property. Accordingly, it is hereby

ORDERED that Debtor's motion for stay pending appeal is *denied*.

IT IS SO ORDERED, this the 14th day of August, 2009.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE