



IT IS ORDERED as set forth below:

Date: December 16, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A09-86178-PWB
	:	
MARTHA ANN KNIGHT,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
U.S. BANK NATIONAL ASSOCIATION,	:	
AS TRUSTEE FOR THE TRUMAN	:	
FHA TRUST 2008-1, BY BAC HOME	:	
LOANS SERVICING, L.P. FKA	:	
COUNTRYWIDE HOME LOANS	:	
SERVICING, L.P.,	:	
	:	
Movant	:	CONTESTED MATTER
	:	
v.	:	
	:	
MARTHA ANN KNIGHT	:	
MARY IDA TOWNSON, Trustee,	:	
	:	
Respondents.	:	

**ORDER MODIFYING AUTOMATIC STAY
AND DENYING REQUEST FOR FINDING UNDER 11 U.S.C. § 362(d)(4)(B)**

The Court is in receipt of a proposed order prepared by counsel for the Movant entitled “Order Granting Motion for Relief from Stay and Finding Pursuant to 11 U.S.C. § 362(d)(4)(B).”

The Order contains the following provision:

FURTHER ORDERED that the Court finds that the filing of the petition in this case was part of a scheme to delay, hinder and defraud this Creditor that involves multiple bankruptcy filings affecting the property, as contemplated by 11 U.S.C. § 362(d)(4)(B).

The Movant’s motion for relief from the automatic stay came before the Court for hearing on December 2, 2009. The motion sought relief from the automatic stay to permit the Movant to exercise its state law rights with respect to real property located at 4150 Ponderosa Drive, Southwest, Covington, Georgia. The motion also contained a request for a finding pursuant to 11 U.S.C. § 362(d)(4)(B). At the call of the calendar, no objection was made to the motion and it was announced that a “no opposition” order would be presented. As a result, the Court did not hear this matter and made no findings whatsoever with respect to the relief requested.

It is the policy of the undersigned that any creditor seeking relief under 11 U.S.C. § 362(d)(4)(B) must be heard by the Court. A creditor may not take a “no opposition” order on such a form of relief. The statute specifies that the court must *find* that the debtor has engaged in a “scheme to delay, hinder, and defraud creditors” by filing the petition. At a minimum, a creditor must proffer facts in sufficient detail which would permit the court to draw such a conclusion. This policy has been announced on multiple occasions at the call of calendars by the Court’s courtroom deputy clerk. It is the responsibility of the movant seeking such relief to make sure such a request is heard by the Court.

The submission of an order containing this provision regarding § 362(d)(4)(B) is highly inappropriate. The Court shall give the Movant the benefit of the doubt that the inclusion of such a provision was error, but the Court shall not be so forgiving if it occurs again.

Aside from the § 362(d)(4)(B) provision, it is appropriate to grant the relief requested in the motion in that the Debtor did not oppose the lifting of the stay. The Court will grant the relief requested as set forth in the proposed order, redacting the § 362(d)(4)(B) provision, as set forth below. It is

ORDERED that the 11 U.S.C. § 362(a) automatic stay is lifted as to Movant, its successors and assigns, regarding the real property commonly known as 4150 Ponderosa Drive Southwest, Covington, Georgia; it is

FURTHER ORDERED that Movant, its successors, and assigns, may proceed to assert its rights, including, but not limited to, the institution and completion of foreclosure proceedings, reasonable fees and to assert any and all of its respective rights and remedies under applicable law, as to its collateral; it is

FURTHER ORDERED that the Trustee shall cease funding the balance of Movant's pre-petition arrearage claim and supplemental claim, if any; it is

FURTHER ORDERED that upon the completion of any foreclosure sale, any funds in excess of the payoff amount due to Movant under its Note and Security Deed, and to any subordinate lienholder(s) properly entitled to receive proceeds under applicable State Law, shall be paid to the Trustee for the benefit of the estate. It is

FURTHER ORDERED that the request for a finding under § 362(d)(4)(B) is denied without prejudice.

End of Order

Distribution List

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