

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
MARY KAY PULLEN,)	CASE NO. 11-81588 - MHM
)	
Debtor.)	

)	
CAIN V. HARRIS,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
MARY KAY PULLEN,)	
)	
Respondent.)	

ORDER DENYING HARRIS' MOTION TO DISMISS

An extensive hearing was held May 21, 2012, on the motion filed February 7, 2012 by Cain Harris ("Movant") to dismiss this case (Doc. No. 73) (the "Motion to Dismiss").¹ At the conclusion of that hearing, for the reasons set forth on the record, the Motion to Dismiss was orally denied. Pursuant to BLR 9013-2, the prevailing attorney is required to

¹ It appears that the Motion to Dismiss was not placed on the hearing calendar earlier because Movant's attorney failed to schedule a hearing as required by the court's Open Calendar Procedure. It was placed on the calendar after a flurry of other pleadings were filed by the parties in April, 2012, including the Chapter 13 Trustee's Motion to Dismiss, and all were scheduled by the court for the same date. The Chapter 13 Trustee's motion to dismiss was withdrawn prior to the hearing and another motion filed by Movant (to vacate confirmation) was also withdrawn prior to the hearing, so that the only matters heard May 21, 2012, were the Motion to Dismiss and Debtor's motion to strike the Motion to Dismiss.

prepare and present a proposed order.² Debtor's attorney, however, failed to present a proposed order denying the Motion to Dismiss.

In the continuing saga of Movant's and Debtor's relentless litigation, on May 29, 2012, Debtor filed a *Motion for Protective Order*, seeking an order protecting her from the obligation to answer pending discovery requests by Movant because no motions remained pending in the main bankruptcy case (Doc. No. 137). On June 7, 2012, Movant filed a response arguing that, until a written order on the Motion to Dismiss is entered, he is entitled to responses to his discovery requests (Doc. No. 140). On June 9, 2012, Movant filed a *Motion for Adequate Protection* (Doc. No. 141) (the "Adequate Protection Motion"), which is scheduled for hearing August 9, 2012.

At the hearing held May 21, 2012, Movant stated on the record that he refused to accept Debtor's October 1, 2011 mortgage payment³ because he maintained that he had

² BLR 9013-2 provides:

- (a) All proposed orders (including findings of fact and conclusions of law or other rulings orally announced by the Bankruptcy Judge and orders submitted following the call of a matter at a scheduled hearing as to which there is no opposition) shall: (1) be prepared in writing and signed by the attorney for the prevailing party, unless the Bankruptcy Court directs otherwise; (2) include the scheduled hearing date, if applicable; and (3) be submitted to the Bankruptcy Judge within seven days from the date of pronouncement or scheduled hearing, if applicable. A copy shall be provided to each party. An attorney's signature as preparer of a proposed order constitutes a certification that the contents of the proposed order accurately reflect the Bankruptcy Judge's oral ruling or the proceedings at the call of the matter, as applicable.

³ Payments are due on Debtor's residence at 330 Jade Cove Drive, Roswell, Georgia (the "Property").

conducted a valid foreclosure sale November 1, 2012. The issue of the validity of the foreclosure sale was decided adversely to Movant by order entered November 23, 2011 (Doc. No. 49), but that issue is currently on appeal. Therefore, it can be, and has been, reasonably assumed by all parties that Movant would continue to refuse to accept mortgage payments from Debtor until further notice.

In the Chapter 13 Trustee's objection to confirmation of Debtor's plan, Trustee requested that Debtor be required to escrow all mortgage payments potentially owing to Movant and to escrow Fulton County and City of Roswell *ad valorem* taxes on Debtor's Property and to furnish proof of same, which proof Debtor did provide to Chapter 13 Trustee at the confirmation hearing held March 12, 2012. Movant did not file any objections to confirmation and was not present at the confirmation hearing. At the confirmation hearing, Debtor satisfied the Chapter 13 Trustee that all his objections had been adequately addressed and Debtor's plan was confirmed by order entered March 12, 2012 (Doc. No. 92).

At the hearing held May 21, 2012, Movant vociferously complained that Debtor had not provided Movant with proof that *ad valorem* taxes were being escrowed and, somewhat counterintuitively in light of Movant's refusal to accept payments from Debtor, complained that Debtor had not paid Movant the monthly mortgage payments. At that hearing, in recognition of the hostility between Movant's attorney and Debtor's attorney, the court directed that Debtor provide to the Chapter 13 Trustee monthly documentation

of deposits by Debtor of an amount equal to the monthly mortgage owed to Movant into an appropriate escrow account, together with assurance that adequate amounts to pay the 'ad valorem taxes were also being escrowed. As noted above, no written order has been entered memorializing the court's oral directions at the May 21, 2012 hearing.

Accordingly, it is hereby

ORDERED that Movant's Motion to Dismiss is *denied*. It is further

ORDERED that Debtor's Motion for Protective Order is *granted*; provided, however, that within 14 days of the date of entry of this order and monthly thereafter, Debtor shall provide to the Chapter 13 Trustee documentary proof that she has escrowed all her post-petition mortgage payments and that she has escrowed amounts sufficient to pay the 2012 *ad valorem* taxes on the Property. Upon written request by Movant to the Chapter 13 Trustee, the Chapter 13 Trustee is permitted to provide copies of such documentary proof to Movant.

The Clerk is directed to serve this Order upon Debtor, counsel for Debtor, Movant, counsel for Movant, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 11th day of July, 2012.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE