



IT IS ORDERED as set forth below:

Date: March 7, 2013

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

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

In re:	:	CASE NUMBER
	:	
ASAR RAMESES EL,	:	12-57090-MGD
	:	
Debtor.	:	CHAPTER 7
-----	:	
	:	
FEDERAL NATIONAL MORTGAGE	:	
ASSOCIATION ITS SUCCESSORS	:	
AND ASSIGNS,	:	
	:	
Movant,	:	
v.	:	CONTESTED MATTER
	:	
ASAR RAMESES EL, Debtor and	:	
MARTHA A. MILLER, Trustee,	:	
	:	
Respondents.	:	
_____	:	
	:	

ORDER GRANTING MOTION FOR RELIEF FROM STAY

Before the Court is Federal National Mortgage Association's ("Fannie Mae") "Motion for Relief from Stay" (the "Motion"). (Docket No. 19). On January 14, 2013, the District Court for the Northern District of Georgia remanded this case, following Debtor-Appellant's appeal of an Order granting Fannie Mae's Motion and directed this Court to enter findings of fact and conclusions of law. (Docket No. 36; 1:12-cv-2760). On remand, the motion was reset for hearing on February 26, 2013. Present at the hearing were counsel for Fannie Mae, John Dale Andrie of McCurdy & Chandler, LLC, and Asar Rameses El ("Debtor"), *pro se*. Fannie Mae seeks relief from the automatic stay to conduct a dispossessory proceeding in state court relating to the property at 3744 Laramie Road in Ellenwood, Georgia (the "Property").

Debtor listed the Property as his address on his petition. (Docket No. 1). However, at the hearing, Debtor stated that he did not reside at the subject property but rather his grandmother, Doreen Morrison, resides at the property and he comes by to check on her and pick up her mail. It is thus unclear whether Debtor has even a possessory interest subject to the automatic stay.

In response to the Court's Order and Notice of Hearing (Docket No. 37), which directed Debtor to file documents demonstrating his interest in the Property, Debtor filed a series of documents which appear on the docket at Docket No. 39. These include a "commercial security agreement" dated November 25, 2010, between Doreen Morrison and Debtor and a series of documents executed after this date relating to purported trusts, claims of interest and surety agreements. None of these documents, even if in proper evidentiary form, establish an interest of Debtor in the Property which would have survived the foreclosure of a 2006 security deed. Debtor introduced no admissible evidence at the hearing. The Court considered the pleadings and the evidence presented at the hearing to determine the bankruptcy estate's interest in the property.

On July 28, 2006, Nationstar Mortgage LLC ("Nationstar") was granted a security interest

in the property. (Docket No. 19). Nationstar foreclosed that security deed on February 7, 2012 in a non-judicial foreclosure. Fannie Mae's Motion attaches a recorded Foreclosure Deed and a recorded Special Warranty Deed in favor of Fannie Mae and its successors and assigns. (Docket No. 19, Exhibits B & C). Fannie Mae tendered to the Court certified copies of the July 28, 2006 Security Deed (Book 8769, Page 356 filed in Clayton County) and of the Foreclosure Deed dated February 28, 2012 (Book 10079, Page 206 filed in Clayton County).

The bankruptcy estate has no interest in the Property. Nationstar, by virtue of the 2006 deed, held a senior interest to any interest purportedly conveyed to Debtor in November of 2010. "Where the holder of the senior encumbrance on realty forecloses on the property, the purchaser obtains title free of all inferior liens." *Murray v. Chulak*, 250 Ga. 765, 770 (Ga. 1983). Thus, the pre-petition foreclosure terminated any interest the owner may have possibly held in the Property as well as any party such as Debtor claiming through that owner.

Debtor further complained at the hearing about wrongful foreclosure on the Property. The Court cannot give Debtor relief on this claim because the Court does not have subject matter jurisdiction over this action. The bankruptcy court's jurisdiction is limited to "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. § 157(a); 28 U.S.C. § 1334(b). In the Northern District of Georgia, the District Court has referred all proceedings within its bankruptcy jurisdiction to the bankruptcy court. 28 U.S.C. § 157(a); Local Rule 83.7, N.D.Ga. A proceeding "arising under" title 11 involves a substantive right created by the Bankruptcy Code. *In re Toledo*, 170 F.3d 1340, 1344-5 (11th Cir. 1999). A proceeding "arising in" title 11 typically includes administrative matters that can only arise in a bankruptcy. *Id.* "Arising under" and "arising in" provide the Court with "core" jurisdiction, allowing it to exercise full judicial power. *Miller v. Kemira, Inc. (In re Lemco Gypsum, Inc.)*, 910

F.2d 784, 787 (11th Cir. 1990).

Debtor raised this claim in Adversary Case No. 12-05275. That case was dismissed by the Court, on motion by Nationstar, on August, 2012. No appeal was taken. The determination by the Court is res judicata of this issue. Any claims Debtor asserts arising out of the foreclosure are unrelated to this bankruptcy proceeding, are entirely based on state law, are not unique to bankruptcy, and do not impact the bankruptcy estate. The bankruptcy court therefore has no core jurisdiction over these claims.

Fannie Mae has met its burden of proof to show that it is a party-in-interest to this Property and is entitled to relief from the automatic stay. Sufficient “cause” exists under 11 U.S.C. § 362(d) to terminate the automatic stay with respect to the Property. Accordingly, it is

ORDERED that Fannie Mae’s Motion is hereby **GRANTED** pursuant to 11 U.S.C. § 362(d). Nothing in this order prevents Debtor from pursuing relief with regard to the foreclosure in an appropriate forum.

The Clerk shall serve a copy of this Order upon Debtor, Movant, counsel for Movant, the U.S. Trustee, and the Chapter 7 Trustee.

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