IT IS ORDERED as set forth below:

Date: May 8, 2013

Barbara Ellis-Monro
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	
Gertilin Edwards,	CASE NO. 13-54582-BEM
Debtor.	CHAPTER 7
Gertilin Edwards,	
Movant,	
v.	Contested Matter
THR Georgia, LLC,	
Respondent.	

O R D E R

This case came before the Court on April 24, 2013, for a hearing (the "Hearing") on "Debtor's Motion to Extend the Automatic Stay" (the "Motion") filed by the Debtor, *pro se*. [Doc. No. 27]. Although the Motion was filed *pro* se, William Smith appeared on behalf of the Debtor at the Hearing, and THR Georgia, LLC ("THR") appeared through its counsel, Justin

Kreindel. Through the Motion, Debtor seeks entry of an order extending the automatic stay that expired on April 4, 2013[1] until an adversary proceeding filed by Debtor *pro se* is finally resolved. [*See* adversary proceeding no. 13-05115]. Debtor alleges in the adversary that First Glenn Trust, LLC ("First Glenn") improperly foreclosed on her residence and on that basis, Debtor seeks to invalidate certain correspondence providing notice of acceleration and intent to collect a debt (the "Letter"), as well as set aside the foreclosure sale, invalidate the deed under power and to recover of her residence. Debtor argues that reimposition of the stay is appropriate because the requirements of O.C.G.A. § 44-14-162.2 were not met when notice of the impending foreclosure was provided to the Debtor. [2] Additionally, the Debtor argues that the Court has authority to reimpose the stay pursuant to 362(3)(c)(3), because although Debtor filed two prior bankruptcy cases, she filed them *pro se* and did not know how to prosecute them, while in this case Debtor is represented by counsel and intends to prosecute this case to its conclusion.

THR opposes reimposition of the stay because the hearing on the Motion was not held on or before April 4, and because, according to THR, the Debtor's financial condition has not changed substantially, if at all, since her prior case, and the instant case was filed in bad faith.

This is Debtor's third bankruptcy case and the second case pending within one year. Thus, the automatic stay is limited to 30 days from the filing of the case unless:

> Except as provided in subsections (d), (e), (f), and (h) of this section . . . if a single or joint case is filed by or against a debtor who is an individual in a case chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refilled under a chapter other than chapter 7 after dismissal under section 707(b) . . . on the motion of a party in interest for continuation of the automatic stay and upon

[1] This case was previously before the Court on March 15, 2013, to consider Debtor's Emergency Motion For Hearing To Determine Bankruptcy Code For Automatic Stay. [Doc. No. 14, 16]. Counsel for THR reported that an amended order had been submitted to the Magistrate Court of DeKalb County, Georgia recognizing that a stay came into effect in this case pursuant to 362(c)(3) and that the stay was effective through and including April 4, 2013. [*See* Doc. No. 34, Ex. 6].

[2] To support his position, Counsel cited *Reese v. Provident Funding Assoc., LLP*, 317 Ga.App. 353 (2012) and *Cumming v. Anderson,* 173 B.R. 159 (Bankr. N.D.Ga. 1994).

> notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed . . . .
>
> 11 U.S.C. § 363(c)(3)(B).

It is not disputed that the Hearing was held after the stay expired. Thus, a stay can be obtained only through reimposition of the automatic stay, and not through extension of the 30 day stay. *See In re Whitaker*, 341 B.R. 336 (Bankr. S.D. Ga 2006).

In *Whitaker*, Judge Dalis considered a situation similar to the present case: a debtor's request to extend the 30 day stay in a second case filed within a year. Judge Dalis held that while the Code did not allow for extension of the stay, 11 U.S.C. § 105 provided a basis for reimposition of the stay in an appropriate case. The standard for reimposition of the stay is the same as that required to obtain a preliminary injunction. *Id.* The elements that must be established for imposition of a preliminary injunction are:

> (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the Movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). A preliminary injunction is a drastic remedy; thus the movant must prove each factor convincingly. *Id.*

Debtor and her husband have filed seven bankruptcy cases in the last three years.[3] In Debtor's husband's last filing, Judge Sacca imposed a two year bar on Debtor's husband filing another case in this Court. [Case No. 12-66531, Doc. No. 13]. Judge Sacca also validated a

[3] Case no. 11-78631 was filed by Debtor on October 3, 2011 and dismissed on December 15, 2011. Debtor filed case no. 12-52485 on February 2, 2012, which was dismissed on May 3, 2012. Debtor's husband has filed four cases: (i) case no. 10-86364 filed on September 5, 2010 and dismissed on December 17, 2010; (ii) case no. 11-50804 filed on January 5, 2011 and dismissed on August 9, 2011; (iii) case no. 12-66531 filed on July 2, 2012 and dismissed on September 12, 2012; and, (iv) case no. 12-79887 filed on December 3, 2012 and dismissed on March 1, 2013. Debtor filed this case on March 4, 2013.

December 4, 2012, foreclosure sale "to the extent otherwise valid under Georgia law" on the Debtors' residence at 7332 Timberline Way, Stone Mountain, Georgia (the "Property"). [Doc. No. 21, Case No. 12-79887]. This is the sale the Debtor seeks to invalidate in the adversary proceeding filed in this court.

Debtor was very forthright in her testimony and acknowledged that she filed her bankruptcy cases to obtain the benefits of the automatic stay. Debtor testified that she and her husband sought to modify the mortgage on the Property without success and that they had last paid $1,000 to First Glenn sometime in 2012, but otherwise had not made any mortgage payments since 2010. Debtor testified further that her house is worth about $93,000, while she owes over $200,000 on the Property. Debtor believes she also owes about $100 to her utility providers and about $400 in credit card debt. Debtor testified that she had paid approximately $100 on the credit card debt since the filing of this case. Debtor receives monthly income of approximately $1000 a month from Social Security and wages from a part-time job of approximately $300 per week.

Considering the factors necessary for reimposition of the automatic stay, the Court finds that Debtor has not established any of the factors necessary to warrant issuance of a preliminary injunction. With regard to the substantial likelihood of success on the merits of the adversary, based upon the Court's review of the complaint and exhibits thereto the Court cannot say that there is a substantial likelihood of success in that litigation. Although the Debtor may be able to state a claim if the Letter attached to the complaint was the only notice sent to Debtor by First Glenn, that is not alleged. Further, since the Letter does not contain notice of foreclosure, but provides the fair debt collection notice, it may well be that there are other letters that were sent to the Debtor that did comply with O.C.G.A. § 44-14-162.2. Thus, the Court cannot say that

there is a substantial likelihood of success on the merits in the adversary. Nor did Debtor establish irreparable harm to the interest of a creditor or to the bankruptcy estate.[4] Unless there is a bankruptcy purpose to be served, which will be determined by the impact, if any, of failing to reimpose the stay, it would not be appropriate for the Court to reimpose the stay. In a Chapter 7 case, the Court looks to see if property has equity and whether it is necessary for reorganization. Here, the Debtor has testified there is no equity in her property. Even if the Debtor is successful in setting aside the foreclosure, because Debtor has made only one payment since 2010 and Debtor owes substantially more than the value of the Property, there would likely be little or no benefit to the estate. Additionally, Debtor scheduled only one creditor in addition to the mortgage lender, a creditor that Debtor appears to be paying post-petition such that it cannot be said that irreparable harm will occur if the stay is not reimposed. Thus, there is no bankruptcy purpose to be served by staying action related to the Property.

With respect to balancing the harm, although the Court is sympathetic to the Debtor's situation, she has not paid for the home she lives in for three years and at some point the creditor is entitled to recover its collateral. THR is not the foreclosing lender, but is a third party purchaser who purchased the Property at foreclosure in December, 2012. At this point it appears to the Court that the harm of reimposing the stay to the third party purchaser and the potential of a chilling effect on bidding at foreclosure sales is greater than the harm to the Debtor.

Finally, the Court finds that imposing a stay would be contrary to public policy. The Debtor has filed bankruptcy three times solely to obtain the benefits of the automatic stay. During that period, Debtor has made only one payment of $1,000 on her mortgage. Filing a

[4] In the bankruptcy context, irreparable harm "refers to either irreparable harm to the interst of a creditor or irreparable harm to the bankruptcy estate." *See Henkel v. Lickman (In re Lickman),* 286 B.R. 821, 829 (Bankr. M.D. Fla. 2002).

bankruptcy case solely for the purpose of invoking the stay in an effort to retain property that the Debtor is not paying for and apparently cannot afford runs afoul of both the good faith requirements underpinning the Bankruptcy Code and contract law because, as previously stated, the creditor contracted for the right to recover its collateral in payment of the debt owed if the debt is not paid. Thus, in this situation reimposing the stay would be contrary to public policy.

Having considered the evidence presented, the argument of counsel and applicable authorities,

IT IS ORDERED that the Debtor's Motion is DENIED.

END OF ORDER

Distribution List

Gertilin Edwards
7332 Timberline Way
Stone Mountain, GA 30087

William J. Smith
PO Box 468328
Atlanta, GA 31146

Justin Kreindel
Fowler, Hein, Cheatwood & Williams, P.A.
2970 Clairmont Road
Park Central, Suite 220
Atlanta, GA 30329

Barbara B. Stalzer
Barbara Bell Stalzer, PC
60 Lenox Pointe, NE
Atlanta, GA 30324-3710