

APR 14 2011

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 10-98793
	:	
REVOLA FONTAINE,	:	
	:	CHAPTER 7
Debtor.	:	
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IBM LENDER BUSINESS PROCESS	:	
SERVICES, INC. AS SERVICER	:	
FOR FANNIE MAE,	:	
	:	CONTESTED MATTER
Movant,	:	
	:	
v.	:	
	:	
REVOLA FONTAINE, Debtor, and	:	
M. DENISE DOTSON, Trustee,	:	
	:	
Respondents.	:	

ORDER

This Chapter 7 case came before the Court on April 12, 2011 on a motion for relief from the automatic stay filed by IBM Lender Business Process Services, Inc. ("LBPS") as servicer for Fannie Mae, its successors and assigns (Docket No. 11). The motion seeks relief from the automatic stay to foreclose on a rental property of the debtor located at 6442 Rockbridge Road, Stone Mountain, Georgia 30087 (the "Property"). Kelly Thomas appeared for LBPS and the debtor, Revola Fontaine, appeared *pro se* and opposed the motion, having previously filed a response opposing the motion. The Chapter 7 Trustee, M. Denise Dotson, did not appear and did not oppose the motion. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). After

hearing from the movant's counsel and the debtor and carefully reviewing the record, the Court concludes the motion should be granted to allow LBPS to proceed with its remedies under state law.

LBPS filed the motion for relief from stay on January 18, 2011 and set it for hearing on February 15, 2011. Exhibits to the motion include a corporate assignment, the note and security deed. The note is for \$122,500.00, dated August 2, 2007, and lists Revola Fontaine as the Borrower and First Horizon Home Loans as the Lender. The security deed, filed and recorded August 8, 2007, lists Revola Fontaine as the Borrower and Mortgage Electronic Registration Systems, Inc. ("MERS"), acting as nominee for the Lender and Lender's successors and assigns, as the Grantee under the security instrument. The corporate assignment is dated October 15, 2010, and in it MERS, as nominee for First Horizon Home Loans, assigns all rights to the security deed to Fannie Mae ("Federal National Mortgage Association").

On January 28, 2011, debtor filed *pro se* a complaint initiating an adversary proceeding, Adversary Proceeding No. 11-5048, against LBPS and other entities. The adversary proceeding related to three properties including the Property at issue in the instant motion for relief from stay. The defendants filed motions to dismiss the complaint, and debtor voluntarily dismissed the Adversary Proceeding shortly before the April 12, 2011 hearing on LBPS' motion for relief from stay.

At the April 12, 2011 hearing, counsel for LBPS stated that debtor was currently fourteen (14) payments behind on the loan. Counsel stated the fair market value of the Property is \$36,743.00 and the estimated payoff on the loan is \$131,000.00. The Property is not debtor's residence, and debtor represented that she receives some rental income from the Property. Debtor

did not refute LBPS' allegations regarding non-payment of the note or the fact that there is no equity in the Property, but appears to argue that Fannie Mae hasn't shown it is the owner of the note or deed.

The hearing on a motion for relief from the stay is meant to be a summary proceeding, and the validity or merits of claims and defenses are not litigated during the hearing. *Grella v. Salem Five Cent Bank*, 42 F.3d 26, 32 (1st Cir. 1994); *In re Vitreous Steel Prods. Co.*, 911 F.2d 1223, 1232 (7th Cir. 1990). Rather, the hearing simply involves "a determination as to whether a creditor has a colorable claim to property of the estate." *Grella*, 42 F.3d at 32. The court in *Grella* aptly stated:

As a matter of law, the only issue properly and necessarily before a bankruptcy court during relief from stay proceedings is whether the movant creditor has a colorable claim; thus, a decision to lift the stay is not an adjudication of the validity or avoidability of the claim, but only a determination that the creditor's claim is sufficiently plausible to allow its prosecution elsewhere.

Id. at 34. In effect, if the creditor presents a colorable claim, the bankruptcy court can lift the stay to permit the creditor to pursue its claims against the debtor in another forum.

In this case, LBPS has set forth a colorable claim to the Property. LBPS provided the security deed and note listing First Horizon Home Loans as the Lender and listing MERS as the Grantee of the security deed. LBPS also provided a copy of the assignment showing an assignment of all rights under the security deed from MERS, as nominee for First Horizon Home Loans, to Fannie Mae, the entity for which LBPS acts as servicer of the loan. Significantly, debtor has not disputed that she has failed to make payments on the note secured by the Property in some fourteen (14) months. There is no equity in the Property which would allow for the administration of the

Property as part of the estate, and whether LBPS has the right to foreclose under Georgia law is a matter of state law and should be litigated in state court rather than in debtor's Chapter 7 bankruptcy case.

In accordance with the above reasoning, the automatic stay under 11 U.S.C. § 362(a) is lifted to permit IBM Lender Business Process Services, Inc. to pursue whatever rights it may have under Georgia law with respect to the Property.

IT IS SO ORDERED, this 12th day of April, 2011.


JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

Revola Fontaine

461 Monteagle Trace
Stone Mountain, GA 30087

Brandi Rainey Lesesne

Kelly Thomas

Johnson & Freedman, LLC
1587 Northeast Expressway
Atlanta, GA 30329

M. Denise Dotson

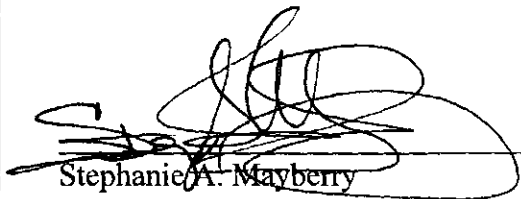
M. Denise Dotson, LLC
170 Mitchell Street
Atlanta, GA 30303

C. Jordan Myers

McGuire Woods LLP
Suite 2100
1170 Peachtree Street, NE
Atlanta, GA 30309

Lawrence W. Kelly

Johnson & Freeman, LLC
1587 Northeast Expressway
Atlanta, GA 30329



Stephanie A. Mayberry
Judicial Assistant for
Chief Judge Bihary

Mailed: 04/12/2011