



IT IS ORDERED as set forth below:

Date: December 14, 2015

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:
	:	
ORONDO JONES	:	14-67333-MGD
	:	
Debtor.	:	CHAPTER 7
<hr/>		
ORONDO JONES	:	ADVERSARY PROCEEDING NUMBER:
	:	
Plaintiff,	:	15-05190-MGD
	:	
v.	:	
	:	
CITIMORTGAGE and	:	
AMERICAN HOMES 4 RENT,	:	
	:	
Defendants.	:	
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ORDER DISMISSING ADVERSARY COMPLAINT

Before the Court is Defendant's unopposed¹ Motion to Dismiss Plaintiff's Complaint

¹ On November 18, 2015, Debtor requested additional time to respond. (Doc. 19). But, as of the date hereof, no

pursuant to Federal Rules of Civil Procedure 8(a), 12(b)(5), and 12(b)(6). (Doc. 17).² For the reasons stated below, the Court finds that the complaint should be dismissed pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). The Court therefore does not reach the merits of Defendant’s claim under Rule 12(b)(5).

I. Background

At 1:31 PM on September 2, 2014, Defendant American Homes 4 Rent (“AH4R”), purchased real property at a foreclosure sale. (Bankr. Doc. 51, Exbt. 3). At 2:34 PM on the same date, *pro se* Plaintiff-Debtor Orondo Jones filed a Chapter 7 petition. (Bankr. Doc. 1). On October 8, 2014, AH4R placed a Notice of Abandonment on the property in question. (Doc. 1, Exbt. B). On November 19, 2014, AH4R placed a notice of sale on the property in question, which indicated that the property had been sold to AH4R. (Doc. 1, Exbt. C).

On September 12, 2014, CitiMortgage filed a Motion for Relief from Automatic Stay (“Motion for Relief”). (Bankr. Doc. 10). In its Motion for Relief, CitiMortgage identified itself as the holder and servicer of the loan secured by the property in question and sought relief to pursue its remedies, including foreclosure, in state court. (*Id.* at 1, ¶ 3; 4–5, ¶ 8(a)). Plaintiff opposed the Motion for Relief, which was granted over his objections on October 17, 2014. (Bankr. Doc. 25). Debtor then moved to set aside the order granting relief. (Bankr. Doc. 27). That motion was denied on November 17, 2014. (Bankr. Doc. 36).

Debtor then filed a second motion to reconsider the order, alleging that CitiMortgage did not have standing to seek relief from the automatic stay because it had assigned the security deed

additional response has been filed.

² Unless stated otherwise, citations to the record are as follows: (1) citations to docket entries in the adversary proceeding, Adv. Proc. No. 15-05190–MGD, are cited as “(Doc. No. ____)””; and (2) citations to docket entries in the main bankruptcy case, Case No. 14-67333–MGD, are cited as “(Bankr. Doc. No. ____)””.

to Wachovia. (Bankr. Doc. 40). The Court denied the second motion to reconsider on December 15, 2014, finding that CitiMortgage had met its burden of showing that relief was warranted. (Bankr. Doc. 43). CitiMortgage responded, arguing that it was the servicer of the mortgage for the property in question, and as such, CitiMortgage had standing to seek relief from the stay. (Bankr. Doc. 42). The Court noted that Debtor had not challenged CitiMortgage's allegation that Debtor had missed 31 mortgage payments and that there was no equity remaining in the property. (Bankr. Doc. 43). Further, the Court re-iterated that CitiMortgage had shown it had a colorable claim to the property as well as sufficient standing to pursue relief from the stay, but that granting relief did not constitute a determination that CitiMortgage was the proper foreclosing party. (*Id.*).

Debtor received a discharge and the case was closed on January 8, 2015. (Bankr. Doc. 45). Debtor then moved to reopen the case to add additional creditors on March 5, 2015. (Bankr. Doc. 47). His motion was granted and the case was reopened on March 11, 2015. (Bankr. Doc. 48). After the case was reopened, AH4R filed a Motion for Relief from Stay and Motion to Validate Foreclosure Sale. (Bankr. Doc. 51). In its motion, AH4R sought relief to pursue its remedies against Debtor in state court. (*Id.* at 4, ¶ 3). AH4R also sought ratification of the foreclosure sale it alleged took place on September 2, 2014 at 1:31pm, prior to the filing of Debtor's petition. (*Id.* at 4, ¶ 4). AH4R attached the Deed Under Power confirming the sale as well as the bid receipt to its motion. (*Id.* at Exhs 1, 2). AH4R also indicated that it had already commenced dispossessory proceedings against Debtor in state court while the bankruptcy case was closed, which were then stayed after the re-opening of the case. (*Id.* at 5, ¶ 5). Debtor did not respond to the motion. On April 1, 2015, the Court entered an order denying the motion as moot. (Bankr. Doc. 53). The Court found that the reopening of the case did not reinstate the automatic stay, and that the foreclosure sale appeared to have been conducted prior to the filing of the case, therefore the relief sought in

the motion was denied as moot. (*Id.*).

Debtor filed a motion to close his bankruptcy case on April 1, 2015, which was granted on April 8, 2015, and the case was closed on April 13, 2015. (Bankr. Doc. 56). Debtor filed this adversary proceeding against AH4R on April 10, 2015, alleging that his property was sold on December 23, 2014, and that the notices posted after the commencement of his bankruptcy case violated the automatic stay. (Doc. 1). The record indicates that the bid by AH4R to purchase the property was accepted on September 2, 2014, (Bankr. Doc. 51 at Exh. 2), and the Deed Under Power of Sale was executed on December 23, 2014. (*Id.* at Exh. 1). AH4R moved to dismiss Plaintiff's complaint on October 2, 2015. (Doc. 17).³

II. Legal Standard

Rule 8(a), applicable in this adversary proceeding through Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7008(a), requires a plaintiff to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2); FED. BANKR. P. 7008(a). Pursuant to Rule 12(b)(6), applicable through Bankruptcy Rule 7012(b), a defendant in an adversary proceeding is permitted to move for dismissal when a plaintiff fails to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6); FED. BANKR. P. 7012(b). When determining whether a complaint states a claim upon which relief can be granted, the Court must accept as true the complaint's factual allegations. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Daewoo Motor Am., Inc. v. Gen. Motors Corp.*, 459 F.3d 1249, 1271 (11th Cir. 2006). The complaint must contain "sufficient factual matter . . . to 'state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the

³ Plaintiff failed to allege any facts indicating any wrongdoing on the part of Co-Defendant, Citimortgage, which obtained relief from the automatic stay on October 17, 2014, prior to the recording of the deed. (Bankr. Doc. 25; Doc. 17, Exbt. 1).

court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “Threadbare recitals of the elements of a cause action, supported by mere conclusory statements, do not suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555).

III. Discussion

Under Bankruptcy Code section 362, a bankruptcy petition acts as a stay prohibiting “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Plaintiff alleges that AH4R violated the automatic stay by posting notices of abandonment and foreclosure on his property, which he claims caused him “great emotional distress and embarrassment.” (Doc. 1). Plaintiff seeks punitive damages, attorneys’ fees, and other expenses under section 362(k), which states that “an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.” (*Id.*); 11 U.S.C. § 362(k)(2). An action is “willful . . . if the creditor engage[d] in a deliberate action that is done in violation of the automatic stay with knowledge that the debtor has filed a petition in bankruptcy.” *In re Matthews*, 184 B.R. 594, 599 (Bankr. S.D. Ala. 1995) (quoting *Washington v. IRS (In re Washington)*, 172 B.R. 415, 419 (Bankr. S.D. Ga. 1994)).

The Court finds that the Plaintiff has failed to state a claim upon which relief can be granted for two reasons. First, it does not appear that the property in question was property of the estate when the notices were posted because the sale to AH4R had already occurred.⁴ Second, Plaintiff fails to allege that AH4R had knowledge of the bankruptcy when the notices were posted.

⁴ It appears that AH4R placed the winning bid approximately one hour before Plaintiff filed his petition. (Bankr. Docs. 1; 51 Exbt. 3); *see also* (Bankr. Doc. 53) (finding AH4R’s motions for relief moot because the property in question appeared to have been sold prior to the filing of Plaintiff’s petition for bankruptcy).

Instead, Plaintiff asserts only that he contacted AH4R after the first notice was posted and “informed them that the house was not foreclosed and that [he] was still living in it.” (Doc. 1). Plaintiff similarly told AH4R “that the house was not sold and that [he] was still living in it” after the second notice was posted. *Id.* Further, AH4R is not listed on Plaintiff’s creditor matrix. Thus, Plaintiff fails to allege that AH4R had notice of his bankruptcy proceeding when the notices were posted, either from his own communications with Defendant or otherwise.

III. Conclusion

It appears the sale of the property occurred prior to the filing of Plaintiff’s bankruptcy petition. And even if the subject property was property of the estate at the time AH4R posted the notices, Plaintiff has failed to allege that AH4R had notice of the bankruptcy prior to posting the notices. Therefore, Plaintiff has failed to state a claim under 11 U.S.C. § 362(k)(2) for willful violation of the automatic stay. AH4R requests the complaint be dismissed with prejudice. Unless otherwise stated in the dismissal order, the involuntary dismissal of an adversary proceeding—other than “for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” FED. R. BANKR. P. 7041.

Accordingly, it is

ORDERED that Plaintiff’s adversary complaint is **DISMISSED WITH PREJUDICE**.

The Clerk shall serve a copy of this Order upon Plaintiff, Defendant and Defendant’s counsel, and the Chapter 7 Trustee.

END OF DOCUMENT

