



**IT IS ORDERED as set forth below:**

**Date: March 30, 2015**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

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

In re:	:	CASE NUMBER:
	:	
<b>ROBERT KERRY LEATHERWOOD,</b>	:	<b>13-40119-MGD</b>
<b>SHAUNA LASHAY LEATHERWOOD,</b>	:	
	:	CHAPTER 7
Debtors.	:	
	:	
<b>THOMAS D. RICHARDSON, Trustee,</b>	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
<b>U.S. BANK, N.A., AS LEGAL TITLE</b>	:	
<b>TRUSTEE FOR TRUMAN 2012 SC2</b>	:	
<b>TITLE TRUST,</b>	:	
	:	
Respondent.	:	
	:	

**ORDER ON TRUSTEE'S MOTION FOR SANCTIONS FOR  
VIOLATION OF THE AUTOMATIC STAY**

A hearing was held on March 18, 2014 for the Trustee's Motion for Sanctions for Violation of the Automatic Stay and the amendment to that motion (Docs. 93, 95) collectively,

the “Motion”). Thomas D. Richardson, Chapter 7 Trustee, appeared at the hearing in support of the Motion. Dallas Ivey, on behalf of Respondent U.S. Bank, N.A., filed a Response to the Motion (Doc. 97) and appeared at the hearing in opposition to it. At the hearing, the Court ruled on the Motion from the bench, and this Order memorializes the Court’s ruling.

## **I. Background**

The issue in this contested matter arises from Respondent’s conduct following the Court’s entry of an order modifying the automatic stay to permit Respondent to foreclose on Debtor’s residence located at 2017 Rolling Hills Way, Rocky Face, GA 30740 (the “Property”). Trustee filed the instant Motion asserting that notwithstanding the Court’s order, Respondent violated the automatic stay by filing an action for declaratory judgment in Superior Court.

Prior to the filing of the instant bankruptcy case, Debtor-Husband Robert Leatherwood executed a security deed for the Property dated June 24, 2009 in connection with a mortgage loan from Wells Fargo Bank, N.A., Respondent’s predecessor-in-interest.<sup>1</sup> (Claim No. 8-2 at 6) (the “Security Deed”). After accruing an arrearage of over \$5,000 on the mortgage loan, Debtors filed a voluntary Chapter 13 case on January 18, 2013. (*Id.*; Petition, Doc. 1). Debtors’ Amended Chapter 13 plan, which proposed to retain the Property and cure Debtor’s arrearage, was confirmed on May 9, 2013. (Docs. 30, 33).

Respondent filed a Motion for Relief from Stay on September 30, 2013, asserting Debtors were delinquent on post-petition payments (Doc. 43). The parties entered into a Consent Order denying the Motion for Relief from Stay with strict compliance on October 30, 2013, but on January 24, 2014, Respondent filed a Delinquency Motion and Affidavit of Default (Docs. 46,

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<sup>1</sup> Respondent filed a Notice of Transfer of Claim on September 27, 2013 (Doc. 40), attaching a Corporate Assignment of Security Deed.

48). The Court consequently granted the Delinquency Motion on February 4, 2014. (Doc. 49) (the “Stay Relief Order”). The Stay Relief Order stated that “Movant is relieved from the effect of the automatic stay to pursue and enforce under non-bankruptcy law any and all rights it has in and to” the Property “including, but not limited to, advertising and conducting a foreclosure sale and seeking possession of” the Property. (*Id.*). The Stay Relief Order was prepared by Counsel for Respondent. (*Id.*, Doc. 49 at 3).

Debtors’ case was converted to Chapter 7 on October 18, 2014, and Movant was appointed as Trustee. Trustee filed his Report of No Distribution on October 30, 2014 and the Court entered an Order of Discharge and closed the Chapter 7 on November 20, 2014. The U.S. Trustee filed a Motion to Reopen Case on January 8, 2015, asserting that “the Chapter 7 Trustee discovered that the estate has an interest in real estate that was inadvertently not properly scheduled and may be administered for the benefit of the debtors’ creditors.” (Doc. 81). The motion to reopen the case was granted and Movant was reappointed Trustee. (Docs. 82, 84).

As explained in Trustee’s Motion, the “discovery” alluded to by the U.S. Trustee was that Respondent had filed a “Complaint for Declaratory Judgment, Equitable Lien and Equitable Subrogation” in Whitfield County Superior Court, in an action styled *US. Bank, NA., as Legal Title Trustee For Truman 2012 SC2 Title Trust, Plaintiff vs. Robert Leatherwood and Shauna Leatherwood, Defendants*, Case No. 14C11740-J on November 10, 2014. (Am. Motion Ex. C, Complaint, Doc. 95-2) (the “Superior Court Complaint”). The Superior Court Complaint asserted that both Debtor-Husband and Debtor-Wife held an interest in the Property, but that the Security

Deed was only signed by Debtor-Husband, allegedly due to mistake (Superior Court Complaint ¶¶ 12, 14).<sup>2</sup>

Through the Superior Court Complaint, Respondent sought a Declaratory Judgment that the Security Deed encumbered both Debtors' interests, among other relief. (Id. ¶ 21). After learning about the Superior Court Complaint, Trustee asserted that he contacted Respondent on January 16, 2015 to stop the prosecution of the suit, claiming it was filed as a violation of the automatic stay, but that Respondent proceeded to seek entry of a default judgment on February 10, 2015. (Motion ¶¶ 19–20).

For the purpose of clarification, the order of events precipitating Trustee's Motion as set forth in his Motion is as follows:

- February 4, 2014: Stay Relief Order entered
- February 18, 2014: Case converted, Trustee appointed
- October 30, 2014: Trustee issues his Report of No Distribution
- November 10, 2014: Superior Court Complaint filed
- November 20, 2014: Bankruptcy case closed
- January 9, 2015: Bankruptcy case reopened
- January 16, 2015: Trustee reappointed, informs Respondent of reopened case
- February 10, 2015: Respondent seeks entry of default on Superior Court Complaint

## **II. Discussion**

The foregoing shows that at the time the Superior Court Complaint was filed, the Chapter

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<sup>2</sup> On Debtors' Schedule A, Debtors listed "House & Lot - 2017 Rolling Hills Way, Rocky Face, GA 30740," with a description of interest as "Deed" and the status of interest as joint. On Debtor's Schedule D, Debtors listed Respondent's predecessor-in-interest as a joint debt secured by the Property.

7 case was still pending and the Property was still property of the estate. *In re Clower*, 463 B.R. 573, 577 (Bankr. N.D. Ga. 2011) (“The entry of the order granting relief from the stay does not extinguish the estate’s interest in the property.”). Regardless of the terms of the Stay Relief Order, the Court retained exclusive jurisdiction to determine the extent of the estate’s interest in the Property. 28 U.S.C. § 1334(e). Further troubling is the fact that Trustee was not a party to the Superior Court Complaint, despite the estate’s continued interest in the Property. The Chapter 7 trustee, and not the debtor, is the representative of the estate and is the proper party in litigation concerning administration of estate property. 11 U.S.C. § 523.

Moreover, the terms of the Stay Relief Order did not permit Respondent’s suit. The Court has “jurisdiction to interpret and enforce its own prior orders,” and Trustee is correct to point out that inconsistencies in prepared orders are properly “construed against the party preparer of the order. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *Matter of Winslow*, 39 B.R. 869, 871 n.1 (Bankr. N.D. Ga. 1984). The Stay Relief Order, prepared by Respondent’s counsel, provided that Respondent was “relieved from the effect of the automatic stay to pursue and enforce under non- bankruptcy law any and all rights it has in and to” the Property “including, but not limited to, advertising and conducting a foreclosure sale and seeking possession of” the Property. (Doc 49). Such relief to enforce existing rights in the Property plainly does not include “imposing an equitable lien on [Debtor-Wife’s] interest in the Property” or “a first priority lien encumbering the interest of [Debtor-Wife],” which would in effect create a new interest in the Property. (Superior Court Complaint ¶ 24, Doc. 95). No demand for that kind of relief was made anywhere in Respondent’s motions seeking relief from stay. (Docs. 43, 48).

Whether Respondent attempts to couch the relief sought in the Superior Court Complaint as seeking recognition of interests it already had or simply those it ought to have, the effect was

the same: enlargement of its own interest as against the estate's. It may be entitled to such relief, but only this Court had jurisdiction to make that determination prior to the closing of the case. The Stay Relief Order did not provide otherwise. Because the Whitfield County Superior Court lacked jurisdiction to entertain the Superior Court Complaint and because its filing violated the automatic stay, the lawsuit was void ab initio and any resulting default judgment would likewise be void. *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306, 1308 (11th Cir. 1982) ("Actions taken in violation of the automatic stay are void and without effect.").

Having concluded that Respondent's filing of the Superior Court Complaint violated the automatic stay, the Court next turns to Trustee's request for sanctions. Trustee seeks actual damages "including costs and attorney's fees, as well as punitive damages" as a result of Respondent's actions. The Court will reserve for further hearing the matter of whether sanctions are appropriate, but it bears mentioning the documents on file with the Court, available to all parties, indicated that Respondent's interest was limited by its security documents to Debtor-Husband. The Superior Court Complaint was not filed until after Trustee had met with Debtors and had issued his Report of No Distribution.

One final issue looms as a result of the closing of Debtors' Chapter 7 Case: abandonment of the Property as a matter of law. 11 U.S.C. § 554(c) ("Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title."). Regardless of whether the Property was at one point within the exclusive jurisdiction of the Court and subject to the automatic stay, closing of the case resulted in a "technical abandonment" of the Property. The Court's determination that the Whitfield County Superior Court action is void ab initio does not change the fact that the Property is at present no longer

property of the estate subject to the automatic stay. Trustee may seek to remedy this by appropriate motion; Respondent is of course free to contest such relief. *See In re Woods*, 173 F.3d 770, 778 (10th Cir. 1999).

### **III. Conclusion**

For the foregoing reasons, the Court finds the filing of the Superior Court Complaint was void as a violation of the automatic stay and any resulting judgment is of no effect. The Court will defer the issue of sanctions to a later date. Accordingly, it is

**ORDERED** that Trustee's motion is **GRANTED IN PART** to the extent it seeks a determination that the Whitfield County Superior Court action· *US. Bank, NA., as Legal Title Trustee For Truman 2012 SC2 Title Trust v. Leatherwood*, No. 14C11740-J (Ga. Super Ct. Nov. 10, 2014) was filed in violation of the automatic stay of 11 U.S.C. § 362.

It is **FURTHER ORDERED** that Trustee is **DIRECTED** to promptly file a copy of this Order in the above Whitfield Superior Court action.

The Clerk is directed to serve a copy of this Order on Debtors, the Chapter 7 Trustee, and Counsel for Respondent.

**END OF DOCUMENT**