

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re )  
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PATRICK FRANKLYN BELMAR and ) Case No. 00-00777  
CLEO PATRICK BELMAR, ) (Chapter 7)  
 )  
Debtors. )

ORDER DENYING MOTION TO VACATE THE ORDER MODIFYING STAY

The debtors seek to vacate the order granting the motion of ContiMortgage Corporation ("Conti") to modify the automatic stay to permit Conti to foreclose on the property known as 215 T Street, N.W., Washington, D.C. They contend that they were not in arrears when the motion was filed; that Conti has misstated the amount of arrears; and that they can bring the note current. They then contend that Conti engaged in inequitable conduct by accepting mortgage payments after Conti obtained relief from the automatic stay.

The foreclosure is set for two days hence. The debtors explain their belated filing as arising because their former counsel was straightening out the matter with Conti and assured them there would be no foreclosure. But the notice of foreclosure was issued on September 11, 2000. So shortly after that the debtors should have been aware that a foreclosure was to occur on October 12, 2000. Waiting until October 10, 2000, to seek to vacate the stay hardly bespeaks the attention that this matter deserved.

But putting that aside, there is no reason to vacate the order granting relief from the automatic stay. This is a chapter 7 case. The time to object to the debtor's discharge has expired

and the debtors have thus become entitled to a discharge. The clerk's office has not yet issued the discharge, but the statute in effect has granted them a discharge. Under 11 U.S.C. § 362(c)(2)(C) the stay of an act against the debtor or against the debtor's property terminates at the time a discharge is granted. So the stay has already terminated as to the debtors or will do so momentarily (depending on whether, for purposes of § 362(c)(2)(C), the discharge is "granted" only when the clerk formally issues a discharge or is "granted" when the statute accords the debtors the right to a discharge).

Although the stay of acts against property of the estate has not expired, the trustee has filed a Report of No Distribution, signaling that he does not view the T Street property as worth administering as an asset of the estate. Although the property has not yet been abandoned, that is a mere formality. In any event, the trustee did not see fit to protect the estate's interests by objecting to the motion for relief from the automatic stay, or by joining in the debtors' motion to vacate. The stay of acts against property of the estate is intended to protect the estate, not the debtors.

Even if the stay protecting the debtors is still in effect, they have not articulated any bankruptcy reason why this court should reimpose the stay. The mortgage dispute is a state law dispute which belongs in state court, not this court. Based on the order granting relief from the stay, Conti is owed additional amounts under the loan instrument, including costs of advertising

and payments it refused after issuing its foreclosure notice. The debtors question the precise amount owed to reinstate the loan. But that is a state law question affecting the debtors' rights as to property the trustee is effectively abandoning. The debtors are not reorganizing--this is a chapter 7 case, not a chapter 11 or chapter 13 case--so the property is not necessary to an effective reorganization. Even if there is equity in the property, there is no bankruptcy reason why this court ought not let Conti exercise its nonbankruptcy law rights. If there is an error in the amount it claims is owed, that may form a basis for seeking an injunction in state court against the foreclosure if Conti refuses to accept a tender of the correct amount of arrears.

This court fails to see any reason why the bankruptcy court should become involved in this dispute which is not related to the administration of the estate (the trustee having determined not to pursue the administration of this asset), and will not have any impact on a pending reorganization case. This is now a dispute between the debtors and their lender with respect to property which the trustee has seen fit not to administer as estate property. The grounds the debtors raise for halting the foreclosure sale are based on state law, and those grounds can and ought to be asserted in the state court, not here.

Were the court to schedule this matter for an emergency hearing tomorrow, that would only delay the debtors' having a chance to seek injunctive relief in the Superior Court of the

District of Columbia. The court does not like ruling without giving the debtors' counsel an opportunity to make oral argument, but in the circumstances, the court believes that the debtors' best interests are served by promptly announcing the court's ruling on the papers instead of awaiting an oral argument.

It is accordingly

ORDERED that the Motion to Vacate the Order Modifying Stay is DENIED.

Dated: October 10, 2000

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S. Martin Teel, Jr.  
United States Bankruptcy Judge

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