

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: THERESA M. GROLLER

C.A. NO. 05-4898

MEMORANDUM OPINION AND ORDER

GOLDEN, J.

OCTOBER 25, 2006

Pro se Debtor appeals from the July 29, 2005 Order of the United States Bankruptcy Court for the Eastern District of Pennsylvania which modified the automatic stay to allow EMC Mortgage Corporation ("EMC") to foreclose on a mortgage it held on the Debtor's property and to allow the purchaser of the property at a sheriff's sale to take possession of the property. The Court will affirm.

The Debtor and her husband are co-owners of a property located at 599 Linden Court, Northampton, Pa. (the "Property"). EMC holds a mortgage on the Property. EMC has been attempting to foreclose on the mortgage for the past five years, only to be thwarted every time by the Debtor and her husband filing a petition for bankruptcy. Indeed, the Debtor and her husband have filed five separate bankruptcies during the past five years with each filing serving to stay the sheriff's sale of the Property. The latest bankruptcy was filed on March 9, 2005 and is the subject of this

appeal.

On February 4, 2005, EMC filed a motion to reassess damages in the Court of Common Pleas of Northampton County. Record, Section 12. That action has been stayed as a result of the Debtor's March 9, 2005 bankruptcy petition. On May 4, 2005, EMC filed a Motion to Dismiss or, in the alternative, Motion for Relief from Stay. Record, Section 6. On July 7, 2006, the Chapter 7 Trustee filed a Report of No Assets. Record, Section 7 at p.6. On July 1, 2005, the Debtor also filed a Statement of Intention advising that she was surrendering the Property. Record, Section 7 at p.5. On July 28, 2005, the Bankruptcy Court held a hearing on the Motion for Relief from the Stay. Record, Section 7. At the hearing, the Debtor admitted that the last payment she tendered to the mortgage company was in 1998. Record, Section 7 at 15.

Relief from a stay is governed by 11 U.S.C. § 362(d) which provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity interest in such property; and

(B) such property is not necessary to an

effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determined that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate.

In the case sub judice, there are numerous reasons for the Bankruptcy Court to have granted relief from the stay under 11 U.S.C. § 362(d). First, the Debtor admitted during the hearing that the last payment she made to the mortgage company was in 1998, over eight years ago. The fact that payments have not been made since 1998 raises a serious adequate protection issue under 11 U.S.C. § 362(d)(1).

Second, the Chapter 7 Trustee filed a Report of No Assets on July 7, 2006. The fact that there was insufficient equity in the property for the Trustee to sell it satisfies 11 U.S.C. section 362(d)(2)(A).

Finally, the Debtor filed a Statement of Intention advising that she was surrendering the property. This Statement of Intention demonstrates that the property is not necessary in order for an effective reorganization to occur. As a result, the requirement under 11 U.S.C. § 362(d)(2)(B) is met.

The Debtor argues that the Stay should not be modified because she believes the exact amount of the debt has not been determined. This is plainly not a valid reason for continuing the Stay. The issue of the exact amount of the debt owed by the Debtor is the subject of the action currently pending in the Court of Common Pleas of Northampton County. The only reason the exact amount of the debt has not been determined by that Court is because the Debtor herself caused that action to be stayed due to the bankruptcy filing which is the subject of this appeal.

In sum, the record reveals the Debtor and her husband have filed five bankruptcy petitions over the past five years and each petition has been filed for the purpose of postponing a sheriff's sale on the Property. The Bankruptcy Court properly modified the automatic stay under 11 U.S.C. § 362(d). Now that the Stay has been modified, the exact amount owed by the Debtor to EMC can be determined by the Court of Common Pleas for Northampton County.

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ORDER

AND NOW, this 25th day of October 2006, it is hereby
ORDERED that the Order of the Bankruptcy Court dated July 29,
2005 is AFFIRMED.

The Clerk is DIRECTED to mark this case closed.

BY THE COURT:

THOMAS M. GOLDEN, J.