

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

TAYLOR, BEAN & WHITAKER)	Bk. No. 3:09-bk-07047-JAF
MORTGAGE CORP.,)	
)	
Debtor.)	Chapter 11
)	
)	Judge Jerry A. Funk

**UNITED STATES' BRIEF IN SUPPORT OF ITS MOTION TO LIFT AUTOMATIC
STAY TO ADD TAYLOR, BEAN & WHITAKER MORTGAGE CORP. AS A PARTY
TO THE FEDERAL TAX LIEN ENFORCEMENT ACTION, *UNITED STATES OF
AMERICA v. ANGELA S. FORD, et al.*, PENDING IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF MICHIGAN, AND TO
ALLOW THAT ACTION TO CONTINUE**

Now comes the United States of America and moves the Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) and Federal Rule of Bankruptcy Procedure 4001. It submits this brief in support.

On July 2, 2010, the United States commenced the action *United States of America v. Ford, et al.*, No. 2:10-cv-12642-MOB-MAR, to enforce its federal tax liens against the real property commonly known as 4090 Cranbrook Court, #44, Bloomfield Hills, Michigan (the "Property"). The Property is more fully described as:

Unit 33, Building 1, Cranbrook Chase, according to the Master Deed recorded in Liber 11593, Pages 138 through 204 incl. and amended by First Amendment of Master Deed recorded in Liber 12227, Pages 709 through 725 incl. and by Second Amendment of Master Deed recorded in Liber 12993, Pages 258 through 271 incl. and by Third Amendment to Master Deed recorded in Liber 13506, pages 161 thru 182 incl. Oakland County Records, and designated as Oakland County Condominium Subdivision Plan No. 700, together with rights in the general common elements and limited common elements as set forth in the above Master Deed as amended, and as described in Act 59 of the Public Acts of 1978, as amended.
Tax Parcel No. 19-28-303-033

Section 7403(b) of Title 26 of the United States Code requires the United States to name Taylor, Bean & Whitaker Mortgage Corp. (“TBW”) as a party to that action as it may have or claim an interest in the real property upon which the United States seeks to enforce its federal tax liens. *See* 26 U.S.C. § 7403(b). Specifically, it appears that TBW has an outstanding mortgage on the Property (*see* Exhibit) given by Ms. Angela S. Ford in the amount of \$222,069.00, and that mortgage encumbers the Property in *United States v. Ford, et al.* After commencing that action, the United States discovered that TBW appeared to come under the protection of the automatic stay, and that any proceeds due to TBW would be property of the bankruptcy estate. On information and belief, TBW believes, however, that the mortgage was assigned to a third party, but that assignment does not appear of record. For these reasons, the United States moves the Court to lift the automatic stay to allow the lien enforcement action to continue in the United States District Court for the Eastern District of Michigan, and to add TBW in that action to ensure that title is properly quieted.

Under 11 U.S.C. § 362(a), the commencement of a bankruptcy case triggers an automatic stay which enjoins the commencement and continuation of any court proceeding against a debtor or property of the estate. However, a party in interest may obtain relief from the automatic stay “for cause” after notice and a hearing. *See* 11 U.S.C. § 362(d)(1). Section 362(d) of the Bankruptcy Code provides courts with the power to terminate, annul, or modify the automatic stay, and “[t]he power to annul authorizes retroactive relief even unto the date of the filing of the petition giving rise to the automatic stay.” *See In re Bresler*, 119 B.R. 400, 403 (Bankr. E.D.N.Y. 1990) quoting *Sikes v. Global Marine*, 881 F.2d 176, 178 (5th Cir. 1989); *but see In re Clark*, 60 B.R. 13, 14 (Bankr. N.D. Ohio 1986).

A hearing on a motion for relief from stay is merely a summary proceeding of limited effect. *See Grella v. Salem Five Cent Savings Bank*, 42 F.3d 26, 31-34 (1st Cir. 1994); *Matter of Vitreous Steel Products Co.*, 911 F.2d 1223, 1232 (7th Cir. 1990). A hearing with respect to a motion for relief from stay is not a proceeding for determining the merits of the underlying substantive claims. *See Grella*, 42 F.3d at 31-34; *Vitreous Steel*, 911 F.2d at 1232. A party opposing the motion has the burden of proof on all issues other than “the issue of the debtor’s equity in property.” *See* 11 U.S.C. § 362(g).

“Because the [Bankruptcy] Code provides no definition of what constitutes ‘cause’” pursuant to § 362(d), “courts must determine whether discretionary relief is appropriate on a case-by-case basis.” *See Laguna Assocs. Ltd. Pshp. v. Aetna Cas. & Sur. Co.*, 30 F.3d 734, 737 (6th Cir. 1994). A bankruptcy court may consider the following factors to determine whether to lift the automatic stay: “(1) judicial economy; (2) trial readiness; (3) the resolution of preliminary bankruptcy issues; (4) the creditor’s chance for success on the merits; and (5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.” *See Garzoni v. K-Mart Corp.*, 35 Fed. Appx. 179, 181 (6th Cir. 2002).

Lifting the automatic stay so that the United States may proceed in its lien enforcement action, *United States v. Ford, et al.*, will not place any burden on the bankruptcy estate. Instead, because the debtor in this bankruptcy case is a potential mortgage holder of the Property in *Ford*, lifting the stay will allow the claims of all parties to be adjudicated in that action. Likewise, allowing the United States to add TBW as a party in *Ford* will ensure that a proper distribution of the property is made. Finally, lifting the stay will not hinder judicial economy or any preliminary bankruptcy issues since it appears that the estate assigned its interest to a third party.

Conclusion

For the above-described reasons, the United States moves the Court to lift the automatic stay to add TBW as a party in the federal tax lien enforcement action *United States v. Ford, et al.*, that is pending in the United States District Court for the Eastern District of Michigan, and allow that action to proceed as against TBW.

Respectfully submitted,

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