U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 06-02286

ORDER MODIFYING STAY AND DENYING RELIEF FROM CO-DEBTOR STAY

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby ORDERED.

FILED BY THE COURT
06/28/2006

US Bankruptcy Court Judge
District of South Carolina

Entered: 06/30/2006

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	)	CHAPTER 13
	)	
Sarah Richbow, aka Sarah Mae Richbow, aka Sarah Mae Jones	)	CASE NO: 06-02286
	)	
Debtor(s).	)	

ORDER MODIFYING STAY AND DENYING RELIEF FROM CO-DEBTOR STAY

THIS MATTER is before the court on motion of American General Financial Services ("movant" or "American General") seeking a modification of the automatic stay imposed by 11 U.S.C. § 362(a)[1] for cause pursuant to § 362(d)(1) and for relief from the co-debtor stay pursuant to § 1301(c)(3). The motion was served on the debtor, her counsel[2], the chapter 13 trustee and the holder of title to the real property which movant claims as a part of its collateral. The debtor filed a response to the motion setting forth a general denial and alleging adequate protection of the interest of the movant in the form of proposed chapter 13 plan payments. The debtor, by counsel, stated at the hearing on the motion that she did not dispute the facts as set forth in the motion and proffered at the hearing by movant. In sum, the movant argues that the debtor and her daughters have filed a series of bankruptcy cases for the purpose of forestalling foreclosure and that the serial filings constitute cause for relief from the stay. It also argues a lack of

[1] Further reference to the Bankruptcy Code, 11 U.S.C. § 101 et. seq., will be by section number only.

[2] Counsel for debtor is referred to in this order as the Jason Moss firm. Various members of the firm or its predecessors actually represented the debtor and her two daughters.

adequate protection. The debtor cavalierly suggests that relief from the stay is premature at this early stage of a chapter 13 case and that a motion to dismiss or objection to confirmation would be more procedurally appropriate.

THE FACTS

The debtor filed her petition for relief under chapter 13 of the Bankruptcy Code on June 2, 2006. American General's motion for relief was filed on June 7, 2006. The debtor and a daughter, Adriane V. Richbow ("Adriane"), signed a note in movant's favor, in the amount of $53,023.95, on September 25, 2000. The debt was secured by a lien on a 1993 Fleetwood mobile home and by a mortgage on certain real property located at 489 Doctor Dr. Hopkins, South Carolina. Thereafter, in April of 2002, the debtor conveyed her interest in the real property to another daughter, Teresa A. Riley.

Teresa A. Riley filed a petition for relief under chapter 13 (Case No. 03-07358) on June 17, 2003. She was represented by the Jason Moss firm. A plan was confirmed July 31, 2003 and amended plans were confirmed November 19, 2004 and November 18, 2005. The first two plans did not treat American General, in fact, American General was not scheduled as a creditor and Ms. Riley's interest in 489 Doctor Dr. was not disclosed. A motion for relief from stay by American General was filed and later settled on August 3, 2005. The settlement was declared in default on August 12 and relief from stay was granted August 18, 2005. Meanwhile, by a June 1, 2005 amendment to Schedule D, Ms. Riley disclosed American General as a creditor and a June 20, 2005 plan attempted to treat the secured claim of American General. This plan was not confirmed. The November 18, 2005 confirmed plan omits mention of American General, who, as noted, had obtained relief from stay by that time.

In the interim, the co-obligor, Adriane, filed two chapter 13 cases (Cases No. 03-09030 and 04-09106). The Jason Moss firm represented her in both cases. Adriane's first case resulted

in a confirmed plan on September 8, 2003 and was dismissed for failure to make plan payments on December 24, 2003. American General was scheduled as a secured creditor in this case, was treated in the plan, and was stayed from action against its collateral. Adriane's second case resulted in a confirmed plan on December 29, 2004. A motion to dismiss the case was settled by the promised payment of a lump sum of money and installment payments of an additional sum of money. Adriane defaulted in settlement and the case was dismissed March 3, 2005. Again, American General was scheduled as a secured creditor, treated in the plan, and stayed from action against its collateral. It was at this point that American General was briefly drawn into the Teresa A. Riley bankruptcy, probably after the conveyance from Sarah Richbow as uncovered.

Sarah Richbow now invokes the protection of the Bankruptcy Court. The movant has been prevented from foreclosing its mortgage and security interest by a series of bankruptcy filings made by family members with the aid of a single law firm. A cursory review of the debtor's schedules, statements and plan dissolve any concern the court might have about the existence of cause to justify relief from the stay. Form B22C, designed to reflect a chapter 13 debtor's minimum disposable income, reflects total monthly income of $216.67; a contribution from family members. Schedule I reflects Social Security income of $760 per month[3] and $500 in contributions from family members[4] and no expectation on the part of the debtor for significant additional income. Schedule J reports currently monthly expenditures of $1242 and no expectation of any significant change. The proposed plan requires monthly payments of $305 to the trustee. The $18 in net income left after subtracting Schedules J expenses from Schedule I

[3]Social Security income is not reported on Form B22C.

[4] The difference in the two amounts reported as contributions from family members is not explained in the record.

income does not afford the debtor sufficient funds to make the plan payment. The total due movant, with interest computed only through April 11, 2005, is $89,963.11. The debtor estimates the value of the collateral as $28,100.00. The proposed plan payment will not be sufficient to pay the arrearage due American General. The trustee final reports in Adriane's bankruptcy cases reveal that the movant has received $ 295.95 in disbursements from the bankruptcy trustees over an approximately 3 year period.

The movant did not serve Adriane V. Richbow with the motion for relief and she has not had the opportunity to be heard.

CONCLUSIONS OF LAW

The filing of a bankruptcy petition operates as a stay of a broad array of actions against the debtor, debtor's property and property of the estate. See § 362(a). Parties in interest may seek relief from the stay for cause. § 362(d)(1). The lack of adequate protection of the movant's interest in property constitutes cause for relief from the stay. Once the movant proves cause for relief from the stay the party opposing relief has the burden of proving that relief is not warranted. The debtor did not contest movant's facts. Those facts establish a lack of adequate protection of the interest of American General in its collateral. The plan that debtor points to as providing adequate protection is not remotely feasible and thus provides no protection. There is no equity cushion in the property and the debtor has offered no other protection of movant's interest. The stay should be lifted for a lack of adequate protection.

The absence of adequate protection is not the only cause for relief from the stay pursuant to § 362(d)(1). The debtor and her daughters have filed a series of bankruptcy cases in an effort to forestall foreclosure of the Doctor Dr. property. The legitimate use of bankruptcy to adjust the debtor-creditor relationship is not at issue here. Rather, the collective debtors have improperly used the stay while failing in every effort to erase the arrearage and come current with the

creditor. Not even minimal success is found in the record. A bankruptcy judge has broad discretion to determine what constitutes "cause" sufficient to warrant relief from the stay. *Central Fidelity Bank v.Coogan (In re Coogan)*, No. 85-2299, 1986 WL 17896 at l (4th Cir. 1986). The plan proposed in this case is patently not confirmable and the only reason that the debtor has filed this case is to stop the foreclosure. The debtor's conduct in filing this bankruptcy, when viewed in the context of the series of failed cases by other family members, constitutes bad faith. This is cause for relief from the stay.

Movant is entitled to relief from the stay and the stay is therefore lifted to permit it to foreclose its security interests. The lifting of the co-debtor stay, to the extent it exists and forestalls any action to foreclose the security interests, is not properly before the court as the co-obligor has not been served.

IT IS SO ORDERED.