

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **12-02086-jw**

**ORDER GRANTING RELIEF FROM STAY AND IN REM RELIEF**

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

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**FILED BY THE COURT  
04/25/2012**



Entered: 04/26/2012

Chief US Bankruptcy Judge  
District of South Carolina

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

The Action Team, LLC

Debtor.

CASE NO: 12-02086-jw  
CHAPTER 7

ORDER GRANTING RELIEF FROM THE  
AUTOMATIC STAY, AND  
GRANTING IN REM RELIEF

This matter comes before the Court on the Motion for Relief from the Automatic Stay (“Motion”) filed by South Carolina Bank and Trust, N.A. (“SCBT”). It appears that the Motion and notice of hearing on the Motion were properly served upon Debtor, but Debtor failed to file an objection to the Motion or make an appearance at the hearing. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Having considered the pleadings, arguments of counsel, and the uncontested evidence offered by SCBT, the Court makes the following findings of fact and conclusions of law:<sup>1</sup>

**FINDINGS OF FACT**

1. SCBT is the holder of a promissory note (the “Note”) executed and delivered by the Debtor in the principal sum of \$150,000.00. A copy of the Note was accepted into evidence without objection.

2. As security for the Note, the Debtor executed in favor of and delivered to SCBT a real estate mortgage (the “Mortgage”) covering the following-described real property (the “Real Property”):

All that certain piece, parcel or lot of land, situate, lying and being in the County of Richland, State of South Carolina, located approximately Five (5) miles

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<sup>1</sup> To the extent any Findings of Fact constitute Conclusions of Law, they are adopted as such. To the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

Northwest of the City of Columbia, being shown and designated as Lot (6) on plat property of N.H. Free prepared by Buford Jackson, Registered Surveyor, on February 23, 1945, recorded in Plat Book "K", at page 12; said lot being bounded and measuring as follows: On the North by Lot #7 whereon it measures 173 feet; on the South by Lots 5 and 10 whereon it measures 213 feet; on the East by Highway #76 whereon it measures 66 feet and on the west by road separating said lot from the Hook Estate measuring 75 feet.

This being the same property conveyed to The Action Team, LLC by deed of F&T Investment Company dated July 17, 2006 and recorded in the Richland County RMC office on July 24, 2006, in Record Book 1209, at Page 1693, South Carolina.

A copy of the recorded Mortgage was accepted into evidence without objection.

3. Lucinda Evans ("Evans"), principal of Debtor, guaranteed payment of the Note, and her guaranty was accepted into evidence without objection.

4. The Debtor defaulted on the Note, and the Richland County Court of Common Pleas entered a judgment of foreclosure and sale on May 4, 2011. A copy of the judgment was accepted into evidence without objection. The judgment is for \$172,897.73. The Real Property has a value of \$145,000. The Real Property was scheduled for a sale on June 6, 2011.

5. Three days before the sale, Evans, in a case styled "Lucinda Amaia Evans, d/b/a The Action Team," filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code. Case No. 11-03598-dd (Bankr. D.S.C. June 3, 2011).

6. Following Evans' failure to appear at two scheduled creditors' meetings, and after due warning, this Court dismissed Evans' case on July 21, 2011.

7. The Court of Common Pleas again scheduled a judicial sale of the Real Property, but Evans filed a new bankruptcy petition in the name of The Action Team, LLC five days before the scheduled sale. See In re The Action Team LLC, Case No. 12-00605-dd (Bankr. D.S.C. Feb. 1, 2012).

8. Neither Evans nor anyone acting on behalf of the Debtor filed a Summary of Schedules, Statistical Summary, Schedules A-J, Statement of Financial Affairs, Statement of Anticipated Increase in Income/Expenditures, or copies of payment advices. After due warning, the Court dismissed the case for failure to file those documents.

9. SCBT once again sought to have the Real Property sold at a judicial sale to be held April 2, 2012, but the Debtor, via a petition signed by Evans, as its principal, filed a third bankruptcy petition three days before the sale. See In re The Action Team, LLC, Case No. 12-02086-jw (Bankr. D.S.C. Mar. 30, 2012). The Debtor's only admitted creditors are SCBT and the Richland County Treasurer. The Real Property is the Debtor's only asset.

10. As shown on SCBT's Certification of Facts, the judgment of foreclosure and sale, and an appraisal by Joseph J.T. Carter, II and William Spacek of Carter Commercial Appraisal Group, Inc. (all accepted into evidence without objection), the Debtor has no equity in the Real Property. Because the Debtor is proceeding under Chapter 7, reorganization is not contemplated.

11. Debtor and Evans appear to have filed these bankruptcy cases on the eve of foreclosure sales in order to frustrate the legitimate efforts of SCBT to recover its collateral – the Real Property. The Debtor did not offer any evidence of changed circumstances between the multiple filings. No evidence was presented indicating that the Debtor intends to sell or refinance the Real Property. In short, the Debtor and Evans acted in bad faith and abused the bankruptcy process to delay the foreclosure process.

## **CONCLUSIONS OF LAW**

SCBT seeks relief from stay pursuant to 11 U.S.C. § 362(d)(2) and (4). Section 362(d)(2) provides that relief shall be granted if “the debtor does not have an equity in such property,” and “such property is not necessary to an effective reorganization.” Section 362(d)(4) of the Bankruptcy Code provides that a creditor may obtain relief from the automatic stay where the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting such real property. To obtain relief from the automatic stay under § 362(d)(4), the creditor “must establish three elements: (1) that [Debtor] engaged in a scheme, (2) to delay, hinder, [or] defraud the creditor, and (3) which involved . . . multiple filings.” In re Davis, 2010 Bankr. LEXIS 4619, \*11-\*12 (Bankr. D.S.C. Oct. 12, 2010). A “scheme,” for purposes of § 362(d)(4) “is an intentional artful plot or plan to delay, hinder [or] defraud creditors.” In re Wilke, 429 B.R. 916, 922 (Bankr. N.D. Ill. 2010); see also In re Duncan & Forbes Dev., Inc., 367 27, 32 (Bankr. C.D. Cal 2006).

Based on the undisputed evidence before the Court, the Court finds that grounds exist for relief from stay under both 11 U.S.C. § 362(d)(2) and (4). There appears to be no equity in the Real Property and since this is a case proceeding under chapter 7, the Real Property does not appear to be necessary to an effective reorganization. Therefore, SCBT is entitled to relief from the automatic stay under § 362(d)(2).

Stay relief is also warranted under § 362(d)(4) because the Debtor’s filing of multiple Chapter 7 bankruptcy petitions on the eve of three separately scheduled foreclosure sales, filed solely to forestall the foreclosure sales, was in bad faith, especially since Debtor’s sole significant asset is the Real Property. See In re Henderson, C/A No. 08-01814-jw, slip op. (Bankr. D.S.C. 2008) (serial filings to protect the debtor’s sole asset from foreclosure sale found

to be bad faith); In re Scott, 42 B.R. 35 (Bankr. D.Ore. 1984) (finding debtor's bankruptcy petition was filed in bad faith where debtor filed bankruptcy petition on eve of foreclosure sale and where debtor clearly filed only to halt the foreclosure sale of the property, which was debtor's sole significant asset); and see In re Choctaw Boundary Farms, Inc., 72 B.R. 638 (Bankr. S.D. Miss. 1987); and In re Nelson, 66 B.R. 231 (Bankr. D.N.J. 1986).

The Debtor's pattern of serially filing voluntary Chapter 7 bankruptcy cases to thwart SCBT from moving forward with the judicial sale of the Real Property, coupled with the Debtor's failures in the previous two bankruptcy cases to comply with the duties imposed by the Bankruptcy Code, demonstrates that the Debtor is engaging in a scheme to delay and hinder SCBT from exercising its legal rights against the Real Property; it also demonstrates that the Debtor lacks the intent to move forward with its current bankruptcy case in good faith and that the Debtor and Evans are likely to invoke the automatic stay again to frustrate SCBT's foreclosure efforts.

This Court may grant in rem relief when there is evidence of a bad faith effort to delay a creditor with a futile bankruptcy filing or other evidence that indicates in rem relief is necessary to prevent an abuse of process. In re Henderson, Case No. 08-01814-jw, slip op. (Bankr. D.S.C. 2008). The court will consider multiple bankruptcy filings filed by separate individuals or entities as filings by a single entity when done to protect a common asset. Id.; In re Hartley, 187 B.R. 506, 507 (Bankr. D.S.C. 1995).

Under the circumstances of this case, the Court finds that SCBT's motion for an in rem order rendering the automatic stay inapplicable to the Real Property for two (2) years from entry of the requested order, regardless of who owns the property or files the petition for bankruptcy relief, should be granted.

Furthermore, based on the Debtor's failure to object to the Movant's request that the automatic 10-day stay of the order granting relief from the automatic stay under Fed. R. Bankr. P. 4001(a)(3) be avoided, this Order shall be effective immediately upon entry.

SCBT has waived any claim that may arise under 11 U.S.C. §§ 503(b) or 507(b).

### **CONCLUSION**

Based on the foregoing, it is hereby ORDERED that:

(1) SCBT's motion is granted, and the automatic stay is lifted pursuant to 11 U.S.C. § 362(d)(2) and (4), so SCBT may commence such actions as are necessary to have the Real Property sold pursuant to the Judgment of Foreclosure and Sale.

(2) Fed. R. Bankr. P. 4001(a)(3) is inapplicable to this Order, and the Order shall be effective immediately upon entry.

(3) Upon recordation of this Order by the Richland County, South Carolina, Register of Deeds, the filing of any bankruptcy petition in any jurisdiction within the two year period following the entry of this Order shall not operate to stay SCBT's efforts to collect its debt and have the Real Property sold pursuant to the Judgment of Foreclosure and Sale, regardless of who owns the Property or files the petition for bankruptcy relief.

(4) The relief granted in this Order shall survive the dismissal or closing of this bankruptcy case.

**AND IT IS SO ORDERED.**