

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

Rufus Lee Lindsey, Jr.,

Debtor(s).

C/A No. 19-06410-JW

Chapter 13

**ORDER DENYING MOTION FOR
RELIEF FROM STAY**

This matter comes before the Court upon the Motion for Relief from Stay (“Motion”) filed by 21st Mortgage Corporation (“Movant”) on February 11, 2020. After Rufus Lee Lindsey, Jr. (“Debtor”) filed a response to the Motion, the Court held a hearing on the matter.

Movant holds a mortgage secured by Debtor’s principal residence, and Debtor proposed in his chapter 13 plan to treat the allowed mortgage claim through the Court’s conduit procedure.¹ The Motion was filed shortly after Debtor filed his petition for relief under chapter 13 of the Bankruptcy Code on the basis that Debtor had not made the first two preconfirmation payments under the proposed plan to the Trustee. Since the filing of the Motion, Debtor has made payments and, without objection from Movant, Debtor’s proposed conduit plan has been confirmed.

On the eve of the continued hearing on the Motion, Movant and Debtor submitted a proposed settlement order which required all conduit payments required by the plan to be timely made or be deemed in default. The proposed order further provided that upon default, Movant could file an affidavit and require, without further motion, a hearing to determine if relief from the stay was warranted. It also provided for the payment of fees and expenses to the Movant. The proposed order did not contain the consent of the Chapter 13 Trustee.

¹ The Conduit Procedure, which benefits mortgage creditors by providing for the payment of ongoing maintenance payments on mortgage creditor’s claim through disbursements of the chapter 13 Trustee and associated record keeping and enforcement of plan payments, is provided under Operating Order 18-03, which has recently been replaced on April 16, 2020 by Operating Order 20-08. Under footnote 11 of Operating Order 20-08, “Motions for Relief from Stay filed before a confirmation hearing in a case with a proposed Conduit Plan are discouraged.”

Based upon a review of the record, the Court finds the proposed settlement order should be rejected and the Motion should be denied for several reasons. First, the Court is generally reluctant to grant relief from the automatic stay in a reorganization case soon after the filing of a petition absent a convincing showing of cause. One of the fundamental purposes of the automatic stay is to provide a debtor a breathing spell in order to propose a plan of reorganization. *See Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198, 200 (4th Cir. 1988). To grant relief at such an early junction in the case may defeat Debtor's case before he has had an adequate opportunity to pursue reorganization.

Further, Movant is bound by the terms of the confirmed chapter 13 plan. The alleged missed payments asserted in the Motion appear to be "Gap Payments" under the conduit procedure, which pursuant to the terms of the confirmed plan and applicable Operating Orders, are a separate class of payments that can be disbursed to Movant over the life of the chapter 13 plan by the Trustee. Additionally, both Operating Orders 18-03 and 20-08 provide that "regardless of the date of disbursement of the Conduit Mortgage Payment by the Trustee, [Movant] shall not declare the loan in default" or seek charges or fees for any delay in Movant's receipt of any payment paid pursuant to a Conduit Plan. For these reasons, Movant's arguments for relief from the stay due to the alleged preconfirmation missed payments are not convincing.²

Finally, the record reflects that Debtor is currently making payments, and the Court finds that Movant's interests are adequately protected at this time by the payments being made and by the plan supervision by the Chapter 13 Trustee, who is assigned to make disbursements to all

² The Court also takes into consideration the fact that while the Motion was pending, a national emergency developed involving COVID-19, resulting in significant hardships for many Americans. As a result of the national emergency, the Supreme Court of South Carolina issued a temporary moratorium of all foreclosure and eviction cases. *See In re Statewide Evictions and Foreclosures*, Sup. Ct. Or. No. 2020-03-18-01 (S.C. Mar. 18, 2020). Such factors further support a finding that a lifting of the automatic stay in this matter is not urgent at this time.

creditors and take proper enforcement action, including seeking dismissal of the Debtor's case, for nonpayment.³

For the foregoing reasons, the Court finds that Movant has not established cause for a lifting of the automatic stay under 11 U.S.C. § 362(d)(1). Therefore, the Court denies Movant's motion for relief from stay.

AND IT IS SO ORDERED.

Columbia, South Carolina
April 23, 2020

**FILED BY THE COURT
04/23/2020**



Entered: 04/23/2020

US Bankruptcy Judge
District of South Carolina

³ Movant's Motion also asserts in the alternative for adequate protection under 11 U.S.C. § 363(e). For the same reasons discussed in this Order, Movant is adequately protected, and its request for adequate protection under § 363(e) is also denied.