

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Shirley Ruth Bethea,

Debtor.

C/A No. 97-3863-W

ORDER

Chapter 13

THIS MATTER comes before the Court upon the Chapter 13 Debtor's motion filed August 10, 1998 asking this Court to reconsider an Order of July 16, 1998 granting relief from the automatic stay provisions of 11 U.S.C. § 362 to Countrywide Home Loans, Inc. Based upon the convoluted history of this case, a recitation of the facts in this Chapter 13 case is appropriate.

On May 5, 1997, the Debtor filed a Chapter 13 petition. The Chapter 13 plan submitted on May 19, 1997 was amended on July 7, 1997 and confirmed by Order of September 3, 1997. The confirmed Chapter 13 plan provided for the curing of arrearage to Countrywide Home Loans, Inc. ("Countrywide"), the creditor herein, with regular payments to be made directly to Countrywide beginning in July of 1997.

On January 14, 1998, Countrywide filed a motion for relief from the automatic stay alleging a failure to make regular payments directly to Countrywide as required by the confirmed Chapter 13 plan. The motion was settled between Countrywide and the Debtor and a consent order was entered on March 9, 1998 which provided for the delinquent payments to be cured with a right of the creditor upon default under the terms of the Order to apply for and receive an ex parte Order granting Relief from the Stay.

On April 6, 1998, Countrywide filed an affidavit of default pursuant to the terms of the

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previous Order and an Order for Relief from Stay was entered ex parte on April 7, 1998.

On April 29, 1998, a new Consent Order was submitted by the counsel for Countrywide and the Debtor which nullified the Order for Relief from Stay of April 7, 1998 and ostensibly reinstated the Consent Order of March 9, 1998.

On July 13, 1998, Countrywide then filed another affidavit of default indicating a breach of the terms of the previous Consent Order and a new Order for Relief from Stay was entered ex parte on July 16, 1998.

Approximately twenty-four (24) days thereafter, on August 10, 1998, the Debtor filed the subject Objection and Motion to Reconsider.

In essence, the Debtor asserts that the Order for Relief from Stay entered ex parte on July 16, 1998 upon the affidavit of default submitted by counsel for Countrywide on July 13, 1998 was in error in as much as the Debtor had attempted to make payments to Countrywide but the payments were refused. Countrywide filed a return to the motion at 3:50 p.m. on the afternoon before the hearing asserting that while it had incorrectly refused certain payments, the Debtor has since become further delinquent under the Court's previous payment order.

At the hearing, counsel for Countrywide admitted that Countrywide had incorrectly refused payments offered by the Debtor but that the Debtor had subsequently and additionally defaulted. The Court took the matter under advisement but was then advised by the parties that they had once again settled the motion and submitted another Consent Order for the Court's consideration, which while incorrectly referring to a pending motion for relief from stay, represents the parties' agreement to resolve the matter before the Court.

Because the parties have agreed to certain settlement terms and because the Court

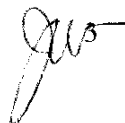
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encourages parties to settle these matters, the Court hereby sets aside and vacates the Order for Relief from the Stay entered on July 16, 1998 and approves the agreement of the parties attached hereto as Exhibit A. However, the Court cautions and advises counsel and the parties that it shall not consider further reinstatement of the stay or vacating of Orders granting relief from the stay upon default of consent payment orders except in an instance of manifest injustice and that further unwarranted or incorrect pleadings in this regard will subject both counsel and parties to a consideration of sanctions or other appropriate remedy. While this Court seeks to serve the interests of parties before it, it cannot address circumstances of repeated defaults and validate all agreements that may occur between a debtor and a secured creditor once relief from stay has been granted. Repeated requests for relief from the stay and later reinstatements of the stay over the course of a Chapter 13 case may constitute abuse of the bankruptcy process.

IT IS SO ORDERED.

Columbia, South Carolina,
September 15, 1998.


UNITED STATES BANKRUPTCY JUDGE



UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

IN RE:

Shirley Ruth Bethea,

DEBTOR(S).

EXHIBIT A

CHAPTER 13

CASE NUMBER: 97-03863/W

REVISED CONSENT ORDER

Before the Court on the Motion of Countrywide Home Loans, Inc. (Movant) for relief from the automatic stay 11 U.S.C. § 362(a).

It appears the Debtor and Movant have reached an agreement to bring the post-petition mortgage payments current, which they wish to be incorporated into an Order of the Court.

NOW, THEREFORE, with the consent of Counsel for the Debtor and Counsel for Movant it is

ORDERED that the motion of Movant for relief from the automatic stay is denied on the conditions that:

1. The Debtor bring the arrearage current pursuant to the terms and conditions as set forth below. The Debtor is currently in arrears for January 1, 1998 through August 1, 1998 monthly mortgage payments and attorney fees of Three Hundred Fifty and 00/100 (\$350.00) and court costs of Seventy-Five and 00/100 (\$75.00), for a total arrearage amount of \$4,944.11.

2. The Debtor will make a payment of \$824.02 for six (6) consecutive months beginning September 1, 1998 in addition to her regular monthly mortgage payments. All payments should be mailed directly to Countrywide Home Loans, Inc. at 6400 Legacy Drive, Plano, TX 75024.

3. Upon curing the arrearage, the Debtor shall continue making all future post-petition monthly mortgage payments as they become due commencing February 1, 1999, each payment to be made in a timely manner and in accordance with the terms of the loan documents between Debtor and Movant. The monthly payment may change from time to time. Debtor shall have the benefit of the grace period as provided under the Note.

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4. Should the Debtor default on any payment as outlined for more than thirty (30) days, the stay shall be automatically lifted upon receipt by the Court of an affidavit of such default by Movant's counsel.

5. The Movant agrees to waive any claim that may arise under 11 U.S.C. § 503(b) or 507(b) as a result of this Order.

6. The Movant further agrees that any funds realized in excess of its debt will be paid to the Chapter 13 Trustee.

Dated: _____, 1998

John E. Waites, Judge

WE CONSENT:



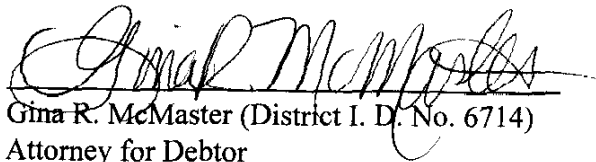
Ronald C. Scott (District I.D. No. 3768)

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U.S. DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

CERTIFICATE OF MAILING

The undersigned Deputy Clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

SEP 16 1998

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk

*Betha
McMaster
Murrell
JB*