

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
at Greenbelt

June 14, 2001

IN RE:

Harold Tolbert	:	CASE NO. 01-17154-DK
	:	CHAPTER 13
Debtor(s).	:	
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Harold Tolbert	:	CASE NO. 00-23188-PM
	:	CHAPTER 7
Debtor(s).	:	

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OPINION NOT FOR PUBLICATION

Honorable Duncan W. Keir

UNITED STATES BANKRUPTCY COURT  
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ORDER DENYING EMERGENCY MOTION BY BANK OF AMERICA, N.A. TO  
DISMISS CASE *NUNC PRO TUNC*, AND CONSOLIDATING CASE 01-17154-DK  
INTO CASE 00-23188-PM

Movant Bank of America seeks dismissal of this case *nunc pro tunc* asserting that debtor initiated it in bad faith. For the reasons set forth below, the court agrees that the case was filed in bad faith. However, the court shall not grant the relief requested.

In addition to the instant case, debtor is also a debtor in bankruptcy case number 00-23188-PM, which was initiated as a chapter 11 case on December 12, 2000. That case was filed on the eve of foreclosure sale of 12700 S.E. Crain Highway, Brandywine, Maryland, (the "Property") by Bank of America, N.A., movant in the instant case. Bank of America filed a motion to lift the automatic stay in case 00-23188 on January 9, 2001. Although he initially opposed the motion, debtor consented to the lifting of

the automatic stay by a stipulation and consent order entered on February 14, 2001. Debtor was unable to reorganize in case 00-23188, and an order converting that case to one under chapter 7 of the bankruptcy code was entered on April 10, 2001. Upon conversion, the debtor failed to attend the scheduled meeting of creditors, and the assigned chapter 7 trustee filed a motion to dismiss. That motion has not yet been acted upon.

After debtor consented to the lifting of the automatic stay in case 00-23188, movant Bank of America scheduled a new foreclosure sale of the Property for April 23, 2001. On the morning of April 23, 2001, however, debtor's wife Anglea Tolbert, co-owner of the Property, initiated her own bankruptcy petition, case number 01-13628-DK, under chapter 13 of the Bankruptcy Code. The effect of filing case 01-13628-DK was to create a new automatic stay thereby prevent the sale of the Property.

Movant then filed a motion to lift the stay in case 01-13628. Angela Tolbert filed no opposition to the motion, and an order lifting the automatic stay in case number 01-13628 was granted on May 4, 2001. Debtor Angela Tolbert made no plan payments in case number 01-13628, and an order dismissing her case was entered on May 11, 2001.

Movant rescheduled its foreclosure sale again, this time to be held on June 4, 2001. On May 31, 2001 debtor initiated the instant case, hoping that by so doing that he would again

forestall foreclosure of the Property.

Although movant became aware of the instant filing on the morning of foreclosure, it made no attempt to seek emergency relief of the automatic stay that arose on account of the filing. Instead, movant chose to proceed with the foreclosure hoping to get approval from this court after the fact, by filing the instant motion to dismiss case *nunc pro tunc*.

As the court admonished counsel for Bank of America at the hearing on this motion, the willful violation of the automatic stay is a serious matter which could result in the imposition of punitive damages pursuant to 11 U.S.C. § 362(h).<sup>1</sup> In this case, however, debtor clearly filed with no hope of reorganization. Rather, debtor and his wife have demonstrated through repeated filings on the eve of foreclosure that the instant proceeding was filed in bad faith, and solely for the purpose of stopping the June 4, 2001 foreclosure sale. Accordingly, although the court finds that movant's violation of the stay to be willful, no sanctions will be imposed.

Nevertheless, the court cannot condone a knowing violation of the stay and shall not grant movant's request to dismiss this case *nunc pro tunc*. As the foreclosure sale was conducted in violation of the stay, it is void. In re Smith, 224 B.R. 44, 47

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<sup>1</sup>11 U.S.C. § 362(h) provides that "[a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

(Bankr. E.D. Mi., 1998); In re Burns, 112 B.R. 763, 765 (Bankr. E.D. Va. 1990). Further, because the sale was not lawful, none of the associated costs may be added to debtor's obligation to movant.

Finally, because debtor has demonstrated no legitimate reason for filing the instant bankruptcy, the court shall exercise its authority under Bankruptcy Rule 1015(a)<sup>2</sup> to consolidate this case into debtor's previously filed, and still pending, case number 01-13628-PM. Because the automatic stay has already been terminated as to the Property in case 01-13628, effective the date of entry of this Order, movant may pursue its state law rights without seeking any further relief from this court.

Accordingly, it is, by the United States Bankruptcy Court for the District of Maryland,

ORDERED that Bank of America's Emergency Motion to Dismiss this case *nunc pro tunc* is DENIED; and it is further,

ORDERED that the foreclosure sale of 12700 S.E. Crain Highway, Brandywine, Maryland conducted by Bank of America on June 4, 2001 is VOID; and it is further,

ORDERED that Bank of America is prohibited from applying the costs of the unlawful June 4 foreclosure sale against debtor's

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<sup>2</sup>Federal Rule of Bankruptcy Procedure 1015(a) provides that, "[i]f two or more petitions are pending in the same court by or against the same debtor, the court may order consolidation of the cases."

obligation; and it is further,

ORDERED that this case (number 01-17154-DK) and debtor's earlier filed case (number 00-23188-PM) shall be consolidated under case number 00-23188-PM, and that no further stay relief is required to allow Bank of America to pursue its state law rights against 12700 S.E. Crain Highway.

\_\_\_\_\_  
Date

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DUNCAN W. KEIR, Judge  
United States Bankruptcy Court  
for the District of Maryland

cc: Debtor  
David Daneman, Esq. (counsel for Bank of America)  
Janet Nesse, Esq.

Office of the United States Trustee