

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

Case No. 09-33035

Jerome Reid,

Chapter 13

Debtor.

ORDER GRANTING TRUSTEE'S MOTION TO DISMISS

On July 27, 2010, this court held an adjourned hearing on a pending motion to dismiss this case filed by the chapter 13 trustee, Mark Swimelar ("Trustee"). The debtor, Jerome Reid ("Mr. Reid" or "Debtor") and counsel for the Trustee, Lynn Harper Wilson, Esq., appeared at the hearing. At the conclusion of the hearing, the court announced its oral decision to dismiss this case. This order explains the background and basis for the court's oral ruling in further supplement to the discussion on the record of the hearing.

The Debtor filed this chapter 13 proceeding on October 30, 2009, his third bankruptcy filing in this court since 2004. At the inception of the case on October 30, Mr. Reid filed a pleading styled "Affidavit" regarding his residence at 634 W. Brighton Avenue, Syracuse, New York ("Property"), in which he sought "30 days to move out of property or a stay of eviction for 30 days...; this would allow me and my family to financially afford to move some where [sic] else." (Document No. 6). The Debtor continues to reside at the Property nine months later, at the time of the adjourned hearing on the chapter 13 Trustee's motion to dismiss the case for unreasonable delay that is prejudicial to creditors. (Document No. 46) ("Motion"). The basis for the Motion was that the court had denied confirmation of the Debtor's chapter 13 plan on April 29, 2010, and the Debtor failed to file and notice for confirmation a new chapter 13 plan. On June

15, 2010, the return date of the initial hearing on the Motion, the Debtor filed an amended plan dated June 15 which neither the Trustee nor the court, in light of its late filing, had a chance to review prior to the hearing. Both the Trustee and Mr. Reid appeared at the June 15 hearing. At that hearing, the court directed Mr. Reid to confer with the Trustee's office and follow the specific directions to properly notice the newly-filed plan for a confirmation hearing set for July 27, 2010 before this court.

The record reflects that contrary to the court's directive, Mr. Reid never timely contacted the Trustee's office with regard to noticing his plan for confirmation for the July 27 date nor did he independently provide notice to all parties of the confirmation hearing on his amended plan. On July 20, 2010, the Trustee objected to confirmation of the plan filed June 15, 2010 on a number of grounds. These include the fact that the proposed plan term exceeds the 60 month permissible maximum term and that the "form" plan utilized by the Debtor, which is one used in the Southern District of New York, was incomplete and provided no proposed treatment of creditors and their specific claims. The Debtor completed only the first page of the seven page form and, on an added cover page, recited that he was currently in civil litigation involving the Property over which United States District Judge David N. Hurd was presiding. In fact, the referenced litigation had been dismissed with prejudice by Judge Hurd in his Memorandum-Decision and Order of May 6, 2010.¹ The Trustee further alleges in his Motion that no payments had been made to the Trustee's office since February 5, 2010, which the Debtor does not dispute. The Motion further recites that the Debtor's current plan is not filed in good faith as the Debtor is not making a serious effort to repay his creditors, "but appears

¹ The litigation before Judge Hurd was commenced after this court entered its order on March 18, 2010 granting relief from stay as to the Property.

to be delaying these creditors while attempting to retain real property in which he no longer has an ownership interest.” (Document No. 55). The real property referenced is the 634 W. Brighton Avenue property.

On the record, the court recounted the tortured history of the Debtor’s three bankruptcy proceedings before this court² which cumulatively have provided the Debtor a total of 42 months of protection to reorganize his financial affairs. Upon the Debtor’s failure, however, to successfully address the secured debt owed on the Property, which was the subject of a final Judgment of Foreclosure and Sale, an auction sale of the Property proceeded, which vested title to the Property in Wells Fargo Bank, N.A. The Debtor has sought to affirmatively challenge and avoid the final stage of the process, namely, the eviction of the Debtor and his family from the Property, by: 1) filing this bankruptcy; 2) filing a separate, district court action in the Northern District of New York;³ 3) requesting the same injunctive relief, that previously had been requested and denied by the district court for the Northern District of New York, in a separate, district court action commenced *pro se* by the Debtor in the District of Maryland;⁴ and 4) seeking similar relief in the form of a separate adversary proceeding filed before this court which the court has dismissed today by entry of a separate order.⁵ The essential timeline regarding a myriad of motions and orders entered over the course of years in the various proceedings pertaining to the Property, that the Debtor continues to occupy, are set forth in the attached appendix.

² Case No. 04-BK-65984 (Bankr. N.D.N.Y. filed August 20, 2004 and closed March 24, 2006); Case No. 06-BK-60206 (Bankr. N.D.N.Y. filed February 22, 2006, assigned case number 06-BK-33795 when transferred from former Chief Bankruptcy Judge Gerling to the Syracuse division and closed September 19, 2008); and Case No. 09-BK-33035 (Bankr. N.D.N.Y. filed October 30, 2009 and still pending).

³ *Reid v. Wells Fargo Home Mortgage, Inc.*, No. 5:10-CV-449 (N.D.N.Y. filed April 15, 2010).

⁴ *Reid v. Wells Fargo Home Mortgage, Inc.*, No. 10-CV-1853 (D. Md. filed July 8, 2010) Doc. No. 3.

⁵ *Reid v. Wells Fargo Home Mortgage, Inc.*, No. 10-AP-50052 (Bankr. N.D.N.Y. filed July 12, 2010).

At the hearing, the Debtor renewed a request for an adjournment seeking more time. His proffered explanation for not complying with the court's June 15 directive was that he was preoccupied with the immediacy of the pending eviction. As the attached timeline reflects, the Debtor was first served with a Notice to Quit the Property on December 1, 2008, as the delayed conclusion of a foreclosure proceeding that was commenced on March 5, 2004. Based upon the timeline and the interim proceedings that have substantively addressed the inability of the Debtor to further challenge the legality of the state court foreclosure, the court denied the adjournment. In response to the Motion, the Debtor further claimed on the record of the July 27 hearing that his interest in a piece of real property in Miami, Florida, of which he claims to have been fraudulently divested, would provide a source of funding to address the claim of creditor Wells Fargo Bank, N.A. The Debtor proffered this same explanation to the court at a hearing held on August 18, 2008, in support of his request that his second bankruptcy case be reinstated. The court addressed and rejected the Debtor's claim in its August 18, 2008 order denying reinstatement⁶ which the court similarly rejects as a defense to the present motion.

Based upon the entire record of proceedings in this case and the court's familiarity with the history of this Debtor, the court, for cause, including unreasonable

⁶ “[H]is asserted entitlement to relief is based upon his claim that a sale of a piece of real property in Florida, of which he claims to be the rightful fee owner, would more than cover the outstanding payments owed to the trustee and Wells Fargo and that he has been deprived of that property by a fraudulent transfer. The Debtor knew about the transfer well before the dismissal of his case. He complained that the chapter 13 trustee did not seek to sell the property to satisfy his obligations. It was not the Trustee's responsibility to do so. The Debtor identified the property as 900 NW 65th Street in Miami. He valued the property at \$4,000 and further listed it as encumbered by a secured claim of \$1,650 in Schedule A that was filed with his petition and sworn to on February 22, 2006. The Debtor affirmed at the hearing that \$4,000 was a correct valuation of the property, as the property had been left vacant and severely vandalized. The record at the hearing does not establish that this property with its attendant legal hurdles would provide debtor sufficient capital to meet the financial commitments which he undertook in his chapter 13 plan nor would any proceeds be readily realized.” See page 4 of Order Confirming Dismissal of Case and Enjoining the Debtor from Refiling a Case under any Chapter of the United States Bankruptcy Code for 180 Days.” Case No. 06-BK-33795, Doc. No. 120.

delay by the Debtor that is prejudicial to creditors, grants the Trustee's motion to dismiss as being in the best interests of creditors and the estate pursuant to the provisions of 11U.S.C. §1307(c). Accordingly, it is hereby

ORDERED that this case is dismissed; and, it is further

ORDERED that pursuant to the final order of this court granting relief from the automatic stay, "should Debtor seek to refile yet another petition under any chapter of the Bankruptcy Code, there will be no stay in effect as to the Property."⁷

SO ORDERED.

Dated: August 2, 2010
Syracuse, New York

/s/ Hon. Margaret Cangilos-Ruiz
Hon. Margaret Cangilos-Ruiz
U.S. Bankruptcy Judge

⁷ Document No. 37 at page 2.

APPENDIX

Year	Month and Day	Event
1997	June 9	Jerome Reid (“Debtor”) executes note and mortgage in favor of Island Mortgage Network for real property located at 634 W. Brighton Ave., Syracuse, New York (“Property”), which was later assigned to Wells Fargo.
2003	October 1	Debtor defaults under note and mortgage.
2004	March 5	Wells Fargo commences foreclosure action.
	July 27	Judgment of Foreclosure and Sale entered by New York State Supreme Court, Onondaga County.
	August 20	Debtor files chapter 13 bankruptcy petition in United States Bankruptcy Court for the Northern District of New York (case number 04-BK-65984) (“First Case”).
	December 8	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in First Case.
2005	February 18	Conditional Order Terminating Automatic Stay with Respect to Property in First Case. (SDG) ¹
	March 7	Chapter 13 Trustee files Default Motion to Dismiss First Case.
	April 5	Conditional Order Dismissing First Case. (SDG)
	May 18	Order Dismissing First Case. (SDG)
	May 25	Debtor files Motion to Vacate Order of Dismissal entered May 18, 2005 and Reinstate Automatic Stay with Respect to Property in First Case.
	July 1	Order Conditionally Vacating Order of Dismissal entered May 18, 2005 and Reinstating Automatic Stay with Respect to Property in First Case. (SDG)
	July 13	Amended Order Conditionally Vacating Order of Dismissal entered May 18, 2005 and Reinstating Automatic Stay with Respect to Property in First Case. (SDG)
	September 2	Order of Dismissing First Case. (SDG)
	September 15	Debtor files Motion to Vacate Order of Dismissal entered September 2, 2005 and Reinstate Automatic Stay with Respect to Property in First Case.
	September 28	Order Vacating Order of Dismissal entered September 2, 2005. (SDG)
	October 5	Order Terminating Automatic Stay with Respect to Property in First Case. (SDG)
	October 28	Chapter 13 Trustee files Default Motion to Dismiss First Case.
	November 17	Debtor files Motion to Reinstate Automatic Stay with Respect to Property in First Case.
	November 29	Interim Conditional Order Dismissing First Case. (SDG)
	December 9	Order Dismissing First Case. (SDG)

¹ “SDG” refers to former Chief United States Bankruptcy Judge Stephen D. Gerling, who presided over the Debtor’s First Case and Second Case through date of transfer to Syracuse Division.

2006	February 22	Debtor files chapter 13 bankruptcy petition in United States Bankruptcy Court for the Northern District of New York (case number 06-BK-60206; assigned case number 06-BK-33795 when transferred to Syracuse division) (“Second Case”).
	March 31	Chapter 13 Trustee files Default Motion to Dismiss Second Case.
	April 10	Order Confirming Termination of Automatic Stay as of March 22, 2006 with respect to Property in Second Case. (SDG)
	June 21	Debtor files Motion to Vacate Order entered April 10, 2006 and Reinstate Automatic Stay with Respect to Property in Second Case.
	July 25	Order Vacating Order entered April 10, 2006 and Extending Automatic Stay with Respect to Property for Duration of Second Case. (SDG)
	August 2	Conditional Order of Dismissing Second Case. (SDG)
	September 25	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in Second Case.
	October 26	Order Dismissing Second Case. (SDG)
	November 16	Debtor files Motion to Vacate Order of Dismissal entered October 26, 2006 and Reinstate Automatic Stay with Respect to Property in Second Case.
2007	March 7	Order Vacating Order of Dismissal entered October 26, 2006 and Reinstating Automatic Stay with Respect to Property in Second Case. (SDG)
	April 3	Amended Order Vacating Order of Dismissal entered October 26, 2006 and Reinstating Automatic Stay with Respect to Property in Second Case. (SDG)
	July 7	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in Second Case.
	December 28	Conditional Order Terminating Automatic Stay with Respect to Property in Second Case. (MCR) ²
2008	March 26	Wells Fargo files Ex-Parte Application for Relief from Automatic Stay with Respect to Property in Second Case.
	May 27	Ex-Parte Order Terminating Automatic Stay with Respect to Property in Second Case. (MCR)
	June 13	Chapter 13 Trustee files Default Motion to Dismiss Second Case.
	July 21	Order Dismissing Second Case. (MCR)
	August 12	Debtor files Motion to Vacate Order of Dismissal entered July 21, 2008 and Reinstate Automatic Stay with Respect to Property in Second Case.
	August 18	Order Confirming Dismissal of Second Case and Enjoining Debtor from Refiling Under Any Chapter of the Bankruptcy Code for 180 Days. (MCR)
	August 20	Amended Order Confirming Dismissal of Second Case and Enjoining Debtor from Refiling Under Any Chapter of the Bankruptcy Code for 180 Days. (MCR)
	November 18	Foreclosure auction (Wells Fargo purchases Property).

² “MCR” refers to United States Bankruptcy Judge Margaret Cangilos-Ruiz.

	December 1	Wells Fargo serves Notice to Quit Premises After Sale.
	December 12	Wells Fargo files Motion for Writ of Assistance in New York State Supreme Court, Onondaga County.
2009	January 1	Debtor files Notice of Appeal of Judgment of Foreclosure and Sale in New York State Supreme Court, Onondaga County (Wells Fargo contends appeal not properly perfected).
	August 20	Order Granting Writ of Assistance entered by New York State Supreme Court, Onondaga County.
	October 27	Debtor unsuccessfully attempts to file adversary proceeding in Second Case as Wells Fargo waits for “lock out” date.
	October 30	Debtor files chapter 13 bankruptcy petition in United States Bankruptcy Court for the Northern District of New York (case number 09-BK-33035) (“Third Case”).
	December 16	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in Third Case.
2010	February 9	Order Directing Wells Fargo to Submit Further Documentation in Support of its Motion for Relief from Automatic Stay with Respect to Property in Third Case. (MCR)
	February 18	Wells Fargo files further documentation in support of its Motion for Relief from Automatic Stay, which demonstrates its ownership interest in Property.
	March 18	Order Terminating Automatic Stay with Respect to Property in Third Case Effective April 16, 2010. (MCR)
	April 6	Debtor files Motion to Extend Time to File Notice of Appeal and Reinstate Automatic Stay with Respect to Property Pending Appeal.
	April 7	Order Denying Extension of Time to File Notice of Appeal. (MCR)
	April 15	Debtor commences civil action in United States District Court for the Northern District of New York (case number 5:10-CV-449) (“NDNY Action”).
	May 6	Memorandum Decision and Order Denying Debtor’s Request to Proceed <i>In Forma Pauperis</i> , Denying Injunctive Relief and Dismissing NDNY Action with Prejudice. (DNH) ³
	May 25	Chapter 13 Trustee files Default Motion to Dismiss Third Case.
	June 18	Debtor files appeal of Order entered May 6, 2010 in United States Court of Appeals for the Second Circuit (case number 5:10-CV-2435) (“Appeal”).
	June 22	Order Dismissing Appeal (effective July 13, 2010 unless Debtor Pays Filing Fee or Moves to Proceed <i>In Forma Pauperis</i> by July 13, 2010). (2d Cir.)
	June 28	Debtor receives notice of eviction.
	June 30	Order Denying Debtor’s Request for Stay Pending Appeal in NDNY Action. (DNH)
	June 30	Debtor files Request to Stay Eviction Proceedings in Third Case.

³ “DNH” refers to United States District Judge David N. Hurd.

	June 30	Order Denying Debtor's Request to Stay Eviction Proceedings in Third Case. (MCR)
	July 8	Debtor commences civil action in United States District Court for the District of Maryland (case number 1:10-CV-01853).
	July 12	Debtor commences adversary proceeding in Third Case (case number 10-AP-50052).
	July 13	Appeal Dismissed per Order entered June 22, 2010. (2d Cir.)
	July 19	Debtor files untimely Motion to Proceed <i>In Forma Pauperis</i> in United States Court of Appeals for the Second Circuit.