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UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

In re: Richard T. Lewis,
Debtor

BK No: 16-10352
Chapter 7

MEMORANDUM SUPPLEMENT TO ORDER
GRANTING MOTION FOR *IN REM* RELIEF FROM STAY
(this relates to Doc. ## 22, 38)

This memorandum sets forth the Court’s findings of fact and conclusions of law that serve as the basis for the entry of the Order dated May 11, 2016 (Doc. # 38) (“Stay Relief Order”) granting the Motion of U.S. Bank National Trust Association (“U.S. Bank”) for *in rem* relief from the automatic stay (Doc. # 22) (“Motion”) under § 362(d)(4) of the Bankruptcy Code,¹ to which no objections were filed.

The following constitute my findings of fact and conclusions of law based on the uncontroverted allegations in the Motion and on the Court’s own review of the docket.² The Debtor, Richard T. Lewis (“Debtor”), owns the residential real estate located at 15 John Kesson Lane, Middletown, Rhode Island 02842 (“Property”) where he currently resides. On March 23, 2004, the Debtor executed a promissory note and granted a mortgage against the Property now held by U.S. Bank in the principal amount of \$346,486 (collectively, “Mortgage Obligation”).³

The present case is the Debtor’s fourth bankruptcy filing in five years, with all of his prior cases being dismissed prior to completion and without the Debtor obtaining a discharge. The Debtor filed his first bankruptcy case on December 28, 2011, as a joint chapter 13 bankruptcy

¹ Unless otherwise indicated, the terms “Bankruptcy Code,” “Chapter,” “section” and “§” refer to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub L. No. 109-8, 119 Stat. 37 (“BAPCPA”).

² The Court may take judicial notice of its docket. *See In re Mailman Steam Carpet Cleaning Corp.*, 196 F.3d 1, 8 (1st Cir. 1999) (“The bankruptcy court appropriately took judicial notice of its own docket.”).

³ Ameriquest Mortgage Company assigned the Mortgage Obligation to Credit Based Asset Servicing and Securitization, LLC on March 31, 2004. It was then assigned to SRMOF 2009-1 Trust, c/o Selene Finance LP on September 13, 2011, who in turn assigned it to U.S. Bank on July 2, 2012. U.S. Bank filed the Motion in its capacity as trustee to SRMOF REO 2011-1 Trust.

petition with his spouse, Ms. Kimberly Lewis (“First Case”). *See* BK. No. 11-14758. In that case they were represented by counsel and, after being granted three extensions, ultimately filed all of their required documents. Nonetheless, on March 27, 2012, the First Case was dismissed without the granting of a discharge to either of these debtors after the chapter 13 trustee’s motion to dismiss was granted because of the debtors’ failure to attend the meeting of creditors mandated by § 341 of the Bankruptcy Code (“§ 341 meeting”). The case was closed April 11, 2012.

On July 29, 2013, the Debtor filed his second chapter 13 bankruptcy case, this time as the sole debtor (“Second Case”). *See* BK No. 13-11978. On September 6, 2013, the Second Case was also dismissed because the Debtor failed to file all the required documents despite being granted two extensions of time in which to do so. That same day the chapter 13 trustee had also filed another motion to dismiss because the Debtor failed to attend the § 341 meeting. The case was closed October 4, 2013.

Then on October 16, 2015, the Debtor filed his third chapter 13 bankruptcy case (“Third Case”). *See* BK No. 15-11988. On November 10, 2015, the Third Case was similarly dismissed because the Debtor failed to file the required documents after being granted two extensions of time in which to file them. The case was closed December 10, 2015.

We now come to the present and fourth bankruptcy case of the Debtor filed on March 1, 2016, but this time under chapter 7 of the Bankruptcy Code (“Present Case”). After being given one extension, the Debtor filed all of the requisite documents. U.S. Bank filed its Motion on March 25, 2016. Initially the chapter 7 Trustee filed an objection to the Motion, but withdrew it a week later. The Debtor did not file an objection and the unopposed Motion was granted May 11, 2016, providing U.S. Bank with *in rem relief* against the Property. Subsequently, on April 29, 2016, the Court entered an order against the Debtor to show cause by May 13, 2016, why the case

should not be dismissed for failure to pay the third installment due towards the full filing fee. The Debtor failed to respond or make this payment.

The Debtor has not paid the monthly installment payments due under the Mortgage Obligation since April 1, 2006, and the total amount owed to U.S. Bank is in excess of \$628,559.00, including principal, accrued interest, late charges, fees, and costs as of March 3, 2016. The Mortgage Obligation is the only encumbrance against the Property and there is no other collateral securing this obligation. Further, there is a contractual arrearage which alone exceeds \$329,876.00. The Debtor valued the property on Bankruptcy Schedule A at \$515,000, considerably less than the outstanding Mortgage Obligation. Based on the lack of equity, the failure to make payments since April of 2006, the lack of adequate protection, and the Debtor's multiple bankruptcy filings, U.S. Bank asserts entitlement to stay relief under § 362(d)(1) and (2) and *in rem* stay relief under § 362(d)(4)(B).

To be entitled to the relief it seeks, U.S. Bank has the burden of establishing that the Debtor's filing of the Present Case was part of a "scheme to delay, hinder or defraud creditors that involved . . . multiple bankruptcy filings affecting" the Property. *See In re Lee*, 467 B.R. 906, 920 (B.A.P. 6th Cir. 2012) (quoting *In re Poissant*, 405 B.R. 267, 273 (Bankr. N.D. Ohio 2009)). Thus, it must establish (1) that the Debtor engaged in a scheme; (2) to delay, hinder, or defraud creditors; (3) which involved multiple filings affecting the Property. *See In re The Action Team, LLC*, No. 12-02086-jw, 2012 Bankr. LEXIS 1854, at *5 (Bankr. D.S.C. Apr. 25, 2012); *In re Taal*, 520 B.R. 370, 377-78 (Bankr. D.N.H. 2014). Section 362(d)(4) is disjunctive, thus, "the court need not inquire into fraud if it finds there was hindrance or delay to the Movant." *In re Briggs*, No. 12-bk-14853, 2012 Bankr. LEXIS 4120, at *11-12 (Bankr. N.D.Ill. Aug. 30, 2012).

Here, U.S. Bank has shown that the Debtor's multiple filings have resulted in the imposition of the automatic stay imposed by § 362(a) on four occasions, preventing efforts to collect the Mortgage Obligation and, most importantly, from enabling it to pursue its remedies to enforce its mortgage lien against the Property. The Court finds that the Present Case was filed by the Debtor as "a scheme to delay and hinder" U.S. Bank from exercising its rights and remedies against the Debtor and the Property under applicable non-bankruptcy law. *See In re Macaulay*, No. 11-07382-DD, 2012 WL 2919154, at *4 (Bankr. D.S.C. July 16, 2012). The history of the Debtor's prior filings, in which he repeatedly requested extensions to file the required documents, and the dismissal of all such cases in their early stages for failure to perform the various duties imposed on a debtor under the Bankruptcy Code, demonstrate the Debtor's utter lack of a good faith intention to complete any of his bankruptcy cases. In short, it is clear that he has abusively used these filings to hinder and delay U.S. Bank from enforcing its lien against the Property. *See e.g. In re Taal*, 520 B.R. 370, 378 (Bankr. D.N.H. 2014) (filing "schedules and other required documents at the last possible moment or even marginally late" evidences intent to abuse the Bankruptcy Code to delay creditors while lacking the intent to complete a bankruptcy); *In re Cruz*, 516 B.R. 594, 604 (B.A.P. 9th Cir. 2014) (filing skeletal petitions without following through with the filing of the balance of required documents shows a lack of ability or intention to complete the bankruptcy cases and are an abuse of the bankruptcy process).

The Present Case is no exception. Even though the Debtor filed all of his documents, this case would have already been dismissed for non-payment of the third installment of the filing fee but for the pendency of U.S. Bank's Motion. Considered in their totality, "the mere timing and filing of several bankruptcy cases is an adequate basis" to infer a scheme to hinder, delay, or defraud creditors. *In re Blair*, Nos. 09-76150-ast, 09-77562 ast, 2009 WL 5203738, at *4 (Bankr.

E.D.N.Y. 2009). The Debtor has filed four cases within the last five years, the last two of which were filed within five months of each other. The cases (including the Present Case which was due to be dismissed on May 14, 2016, and will be shortly) have lasted between two and four months from filing to dismissal. All of these factors demonstrate the Debtor's intent to repeatedly use the bankruptcy system to hinder and delay U.S. Bank from exercising its non-bankruptcy law remedies against the Property without a realistic ability or intention to complete the cases or fulfill his obligations as a debtor. And it is significant that throughout all of these multiple cases the Debtor has failed to make any payment on the Mortgage Obligation, including post-petition payments, resulting in the accrual of a substantial arrearage and a total indebtedness that exceeds the Debtor's asserted value of the Property by over \$100,000.

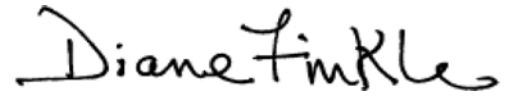
Based on all of these factors, the Court concludes that U. S. Bank has met its burden and established that the Debtor has engaged in a scheme to hinder and delay it from exercising its non-bankruptcy rights against the Property, and it is entitled to *in rem* relief from the stay under § 364(d)(4).

U. S. Bank also asserts that in light of these multiple filings and the Debtor's abuse of the bankruptcy system, cause exists to waive the 14-day delay of the effectiveness of the Stay Relief Order under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure. The Court agrees and the Stay Relief Order provided that it was immediately effective upon entry. The effect of my granting such *in rem* relief pursuant to § 362(d)(4) is to render the automatic stay under § 362(a) inapplicable with regard to the Property in any future bankruptcy cases affecting the Property filed not later than two years after the entry of the Stay Relief Order. *See In re Rodriguez*, 516 B.R. 177, 179 n.2 (B.A.P. 1st Cir. 2014).⁴

⁴ Having granted *in rem* stay relief and a waiver of the delay period under Bankruptcy Rule 4001(a)(3), the Court need not address U.S. Bank's request for a determination that the stay terminated (at least as to the Debtor) 30 days

Date: May 18, 2016

By the Court,

A handwritten signature in black ink that reads "Diane Finkle". The signature is written in a cursive style with a large initial "D" and a long, sweeping tail on the "l".

Diane Finkle
U.S. Bankruptcy Judge

after the petition date by virtue of § 362(c)(3)(A).