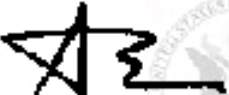


ORDERED.

Dated: June 16, 2015



Arthur B. Briskman
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

DAVID RAMOS,

Case No. 6:13-bk-11532-ABB
Chapter 13

Debtor.
_____ /

**ORDER DENYING DEBTOR'S MOTION TO STAY ORDER PENDING
OUTCOME OF APPEAL (DOC. NO. 190)**

This matter came before the Court on the Motion to Stay Order Pending Outcome of Appeal (Doc. No. 190, the "Motion") filed by the Debtor requesting imposition of the automatic stay pending his appeal of two Orders issued by this Court to the District Court. The Motion is due to be denied.

The Debtor's case was dismissed for bad faith on April 28, 2015 (Doc. No. 175, the "Dismissal Order") on the Trustee's Motion to Dismiss for Bad Faith (Doc. No. 170) and creditor, Wells Fargo's, Joinder in the Motion to Dismiss (Doc. No. 172). The Court found the Debtor's proposed monthly plan payments of \$25.00 did not represent a good faith effort to repay Wells Fargo where its mortgage and an *In Rem* Final Consent Judgement between the Debtor and Wells Fargo had been validated by the state court in foreclosure proceedings (Doc. No. 162, Ex. A). This Court had granted limited relief

from the automatic stay in order for the Parties to complete the foreclosure litigation including, among other issues, the Debtor's allegation that Well Fargo had obtained the *In Rem* Final Consent Judgement by fraud and was not in fact the holder of the note and mortgage secured by the Debtor's homestead property.

The Debtor sought reconsideration of the Dismissal Order (Doc. No. 176, the "Motion for Reconsideration"). The Motion for Reconsideration was denied on May 14, 2015 (Doc. No. 177, the "Order Denying Reconsideration"). The Court found the Motion for Reconsideration was an attempt to argue and reargue issues related to the foreclosure litigation—a state law issue best left to the expertise of the state court.

The Debtor timely filed his Notice of Appeal of both the Dismissal Order and the Order Denying Reconsideration on May 26, 2015 (Doc. No. 180). The Debtor now requests the automatic stay be imposed pending the outcome of his appeal.

The automatic stay continues until the time the case is dismissed. *See* 11 U.S.C. section 362(c)(2)(B). A bankruptcy court may reimpose the automatic stay pending an appeal pursuant to Federal Rules of Bankruptcy Procedure Rule 8007 which permits a bankruptcy court to "issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest." Fed. R. Bankr. P. 8007(e)(2). A motion requesting imposition of the automatic stay may be made either before or after the notice of appeal is filed. Fed. R. Bankr. P. 8007(a)(2).

In order to grant a motion for stay pending appeal "the movant must clearly establish: (i) that the movant is likely to prevail on the merits of its appeal, (ii) that the movant will suffer irreparable injury if a stay or other injunctive relief is not granted, (iii)

that other parties will suffer no substantial harm if a stay or other injunctive relief is granted, and (iv) in circumstances where the public interest is implicated, that the issuance of a stay or other injunctive relief will serve, rather than disserve, such public interest.” *Tooke v. Sunshine Trust Mortgage Trust*, 149 B.R. 687, 689 (M.D. Fla. 1992). All prongs must be met to warrant granting a motion for stay pending appeal. *In re Turner*, 207 B.R. 373, 375 (B.A.P. 2d Cir. 1997), *as amended* (Mar. 4, 1997)(internal citations omitted).

The Court cannot find that the Debtor has made of showing of any likelihood of success on the merits. The District Court's review of this Court's Dismissal Order and Order Denying Reconsideration will be limited to whether this Court abused its discretion in dismissing the Debtor's case for bad faith and denying the Motion for Reconsideration. The Court concluded the Debtor filed the instant case in bad faith and the finding is well-supported by the record. The Court concluded the Debtor had failed to present any legal or factual basis for this Court to reconsider the Dismissal Order. The Debtor makes no showing in the instant motion of any kind that would persuade the Court it erred in reaching these conclusions. The Debtor has not shown he is likely to prevail on the merits of his appeal. The Debtor has failed to demonstrate all of the factors required to obtain a stay.

Accordingly it is,

ORDERED, ADJUDGED and DECREED that the Motion to Stay Order Pending Outcome of Appeal (Doc. No. 190) is hereby **DENIED**.

The Clerk is directed to serve a copy of this Order on all interested parties.