


ORDERED.

Dated: January 05, 2017



Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re	)	
	)	
CHARLES JAMES MCHALE, JR., and	)	Case No. 6:10-BK-02527-KSJ
SUSAN MCHALE,	)	Chapter 7
	)	
Debtor.	)	

**ORDER DEFERRING CONSIDERATION OF CREDITOR'S  
MOTION TO REOPEN AND COMPEL SURRENDER OF PROPERTY**

Christiana Trust, an alleged creditor of the Debtors, seeks to reopen this long ago closed Chapter 7 bankruptcy case to force the Debtors to surrender their home.<sup>1</sup> Because the Court needs additional evidence before considering the Movant's request, the Court will defer consideration of the Motion to Reopen and Compel Surrender.

Debtors filed this routine and uneventful Chapter 7 bankruptcy case almost six years ago on February 19, 2010.<sup>2</sup> They received their Discharge on July 1, 2010.<sup>3</sup> In their Statement of Intentions, the Debtors indicated they wanted to reaffirm the mortgage debt encumbering their

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<sup>1</sup> Doc. No. 20.  
<sup>2</sup> Doc. No. 1.  
<sup>3</sup> Doc. No. 15.

home and held by Bank of America.<sup>4</sup> No claims or reaffirmation agreement with Bank of America was filed. Debtors, however, continued making timely mortgage payments and were current in their payments to Bank of America<sup>5</sup> when the bankruptcy case was closed.<sup>6</sup>

Now, years later, a new creditor, Christiana Trust, seeks to reopen this closed Chapter 7 case arguing the Debtors did not effectuate their intent to reaffirm the debt then due to Bank of America. Section 350(b) of the Bankruptcy Code<sup>7</sup> allows a bankruptcy court to reopen a case for “cause.” The Court, however, cannot determine whether Christiana Trust has articulated any cause to reopen this case without a further evidentiary hearing to address these open factual questions:

1. Did Bank of America or any successor in interest send the Debtors a proposed reaffirmation agreement or take any steps to negotiate a reaffirmation agreement with the Debtors?
2. Did the Debtors ever refuse to sign any proposed reaffirmation agreement or act inconsistently with their stated intention to reaffirm the debt?
3. Did Bank of America or any successor in interest seek to compel the Debtors to comply with their duty under §521 of the Bankruptcy Code prior to filing this Motion to Reopen and Compel Surrender?
4. Did Bank of America or any successor in interest accept payments from the Debtor on the mortgage debt after this case was filed on February 19, 2010 (the “Petition Date”)? How did the creditor account for these payments?
5. Did Bank of America or any successor in interest send statements requesting payment to the Debtor after the Petition Date?

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<sup>4</sup> Doc. No. 1, p. 41.

<sup>5</sup> Doc. No. 20, p. 2, para. 7.

<sup>6</sup> The case was closed on September 22, 2011. Doc. No. 18.

6. If the Movant, Christiana Trust, is seeking surrender of the home, is it conceding that any personal liability by the Debtors to Bank of America or its successor in interest was discharged?
7. Did Bank of America or any successor in interest agree to modify the mortgage debt with the Debtors or accept payments under a modified mortgage loan after the Petition Date?
8. What is the litigation history between the parties following the Petition Date? The Court is particularly interested in information related to a foreclosure action that the creditor apparently voluntarily dismissed against the Debtors on October 3, 2014. Why was a second foreclosure action initiated or needed?

The Court acknowledges that the answers to these questions would require discovery and a substantial and potentially lengthy trial that the Movant may not want to pursue given the significant time and cost involved. Therefore, at this juncture, the Court simply will defer consideration of the Motion **until March 3, 2017**. If the Movant wants to proceed with a formal evidentiary hearing, it must timely file a request for trial. The Court then will notice a scheduling conference to set deadlines for discovery and trial. If no timely request for trial is filed, an order denying the motion for lack of prosecution will issue after March 3, 2017.

Accordingly, it is **ORDERED** that consideration of Christiana's Trust's Motion to Reopen and to Compel Surrender is deferred until **March 3, 2017**.

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<sup>7</sup> References to the Bankruptcy Code refer to 11 U.S.C. §101 *et seq.*