

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No. 8:09-bk-23656-CPM

JESSICA A. LONG,

Chapter 7

Debtor.

ORDER DENYING EMERGENCY MOTION TO REOPEN CASE

THIS CASE came on for consideration of the Debtor's Emergency Motion to Reopen Chapter 7 Bankruptcy Case (Doc. 108). The Court notes that the Debtor voluntarily converted her chapter 13 case to a chapter 7 without obtaining this Court's assistance in determining whether, at that time, she was current on her Chapter 13 Plan. She was represented by counsel at that time. The Court also notes that the lone parcel of scheduled real property in this case was not claimed as exempt (Doc. 100) and the chapter 7 trustee abandoned the property back to the Debtor (see docket entry on 5/22/12), meaning the chapter 7 estate has no interest in the property. Accordingly, the real property is *not* an asset of the bankruptcy estate, contrary to the Debtor's asserted reason for reopening this case; rather, it is *her* property, subject to the lien of the first mortgage holder. Thus, there is no reason to reopen the case to require an accounting for what is essentially a two-party contract dispute pending in state court and not affecting the bankruptcy case. That the Debtor's argument before the state court may involve accounting disputes relating to what happened when this case was a chapter 13 case is not a reason to reopen this case, either. The Court presumes that the state court trial has been scheduled for a reasonable amount of time for the Debtor to subpoena Jon Waage, the chapter 13 trustee (and his records, including cancelled, stopped, or returned checks), for the trial in order to elicit from him evidence to support her contentions concerning chapter 13 accounting issues. However, the undersigned is not unsympathetic to the Debtor's plight, assuming, without deciding, that it is true that (i) a lender has not accounted for or applied payments actually received in a chapter 13

case as required by the Bankruptcy Code and any of this Court's orders and (ii) such noncompliance is *the only* reason the lender has called a default. It is accordingly

ORDERED:

1. The Emergency Motion to Reopen Chapter 7 Bankruptcy is denied.
2. This order is without prejudice to the Debtor to ask the state court to take judicial notice of this Court's record, including its orders, as well as Mr. Waage's online accounting records concerning payments.

DONE and ORDERED on _____ September 19, 2014

BY THE COURT



Catherine Peek McEwen
United States Bankruptcy Judge

The Clerk is directed to serve a copy of this order on the Debtor and on Hon. Thomas H. Minkoff, Sixth Judicial Circuit Serving Pasco and Pinellas Counties, 545 First Avenue North, St. Petersburg, FL 33701.