UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 9:18-bk-10706-FMD
Chapter 11

166 Hillside LLC,

Debtor.
_____/

166 Hillside LLC,

Plaintiff,

vs. Adv. Pro. No. 9:19-ap-440-FMD

JPMorgan Chase Bank, N.A.,

Defendant.

_____/

ORDER (1) TREATING JPMORGAN CHASE BANK, N.A.'S RENEWED MOTION TO DISMISS ADVERSARY PROCEEDING WITH PREJUDICE AS A MOTION FOR SUMMARY JUDGMENT, (2) GRANTING MOTION FOR SUMMARY JUDGMENT, AND (3) DENYING PLAINTIFF'S MOTION TO COMPEL MEDIATION AS MOOT

THIS PROCEEDING came before the Court for hearing on November 19, 2019, to consider Defendant *JPMorgan Chase Bank, N.A.'s Renewed Motion to Dismiss Adversary Proceeding with Prejudice* (the "Motion").[1] For the following reasons, the Court will treat the Motion as a motion for summary judgment and will grant summary judgment in Defendant's favor.

A. Background

The facts are not in dispute. On May 10, 2004, Greg Andrew Stranger and Coralie Kim Stranger (the "Strangers") signed a promissory note in favor of JPMorgan Chase ("Defendant") in the amount $910,000.00 (the "Note").[2] The Note was secured by a deed of trust and mortgage (the "Deed of Trust") on real property owned by the Stranger Family 2003 Trust (the "Stranger Trust") at 166 Hillside Avenue, Mill Valley, California (the "Property").[3]

In 2010, the Stranger Trust transferred title to the Property to Stranger Property Hldgs, LLC ("Stranger Family Holdings"), an entity owned by the Strangers.[4] Defendant contends, and Plaintiff has not disputed, that the Strangers defaulted on the Note by failing to make the payment due on February 1, 2011, and all subsequent payments.[5]

On April 8, 2011, Mrs. Stranger filed a petition under Chapter 7 of the Bankruptcy Code,[6] and on April 18, 2011, Mr. Stranger filed his own petition under Chapter 7.[7] Defendant filed motions for relief from automatic stay under 11 U.S.C. § 362,[8] that were granted by the Court.[9] The Strangers received Chapter 7 discharges, including a discharge of their personal obligations under the Note.[10]

After Defendant obtained relief from the stay, it commenced a nonjudicial foreclosure in California.[11] Over an extended period of time, the Strangers unsuccessfully attempted to modify the

[1] Doc. No. 17.
[2] Exhibit to Doc. No. 8.
[3] Doc. No. 8, ¶¶ 4, 7. (The Deed of Trust is not in the record; however, Debtor has not asserted a dispute regarding the existence or enforceability of the Deed of Trust.)
[4] Doc. No. 8, ¶ 8; Doc. No. 16, ¶ 4.
[5] Main Case, Doc. No. 60, ¶ 6.
[6] Case No. 9:11-bk-06723-FMD.
[7] Case No. 9:11-bk-07194-FMD.
[8] Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*
[9] Doc. No. 87 in Case No. 9:11-bk-06723-FMD; Doc. No. 206 in Case No. 9:11-bk-07194-FMD.
[10] Doc. No. 122 in Case No. 9:11-bk-06723-FMD; Doc. No. 100 in Case No. 9:11-bk-07194-FMD.
[11] Under California law, a non-judicial foreclosure under a deed of trust is commenced when a "Notice of Default" is recorded in the public records and served upon relevant parties. If the default is not cured within 90 days of the Notice of Default, the foreclosing party may record, publish, and serve a Notice of Sale giving at least 20 days' notice of the foreclosure sale. Cal. Civ. Code §§ 2924 through 2924k. "Upon default by the trustor,

terms of the Note and Deed of Trust.[12] However, on November 15, 2018, Defendant filed a Notice of Sale scheduling a foreclosure sale for December 14, 2018.[13]

On December 10, 2018, Mr. Stranger, as manager of Stranger Family Holdings, purportedly signed a quitclaim deed transferring the Property to 166 Hillside LLC (the "Quitclaim Deed").[14] However, the Quitclaim Deed was not recorded in the public records at that time.

On December 13, 2018, 166 Hillside LLC ("Debtor") filed a petition under Chapter 11 of the Bankruptcy Code. On its Statement of Financial Affairs, Debtor stated that "Stranger Properties Hlgs LLC" is the manager and holds 100% of the interest in Debtor.[15]

Shortly after the petition was filed, on December 13, 2018, Mr. Stranger faxed a fax cover sheet and a "Notice of Bankruptcy Case Filing," a form notice issued by the Clerk of the Bankruptcy Court that identified Debtor's name and bankruptcy case number, to "Chase Bank – Bankruptcy Department."[16] The fax cover sheet stated that it was "From: Greg Stranger" at "Company: 116 Hillside, LLC." The cover sheet advised that the owner of the Property had filed for bankruptcy and that any scheduled foreclosure action must be halted pending further order of the Bankruptcy Court.

On December 14, 2018, the nonjudicial foreclosure sale was conducted and the Property was sold to Defendant.

On March 3, 2019, Debtor filed a Motion to Enforce the Stay (the "First Motion to Enforce"), asking the Court to declare the foreclosure sale void as a violation of the automatic stay.[17] Defendant filed a response (the "Response").[18] On March 11, 2019, the Court conducted a hearing on the First Motion to Enforce. The Court continued the hearing to March 25, 2019, because Debtor had provided no evidence that it was the record owner of the Property.

On March 22, 2019, Debtor filed a reply to the Response,[19] attaching a copy of the unrecorded Quitclaim Deed.[20] And on the morning of the March 25, 2019 hearing, Debtor filed a "Notice of Filing Quitclaim Deed," that attached a copy of the Quitclaim Deed reflecting its recordation in the official records of Marin County, California on March 22, 2019. In other words, the Quitclaim Deed was recorded more than three months *after* Debtor filed its bankruptcy petition, *after* Debtor filed the First Motion to Enforce, and *after* the Court's March 11, 2019 hearing on the First Motion to Enforce.

At the March 25, 2019 hearing, the Court denied the First Motion to Enforce.[21] But on June 13, 2019, Debtor filed a second Motion to Enforce the Stay (the "Second Motion to Enforce").[22] In the Second Motion to Enforce, Debtor stated that through discovery it had learned that Defendant had received notice of Debtor's bankruptcy case before the foreclosure sale.[23]

At a June 19, 2019 hearing, the Court denied the Second Motion to Enforce.[24] The Court's decision was based on the undisputed facts that (1)

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the beneficiary may declare a default and proceed with a nonjudicial foreclosure sale." *Moeller v. Lien*, 25 Cal. App. 4th 822, 830, 30 Cal. Rptr. 2d 777 (1994)(quoted in *Spencer v. DHI Mortgage Company, Ltd*., 642 F. Supp. 2d 1153, 1166 (E.D. Cal. 2009)).

[12] Amended Complaint, Doc. No. 16, ¶¶ 5-16.

[13] Main Case, Doc. No. 60, ¶ 15.

[14] Main Case, Exhibit B to Doc. No. 31. According to Creditor, Debtor was a Florida limited liability company that was formed on December 10, 2018, only three days before the filing of the bankruptcy case and four days before the scheduled sale (Main Case, Doc. No. 25, p. 1).

[15] Main Case, Doc. No. 1.

[16] Main Case, Exhibit A to Doc. No. 56.

[17] Main Case, Doc. No. 20.

[18] Main Case, Doc. No. 25.

[19] Main Case, Doc. No. 31.

[20] Defendant contends that the attachment of the unrecorded Quitclaim Deed on March 22, 2019, represents the first time that Debtor produced the deed on which it relies to evidence its ownership of the Property (Doc. No. 8, ¶ 22).

[21] Main Case, Doc. Nos. 36 and 39.

[22] Main Case, Doc. No. 56.

[23] *Id.* p. 3, ¶ 10.

[24] Main Case, Doc. Nos. 64 and 65.

Debtor was not the borrower on the loan and was not in privity with Defendant, (2) Debtor was not the record owner of the Property on the petition date, and (3) Defendant had no notice of Debtor's alleged ownership interest in the Property—if in fact Debtor had an ownership interest—on the petition date.

On August 27, 2019, Debtor filed a *Complaint to Void Foreclosure Pursuant to 11 U.S.C.S. §§ 105(a), 362, 542 or, in the Alternative, Avoid Transfer Pursuant to 11 U.S.C.S. §§ 549 & 1107*.[25] Defendant filed a motion to dismiss that the Court granted, without prejudice to Debtor's right to file an amended complaint.[26] Debtor filed an amended complaint on October 22, 2019,[27] and a second amended complaint on October 29, 2019 (the "Second Amended Complaint").[28]

Debtor's Second Amended Complaint contains three counts: a claim for a declaratory judgment determining the interests in the Property on December 14, 2018; a claim to avoid the December 14, 2018 transfer of the Property to Defendant; and a claim for damages for unjust enrichment.[29] Debtor primarily asserts that it owned the Property on the date that it filed its bankruptcy petition, and that Defendant proceeded with a nonjudicial sale of the Property after the petition was filed even though it had received notice of the bankruptcy case. Debtor also contends that the postpetition sale of the Property was not authorized by the Bankruptcy Code or the Court and should therefore be avoided pursuant to § 549.

Defendant filed an Amended Motion to Dismiss Adversary Proceeding and a Renewed Motion to Dismiss, asserting that Debtor's claims are barred by the law of the case doctrine, and that the Second Amended Complaint fails to state claims under any of its three counts.[30]

B. Summary judgment standard

Because the facts are not in dispute and because the Court has twice ruled on the merits of Debtor's claims in the Second Amended Complaint, the Court treats Defendant's Renewed Motion to Dismiss Adversary Proceeding as a motion for summary judgment.[31]

Summary judgment is appropriate when the moving party shows that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law.[32] In reviewing a motion for summary judgment, courts must view the record and draw all reasonable inferences in the light most favorable to the non-moving party.[33] When the facts are undisputed and the court need only render a legal conclusion, summary judgment is appropriate.[34]

C. Law of the case

The purpose of the law of the case doctrine is to avoid the reconsideration of matters that have already been decided in the course of a single continuing action. Under the doctrine, an issue decided at one stage of a case is binding at later stages of the case. Specifically, where a decision is made at one stage of litigation and not appealed, the decision becomes the law of the case in future stages of the same litigation and may not be challenged at a later time.[35]

Here, the Court twice decided in Debtor's main bankruptcy case that the sale of the Property on December 14, 2018, did not violate the automatic

[25] Doc. No. 1.
[26] Doc. Nos. 8 and 11.
[27] Doc. No. 13.
[28] Doc. No. 16.
[29] The Second Amended Complaint also alleges the Strangers' numerous attempts to modify the terms of the Note, but acknowledges that those attempts are not relevant to Debtor's claims.
[30] Doc. Nos. 8, 17.
[31] At the November 19, 2019 hearing on the Motion, the parties consented to the Court's treating the Motion as a motion for summary judgment.
[32] Fed. R. Civ. P. 56(a).
[33] *Bedoya v. Travelers Property Cas. Co. of America*, 773 F. Supp. 2d 1326, 1328 (M.D. Fla. 2011).
[34] *In re Sciarrino*, 2013 WL 3465920, at *2 (Bankr. M.D. Fla. July 10, 2013).
[35] *United States v. Escobar-Urrego*, 110 F. 3d 1556, 1560 (11th Cir. 1997)(citations omitted)(quoted in *In re Sandlin*, 2010 WL 4260055, at *4 (Bankr. N.D. Ala. Oct. 21, 2010).

stay.[36] The Court's decision was based on the undisputed facts that (1) Debtor was not the borrower on the loan and was not in privity with Defendant, (2) Debtor was not the record owner of the Property on the petition date, and (3) Defendant had no notice of Debtor's alleged ownership interest in the Property—if in fact Debtor had an ownership interest—on the petition date.

Although Debtor claims that it acquired the Property three days before the filing of the bankruptcy petition by virtue of the Quitclaim Deed from Stranger Family Holdings, the Quitclaim Deed was not recorded in the public records of Marin County, California, until March 22, 2019, more than three months after the bankruptcy filing.[37]

In fact, the record before the Court is that the first time Defendant was provided with an *unrecorded* copy of the Quitclaim Deed was on March 22, 2019, when Debtor filed it with this Court to support the First Motion to Enforce.[38] Consequently, even assuming that Defendant received the notice of Debtor's bankruptcy filing on December 13, 2018, Defendant would have had no reason to recognize Debtor as an entity with any interest in the Property prior to the December 14, 2018 scheduled foreclosure sale.

This Court's orders denying the First Motion to Enforce and the Second Motion to Enforce completely resolved the issues of whether the automatic stay under § 362 applied to Defendant's foreclosure sale and whether the foreclosure sale was conducted in violation of the automatic stay. The Court's orders were final, appealable orders.[39] But Debtor did not seek reconsideration of or appeal from the orders.

When a bankruptcy court has entered an order that denies a debtor's motion alleging a creditor's violation of the stay, and the debtor has not appealed the order, the unappealed order is considered "to be law of the case on any issues regarding an alleged stay violation" by the creditor.[40]

Accordingly, because the Court's orders on the First Motion to Enforce and the Second Motion to Enforce were final decisions for purposes of the law of the case doctrine,[41] the law of the case precludes Debtor's request for relief in Count I of Second Amended Complaint.

D. Section 549

Count II of Debtor's Second Amended Complaint is an action under § 549. Under § 549(a), a trustee (or, as in this case, a Chapter 11 debtor in possession) may avoid a transfer of property of the estate that occurs after the commencement of the case and that is not authorized under the Bankruptcy Code or by the court.[42] Debtor alleges that Defendant completed its foreclosure of the Property in violation of the stay and that the transfer therefore was not authorized under the Bankruptcy Code.

But in two separate orders, the Court expressly declined to enforce the automatic stay with respect to the December 14, 2018 sale of the Property.[43] Accordingly, the sale was not an unauthorized transfer that is avoidable under § 549(a). Further, even if the sale initially had constituted a violation of the stay, § 362(d) authorizes the Court to annul the stay in certain situations,[44] and the annulment of the stay retroactively validates the act that otherwise amounts to a violation.[45] The Court finds that the circumstances of Debtor's bankruptcy filing in this case, including the purported transfer

[36] Main Case, Doc. Nos. 39, 65.
[37] Main Case, Doc. No. 35.
[38] Main Case, Doc. No. 20.
[39] *In re LaPointe*, 505 B.R. 589, 592-93 (B.A.P. 1st Cir. 2014).
[40] *In re Davis*, 597 B.R. 770, 776-77 (Bankr. M.D. Penn. 2019).
[41] See *In re Chesapeake Contractors, Inc*., 413 B.R. 254, 260 (Bankr. D. Md. 2008).
[42] 11 U.S.C. § 549(a).
[43] Main Case, Doc. Nos. 39, 65.
[44] 11 U.S.C. § 362(d).
[45] *In re Heritage Real Estate Investment, Inc*., 2017 WL 4693991, at *6 (Bankr. S.D. Miss. Oct. 17, 2017)(quoting *In re Pierce*, 272 B.R. 198, 210 (Bankr. S.D. Tex. 2001); *In re Vallecito Gas, LLC*, 461 B.R. 358, 389 (Bankr. N.D. Tex. 2011).

of the Property to Debtor via the *unrecorded* Quitclaim Deed just three days before the bankruptcy filing and the recordation of the Quitclaim Deed more than three months after the bankruptcy filing and after Debtor filed its First Motion to Enforce, are circumstances that justify the annulment of the stay under § 362(d).

The circumstances of the case are also evidence of bad faith and the so-called "new debtor syndrome," where a debtor is created and receives property on the eve of foreclosure solely for the purpose of filing a bankruptcy case and obtaining the protection of the automatic stay.[46] Such a bad-faith filing is grounds for annulment of the stay under § 362(d).[47]

Here, even if the automatic stay applied to the foreclosure of the Property, the effect of the Court's orders denying the First Motion to Enforce and the Second Motion to Enforce was to annul the stay and retroactively validate the foreclosure sale. Therefore, the foreclosure sale was not an unauthorized transfer that is subject to avoidance under § 549(a).

E. Unjust enrichment

Count III of Debtor's Second Amended Complaint is an action for an award of damages based on Defendant's alleged unjust enrichment. Debtor asserts that it is entitled to an award under California law because Defendant was unjustly enriched when it acquired the Property as a result of the sale.[48]

But Defendant was the holder of the Deed of Trust on the Property that secured a loan in the original amount of $910,000.00. According to Defendant, and apparently not disputed by Debtor, the loan had been in default since 2011.[49] Debtor's own schedules reflect that the amount owed to Defendant as of the petition date was $1,240,000.00.[50] The Note and the Deed of Trust provided Defendant with rights upon default. The Court finds that Defendant's foreclosure of the Property was not unjust because under California law, Defendant was lawfully permitted to pursue its collection rights under the Note and Deed of Trust.[51] Debtor's claim for unjust enrichment must therefore fail.[52]

F. Conclusion

Debtor's Second Amended Complaint primarily seeks to avoid the postpetition foreclosure of the Property. Defendant filed a Renewed Motion to Dismiss Debtor's Second Amended Complaint with prejudice, which the Court treats as a motion for summary judgment. The Court previously determined that the automatic stay of § 362 did not apply to the sale of the Property because Debtor was neither the borrower on the loan to Defendant nor the record owner of the Property on the petition date. The Court finds that the undisputed facts show that Debtor's claims in the Second Amended Complaint are barred by the law of the case and do not state a cause of action for avoidance of the sale under § 549.

Accordingly, it is

ORDERED:

1. JPMorgan Chase Bank, N.A.'s Renewed Motion to Dismiss Adversary Proceeding with Prejudice, treated as a motion for summary judgment, is granted.

2. A separate Final Judgment will be entered in this proceeding in favor of Defendant, JPMorgan Chase Bank, N.A., and against Plaintiff, 166 Hillside LLC.

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[46] *In re Squires Motel, LLC*, 416 B.R. 45, 50 (Bankr. N.D.N.Y. 2009).
[47] *In re Cinole, Inc.*, 339 B.R. 40, 47 (Bankr. W.D.N.Y. 2006).
[48] Doc. No. 16, pp. 12-14.
[49] Main Case, Doc. No. 60, ¶ 6.
[50] Main Case, Doc. No. 1.
[51] "Upon default by the trustor, the beneficiary may declare a default and proceed with a nonjudicial foreclosure sale." *Moeller v. Lien*, 25 Cal. App. 4th 822, 830, 30 Cal. Rptr. 2d 777 (1994)(quoted in *Spencer v. DHI Mortgage Company, Ltd.*, 642 F. Supp. 2d 1153, 1166 (E.D. Cal. 2009)).
[52] *See Ellis v. J.P. Morgan Chase & Co.*, 2016 WL 5815733, at *6 (N.D. Cal. Oct. 5, 2016).

3. Plaintiff's Motion to Compel Mediation (Doc. No. 19) is denied as moot.

DATED: December 17, 2019.

/s/ Caryl E. Delano
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Caryl E. Delano
Chief United States Bankruptcy Judge