

ORDERED.

Dated: January 21, 2022

  
Grace E. Robson  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
Daniel Dragan Civic,	)	Case No. 6:21-bk-04843-GER
	)	Chapter 13
Debtor.	)	
_____	)	

**ORDER GRANTING MOTION FOR  
RELIEF FROM AUTOMATIC STAY TO ENFORCE FINAL JUDGMENT**

This case came on for hearing on January 5, 2022, at 3:15 p.m., upon on the *Motion for Relief from the Automatic Stay to Enforce Final Judgment Pursuant to § 362(d)(4)(B) Seeking Two Year Bar and Relief from Co-Debtor Stay as to Susan Civic Pursuant to § 1301(c)* (the “Motion”) filed by Cenlar FSB, its successors and/or assigns (“Movant”),<sup>1</sup> Movant’s exhibits in support of the Motion,<sup>2</sup> and the Objection thereto filed by Daniel Dragan Civic (“Debtor”).<sup>3</sup> The Court, having reviewed the Motion, the exhibits, and the Objection, **FINDS, ORDERS, AND ADJUDGES as follows:**

<sup>1</sup> Doc. No. 19. All “Doc. No.” citations refer to pleadings in this case, No. 6:21-bk-04843-GER, unless otherwise noted.

<sup>2</sup> Doc. No. 21.

<sup>3</sup> *Debtor’s Objection to Creditor Cenlar FSB’s Motion for Relief from Automatic Stay* (the “Objection”), Doc. No. 24.

**Background**

A. Movant's lien is secured by real property located at 40111 CR 452, Leesburg, Florida 34788 (the "Property"), which is legally described as:

**LOT 12, LAKE YALE WOODS, ACCORDING TO THE  
PLAT THEREOF, AS RECORDED IN PLAT BOOK 29,  
PAGES 71 THROUGH 73, INCLUSIVE, PUBLIC RECORDS  
OF LAKE COUNTY, FLORIDA.**

B. On April 28, 2016, Movant commenced a foreclosure action against Debtor and Susan Civic ("Ms. Civic") in the 5th Judicial Circuit, in and for Lake County, Florida (the "State Court").

C. On October 3, 2018, a Summary Final Judgment of Foreclosure ("Final Judgment") was entered in favor of Movant in the amount of \$541,753.27 with respect to the Property, and a foreclosure sale was scheduled for December 11, 2018.<sup>4</sup> The Florida Fifth District Court of Appeal upheld the Final Judgment on appeal.<sup>5</sup>

D. On December 10, 2018, Debtor filed for Chapter 7 bankruptcy.<sup>6</sup> Movant was granted relief from stay on March 25, 2019,<sup>7</sup> and Debtor was granted discharge on September 18, 2019.<sup>8</sup> The foreclosure sale was rescheduled to May 29, 2019.

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<sup>4</sup> Doc. No. 21-2, at 1-8.

<sup>5</sup> See *Civic v. Cenlar, FSB*, 272 So. 3d 883 (Fla. 5th DCA 2019); *Civic v. Cenlar FSB*, No. 5D18-3443, 2019 WL 5091908 (Fla. 5th DCA Oct. 8, 2019); *Civic v. Cenlar FSB*, 292 So. 3d 1189 (Fla. 5th DCA 2020), *reh'g denied* (Mar. 6, 2020), *reh'g denied* (Apr. 8, 2020). The Court takes judicial notice of the State Court docket as well as the Florida Fifth District Court of Appeal opinions archive. See Fed. R. Evid. 201; *Lozman v. City of Riviera Beach*, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013) ("Although this matter is before the court on a motion to dismiss, we may take judicial notice of the court documents from the state eviction action.").

<sup>6</sup> Voluntary Petition under Chapter 7, *In re Civic*, No. 6:18-bk-07619-KSJ (Bankr. M.D. Fla. Dec. 10, 2018), Doc. No. 1.

<sup>7</sup> Order Granting Motion for Relief from Stay, *In re Civic*, No. 6:18-bk-07619-KSJ (Bankr. M.D. Fla. Mar. 25, 2019), Doc. No. 32.

<sup>8</sup> Discharge of Debtor, *In re Civic*, No. 6:18-bk-07619-KSJ (Bankr. M.D. Fla. Sept. 18, 2019), Doc. No. 53.

E. On May 25, 2019, Ms. Civic filed for Chapter 7 bankruptcy.<sup>9</sup> The case later was converted to Chapter 13.<sup>10</sup> The court entered an order granting a motion for relief from stay, allowing Movant “to complete *in rem* relief to take any and all steps necessary to exercise any rights it may have in the Property and gain possession of said Property”;<sup>11</sup> and the Amended Chapter 13 Plan, filed on August 26, 2019, provided Movant relief from stay and provided that the Property was surrendered to Movant.<sup>12</sup> The foreclosure sale was rescheduled to September 24, 2019.

F. On September 23, 2019, Debtor filed for Chapter 13 bankruptcy.<sup>13</sup> The case was dismissed for failure to file information.<sup>14</sup>

G. The foreclosure sale was rescheduled to October 26, 2021.

H. On October 25, 2021, Debtor, *pro se*, filed this bankruptcy case.<sup>15</sup> The filing of this petition cancelled the foreclosure sale scheduled for the following day.

I. Movant filed this Motion<sup>16</sup> seeking relief from the automatic stay of 11 U.S.C. § 362(a) and the codebtor stay of 11 U.S.C. § 1301(a). Movant also seeks *in rem* relief under § 362(d)(4), which provides two-year relief from the automatic stay against any subsequent bankruptcies that may be filed pertaining to the subject property.<sup>17</sup>

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<sup>9</sup> Voluntary Petition under Chapter 7, *In re Civic*, No. 6:19-bk-03468-KSJ (Bankr. M.D. Fla. May 25, 2019), Doc. No. 1.

<sup>10</sup> Order and Notice Converting Case to Chapter 13, *In re Civic*, No. 6:19-bk-03468-KSJ (Bankr. M.D. Fla. July 1, 2019), Doc. No. 11.

<sup>11</sup> Order Granting Motion for Relief from Stay, *In re Civic*, No. 6:19-bk-03468-KSJ (Bankr. M.D. Fla. July 29, 2019), Doc. No. 15.

<sup>12</sup> Amended Chapter 13 Plan, *In re Civic*, No. 6:19-bk-03468-KSJ (Bankr. M.D. Fla. Aug. 26, 2019), Doc. No. 19; *see also* Order Confirming Plan, *In re Civic*, No. 6:19-bk-03468-KSJ (Bankr. M.D. Fla. Feb. 10, 2020), Doc. No. 25.

<sup>13</sup> Voluntary Petition under Chapter 13, *In re Civic*, 6:19-bk-06159-KSJ (Bankr. M.D. Fla. Sept. 23, 2019), Doc. No. 1.

<sup>14</sup> Order Dismissing Case, *In re Civic*, 6:19-bk-06159-KSJ (Bankr. M.D. Fla. Oct. 21, 2019), Doc. No. 15.

<sup>15</sup> Doc. No. 1. In his proposed Chapter 13 Plan, Debtor proposes to cramdown Movant’s lien. Doc. No. 4.

<sup>16</sup> Doc. No. 19.

<sup>17</sup> *See* 11 U.S.C. § 362(b)(20).

J. In support of his Objection, Debtor submitted copies of: (i) a *Corporate Assignment of Mortgage* recorded in the public records of Lake County (Instrument #2016050236) showing that Ocwen Loan Servicing, LLC (“Ocwen”) assigned a mortgage signed by Debtor and Ms. Civic to Cenlar FSB; (ii) a *Lost Promissory Note Affidavit* signed and notarized on April 1, 2016 that was filed in State Court; (iii) a copy of a contact form Debtor completed with the Florida Attorney General; and (iv) an unidentified document that references Ocwen Financial Corporation and the State of Maine, Bureau of Consumer Credit Protection.

K. Debtor argues in the Objection that Movant: (i) could not have acquired the note and mortgage from Ocwen because Ocwen has been defunct and shut down since March 2012; and (ii) Movant’s Lost Promissory Note Affidavit was perjured because the affidavit is dated April 1, 2016, but the Corporate Assignment of Mortgage reflects an assignment date of April 15, 2016.

**The Bankruptcy Court Has No Authority to  
Review the Final Judgment Entered by the State Court**

As noted above, the Final Judgment was rendered by the State Court prior to the commencement of this bankruptcy case and is a final, non-appealable judgment. As a result, this Court has no authority to review the merits of the Final Judgment,<sup>18</sup> including Debtor’s arguments that the Final Judgment was defective or invalid, that the Final Judgment cannot be enforced, and that Movant is not the proper owner of the note and mortgage at issue.

Therefore, Movant is recognized as the proper party with standing to prosecute the Motion.

**Stay Relief is Appropriate**

Movant asks the Court to modify the automatic stay to complete the foreclosure of the Property, which has been pending since 2018. “The automatic stay is imposed to give honest

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<sup>18</sup> *Lozman*, 713 F.3d at 1072 (quoting *Nicholson v. Shafe*, 558 F.3d 1266, 1271 (11th Cir. 2009)) (recognizing that the *Rooker-Feldman* doctrine states that federal district courts have “no authority to review final judgments of a state court”).

debtors a hiatus from constant creditor collection actions. The stay is not intended to reward abusive debtors by continually keeping creditors from collecting legitimate claims.”<sup>19</sup> Section 362(d)(4)(B) provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the [automatic] stay . . .

. . .

(4) with respect to a stay of an act against real property . . . by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved . . .

. . .

(B) multiple bankruptcy filings affecting such real property.<sup>20</sup>

“[T]he *in rem* remedy is specifically tailored to the problem of abusive use of the stay, provides certainty for the creditor, and does not unfairly affect the positions of other parties in interest.”<sup>21</sup>

Debtor and Ms. Civic have filed four bankruptcies since 2018, always on the eve of the scheduled foreclosure sale. The Court finds that Debtor and Ms. Civic have filed multiple bankruptcies to delay or hinder Movant, designed to prevent Movant from concluding the foreclosure process; accordingly, pursuant to § 362(d)(4)(B), Movant is entitled to relief from the stay and a two-year *in rem* bar as to the Property is warranted. Additionally, the Court finds that relief is appropriate under § 1301(c)(3) because Movant has been harmed by Debtor and Ms. Civic’s repeated bankruptcy filings, which have frustrated Movant’s foreclosure efforts; this harm may continue if Movant is further stayed by § 1301(a).<sup>22</sup>

<sup>19</sup> *In re Zalloum*, No. 6:17-bk-02329-KSJ, 2019 WL 548545, at \*9 (Bankr. M.D. Fla. Feb. 11, 2019).

<sup>20</sup> 11 U.S.C. § 362(d)(4)(B).

<sup>21</sup> *Aurora Loan Servs., Inc. v. Amey (In re Amey)*, 314 B.R. 864, 869 (Bankr. N.D. Ga. 2004).

<sup>22</sup> The Court also notes that Ms. Civic surrendered the Property in her previous bankruptcy. Amended Chapter 13 Plan, *In re Civic*, No. 6:19-bk-03468-KSJ (Bankr. M.D. Fla. Aug. 26, 2019), Doc. No. 19; Order Confirming Plan, *In re Civic*, No. 6:19-bk-03468-KSJ (Bankr. M.D. Fla. Feb. 10, 2020), Doc. No. 25.

Accordingly, it is **ORDERED**:

1. The Motion (Doc. No. 19) is **GRANTED**.
2. The automatic stay in effect pursuant to 11 U.S.C. § 362(a) is terminated as to Movant, its agents, assigns or successors in interest, so that Movant, its agents, assigns or successors in interest, may take any and all action under applicable state law to exercise its *in rem* remedies against the Property.
3. The co-debtor stay under 11 U.S.C. § 1301(a) is terminated as to Movant, its agents, assigns or successors in interest, so that Movant, its agents, assigns or successors in interest, may take any and all action under applicable state law to exercise its *in rem* remedies against the Property.
4. The automatic stay is annulled in any future case involving the Property for a period of two years from the entry of this Order. No future bankruptcy filing will delay any foreclosure action. Clerks of Court may issue sale notices and certificates of title or sale without further order from the Bankruptcy Court.
5. Movant may contact Debtor regarding potential loss mitigation options pursuant to applicable non-bankruptcy law.
6. Movant is awarded attorneys' fees in the amount of \$1,375.00 and costs of \$188.00.

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Attorney Reka Beane, Esq., is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.