ORDERED.

Dated: October 06, 2022

Caryl E. Delano
Chief United States Bankruptcy Judge

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

In re:

Marie Ester Adams,

Debtor.
_____/

Case No. 2:22-bk-00820-FMD
Chapter 7

ORDER GRANTING
MOTION TO DISMISS INVOLUNTARY BANKRUPTCY PETITION

THIS CASE came before the Court for hearing on September 21, 2022, to consider the *Motion to Dismiss Involuntary Bankruptcy Petition* (the "Motion to Dismiss")[1] filed by alleged debtor Marie Ester Adams ("Debtor"), and the Response and Objection (the "Response")[2] to the Motion to Dismiss filed by AAC Property Trust, LLC ("Petitioner").

[1] Doc. No. 13.
[2] Doc. No. 22. After the hearing on the Motion to Dismiss, Petitioner filed a motion to supplement its Response with an affidavit of Alison Casey, Petitioner's managing member (Doc. No. 27).

Petitioner filed an involuntary Chapter 7 bankruptcy case against Debtor under 11 U.S.C. § 303(b). For the reasons explained below, the Court finds that Petitioner is not qualified to file the involuntary case because its claim against Debtor is the subject of a bona fide dispute as to liability or amount. Therefore, the Court grants the Motion to Dismiss and dismisses this involuntary case.

I. BACKGROUND

A. The Municipal Lien Foreclosure

Prior to November 2021, Debtor owned the real property located at 610 4th Avenue NW, Largo, Florida (the "Property"). The Property was subject to a mortgage held by PHH Mortgage Services ("PHH").

In 2021, the City of Largo (the "City") filed a complaint to foreclose its municipal lien on the Property (the "Lien Foreclosure Case") in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida (the "State Court").[3] The complaint did not name PHH as a party in the Lien Foreclosure Case nor did it identify any liens on the Property other than the City's lien. On September 24, 2021, the State Court entered a Final Judgment on the City's complaint and, on October 26, 2021, Petitioner purchased the Property at a judicial sale. On November 8, 2021, the clerk of the State Court issued a certificate of title to Petitioner and a certificate of

[3] Generally, the facts regarding the Lien Foreclosure Case are taken from the *Order on Purchaser's Motion for Relief from Final Judgment and Sale*, entered by the State Court in the Lien Foreclosure Case on June 20, 2022 (Doc. No. 13, pp. 12-14).

disbursements reflecting the clerk's retention, after payment of the City's lien, of $171,094.60 in surplus funds.

On December 6, 2021, Petitioner filed a motion to vacate the sale. On December 27, 2021, the State Court denied the motion.

On December 30, 2021, Petitioner filed a second motion to vacate the sale, combined with a request to vacate the City's Final Judgment. On June 20, 2022, the State Court denied Petitioner's second motion.

On July 19, 2022, Petitioner filed a Notice of Appeal of the State Court's order denying its second motion for relief from the sale.[4]

PHH's mortgage loan was in default. On July 20, 2022, in order to prevent PHH's foreclosure of the Property, Petitioner paid $162,981.54 to PHH as the balance then owing on PHH's mortgage.[5]

During the course of the Lien Foreclosure Case, Debtor (or Debtor's assignee) and Petitioner each filed a motion for distribution of the surplus funds held in the court registry. The motions were set for hearing on July 27, 2022.

B. The Involuntary Bankruptcy Case

On July 26, 2022, Petitioner filed an involuntary Chapter 7 case against Debtor.[6] On the petition, Petitioner stated that the amount of its claim against Debtor

[4] Doc. No. 13, p. 16.
[5] Doc. No. 1-1, pp. 2-9.
[6] Doc. No. 1.

was $162,981.54 (the amount that it had paid to PHH), and that the nature of the claim was "subrogation of PHH debt/note/owed by [Debtor]."

On August 29, 2022, Debtor filed the Motion to Dismiss. Generally, Debtor asserts that Petitioner is not eligible to file the involuntary case because its claim is subject to a bona fide dispute, that Petitioner filed the involuntary petition in bad faith, and that Debtor is entitled to an award of damages against Petitioner under 11 U.S.C. § 303(i).

In its Response, Petitioner contends that it holds an undisputed claim against Debtor under the doctrine of equitable subrogation, and that the involuntary petition was filed for the good faith purpose of ensuring that the surplus funds in the court registry are distributed to Debtor's creditors (including Petitioner) rather than to Debtor or Debtor's assignee.[7]

II. ANALYSIS

Involuntary bankruptcy cases are governed by 11 U.S.C. § 303.[8] Under § 303(b)(2), if an alleged debtor has fewer than 12 creditors, an involuntary case against a person may be filed by a single entity that holds a claim against such person

[7] After the hearing and without providing Debtor an opportunity to reply, Petitioner attempted to supplement its Response with the affidavit of Alison Casey, Petitioner's managing member (Doc. No. 27-1). Ms. Casey claims that she was misled regarding the liens on the Property, that Debtor and The Recovery Agents, LLC are working together to obtain the surplus funds, and that Debtor has other creditors. Otherwise, the affidavit largely contains conclusory statements and legal arguments.
[8] Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

"that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount."[9]

The Bankruptcy Code does not define the phrase "bona fide dispute." But as the bankruptcy court in *Farmers & Merchants State Bank v. Turner* stated:

> [A] majority of courts, including bankruptcy courts in Florida, apply an objective standard. . . . Under this standard, a bona fide dispute exists and requires dismissal of the creditors' petition "if there is either a genuine issue of material fact that bears upon the debtor's liability [or amount], or a meritorious contention as to the application of law to undisputed facts." . . . In other words, "if there are substantial legal or factual questions raised by the debtor, the debtor can preclude the creditor from being an eligible petitioning creditor."[10]

If the alleged debtor moves to dismiss an involuntary petition, the petitioning creditor bears the burden of establishing a prima facie case that its claim is not the subject of a bona fide dispute.[11] Under § 303(b), bankruptcy courts engage in only a limited analysis of a petitioning creditor's claims to determine the presence or absence of a bona fide dispute, but do not attempt to resolve the outcome of any dispute.[12]

Here, Petitioner asserts that it holds an undisputed claim against Debtor because, after it purchased Debtor's Property at a foreclosure sale, Petitioner paid a

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[9] 11 U.S.C. § 303(b).
[10] *Farmers & Merchants State Bank v. Turner*, 518 B.R. 642, 649 (N.D. Fla. 2014) (citations omitted).
[11] *Farmers & Merchants State Bank v. Turner*, 518 B.R. at 649 (citations omitted).
[12] *Id*.

mortgage debt owed by Debtor. Therefore, Petitioner contends that the "Doctrine of Equitable Subrogation is without dispute in this case."[13]

Generally, the doctrine of equitable subrogation applies where a claimant satisfies the obligation of another and then stands in the shoes of the satisfied creditor in order to prevent unjust enrichment to the party whose obligation was paid.[14]

Petitioner cited Florida's Third District Court of Appeals' ruling in *Garal Corporation v. Poceiro*[15] to support its subrogation claim. However, the facts and ruling in *Garal* actually support Debtor's contention that she was not unjustly enriched by Petitioner's payment of the PHH mortgage.

Garal owned two condominiums that were located in separate communities (the "Ocean Walk Condo" and the "Royal Springs Condo"). The two condominiums were encumbered by a single mortgage. The condominium association for the Ocean Walk Condo filed a foreclosure action for nonpayment of maintenance fees, and the plaintiff purchased the Ocean Walk Condo at the foreclosure sale.

Later, in order to prevent the foreclosure of the Ocean Walk Condo by the mortgage lender, the plaintiff paid the entire amount of the mortgage in full, satisfying the mortgage on both the Ocean Walk Condo and the Royal Springs

[13] Doc. No. 22, ¶ 11.
[14] *In re Pope*, 631 B.R. 55, 62-63 (Bankr. M.D. Fla. 2021).
[15] 888 So.2d 681 (Fla. 3d DCA 2004).

Condo. The plaintiff then sued Garal to recover the total amount he had paid on the mortgage.

On appeal, the court determined that the doctrine of equitable subrogation prevented Garal from being unjustly enriched by the plaintiff's payment of the mortgage, but *only* to the extent that the mortgage encumbered the Royal Springs Condo—that Garal still owned—and not to the extent that the mortgage encumbered the Ocean Walk Condo, which the plaintiff had purchased at the foreclosure sale. In other words, the critical fact in *Garal* is that a portion of the plaintiff's payment was used to satisfy a mortgage on property that Garal still owned. Therefore, the court held Garal was unjustly enriched to the extent that it had been relieved of a mortgage debt encumbering its property. But the court ruled that the plaintiff could not recover from Garal for the amount that he had paid to satisfy the mortgage on property that the plaintiff had purchased and owned at the time of payment. The court then remanded the case back to the trial court to address the issue of the "apportionment of the mortgage debt."[16]

Here, Debtor had effectively surrendered the Property through the Lien Foreclosure Case and judicial sale, and she did not own the Property at the time that Petitioner paid the PHH mortgage. Therefore, under the ruling in *Garal*, Debtor has a meritorious contention that she was not unjustly enriched by the satisfaction of the

[16] 888 So.2d at 682.

mortgage and that Petitioner may not assert a claim against her for equitable subrogation.

In addition, Debtor has a meritorious contention that Petitioner is not entitled to the surplus funds held in the State Court registry.

Section 45.032(2) of the Florida Statutes, titled *Disbursement of surplus funds after judicial sale*, establishes a rebuttable presumption that "the owner of record on the date of the filing of a lis pendens [by the foreclosing lienholder] is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim."[17]

In *Goetz v. AGB Tampa LLC*,[18] a homeowners' association foreclosed a lien on Goetz's property, resulting in a surplus after payment of the association's lien. The holder of the first mortgage on the property (the "Bank") asserted a claim to the surplus funds, and Goetz asserted a competing claim to the surplus.

The trial court directed the clerk to pay the Bank the amount of its mortgage from the surplus funds, and Goetz appealed. On appeal, the court reversed the trial court's ruling because the undisputed record showed that Goetz was the owner of the property when the association filed its lis pendens, and the Bank was not a subordinate lienholder. Therefore, even though the Bank argued that applying the

[17] Fla. Stat. § 45.032(2).
[18] 335 So.3d 228 (Fla. 2d DCA 2022).

statute would create a windfall for Goetz, the court ruled that Goetz was entitled to the surplus proceeds under the unambiguous language of § 45.032(2).

Here, Debtor asserts a claim for disbursement of the surplus funds held in the State Court registry under § 45.032 and *Goetz*. Accordingly, she has raised a meritorious objection to Petitioner's claim against her for recovery of the funds.

III. CONCLUSION

The Court finds that Petitioner's claim against Debtor for equitable subrogation is the subject of a bona fide dispute. First, under *Garal*, Debtor has a meritorious contention that she was not unjustly enriched by Petitioner's payment of a mortgage on the Property that Petitioner had purchased and that Debtor no longer owned. Second, under § 45.032 and *Goetz*, Debtor has asserted a claim to the surplus funds in the State Court registry, and has a meritorious contention that Petitioner is not entitled to prevail in its competing claim to the funds.

Therefore, because Petitioner's claim is the subject of a bona fide dispute, the Court concludes that Petitioner is not qualified to file an involuntary bankruptcy case against Debtor and will grant Debtor's Motion to Dismiss.

Finally, Debtor asserts in the Motion to Dismiss that Petitioner filed the involuntary petition for the improper purpose of circumventing her claim to the surplus funds in the Lien Foreclosure Case. Under § 303(i), the Court may grant judgment for attorney's fees and costs against a petitioner if the case is dismissed and

may also grant judgment for consequential and punitive damages against the petitioner if the case was filed in bad faith.[19] The Court reserves ruling on Debtor's request for a judgment under § 303(i).

Accordingly, it is

ORDERED:

1. The *Motion to Dismiss Involuntary Bankruptcy Petition* (Doc. No. 13) filed by Marie Ester Adams is **GRANTED,** and this involuntary Chapter 7 case is **DISMISSED.**

2. The Court **RESERVES RULING** on Debtor's request under 11 U.S.C. § 303(i) for judgment against Petitioner.

3. All pending motions filed by Petitioner (Doc. Nos. 19, 23, 27) are **DENIED WITHOUT PREJUDICE.**

The Clerk's office is directed to serve a copy of this order on interested parties via CM/ECF.

[19] 11 U.S.C. § 303(i).