

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

LESLIE A. SWEET,

Debtor.

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Case No. 6:09-bk-06781-ABB

Chapter 11

**ORDER**

This matter came before the Court on the Renewed Motion for Relief from the Automatic Stay (Doc. No. 67) (“Renewed Motion”) filed by U.S. Bank, N.A., as Trustee of Lehman Brothers Small Balance Commercial Mortgage Pass-Through Certificates 2007-3, by its attorney in fact, Aurora Bank FSB, f/k/a Lehman Brothers Bank (“Movant”) requesting relief from the automatic stay pursuant to 11 U.S.C. Section 362(d). A hearing was held on January 11, 2010 at which the Debtor Leslie A. Sweet (“Debtor”) and counsel for Movant appeared.

Movant’s Renewed Motion is due to be granted for the reasons set forth hereinbelow. The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing proffers and argument, and being otherwise fully advised in the premises.

***Movant’s Original Motion for Relief from Stay***

The Debtor filed this bankruptcy case on May 18, 2009 in an attempt to stay Movant’s foreclosure proceedings against her office building located at 215 South Vernon Avenue, Kissimmee, Florida 34741 (“Property”). The Debtor is a practicing attorney and her law office is located at the Property. She has asserted throughout this case the Property is essential to a reorganization.

Movant filed an Emergency Motion for Relief from Stay on June 18, 2009 (Doc. No. 23) seeking relief from the automatic stay of 11 U.S.C Section 362(a) on the grounds the Debtor had not made a mortgage payment in approximately fifteen months and the Property was uninsured. An expedited hearing was held on June 23, 2009 at which the Court, in open Court, directed the Debtor to file proof of insurance coverage for the Property, with Movant named as the loss payee, by 5:00 p.m. on June 24, 2009 (Doc. No. 30). The Debtor did not comply with the Court's directive.

A continued hearing was held on Movant's Emergency Motion on July 14, 2009 at which the Debtor and counsel for Movant appeared. The Court, in open Court, again directed the Debtor to file proof of insurance with Movant named as the loss payee by close of business on July 15, 2009 or stay relief would be granted (Doc. No. 33). The Court continued the hearing to July 27, 2009. Movant issued a Notice of Continued Hearing, which it mailed to the Debtor (Doc. No. 35).

The Debtor filed a one-page document on July 15, 2009 purporting to be proof of insurance (Doc. No. 34). The continued hearing on the Emergency Motion was held on July 27, 2009. The Debtor did not appear. Counsel for Movant, based upon telephone communications with the alleged insurance company, confirmed the Property was uninsured (Doc. No. 38). An Order was entered on July 30, 2009 (Doc. No. 41) granting Movant stay relief to pursue its rights against the Property. The Debtor did not seek reconsideration or appeal of the July 30, 2009 Order.

A hearing was held on August 24, 2009 on the United States Trustee's ("UST") Objection to the Debtor's claims of exemption at which the Debtor and counsel for the UST appeared. The Debtor disputed Movant's assertion the Property is uninsured and

asserted no basis existed for the entry of the stay relief Order. She asserted she did not have notice of the July 27, 2009 hearing.

The Court issued a Notice (Doc. No. 47) setting a status conference for September 10, 2009 and directing the Debtor to “file proof of insurance listing the complete policy number and the full name and address of the insurance agent or insurance company no later than 12:00 p.m. on Friday, September 4, 2009.” The Court faxed the Notice to the Debtor at the fax number she provided to the Court. She did not comply with the Notice.

The Debtor appeared at the September 10, 2009 status conference and gave a litany of excuses why she did not comply with the Notice, none of which were credible. A foreclosure sale of the Property was pending for September 15, 2009. She made an *ore tenus* motion to reimpose the automatic stay.

The Court gave the Debtor one last chance to save the Property and, in open Court, granted her *ore tenus* motion and reimposed the automatic stay upon the condition she file proof of insurance coverage for the property by 5:00 p.m. on September 15, 2009. She timely filed proof of insurance naming Movant as loss payee. The Court entered an Order on September 15, 2009 (Doc. No. 52) reimposing the automatic stay as to the Property, cancelling the foreclosure sale, and awarding Movant administrative costs relating to the cancelled foreclosure sale.

#### ***Debtor’s Plan and Movant’s Renewed Motion***

The Debtor filed a Motion to Extend the exclusivity period for filing a plan of reorganization (Doc. No. 53) and a hearing was held on October 13, 2009 at which the Debtor, counsel for Movant, and counsel for the UST appeared. Counsel for the UST advised the Court the Debtor was delinquent with her monthly operating reports and

quarterly fees. The Court, in open Court, granted the Debtor's Motion to Extend. An Order has not been entered granting her Motion to Extend because she did not submit a proposed order pursuant to the Court's directive and Local Rule 9072-1.

The Debtor filed her monthly operating reports for August through October 2009. She filed a Plan of Reorganization on November 16, 2009 (Doc. No. 64) in which she sets forth she intends to deed the Property to Movant "as full satisfaction of lien." (Doc. No. 64, p. 6). The Debtor has not filed a disclosure statement as required by the Bankruptcy Code.

Movant filed its Renewed Motion on December 21, 2009 (Doc. No. 67) requesting relief from the automatic stay "for cause" based upon:

- (i) The Debtor has not filed a disclosure statement.
- (ii) The Plan sets forth the Debtor will surrender the property to the Bank.
- (iii) The Debtor states in Schedule J she intends to find new office space.
- (iv) She concedes there is no equity in the property.
- (v) She is not making mortgage payments.
- (vi) She has failed to maintain insurance on the Property.

The Debtor did not file a response to the Renewed Motion. She asserted at the January 11, 2010 hearing she does not intend to surrender the Property.

Movant has established cause exists for granting it relief from the automatic stay pursuant to 11 U.S.C. Section 362(d). The Renewed Motion is due to be granted.

Accordingly, it is

**ORDERED, ADJUDGED AND DECREED** that Movant's Renewed Motion (Doc. No. 67) is hereby **GRANTED** pursuant to 11 U.S.C. Section 362(d) and the automatic stay of 11 U.S.C. Section 362(a) is hereby lifted as to the Property having a legal description of:

The South 4.42 feet of Lot 2 and the North 76.58 feet of Lot 3, Block III, of W.A. PATRICK & CO. AND U.P. HUGHEY'S ADDITION TO THE TOWN OF KISSIMMEE, according to the Official Plat thereof, recorded in Plat Book "A", Page 1 of the Public Records of Osceola County, Florida;

and more commonly known as 215 South Vernon Avenue, Kissimmee, Florida 34741; and it is further

**ORDERED, ADJUDGED AND DECREED** that this Order is entered for the sole purpose of allowing Movant to pursue *in rem* remedies and Movant shall not seek or obtain *in personam* relief against the Debtor.

Dated this 15th day of January, 2010.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge