

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

In re:

MARY LORENZO,

Case No. 6:09-bk-04179-ABB
Chapter 13

Debtor.

ORDER

This matter came before the Court on the Motion by the Debtor for Reconsideration of the Order Overruling Debtor's Objection to Amended Claim 4. (DE 222).

Background

Debtor filed for bankruptcy on March 31, 2009. Bank of America, N.A. ("BOA"), the original holder of the mortgage, filed a secured claim on April 15, 2009, discussed below as Proof of Claim 4, in the amount of \$149,106.92 with arrearages of \$3,999.51 on the property located at 411 Cumberland Harbour Boulevard, Saint Marys, Georgia, 31558 ("the property"). BOA filed a Motion for Relief from Stay on May 14, 2009, which was granted on May 27, 2009, allowing BOA to pursue *in rem* remedies as to the property but not an *in personam* judgment against the Debtor. (DE 50 and DE 66). The parties have not provided any specific information regarding transfer or sale of the property. A foreclosure deed was recorded on May 6, 2011. (DE 220).

A Notice of Transfer/Assignment of Claim from BOA to Real Time Resolutions, Inc. ("Real Time") was filed on December 19, 2011. (DE 201). Real Time then sought to

amend BOA's original claim in the amount of \$149,106.92 to a deficiency claim in the amount of \$128,999.05 on April 26, 2012.¹ Debtor objected asserting BOA did not reserve the right to amend the claim and Real Time had not provided any documentation to support an unsecured status. A hearing was held on May 8, 2012, and Debtor's objections were overruled. (DE 223).

Debtor filed the pending Motion for Reconsideration on May 10, 2012. Debtor asserts OCGA §44-14-161 ("confirmation statute") requires a creditor to obtain judicial confirmation as a condition precedent to obtaining a deficiency judgment within thirty (30) days of a non-judicial foreclosure sale. (DE 222). Debtor advances BOA did not do this and Real Time is now precluded from seeking a deficiency judgment. Real Time filed a response on July 13, 2012, contending the foreclosure sale was conducted during the stay and BOA's relief from stay allowed it to proceed only as to *in rem* remedies, not *in personam* remedies including deficiency judgments. (DE 230). Debtor filed a Supplemental Motion for Reconsideration on July 16, 2012, reasoning Real Time has waived its right to a deficiency claim because it should have either filed to confirm the non-judicial sale with the bankruptcy court or requested relief from stay to seek confirmation with the state court. (DE 231). A hearing was held on July 17, 2012. (DE 232).

Discussion

Relief from stay allowing a creditor to exercise its foreclosure rights against a debtor's property under Georgia law "carries no presumption that foreclosure

¹ Real Time asserted it did not realize BOA's Proof of Claim 4 had already been filed regarding the property so it filed Proof of Claim 30 as an unsecured claim to preserve a deficiency claim against the Property. (DE 219). Real Time filed Proof of Claim 30 beginning on December 30, 2011, to which Debtor continuously objected beginning on March 15, 2012. (DE 208). Real Time ultimately withdrew Proof of Claim 30 and instead seeks to amend Proof of Claim 4.

confirmation proceedings or actions for a deficiency are also authorized” under the relief from stay. *In re Virginia Hill Partners I*, 110 B.R. 84, 87 (Bankr. N.D. Ga., 1989). The determination of a deficiency against the debtor or the estate in the pending bankruptcy case remains within the exclusive jurisdiction of the bankruptcy court unless the stay provides otherwise. *Id.* The moving party desiring confirmation of the foreclosure and allowance of a deficiency claim would be required to initiate these proceedings within the bankruptcy court or seek further relief from the automatic stay before commencing a confirmation proceeding in the state court. *Id.*

The stay in the instant case provided for BOA to pursue *in rem* remedies as to the property but specifically not an *in personam* judgment against the Debtor. (DE 66). This makes it clear the relief from stay did not permit BOA or its successor Real Time to commence confirmation proceedings within the state court without seeking further relief. Neither BOA or Real Time initiated proceedings in the bankruptcy court regarding this sale on than the relief from stay permitting the sale itself.

The issue then becomes within what time frame the creditor must commence either of these options. The Georgia confirmation statute’s requirement for a creditor to obtain confirmation of a foreclosure sale within 30 days of the sale will be tolled until 30 days after the bankruptcy stay is terminated if the foreclosure sale is conducted during a stay period. *Breeze v. Columbus Bank & Trust Co.*, 214 Ga. App. 534, S.E.2d 276 (1994). The statute of limitation runs during the bankruptcy proceedings but “the period for filing suit against the debtor is extended *notwithstanding* the running of the limitation period until 30 days after the stay is lifted.” *J.T. Indus. Contractors, Inc. v. Hargis Railcar, Inc.*, 217 Ga. App. 679, 458 S.E.2d 702, 703 (1995).

The stay is in effect in the instant case. 11 U.S.C. § 362. Real Time could still seek to commence confirmation proceedings with the state court if this Court were to grant a relief from stay. There is no clear guidance on exactly how long Real Time has initiate proceedings with this Court but given the rulings of the Georgia courts it appears this time period has not yet elapsed as the stay remains in effect.

Real Time can seek to amend the claim but has not provided the Court with sufficient documentation to support the claim and to establish a deficiency amount at this time.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Debtor's Request for Reconsideration (DE 222) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED AND DECREED that the Debtor's Objection to Real Time's Amended Claim 4 is hereby **SUSTAINED** as to Real Time's failure to include supporting documentation; and it is further

ORDERED, ADJUDGED AND DECREED that Real Time has fourteen (14) days to file an amended claim with appropriate documentation to establish deficiency.

Dated this 30th day of July, 2011.

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