

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

In re:

MARY LORENZO,

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

Debtor.

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**ORDER**

This matter came before the Court on Debtor's Objection to Amended Claim Number 4-3 of Real Time Resolutions, Inc. (DE 235). A hearing was held on September 25, 2012, at which Debtor's counsel, counsel for Real Time Resolutions, Inc., and the Chapter 13 Trustee were present. The Objection is due to be overruled.

***Background***

Debtor filed for bankruptcy on March 31, 2009. Bank of America, N.A. ("BOA"), the original holder of the mortgage on unimproved property located at 411 Cumberland Harbour Boulevard, Saint Marys, Georgia, 31558 ("the property"), filed a secured claim on April 15, 2009 ("Claim 4"), in the amount of \$149,106.92 with arrearages of \$3,999.51. 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).

A foreclosure sale was held on May 2, 2011. BOA purchased the property for \$18,000.00. BOA resold the property to an unrelated third party on October 21, 2011, for \$6,500.00.

Real Time Resolutions, Inc. (“Real Time”) filed a Notice of Transfer/Assignment of Claim from BOA to Real Time on December 19, 2011. (DE 201). The clerk mailed a Notice Of Transfer Of Claim Other Than For Security to BOA on December 22, 2011. Debtor’s counsel received notice through the Court’s electronic notification system. The clerk’s notice stated:

[O]bjections must be filed with the court within twenty-one (21) days of the mailing of the Notice. If no objection is timely received by the court, the transferee will be substituted as the original claimant without further order of the court.

Real Time sought to amend the original secured claim to an unsecured deficiency claim on April 26, 2012. 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 then filed a Motion for Reconsideration in which she argued Real Time had not obtained a deficiency judgment pursuant to the Georgia confirmation statute, O.C.G.A. § 44-14-161, and could not do so now. (DE 222 & DE 231). The Court held a hearing on July 17, 2012 (DE 232) and issued an order on July 30, 2012.

The July 30, 2012 Order found neither BOA nor Real Time had obtained a deficiency judgment against Debtor. The automatic stay of 11 U.S.C. Section 362 prevents the holder of a deficiency claim from pursuing foreclosure confirmation proceedings in any court other than this one without a grant of relief from the stay by this Court. *See In re Virginia Hill Partners I*, 110 B.R. 84, 87 (Bankr. N.D. Ga. 1989).

Neither BOA nor Real Time received relief from stay for the purpose of pursuing a deficiency judgment.

The July 30, 2012 Order further found the statute of limitations has not run on Real Time's ability to seek confirmation of the foreclosure sale. Real Time could seek relief from the automatic stay in order to commence confirmation proceedings with the state court or Real Time could seek to confirm the foreclosure sale in this Court. The July 30, 2012 Order required Real Time to file any amended claim and supporting documentation within fourteen days.

Real Time filed Amended Claim 4-3 on August 13, 2012 reducing the amount of its unsecured deficiency claim to \$104,499.05. Real Time also filed documents supporting its Amended Claim 4-3, including the promissory note and property sales information from the tax assessor.

Debtor objects to Amended Claim 4-3 on three bases:

- (1) Real Time did not establish standing to pursue the claim because it did "not file[] any documentation with the Court supporting the assignment of the claim from Bank of America to Real Time;"
- (2) Real time has not requested confirmation of the foreclosure sale by this Court or moved for stay relief to seek confirmation in the state court; and
- (3) If Real Time's Amended Claim 4-3 is construed as a motion for confirmation of the foreclosure sale by this Court, Debtor objects to confirmation on the basis there is an absence of proof that BOA provided Debtor with notice of the foreclosure sale in compliance with Georgia laws.

### *Discussion*

Real Time is the proper transferee of BOA's Claim Number 4. Real Time has standing to pursue Amended Claim 4-3.

Bankruptcy Rule 3001(e)(2) states:

**Transfer of claim other than for security after proof filed.**

If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

Fed. R. Bankr. P. 3001(e)(2).

Real Time filed with this Court evidence of the transfer of Claim Number 4 on December 19, 2011 in compliance with Bankruptcy Rule 3001(e)(2). (DE 201). The clerk of the court noticed BOA and all other interested parties. (DE 202). No objection was made.

Debtor's current objection to the transfer – made more than seven months after Debtor received the clerk's notice of the transfer – is untimely and improper. *See* 9 Collier on Bankruptcy ¶ 3001.08[1][c] & n.16 (16th ed. 2011) (“Since the 1991 amendments, Rule 3001(e)(2), (4) requires that the alleged transferor be the objecting party.”)

Real Time was substituted properly for BOA as the claimant on Claim 4. No assignment of the promissory note or mortgage is needed to establish Real Time's standing.

Real Time's claim is a contingent unsecured claim. It is based on a debt that arose out of prepetition facts (Debtor's default on the promissory note), and "the debtor's legal duty to pay . . . does not come into existence until triggered by the occurrence of a future event" (court confirmation of the foreclosure sale and existence of the deficiency). Keith M. Lundin, Chapter 13 Bankruptcy § 15.1 (3d ed. 2004) (quotations omitted). Contingent debts generally are discharged upon the debtor's completion of a Chapter 13 Plan. 11 U.S.C. § 1328 (a).

Section 502(c) of the Code states in relevant part:

There shall be estimated for purpose of allowance under this section—

- (1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case;

11 U.S.C. § 502(c).

The foreclosure sale occurred on May 2, 2011. Real Time still has not moved this Court for confirmation of the foreclosure sale or relief from stay to proceed in state court to that end. Real Time's failure to pursue foreclosure confirmation, either in this Court or in the Georgia state court, is delaying the administration of this case. Confirmation of the Debtor's Chapter 13 Plan is being delayed as a result of Real Time's inaction.

Real Time shall move this Court, within 14 days of the date of entry of this Order, for either: (a) confirmation of the foreclosure sale or (b) relief from stay to proceed in state court to confirm the foreclosure sale. Real Time's selection of option (a) will result

in this Court holding an evidentiary hearing on the validity of the foreclosure sale and the value of any deficiency claim.<sup>1</sup> Real Time's selection of option (b) will result in this Court estimating the value of its contingent claim pursuant to Section 502(c).

The Debtor shall amend her Chapter 13 Plan after this Court values the deficiency claim or estimates the value of that claim. The amended Plan shall provide payments made towards an estimated claim will be held in trust by the Chapter 13 Trustee until such time as the state court rules on the validity of the foreclosure sale and any deficiency debt can be valued.

Accordingly, it is

**ORDERED, ADJUDGED AND DECREED** that the Debtor's Objection to Real Time's Amended Claim 4-3 is hereby **OVERRULED**; and it is further

**ORDERED, ADJUDGED AND DECREED** that Real Time has fourteen (14) days from the date of entry of this Order to file a motion with this Court to either: (a) confirm the foreclosure sale or (b) grant Real Time relief from stay to proceed in Georgia state court to confirm the foreclosure sale.

Dated this 4<sup>th</sup> day of October 2012.

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

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<sup>1</sup> Debtor's concern regarding statutory notice properly should be addressed in the context of a foreclosure confirmation hearing. It is not properly presented as an objection to claim.