

United States Bankruptcy Court
District of New Jersey
Mitchell H. Cohen U.S. Courthouse
P.O. Box 2067
Camden, New Jersey 08101-2067

JUDITH H. WIZMUR
CHIEF BANKRUPTCY JUDGE

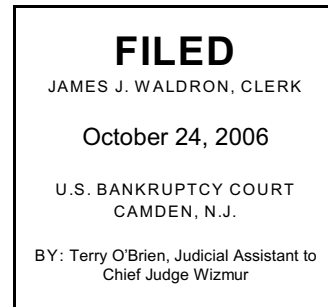
(856) 757-5126

October 24, 2006

Albert J. Fields, Jr.
105 South Miller Avenue
Penns Grove, New Jersey 08069

James D. Donnelly, Esquire
1236 Brace Road, Suite C
P.O. Box 536
Cherry Hill, New Jersey 08003-0536

Re: Albert J. Fields, Jr.
Case No. 05-60595/JHW
LETTER OPINION



Dear Mr. Fields and Mr. Donnelly:

I write to clarify my ruling, issued orally on October 10, 2006, to deny the debtor's motion to reconsider my previous ruling that the creditor, Jack Bleiman, had not violated the automatic stay provisions of 11 U.S.C. § 362, warranting the avoidance of all post-petition collection activity pursued by the creditor. As well, I write to address the debtor's Notice of Appeal filed on October 16, 2006, with the United States Bankruptcy Court, addressed to the United States Court of Appeals for the Third Circuit.

1. Motion to Reconsider

The debtor filed a Chapter 7 petition on December 6, 2005. Listed as an

asset on the debtor's petition was his primary residence at 105 South Miller Avenue, Penns Grove, New Jersey. The value of the residence was listed at \$46,000. The amount of the secured claim was listed at \$37,000.

On January 26, 2006, the Chapter 7 trustee issued a Notice of Information for Abandonment, signifying the trustee's intention to abandon the debtor's residence because the liquidation of the property would be of inconsequential value to the estate. The Notice of Information for Abandonment was sent out on the same day, with an indication that objections to the abandonment were due by February 15. If no objections were filed, the abandonment would take effect "on the fifth day following the last day to file objections." No objections to the Notice of Information were received, and the abandonment became effective on February 20, 2006. An order discharging the debtor was issued on March 31, 2006. A final decree, issued on April 3, 2006, was followed by the closure of the case on the same date.

On July 10, 2006, the debtor filed a motion to reopen the case "to judge (sic) the Creditor violated the Automatic Stay Provisions of Section 362(a) of the Bankruptcy Code; [and] [t]o Vacate any and all post-petition non-bankruptcy matters between the parties as a result of the Creditor's violation of the Automatic stay." In his motion, the debtor complained that on February 27,

2006, he received a “Notice of Entry of Final Judgment” dated February 24, 2006, forwarded to him on behalf of Jack Bleiman, the foreclosing mortgagee on the debtor’s residence “in accordance with paragraph 2 of subsection 6a of the Fair Foreclosure Act.” The letter advised the debtor that to delay the foreclosure of the mortgage on his residence, under the Fair Foreclosure Act, the debtor must mail to the plaintiff, no later than 10 days after receipt of the notice, a statement that there is a reasonable likelihood that he would be able to provide payment necessary to cure the mortgage default within 45 days. The debtor was further informed that if such a statement were received, the creditor could not apply for the entry of final judgment prior to April 9, 2006. Apparently, the debtor submitted such a statement to the foreclosing mortgagee. The debtor further complained that on April 13, 2006, the mortgagee requested that a foreclosure judgment be entered. The foreclosure judgment was entered on June 21, 2006.

According to the debtor, the actions of the mortgagee in continuing with foreclosure after the abandonment of the debtor’s residence by the trustee constituted a violation of the automatic stay, necessitating actual damages, including costs and attorney’s fees, punitive damages, and a vacation of all actions taken in violation of the automatic stay. These arguments were rejected during oral argument on September 11, 2006. Under 11 U.S.C. § 554,

a Chapter 7 trustee may abandon any property of the estate that is of inconsequential value and benefit to the estate. Following abandonment, the property abandoned reverts to the debtor, and is no longer property of the estate. See Catalano v. C.I.R., 279 F.3d 682, 685 (9th Cir. 2002) (“Upon abandonment, the debtor’s interest in the property is restored nunc pro tunc as of the filing of the bankruptcy petition.”); In re St. Lawrence Corp., 239 B.R. 720, 723 (Bankr. D.N.J. 1999), aff’d, 248 B.R. 734 (D.N.J. 2000). Under 11 U.S.C. § 362(c)(1), “[t]he stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate.” 11 U.S.C. § 362(c)(1). Because property abandoned by the trustee is no longer property of the estate, the automatic stay under 362(a) terminated by operation of law. See, e.g., In re Boland, 275 B.R. 675, 678 n.5 (Bankr. D.Conn. 2002) (“Abandoned property is not property of the estate and thus the technical abandonment terminates the automatic stay for Section 362(c)(1) purposes.”); In re Beaudoin, 160 B.R. 25, 32 (Bankr. N.D.N.Y. 1993). In this case, the creditor’s action to forward a Notice of Intent to Foreclose to the debtor, following the effective date of the abandonment, was an action against property which was no longer property of the estate. The property was no longer protected by the automatic stay. Therefore, the debtor’s contention that the automatic stay was violated was rejected at oral argument.

On September 15, 2006, the debtor filed a motion to reconsider, arguing that the property abandoned to the debtor was protected from foreclosure under the provisions of 11 U.S.C. § 362(a)(5) until the bankruptcy case was closed, dismissed or discharged. At oral argument on the reconsideration motion, held on October 10, 2006, the debtor's contentions were rejected. In effect, the debtor argued that the actions of the mortgagee were directed against the debtor, and were therefore stayed until his Chapter 7 case were closed, dismissed, or a discharge granted or denied. 11 U.S.C. § 362(c)(2). The debtor failed to recognize that a foreclosure proceeding "is solely an action *quasi in rem* and that the relief granted is only against the land itself." Central Penn Nat'l Bank v. Stonebridge Ltd., 185 N.J. Super. 289, 302, 448 A.2d 498, 504 (Ch. Div. 1982). See also Resolution Trust Co. v. Berman Indus., Inc., 271 N.J. Super. 56, 62, 637 A.2d 1297, 1300 (Law Div. 1993). As an action against the property of the debtor, the foreclosure action was no longer stayed once the property was abandoned by the trustee.

On October 16, 2006, the debtor filed a Notice of Appeal with the United States Bankruptcy Court, addressed to the United States Court of Appeals for the Third Circuit. The Notice of Appeal was accompanied by a Motion for Leave to Appeal In Forma Pauperis on the form utilized by the United States District Court. No other documentation regarding the debtor's quest to be heard by the

Third Circuit Court of Appeals was appended. Under the newly amended provisions of 28 U.S.C. § 158 governing appeals, the Court of Appeals has jurisdiction of bankruptcy appeals under limited circumstances. As a predicate to an appeal directly to the Court of Appeals, the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion, or on the request of a party to the order, or all of the parties acting jointly, must certify that:

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

28 U.S.C. § 158(d)(2)(A). The Court of Appeals must authorize the direct appeal of the order.

In this case, I am not able to certify that any of the conditions noted above are present in this matter. The question of law involved in this case is answered directly by the statutory provisions cited above. I am not aware of conflicting decisions regarding the termination of the automatic stay by

operation of law following abandonment of property by the trustee. The material advancement of the progress of the case is not implicated. The case has been completed and will be reclosed. Accordingly, no such certification will be provided. The Notice of Appeal will be transmitted to the District Court for adjudication under 28 U.S.C. § 158(a).

Very truly yours,



JUDITH H. WIZMUR
CHIEF U.S. BANKRUPTCY JUDGE

JHW:tob