NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. EC-10-1340-KiDH
SYREETA D. CORBITT,	Bk. No. EC-10-37534-RHS
Debtor.	
SYREETA D. CORBITT,	
Appellant,	
v.	**M E M O R A N D U M**[1]
AURORA LOAN SERVICES, LLC,	
Appellee.	

Argued and Submitted on February 17, 2011
at Sacramento, California

Filed - March 9, 2011

Appeal from the United States Bankruptcy Court
for the Eastern District of California

Honorable Ronald H. Sargis, Bankruptcy Judge, Presiding

Appearances: Syreeta D. Corbitt, appellant, argued pro se
Brian A. Paino of Pite Duncan, LLP argued for appellee, Aurora Loan Services, LLC

Before: KIRSCHER, DUNN, and HOLLOWELL, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Appellant, chapter 13[2] debtor Syreeta D. Corbitt ("Corbitt"), appeals an order from the bankruptcy court granting relief from the automatic stay to appellee, Aurora Loan Services, LLC ("Aurora"), to proceed with its unlawful detainer action against Corbitt in state court. Because the bankruptcy court did not abuse its discretion in lifting the stay, we AFFIRM.

I. FACTS AND PROCEDURAL BACKGROUND

A. Prepetition Events.[3]

In November 2005, Corbitt obtained a loan for $557,100 from Universal American Mortgage Company ("Universal") to purchase a home in Vallejo, California (the "Property"). In exchange for the loan, Corbitt executed a note, which was secured by a first deed of trust on the Property in favor of Universal. Sometime thereafter, Corbitt obtained a second loan on the Property from Ocwen Loan Servicing ("Ocwen") for $137,000. In or around early 2006, Universal sold Corbitt's loan to Aurora. Corbitt kept the Aurora loan current until April 2008. Corbitt admittedly stopped making payments to Aurora after August 2008. Corbitt's payment history to Ocwen is unknown.

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[2] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All "Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

[3] The parties make references to prepetition actions that took place in state court, but they did not include many of the documents related to these actions in the record. Therefore, we invoke our discretion to take judicial notice of the Solano County Superior Court docket, where these various prepetition actions were filed. Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006)(appellate court has discretion to take judicial notice of court filings and other matters of public record).

A Notice of Default was recorded against the Property on August 15, 2008, in Solano County, California. Aurora was the successful bidder at a nonjudicial foreclosure sale on the Property on December 11, 2008, paying $303,160 for it. By that time, Corbitt owed approximately $587,000 on the Aurora loan. According to a 1099-A Form (Acquisition or Abandonment of Secured Property) Aurora sent to Corbitt, as of December 11, 2008, the Property had a fair market value of $167,200. Aurora recorded its Trustee's Deed in Solano County on December 19, 2008.

Aurora filed an unlawful detainer complaint ("First UD Action") against Corbitt in Solano County Superior Court ("State Court") in January 2009, commencing Aurora Loan Services, LLC v. Corbitt, Case No. VCM104344. For reasons not entirely clear from this record, the First UD Action was dismissed with prejudice on November 13, 2009. On December 8, 2009, Aurora moved to set aside dismissal of the First UD Action, which the State Court denied on or around December 21, 2009.

Meanwhile, on April 17, 2009, Corbitt filed suit against Aurora (and others) in State Court for wrongful foreclosure, commencing Corbitt v. Aurora Loan Services, LLC et al., Case No. FCS033344. After the filing of numerous motions, the State Court dismissed Corbitt's wrongful foreclosure suit with prejudice as to Aurora on or around May 3, 2010.[4]

On December 30, 2009, Aurora served Corbitt with a Notice to Quit requiring her and all other occupants to vacate the Property

[4] We see nothing in the State Court docket indicating that Corbitt appealed this ruling. Corbitt confirmed at oral argument that she did not appeal the dismissal of her wrongful foreclosure suit against Aurora.

in three days. Because Corbitt failed to timely vacate, Aurora filed another unlawful detainer complaint ("Second UD Action") against her in State Court on January 15, 2010, commencing Aurora Loan Services, LLC v. Corbitt, Case No. VCM108334. Before filing an answer, Corbitt, represented by counsel, filed a demurrer alleging issue preclusion, claim preclusion, malicious prosecution, and intentional infliction of emotional distress. Corbitt's demurrer was overruled on April 30, 2010 ("Judgment"). In the Judgment, the State Court determined that Aurora's Second UD Action was not barred by issue or claim preclusion because the First UD Action was not heard on the merits; it was involuntarily dismissed, and the parties were not afforded a full and fair opportunity to litigate the issues. Further, the State Court found that the Notice to Quit filed in the Second UD Action constituted a new claim.

B. Postpetition Events.

Corbitt filed a petition for relief under chapter 13 on May, 25, 2010, thereby imposing a stay on the Second UD Action. Corbitt filed a Notice of Bankruptcy with the State Court about two months later on July 28, 2010. In the meantime, Aurora had filed a motion for summary judgment in the Second UD Action on June 8, 2010. However, once Aurora found out about the bankruptcy, it ceased all further action in that case.

On July 29, 2010, Aurora moved for relief from the automatic stay under section 362(d)(2) so it could continue litigation in the Second UD Action (the "Motion"). Aurora contended that, prepetition, it had obtained title to the Property at a foreclosure sale and recorded its Trustee's Deed, it had served

Corbitt with a Notice to Quit, and it had commenced an unlawful detainer action against her in State Court. Therefore, Aurora contended that it was entitled to relief because Corbitt had no equity in the Property and it was not necessary for an effective reorganization. The Motion was set for hearing on August 31, 2010.

Corbitt opposed the Motion arguing that it was barred by issue and claim preclusion because the State Court had dismissed the First UD Action with prejudice. Corbitt further argued that: (1) Aurora's Motion was brought in violation of her Notice of Unavailability filed on July 20, 2010; (2) it was a non-core proceeding; (3) it was barred by the automatic stay; (4) Aurora lacked standing because it had failed to file a proof of claim; and (5) Aurora had violated the Fair Debt Collection Practices Act ("FDCPA") by foreclosing on the Property. Corbitt also asked for sanctions due to Aurora's bad faith.

The bankruptcy court heard Aurora's Motion on August 31 as scheduled; Corbitt did not appear. On that same date, the bankruptcy court entered Civil Minutes setting forth its findings and conclusions. The court determined that Aurora had established its ownership of the Property prepetition; therefore, Aurora was entitled to relief under section 362(d)(2) because Corbitt had no equity in the Property and it was not necessary for reorganization. The court rejected all of Corbitt's arguments. Specifically, it found that: (1) the Judgment clearly determined that Aurora's Second UD Action was not barred by issue or claim preclusion; (2) Corbitt had failed to serve her Notice of Unavailability on Aurora, assuming even such a notice was

enforceable; (3) a proceeding to terminate, annul or modify the automatic stay is plainly a core proceeding under 28 U.S.C. § 157(b)(2)(G), and seeking relief from stay was not a violation of the stay; (4) Aurora was not required to file a proof of claim because it offered a Trustee's Deed establishing its interest in the Property, thus Aurora had standing; (5) Corbitt's accusation that Aurora violated the FDCPA was not properly before the court; such a matter needed to be litigated in an adversary proceeding or brought before the district or state court; and (6) Corbitt was not entitled to sanctions because she failed to plead any facts showing that Aurora's motive in filing the Motion was anything other than to protect its interest.

Corbitt's premature Notice of Appeal filed on September 3, 2010, was deemed timely once the bankruptcy court entered a Civil Minute Order granting the Motion on September 7, 2010. Rule 8002(a). On October 8, 2010, the motions panel issued an order denying Corbitt's emergency motion for stay pending appeal. On October 13, 2010, the motions panel issued an order denying Corbitt's motion to reconsider the October 8 order. On November 2, 2010, the motions panel issued an order denying Corbitt's second motion to reconsider the October 8 order.

II. JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(G). An order granting or denying a motion for relief from the automatic stay is a final, appealable order. Centofante v. CBJ Dev., Inc. (In re CBJ Dev., Inc.), 202 B.R. 467, 469 (9th Cir. BAP 1996). Therefore, we have jurisdiction under 28 U.S.C. § 158.

III. ISSUE

Did the bankruptcy court abuse its discretion in granting relief from stay to Aurora?

IV. STANDARD OF REVIEW

We review the bankruptcy court's decision to grant relief from the automatic stay for an abuse of discretion. Kronemeyer v. Am. Contractors Indem. Co. (In re Kronemeyer), 405 B.R. 915, 918 (9th Cir. BAP 2009). In applying an abuse of discretion test, we first determine de novo whether the bankruptcy court identified the correct legal rule to apply to the relief requested. United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009). If it did, we then determine whether its "application of the correct legal standard [to the facts] was (1) illogical, (2)implausible, or (3) without support in inferences that may be drawn from the facts in the record." Id. (internal quotation marks omitted). If the bankruptcy court did not identify the correct legal rule, or its application of the correct legal standard to the facts was illogical, implausible, or without support in inferences that may be drawn from the facts in the record, then the bankruptcy court has abused its discretion. Id.

V. DISCUSSION

The Bankruptcy Court Did Not Abuse Its Discretion When It Granted Aurora's Motion For Relief From The Automatic Stay.

A. Section 362(d)(2).

Section 362(d)(2) provides that "on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . with respect to a stay of an act against property . . . if - (A) the debtor does not have an equity

in such property; and (B) such property is not necessary to an effective reorganization[.]" The party requesting relief has the burden to prove a debtor's lack of equity, and the debtor has the burden as to all other issues. Section 362(g).

"The proper definition of 'equity' for purposes of § 362(d)(2)(A) is the difference between the value of the property and all the encumbrances upon it." Sun Valley Newspapers, Inc. v. Sun World Corp. (In re Sun Valley Newspapers, Inc.), 171 B.R. 71, 75 (9th Cir. BAP 1994)(citing Stewart v. Gurley, 745 F.2d 1194, 1196 (9th Cir. 1996)). As for section 362(d)(2)(B), a debtor must show that there is "a reasonable possibility of a successful reorganization within a reasonable time." United Sav. Ass'n v. Timbers of Inwood Forest Assoc. Ltd., 484 U.S. 365, 376 (1988).

B. Analysis.

The bankruptcy court determined that because Aurora purchased the Property at the foreclosure sale and recorded its Trustee's Deed prepetition, neither Corbitt nor the estate had any equity in the Property pursuant to section 362(d)(2)(A). For this same reason, the bankruptcy court determined that Corbitt was unable to show that the Property was necessary for a successful reorganization pursuant to section 362(d)(2)(B).

First, Corbitt disputes the bankruptcy court's finding that she lacked equity in the Property. Corbitt contends that she in fact has equity in the Property, including her initial down payment of approximately $22,000, mortgage payments she made to Aurora from November 2005 to April 2008, funds she spent on various improvements, and attorneys fees she incurred. Although Corbitt raises this issue for the first time on appeal, we will

consider it because this issue was raised sufficiently for the bankruptcy court to rule on it. O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957 (9th Cir. 1989). Corbitt's argument lacks merit.

Bankruptcy courts must look to state law to determine whether and to what extent the debtor has any legal or equitable interests in property as of the commencement of the case. Butner v. United States, 440 U.S. 48, 54-55 (1979). Under California law, a trustee's sale is deemed final upon the acceptance of the last and highest bid. CAL. CIV. CODE 2924h(c). The successful bidder "at a nonjudicial foreclosure sale receives title under a trustee's deed free and clear of any right, title or interest of the trustor." Wells Fargo Bank v. Neilsen, 100 Cal. Rptr. 3d 547, 554 (Cal. Ct. App. 2009).

Here, the bankruptcy court had uncontroverted evidence that Aurora was the successful bidder at a nonjudicial foreclosure sale of the Property held on December 11, 2008, and that Aurora recorded its Trustee's Deed on December 19, 2008. Corbitt filed bankruptcy on May 25, 2010. Under California law, title to the Property passed to Aurora free and clear of any right, title or interest of Corbitt's more than one year before she filed bankruptcy. Thus, at the time Aurora filed its Motion, neither Corbitt nor her estate had any ownership interest or right in the Property. Corbitt could not have equity in property she does not own. At this point, Corbitt is effectively a squatter.[5]

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[5] Where a real property nonjudicial foreclosure was completed and the deed recorded prepetition, the debtor has neither legal (continued...)

Even if we accepted Corbitt's argument that she has an interest in the Property, at the time of the foreclosure sale Corbitt owed over $587,000 on the Aurora loan, plus it appears that she owed at least $137,000 on the Ocwen second loan; the fair market value of the Property was $167,200. She has not made any further payments to Aurora for over two years. Therefore, regardless of whatever down payment, mortgage payments, or improvements Corbitt made on the Property, she has (or had) no equity in it. Accordingly, the bankruptcy court did not err when it determined that Corbitt lacked equity in the Property under section 362(d)(2)(A).

Corbitt also disputes the bankruptcy court's finding that the Property was not necessary to a successful reorganization under section 362(d)(2)(B) because she listed Aurora and Ocwen as secured creditors in her Schedule D, and because she is making payments to both Aurora and Ocwen in her chapter 13 plan. Again, Corbitt raises this issue for the first time on appeal, but we will consider it because this issue was raised sufficiently for the bankruptcy court to rule on it. E.R. Fegert, Inc., 887 F.2d at 957. This argument also lacks merit.

Whether Corbitt listed Aurora and Ocwen on her Schedule D is irrelevant; she no longer owned the Property at the time and,

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[5](...continued)
nor equitable title to the property at the time the bankruptcy petition is filed. Although the debtor may still be in possession of the premises, his or her status is essentially that of a "squatter." The mortgagee (or purchaser at the foreclosure sale) is entitled to the property and thus relief from the stay should be granted. See Kathleen R. March and Alan M. Ahart, CALIFORNIA PRACTICE GUIDE: BANKRUPTCY ¶ 8:1195-96 (2009)(emphasis in original).

presumably, no longer owed any debt on at least the Aurora loan because under California law she was not responsible for any deficiency. CAL. CIV. PROC. § 580d.[6] Further, according to Corbitt's chapter 13 plan, she has not made any payments to Aurora, and she has attempted to strip off Ocwen's second lien. Without any interest in the Property, it cannot be necessary for Corbitt's successful reorganization. Consequently, the bankruptcy court did not err when it determined that the Property was not necessary for reorganization under section 362(d)(2)(B).[7]

VI. CONCLUSION

As the bankruptcy court noted, granting relief from stay does not determine the parties' rights in the matter; it merely permits them to go to state court to determine their respective rights. Nothing in the bankruptcy court's order granting Aurora relief from the automatic stay is illogical, implausible, or without support in inferences that may be drawn from the facts in the record. Accordingly, we conclude that the bankruptcy court did

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[6] CAL. CIV. PROC. § 580d provides:

> No judgment shall be rendered for any deficiency upon a note secured by a deed of trust or mortgage upon real property or an estate for years therein hereafter executed in any case in which the real property or estate for years therein has been sold by the mortgagee or trustee under power of sale contained in the mortgage or deed of trust.

[7] At oral argument, we inquired about the status of the Second UD Action in State Court. Counsel for Aurora was unsure. According to the State Court docket, after the bankruptcy court granted Aurora relief from stay it filed a motion for summary judgment in the Second UD Action on September 29, 2010. Corbitt filed an opposition on October 12, 2010. A hearing on Aurora's motion was rescheduled for November 17, 2010. On February 2, 2011, the State Court entered an order granting Aurora's motion for summary judgment. Corbitt stated at oral argument that she is appealing that ruling.

not abuse its discretion, and we AFFIRM.[8]

[8] To the extent Corbitt argues on appeal, as she did at the bankruptcy court, that Aurora engaged in fraud when it foreclosed on the Property, we must reject such arguments. The validity of the foreclosure sale has already been litigated in State Court, concluded in Aurora's favor, and has not been appealed. (See Case No. FCS033344). Despite Corbitt's desire to litigate these issues, the bankruptcy court and this Panel are not avenues to appeal the State Court's ruling.