


SO ORDERED.

SIGNED this 18th day of August, 2023.




Mitchell L. Herren
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS AT WICHITA**

In Re:)	
)	
TINA M. CARSON,)	Case No. 23-10664
)	Chapter 13
Debtor.)	

**ORDER GRANTING MOTION FOR IN REM RELIEF FROM THE
AUTOMATIC STAY AND RELIEF FROM THE CO-DEBTOR
STAY PURSUANT TO 11 U.S.C. §§ 362(d)(1), 362(d)(4) and 1301
AS TO CREDITOR AND ITS SUCCESSORS AND ASSIGNS**

ON AUGUST 14, 2023, this matter came on for hearing upon the Motion of Creditor Ajax Mortgage Loan Trust 2021-D, Mortgage-Backed Securities, Series 2021-D, by U.S. Bank National Association, as Indenture Trustee, by Gregory Funding, and its successors and assigns ("Creditor" or "Ajax") for *In Rem* Relief from the Automatic Stay and Relief from the Co-Debtor Stay ("Motion," Doc. 32 filed July 20, 2023). Richard M. Beheler, of the firm SouthLaw, P.C. appeared for

Creditor. Karin Amyx appeared for Carl B. Davis, Chapter 13 trustee. Jordan Sickman appeared for the United States Trustee. Pro se debtor Tina M. Carson (“Carson” or “Debtor”) and co-debtor Daniel Brunson Carson (“Co-Debtor”) did not appear. No objection to the Motion was filed by any party.

Based on a review of the case file in this case and Debtor’s previously-filed bankruptcy cases,¹ the arguments of counsel, and for the reasons stated on the record, the Court finds that cause exists to terminate the automatic stay imposed by § 362 of the Bankruptcy Code, and for other related relief set forth herein, and the Motion is and should be GRANTED for Ajax, and its successors and assigns, to exercise its *in rem* state law remedies and pursue to completion its pending state court mortgage foreclosure action in the District Court of Grant County, Kansas (Case No. 2022-CV-000002) on real property owned by Carson and identified generally as 5451 W. Road 11, Ulysses, KS 67880 (“the Property”).

The Court made its oral ruling on the Motion at the August 14 hearing, including the following findings of fact and conclusions of law, and the Court’s findings based on its review of Debtor’s previous bankruptcy case files.

1. This Court has subject matter jurisdiction over this Motion. A motion to terminate the automatic stay is a core bankruptcy proceeding under 28 U.S.C. §

¹ The Court takes judicial notice of the dockets and case files in Carson’s previous bankruptcy cases: No. 14-12733 (Bankr. D. Kan.) (Chapter 12 case filed 12/10/2014 and dismissed 10/04/2016 for failure to make plan payments); No. 18-11150 (Bankr. D. Kan.) (Chapter 13 case filed 06/18/2018 and dismissed 03/11/2022 for failure to make plan payments); No. 23-40637 (Bankr. W.D. Mo.) (Chapter 13 case filed on 05/11/2023 and dismissed 06/07/2023).

157(b)(2)(G), over which the bankruptcy court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1) and § 1334(b).

2. Debtor and Co-Debtor were properly served with the Motion and Notice of Hearing.

3. In 2001, Co-Debtor, a single person, executed a \$208,000 note and mortgage on the Property. Debtor is not personally obligated on the note but has an *in rem* interest in the Property by virtue of Co-Debtor quitclaiming his interest in the Property to Debtor in 2004. Based on a series of assignments of the mortgage on the Property attached to the Motion, Ajax is the current assignee of the mortgage and is entitled to enforce the note and mortgage.

4. In Debtor's previous 2018 Chapter 13 case (No. 18-11150) filed in June of 2018, Debtor listed the Property as her address on the bankruptcy petition and claimed the Property exempt as her homestead. On bankruptcy Schedule A/B, Debtor valued the Property at \$510,000. Under Debtor's Chapter 13 plan filed in the 2018 case, Debtor proposed to pay Ajax's ongoing monthly mortgage payment through the plan and to cure the prepetition mortgage arrearage in excess of \$84,000 by selling property at 421 W. Lotus in Ulysses owned by Debtor's daughter, the proceeds of which the daughter agreed to give to Debtor to apply on the arrearage. The Plan was confirmed on November 30, 2018. The Debtor did not sell the Lotus property and defaulted in plan payments leading to the first motion to dismiss filed by the Chapter 13 trustee on February 21, 2019. Debtor then filed the first post-confirmation modification of the plan on May 31, 2019, to extend the June

1, 2019 deadline to sell the Lotus property by 120 days. Still, no sale of the Lotus property occurred. The sale deadline was extended to June 30, 2020, by a second post-confirmation modification of the plan. The Lotus property was not sold. The Chapter 13 trustee filed a second motion to dismiss on August 11, 2020, for Debtor's failure to comply with the terms of her confirmed plan and lack of feasibility. The trustee agreed to withdraw the motion to dismiss in exchange for which Debtor would sell or auction the Lotus property by June 30, 2021, some three years after the sale was initially proposed. No sale of the Lotus property ever occurred, and it appeared that Debtor made no effort to do so. Ajax's proof of claim filed in the 2018 case asserted a secured claim in the amount of \$250,776 plus an arrearage of \$84,974.

5. On June 11, 2021, Ajax filed a motion for relief from the stay and relief from the co-debtor stay, or alternatively, to dismiss Debtor's 2018 case. After a series of motions by Debtor to continue the hearing, Debtor failed to appear in person at the rescheduled hearing on September 23, 2021, as previously ordered by the Court. This Court granted Ajax's motion on September 24, 2021. Debtor subsequently filed numerous, meritless post-trial motions to reconsider, for new trial, to alter or amend judgment, and appealed the stay relief order to the Tenth Circuit BAP (Bankruptcy Appellate Panel), No. 21-33. The BAP dismissed the appeal on November 29, 2021, for lack of jurisdiction because Debtor's notice of appeal was untimely. Debtor also appealed the stay relief order to the federal District Court for the District of Kansas, No. 22-CV-1024-JWB. The District Court

dismissed that appeal on May 31, 2022 as moot and for lack of jurisdiction because the 2018 bankruptcy case had been dismissed and the automatic stay was no longer in effect. On January 11, 2022, the Chapter 13 trustee filed his third and final motion to dismiss for failure to make plan payments. That motion was granted on March 11, 2022, dismissing the 2018 case.

6. After obtaining stay relief in the 2018 case, Ajax commenced a new mortgage foreclosure action (the third attempt to foreclose the mortgage on the Property by Ajax or its predecessors) in the District Court of Grant County, Kansas on January 31, 2022. Ajax filed a motion for summary judgment in September of 2022. After granting several continuances to Carson, a hearing was scheduled for May 11, 2023, on the summary judgment motion and other motions. Debtor did not appear on May 11. The state court orally ruled on the motion and granted summary judgment. Unbeknownst to Ajax and the state court, Debtor was in the process of filing a new Chapter 13 bankruptcy case in the Western District of Missouri (WDMO) in Kansas City, Missouri on May 11, Case No. 23-40637. That filing was a “quick-file” to invoke the automatic stay and again halt Ajax’s foreclosure, and did not include all required bankruptcy schedules, statements, and documents (including the certificate of prepetition credit counseling required by 11 U.S.C. § 521(b)) and was met with orders to show cause and to correct the filing deficiencies. The WDMO Chapter 13 trustee filed a motion to transfer the case to Kansas and Ajax filed a motion to dismiss for lack of venue under 28 U.S.C. § 1408.

7. Ajax learned of the WDMO case on May 12 and took no action to journalize the oral summary judgment ruling in the foreclosure case. The record before this Court suggests that the oral summary judgment ruling and the filing of the WDMO bankruptcy occurred on the same date, but nothing in the record indicates whether the bankruptcy case was filed before or after the oral summary judgment ruling. If the oral ruling was made after the bankruptcy case was filed, the oral ruling was made in violation of the automatic stay and is void, and cannot be journalized.

8. The Missouri bankruptcy court dismissed the WDMO case on June 7, 2023, for Debtor's failure to obtain prepetition credit counseling from an approved credit counseling agency for the district within the 180-day period prior to filing as required by § 109(h). Thus, Carson was not eligible to be a debtor. Carson appealed the dismissal to the Eighth Circuit BAP, No. 23-6005, and the BAP dismissed the appeal on August 4, 2023, for lack of prosecution due to Carson's failure to pay the docketing fees.

9. Undeterred, in what appears to be an attempt at judge-shopping, Carson filed this current Chapter 13 case on June 30, 2023 in the Kansas City, Kansas divisional office instead of the Wichita divisional office closest to her residence, again as a "quick-file" to stop the foreclosure proceedings. On July 5, 2023, Chief Bankruptcy Judge Dale L. Somers for the District of Kansas *sua sponte* transferred the case to the Wichita divisional office where Carson filed her 2014 and 2018 bankruptcy cases and reassigned the case to Bankruptcy Judge Mitchell L.

Herren. Carson failed to appear for the § 341 meeting of creditors on August 10. Ajax filed the current stay relief motion on July 20, 2023 (Doc. 32).

10. The Court finds that cause exists to terminate the automatic stay under § 362(d)(1) and to lift the co-debtor stay under § 1301. Debtor has now filed four bankruptcy cases since 2014. The two bankruptcy cases in which Debtor's plans were confirmed have been dismissed for Debtor's failure to make plan payments (including ongoing mortgage payments on the Property and payments to cure the prepetition arrearage) and to comply with the confirmed plans (*i.e.* sell the Lotus property). Nothing has substantially changed during this nine-year period, other than the amount of the debt has grown; the arrearage alone has ballooned from \$84,000 to over \$200,000. No payments have been made on the mortgage or arrearage since at least September of 2021, when Ajax obtained stay relief in the 2018 Chapter 13 case. Debtor is unable or unwilling to comply with the confirmed plans that she has proposed. She has been through four attorneys during this nine-year period, with each attorney either withdrawing or being fired (and sued in one instance), and has found herself without counsel since late August 2021, including in the two most recent bankruptcy cases.

11. The Court finds that the Debtor has filed at least three bankruptcy cases affecting the Property that were a scheme to delay or hinder Ajax's ability to exercise its state law remedies and foreclose its mortgage on the Property—the 2018 Chapter 13 case and two Chapter 13 cases in 2023. As noted above, these three case filings hindered and delayed Ajax's ability to prosecute its pending foreclosure

actions. In the 2018 case, Debtor delayed a sale of the Lotus property for three years which she had proposed in her plan to cure the \$84,000 prepetition mortgage arrearage, and ultimately refused to sell the Lotus property as ordered under the confirmed plan. The Court now doubts that Debtor ever had any intention or ability to sell her daughter's house. In these cases Debtor sought multiple continuances or extensions of time to respond to Ajax's stay relief motions and to the holding of any hearings on the motions. The 2023 case filings were incomplete, quick-files of a bankruptcy petition being filed to invoke the automatic stay. After filing them, Debtor sought multiple extensions of time to file all required schedules, statements and documents required by the Bankruptcy Code. She failed to provide her federal income tax return to the Chapter 13 trustee and Creditor as required by § 521(e)(1) and (2). In this case, Debtor failed to appear for the § 341 first meeting of creditors and failed to appear at the hearing on Ajax's Motion. In the current case, Debtor filed proposed plans without using the mandatory Chapter 13 form plan in this District and has not corrected that deficiency. In one plan, Debtor again proposes to sell her daughter's house (the Lotus property) for \$139,000 if necessary to fund additional plan payments and "reserves her right to dispute" Ajax's claim. Most of Debtor's filings are duplicative, illegible or incomprehensible. In short, the totality of the circumstances adequately demonstrates since at least 2018, a scheme to hinder or delay Ajax's foreclosure of the mortgage on the Property and satisfies the conditions for imposition of a 2-year stay relief order binding on any subsequent bankruptcy case affecting the Property filed within two years from the date of entry

of this Order and authorizes recording of this Order pursuant to 11 U.S.C. § 362(d)(4).

12. To the extent Debtor raises defenses or counterclaims in this Court to Ajax's foreclosure action, including alleged violations of consumer financial and protection laws or enforcement actions by the CFPB (Consumer Financial Protection Bureau), those alleged defenses and claims should be raised and addressed in the pending foreclosure action. This Court will defer to the state court and abstains from hearing and deciding those issues pursuant to 28 U.S.C. § 1334(c).

13. In the alternative to granting stay relief for cause, the Court concludes that the automatic stay expired on July 30, 2023, thirty (30) days after the filing of the current case as a matter of law under 11 U.S.C. § 362(c)(3)(A). Under that statute, when Debtor filed the current case, the Debtor's WDMO Chapter 13 case was pending within the preceding 1-year period and was dismissed for failure to satisfy the credit counseling requirement. As a result, when Debtor filed the current case, the automatic stay terminated on the 30th day after filing of the current case by statute. No interested party, including Debtor, timely moved to extend the automatic stay beyond the thirty days pursuant to § 362(c)(3)(B).

14. In light of the already lengthy delay in prosecuting the foreclosure action on the Property, the Court waives the 14-day stay of this Order under Fed. R. Bankr. P. 4001(a)(3).

IT IS THEREFORE ORDERED that the automatic stay imposed by Section 362 of the Bankruptcy Code is terminated for cause under § 362(d)(1), to permit Creditor, and its successors and assigns, to exercise its *in rem* state law remedies, including seeking foreclosure of the mortgage on the Property owned by the Debtor; Creditor may not pursue *in personam* relief against Debtor.

IT IS FURTHER ORDERED that the Co-Debtor stay imposed by Section 1301 of the Bankruptcy Code is similarly terminated to permit Creditor, and its successors and assigns, to exercise its state law remedies, *in personam* and *in rem*, including foreclosure, against the interests of Co-Debtor Daniel Brunson Carson a/k/a Daniel Brunson.

IT IS FURTHER ORDERED that the Court finds that the filing of the present bankruptcy petition by Debtor was, in accordance with Section 362(d)(4) of the Bankruptcy Code, part of a scheme to delay or hinder creditors through the filing of multiple bankruptcy proceedings affecting the Property, that Creditor, and its successors and assigns shall be permitted to immediately file a certified copy of this Order in the real property records of Grant County, Kansas without regard to any subsequently filed bankruptcy case affecting the Property, and that this Order shall be binding as to the Debtor or any other party or entity asserting an interest in the Property or purporting to affect the Property in any way, in any subsequent case under Title 11 for a period of two years from its entry.

IT IS FURTHER ORDERED that notwithstanding whether or not Fed. R. Bankr. P. 3002.1 applies, that Creditor, and its successors and assigns, shall be

permitted to assert in any ensuing state court foreclosure action an entitlement to add to the indebtedness owed by Debtor, *in rem* and by Co-Debtor, *in personam* and *in rem*, consistent with its loan documents, any attorneys' fees and costs incurred by it in connection with this case.

IT IS FURTHER ORDERED that the Trustee may cease any further payments on the claim given that relief from the stay is effective.

IT IS FURTHER ORDERED that this Order shall be rendered effective immediately and the 14-day stay imposed by Fed. R. Bankr. P. 4001(a)(3) is hereby waived.

IT IS FURTHER ORDERED that counsel for the Creditor shall provide a courtesy file-stamped copy of this Order after its entry to the presiding judge of the pending foreclosure action in the District Court of Grant County, Kansas (Case No. 22-CV-000002).

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