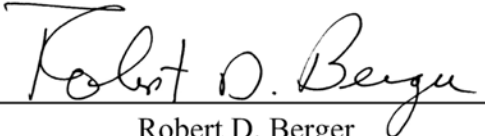




The relief described hereinbelow is SO ORDERED.

SIGNED this 31st day of May, 2013.


Robert D. Berger
United States Bankruptcy Judge

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

In re:

**COREY VAN NOSTRAND and
MISTY VAN NOSTRAND,
Debtors.**

**Case No. 09-24265
Chapter 13**

**ORDER DENYING IN PART AND GRANTING IN PART
DEBTORS' APPLICATION FOR ORDER TO SHOW CAUSE
FOR DAMAGES AND ATTORNEY FEES UNDER 11 U.S.C. §362(k)**

This matter comes before the Court on Debtors' Application to Show Cause for Damages and Attorney Fees Under 11 U.S.C. § 362(k).¹ Debtors argue that their modified plan (Plan) does not provide relief from the automatic stay to Federal National Mortgage Association (Fannie Mae) and, therefore, Fannie Mae's foreclosure action filed on December 7, 2012, violated the automatic stay injunction under § 362(a). Fannie Mae filed a response² to the motion. The matter was submitted to this Court on the parties' briefs, including attachments

¹ Doc. No. 127.

² Doc. No. 130.

thereto.

This matter constitutes a core proceeding³ and the Court has jurisdiction to decide the matter in controversy.⁴

Upon review of the pleadings, the Court's file, and the arguments of counsel, the Court is prepared to rule.

Facts

1. Debtors filed their Chapter 13 petition on December 23, 2009.
2. On September 15, 2010, Debtors filed an adversary proceeding to determine the nature, extent, and validity of a lien claimed on the Debtors' homestead by Chase Home Finance, LLC.⁵
3. On April 30, 2012, this Court issued its Order Granting Defendants' Motion for Summary Judgment in the adversary proceeding. The Order held that "Fannie Mae owns the note, Seterus⁶ holds and services the note, and MERS holds the mortgage as an agent of Seterus and Fannie Mae"⁷
4. Debtors amended their plan on May 10, 2012.⁸ The Plan was confirmed by this Court on June 20, 2012.⁹
5. The relevant paragraphs of the Plan are:

³ 11 U.S.C. §157(b).

⁴ 28 U.S.C. §1334.

⁵ *Van Nostrand v. IBM Lender Business Process Services, Inc., et al.*, Adversary Case No. 10-06146.

⁶ Seterus, Inc., was formerly known as IBM Lender Business Process Services, Inc.

⁷ Doc. 75 at 2 in Adversary Case No. 10-06146.

⁸ Doc. No. 98.

⁹ Doc. No. 104.

[8.c.] Upon approval of this motion and confirmation of the plan, IBM Lender Business Process Services shall have in rem relief from stay with no further order necessary.

[8.d.] The Debtors will surrender the homestead located at 17361 3rd Street, Lawrence, KS 66044 to any party that obtains a valid Journal Entry of Judgment for Foreclosure according to Kansas State Law.¹⁰

6. Fannie Mae filed a petition for foreclosure in the Jefferson County, Kansas, District Court, Case No. 12 CV 182, *Fed. Nat'l Mortg. Ass'n v. Van Nostrand, et al.*, on December 7, 2012 (State Court Case).
7. Debtors filed the instant Application for Order to Show Cause for Damages and Attorney Fees Under 11 U.S.C. § 362(k) on January 15, 2013.

Analysis

The dispute before this Court is the result of ambiguous language contained in the Plan. The relevant provisions are Plan paragraphs 8.c. and d. Read individually, paragraph 8.c. limits the grant of relief from stay to IBM. Fannie Mae argues that the provisions, read together, evidence the Debtors' intent to grant relief from the stay to both Seterus and Fannie Mae.¹¹ Fannie Mae asserts that the Law of the Case Doctrine prevents the Debtors from "denying Fannie Mae and Seterus' standing to enforce or negotiate the Note and Mortgage"¹² Fannie Mae would be correct had Debtors claimed that Fannie Mae was not the proper party in interest to proceed with foreclosure, because the rights of the parties have already been established in the Court's Order Granting Defendants' Motion for Summary Judgment.¹³ Fannie Mae's right to

¹⁰ Doc. No. 98 ¶8 at 2.

¹¹ Doc. No. 130 at 2.

¹² Doc. No. 130 at 2.

¹³ Doc. No. 75, Adv. Case No. 10-06146.

proceed *in rem* against the property under non-bankruptcy law is not disputed. Instead, the issue here is a separate inquiry into whether Fannie Mae violated the automatic stay injunction by filing the State Court Case without relief from the automatic stay.

Neither party has argued, nor has this Court been able to find, precedent that relief from the automatic stay is extended from an agent to its principal based solely on the nature of the parties' agency relationship.¹⁴ Without such authority, this Court finds that Fannie Mae willfully violated § 362(a) because it did not obtain relief from the stay before filing the State Court Case. The Plan language is admittedly vague, which should have prompted an objection to the Plan or the filing of a stay relief motion by Fannie Mae and other parties-in-interest.¹⁵ In *In re Hann*,¹⁶ the court rejected a creditor's argument that the creditor should not be sanctioned because of the lack of clarity of a court order. The *Hann* court admonished the creditor that it should have sought guidance from the issuing court as to the order's legal effect.¹⁷ In the case *sub judice*, it was imprudent for Fannie Mae not to seek clarity of the Plan provisions or, more appropriately, to seek relief from the automatic stay to proceed *in rem* against its collateral.

Generally, actions taken in violation of the automatic stay are void, although some courts have held in particular circumstances that such actions are only voidable and require an objection or some act of the debtor to render them void.¹⁸ In cases where a creditor has acted

¹⁴ Violations of the stay may be imputed to the principal when the agent is acting within the scope of the agency relationship, but this does not suggest that a grant of relief to an agent will automatically apply to the principal. See, e.g., *In re Crawford*, 388 B.R. 506 (Bankr. S.D.N.Y. 2008).

¹⁵ *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1380 (2010). Even "illegal" provisions of a confirmed plan are binding on creditors.

¹⁶ *Hann v. Educational Credit Management Corp. (In re Hann)*, 711 F.3d 235, 243 (1st Cir. March 29, 2013).

¹⁷ *Id.*

¹⁸ See 3 COLLIER ON BANKRUPTCY ¶ 362.12[1] at 362-140 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2013).

based on a mistake of law, this Court has held that violations of the automatic stay are void from the outset.¹⁹ Here, Fannie Mae willfully violated the automatic stay when it filed the State Court Case; however, it appears to have acted based on a misinterpretation of the Plan language. Regardless, all pleadings filed in the State Court Case after the filing of this bankruptcy petition are void and of no legal effect. Since Fannie Mae, *sans* relief from the automatic stay, could not obtain a valid Journal Entry of Judgment for Foreclosure, the surrender language in paragraph 8.d. of the Plan is not triggered. While it is apparent that Fannie Mae's actions were willful in that it intended to file the State Court Case, under these limited circumstances, the Court does not ascribe malevolence to these acts.

Despite the mistaken belief by Fannie Mae that it had relief from the automatic stay, §362(k) still applies. This section provides the following relief if willful acts are taken in violation of the automatic stay:

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

Conclusion

Based on the facts and applicable law, the Court finds and orders as follows:

1. That Fannie Mae willfully violated the bankruptcy automatic stay;
2. That such violation does not justify the imposition of punitive damages; although Fannie Mae could have easily avoided this dispute by filing a motion for relief from the automatic stay, this Court finds that such action may have been predicated on a

¹⁹ *In re Maslak*, 2012 WL 5199168, at 2 (Bankr. D. Kan. 2012).

misinterpretation of the Plan and nebulous language contained therein;

3. That any and all pleadings filed after December 23, 2009, in the State Court Case, cited as *Fed. Nat'l Mortg. Ass'n v. Corey Van Nostrand, et al.*, Case No. 12 CV 182 in the District Court of Jefferson County, are void and without legal effect; and
4. That a copy of this order shall be filed in the State Court Case by counsel for the Debtors.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Fannie Mae pay Debtors' attorney's fees and costs associated with Fannie Mae's violation of the automatic stay in the amount of \$300.00. The Court finds that, aside from attorney's fees, actual damages have not been established by Debtors. Any further relief requested by Debtors not addressed herein is denied.

IT IS SO ORDERED.

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ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE
DISTRICT OF KANSAS