

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE:)
)
KENNETH V. FORDHAM,) Case No. 13-04357
)
Debtor.)

ORDER DENYING MOTION FOR RELIEF FROM STAY
AND SUSTAINING IN PART OBJECTION TO CLAIM NO. 10

This matter is before the Court on a motion for relief from stay (doc. 192) filed by creditor RREF RB SBL AL-KVF, LLC (“RREF”) and debtor’s objection (doc. 207) to RREF’s claim no. 10. Appearances were noted in the record. The Court has jurisdiction pursuant to 28 U.S.C. § 157 and § 1334 and the order of reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), (G), and (K), and the Court has authority to enter a final order.

The underlying issue in both of these matters is whether RREF has a valid mortgage on real estate located at 51 Rickarby Street, Mobile, Alabama. For the reasons set out below, the Court holds that it does not.

RREF is the successor-in-interest to Regions Bank with regard to the debt at issue. Its claim no. 10 is based upon an October 17, 2006 note (“the 2006 note”) to Regions Bank in the amount of \$250,000.00. RREF contends that its claim is secured based upon an April 20, 2000 mortgage (“the 2000 mortgage”) on the 51 Rickarby Street property -- a mortgage which has apparently never been released of record. Another property at 601 Church Street which previously secured the 2006 debt has already been foreclosed upon. The collateral provision of

the 2006 note includes “real estate mortgage dated 4/20/2000 from borrower covering real estate located at 51 Rickarby Street, Mobile, Mobile County, AL” However, the Court finds that the 2000 mortgage does not secure the 2006 note for two independent reasons.

First, the Court finds that the debt originally secured by the 2000 mortgage has been paid. The 2000 mortgage (which is an exhibit to RREF’s motion for relief from stay) states that it secures a promissory note dated the same day, April 20, 2000, in the original principal amount of \$167,850 (“the 2000 note”). Ferrell Anders, a local real estate attorney whose firm closed the transactions at issue in this case, testified that the 2000 note, along with additional seller financing, was paid on April 18, 2001 by a loan also made by Regions Bank. He produced a check to Regions Bank (debtor’s Exhibit 1) dated April 18, 2001 from his firm trust account in the amount of \$169,721.64, which is in line with the amount of the 2000 note. Mr. Anders testified that the April 2001 loan from Regions was later paid off in November 2002 by a loan from another lender, Coats & Company. [Debtor’s Exhibit 2.] Mr. Anders testified that it is very common for creditors to say they will file mortgage releases themselves but that they sometimes mistakenly forget to do so. The most likely explanation as to why Regions Bank did not release the 2000 mortgage is that the bank simply overlooked it.

However, in the absence of a future-advance provision, “[t]he payment or satisfaction of the real property mortgage debt divests the title passing by the mortgage.” Alabama Code § 35-10-26. “[W]hen a debt secured by a mortgage has been paid, the mortgage becomes functus officio, and it cannot be made to stand as security for a new or different debt between the parties, or reissued to a different creditor.” Cottingham v. Citizens Bank, 859 So. 2d 414, 420 (Ala. 2003) (quoting Hammock v. Oakley, 154 So. 906, 908 (1934)). Since the 2000 mortgage did not

contain a future-advance provision (as discussed below), it was no longer valid after the 2000 note had been paid or, at the very latest, after the April 2001 Regions note had been paid off in November 2002.

Second, regardless of whether the 2000 note secured by the 2000 mortgage had been paid, the 2000 mortgage does not contain a future advance provision which would allow it to secure the 2006 note. The parties agreed at the hearing that the note which is the basis of RREF's claim no. 10 was new money advanced for the purchase of property at 601 Church Street in Mobile -- not a renewal, extension, or refinancing of the 2000 note. The 2000 mortgage provides that it secures "(1) payment of the indebtedness and (2) performance of all obligations of grantor under this mortgage and the related documents." "Indebtedness" is defined in the mortgage as "all principal and interest payable under the Note and any amounts expended or advanced by Lender to discharge obligations of Grantor or expenses incurred by Lender to enforce obligations of Grantor under this Mortgage, together with interest on such amounts as provided in this Mortgage." "Note" is defined as "the promissory note or credit agreement dated April 20, 2000, in the original principal amount of \$167,850.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement." The 2000 mortgage thus does not contain a future-advance or cross-collateralization provision.

"The law in Alabama is clear that a mortgage for a specific debt cannot be used to secure any subsequent advances in the absence of an express provision securing future indebtedness." Cottingham, supra at 419 (quoting Johnson v. Shirley, 539 So. 2d 165, 168 (Ala. 1988)). The

2000 mortgage thus does not secure the 2006 note even though the 2006 note states that the 2000 mortgage will stand as additional collateral.

Debtor did not present any evidence regarding his alleged setoff against claim no. 10 or his contention that RREF's calculation of claim 10 is incorrect. The amount of the claim is presumed valid pursuant to Bankruptcy Rule 3001(f). However, since the claim is unsecured, no postpetition interest accrues pursuant to Bankruptcy Code § 506(b).

For the reasons stated above:

1. RREF's motion for relief from stay to foreclose on the 51 Rickarby property is denied, since it does not hold an interest in the property and thus lacks "cause" under Bankruptcy Code § 362(d)(1).

2. Debtor's objection to claim no. 10 is sustained to the following extent. The claim is allowed in full in the amount of \$168,871.51 but is reclassified as unsecured, with no postpetition interest.

Dated: October 22, 2015


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE