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2005 WL 2456933
United States Bankruptcy Court,
N.D. Florida.

In re Jung Bea **HAN** and
Hyung Sook **Han**, Debtors.
Jung Bea **Han**, Plaintiff.

v.

GE Capital Small Business
Finance Corporation, Defendant.

No. 00-42086, 05-03012.

|
filed March 8, 2005.

|
July 12, 2005.


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last filing Sept. 28, 2005.




Attorneys and Law Firms

[Daniel S. Mandel](#), Mandel, Weisman, Heimberg et al, Boca Raton, FL, Lead Attorney, for GE Capital Small Business Finance Corporation, (Defendant).

ORDER GRANTING IN PART AND DENYING IN PART GE CAPITAL SMALL BUSINESS FINANCE CORPORATION'S MOTION FOR SUMMARY JUDGMENT

MAHONEY, Bankruptcy J.

*1 This case was originally brought in the United States District Court for the Northern District of Florida. **Han**, a pro se plaintiff, filed suit against GE Capital Small Business Finance Corporation seeking damages and criminal penalties for multiple claims under various statutes based on GE's alleged conduct during **Han's** bankruptcy. The District Court, adopting the report and recommendation of the Magistrate Judge, granted summary judgment in favor of GE on all claims except plaintiff's claims for damages under  [11 U.S.C. § 362\(h\)](#) for alleged violations of the automatic stay. The District Court referred these alleged stay violations to this

Court. GE now moves this Court for summary judgment. The Court has jurisdiction to hear this matter 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\(b\)\(2\)](#) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is granting in part and denying in part GE's motion for summary judgment.

FACTS ¹

On March 6, 1996, plaintiff Jung Bea **Han** signed a promissory note on a business loan with GE Capital Small Business Finance Corporation in the original principal amount of \$125,000.00. The note contained a fluctuating interest rate that was adjusted on the first business day of each month to the prime rate, as published in the Wall Street Journal, plus 2.75%. The note also contained a clause whereby if the debtor was in default when the Small Business Administration purchased the guaranteed portion of the debt, the interest rate at the time of the purchase would be locked-in on the entire debt from that time forward. On June 2, 2000, the loan interest rate reamortized to 12.25% based on the published prime rate plus 2.75%. **Han** defaulted on the monthly loan installment due on June 6, 2000. Based on the default, GE locked in the 12.25% interest rate on the loan on June 6, 2000. Since that time **Han** communicated with GE multiple times objecting to the locked in interest rate.

On October 11, 2000, Jung Bea **Han** and Hyung Sook **Han** filed a joint petition under Chapter 13 of the Bankruptcy Code. Along with their voluntary petition, the **Hans** filed a proposed Chapter 13 plan which listed GE as a secured creditor and provided for the debtors to make direct payments of all postpetition note obligations to GE, with the prepetition arrearage being paid through the proposed plan. The initial plan provided for the cure of \$5,500.00 in prepetition arrears. GE filed a secured proof of claim setting forth a prepetition arrearage amount of \$7,798.70 based on prepetition defaults pursuant to the promissory note. On March 9, 2001, the debtors filed a first amended plan stating that the debtors would pay GE the prepetition arrearages of \$7,798.70 through the plan, and make postpetition payments directly to GE. GE objected to the first amended plan claiming **Han's** postpetition direct payments to GE were short \$175.00 per month. On June 20, 2001, the debtors filed a second amended plan which extended the duration of the plan from 40 months

to 60 months and again stated the prepetition arrearage was to be paid through the plan with direct postpetition payments to GE. This second amended plan was confirmed by the bankruptcy court on July 12, 2001.

*2 After the confirmation order was entered, **Han** continued to question GE regarding the computation of the prepetition arrearages and the postpetition interest. GE responded to **Han's** inquiries on a number of occasions, providing **Han** with payment histories and written explanations. Despite having locked in the interest rate on **Han's** loan in June 2000, GE at some point returned the interest rate on the note to a fluctuating rate.

On February 23, 2004, the debtors' bankruptcy case was dismissed for failure to comply with a strict compliance order. On April 12, 2004, Mr. **Han** filed a lawsuit against GE in the U.S. District Court for the Northern District of Florida (Case No. 04–00127–MCR–EMT). On October 28, 2004, the U.S. District Court entered an order adopting a Report and Recommendation of the Magistrate Judge which dismissed the majority of the plaintiff's claims for lack of jurisdiction.

The three remaining claims, which seek damages under 11 U.S.C. § 362(h) were referred to this Court, giving rise to the present action. On March 29, 2005, this Court entered an order deeming **Han's** amended complaint filed in the District Court to be the Adversary Complaint in this proceeding.

Hans remaining claims are: (1) GE misapplied at least one postpetition direct payment (specifically the November 2000 payment) to the prepetition arrearage on his account in violation of the automatic stay provisions of 11 U.S.C. § 362; (2) GE violated the automatic stay by appraising its collateral (i.e., Plaintiff's property) after the filing of the bankruptcy petition; and (3) GE charged a higher interest rate on postpetition payments in violation of the automatic stay. To redress these alleged stay violations, **Han** seeks actual and punitive damages under § 362(h). GE now motions the Court for summary judgment on **Han's** remaining claims.

LAW

A motion for summary judgment is controlled by Rule 56 of the Federal Rules of Civil Procedure, which is applicable to bankruptcy proceedings pursuant to Fed. R. Bankr.P. 7056. A court shall grant summary judgment to a party when the movant shows that “there is no genuine issue as to

any material facts and ... the moving party is entitled to judgment as a matter of law.” Fed. R. Bankr.P. 7056(c). In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 2020 (1986), the Supreme Court found that a judge's function is not to determine the truth of the matter asserted or weight of the evidence presented, but to determine whether or not the factual disputes raise genuine issues for trial. *Anderson*, 106 S.Ct. at 2510–511. In making this determination, the facts are to be looked upon in the light most favorable to the nonmoving party. *Id.*; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

Han's remaining claims are all based upon purported violations of the automatic stay. **Han's** plan continually alleges that GE violated § 362(d)(3)(B), but that section involves relief from stay in single asset real estate cases and thus is not applicable in the present case. See 11 U.S.C. §§ 101(51B) & 362(d)(3). However, because **Han** is proceeding pro se, the Court will treat his complaint as alleging violations of the stay under § 362 generally. See *Stephens v. Georgia. Dept. of Transp.*, 2005 WL 1274481 (11th Cir.2005); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding that pro se pleadings are held to less stringent standards than counseled pleadings).

*3 The filing of a bankruptcy petition stays all entities from, among other things, “any act to obtain possession of property of the estate or property from the estate or to exercise control over property of the estate,” and “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.” 11 U.S.C. § 362(a). Additionally, the stay of an act against property of the estate continues until the property is no longer property of the estate, while the stay of any other act listed under § 362(a) continues until the case is closed, the case is dismissed, or a discharge is granted or denied, whichever comes first. *Id.* at § 362(c). Furthermore, to recover damages for a stay violation, § 362(h) requires that the creditor's act be “willful.” 11 U.S.C. § 362(h).

COUNT I

Han claims that GE misapplied at least one postpetition loan payment (specifically the November 2000 payment) to the prepetition arrearage in violation of the automatic stay. **Han** presented payment history statements (that GE provided to him) indicating a possible misapplication of the payment by GE.

Pursuant to § 362(a), the filing of a bankruptcy petition acts an automatic stay against actions or claims against property of the bankruptcy estate. See 11 U.S.C. § 362(a). When a bankruptcy petition is filed, all the debtor's property becomes property of the estate. See 11 U.S.C. § 541. But, upon confirmation of the Chapter 13 plan, only the property necessary for the fulfillment of the plan remains property of the estate, with the remaining property reverting in the debtor. *Telfair v. First Union Mortgage Corp. (In re Telfair)*, 216 F.3d 1333, 1340 (11th Cir.2000). In **Han's** case, after confirmation, only the amount required for the plan payments remained property of the estate.² See *id.* Thus **Han's** postconfirmation direct payments to GE, made outside the plan, were no longer property of the estate and GE's application of any of those payments to the arrearage would not violate § 362. Conversely, any preconfirmation payments were property of the estate. *Id.* But, once the payments were made, that is tendered to GE pursuant to the plan, the payments were no longer property of the estate. *Telfair v. First Union Mortgage Corp. (In re Telfair)*, 224 B.R. 243 (Bankr.S.D.Ga.1998), *aff'd by Telfair v. First Union Mortgage Corp.*, 216 F.3d 1333 (11th Cir.2000). The payments then became property of GE. *Id.* Whether GE properly applied the payment is purely a question of state law. *Id.* "Section 362(a) has nothing to do with that application." *Id.* at 248. Therefore, GE's motion for summary judgment will be granted as to Count I.

COUNT II

Han also asserts that GE violated the automatic stay by sending an appraiser, an equipment inspector, and an environmental inspector onto **Han's** business premises. GE had a right to have the property securing the debt owed

to it appraised and inspected. Additionally, **Han** provided no evidence that these inspections were performed with an improper purpose or in an improper manner. Therefore, the Court can find no basis for believing that these actions were taken in an effort to harass or coerce **Han**, or to collect the debt owed by **Han** to GE, or that the actions affected **Han's** efforts to reorganize in any manner. See *Health Science Products, Inc. v. Taylor (In re Health Science Products Inc.)*, 183 B.R. 903, 934 (Bankr.N.D.Ala.1995). GE's motion for summary judgment will be granted as to this portion of **Han's** claim.

COUNT III

*4 **Han** also claims that GE violated the automatic stay by charging a postpetition interest rate that was higher than the rate allowed under the note. GE locked in **Han's** interest rate at 12.25% after he defaulted on his loan in June of 2000. However, the note only allowed GE to lock in the rate if **Han** was in default when the SBA purchased the guaranteed portion of the loan. Although **Han** was in default in June of 2000, there is no evidence before the Court that the SBA purchased the guaranteed portion of the loan. Furthermore, there is no evidence before the Court of what the Wall Street Journal's published prime rates were on the applicable dates.

Because, as stated above, the preconfirmation direct payments were property of the estate, if GE charged a higher interest rate on the preconfirmation payments than the note authorized, there could have been a violation of the stay, as any amount GE charged over the note authorized amount could be considered an act to obtain possession of property of the estate. See 11 U.S.C. § 362(a)(3); *LTV Corp. v. Gulf States Steel, Inc. of Alabama*, 969 F.2d 1050 (D.C.Cir.1992) (acts to obtain possession of property of the estate interpreted broadly by courts). Without the abovementioned evidence, the Court cannot conclude that GE was entitled to the 12.25% interest rate on the preconfirmation direct payments, and summary judgment will be denied as to preconfirmation portion of Count III. But, as explained, the postconfirmation direct payments to GE were not property of the estate, and thus there could not have been a stay violation as to the postconfirmation direct payments. Accordingly, GE's motion for summary judgment will be granted as to the postconfirmation portion of Count III.

THEREFORE IT IS ORDERED that:

1. GE's motion for summary judgment is DENIED IN PART and GRANTED IN PART;

a) GE's motion for summary judgment is GRANTED for Counts I and II;

b) GE's motion for summary judgment on Count III is DENIED as to the preconfirmation payments and GRANTED as to the postconfirmation payments.

2. The surviving Count III claims will be addressed by the Court at trial or as part of a further motion for summary judgment, if presented.

3. A further telephonic status hearing will be held on August 22, 2005 to discuss a trial date or motions filed by either party.

All Citations

Not Reported in B.R., 2005 WL 2456933, 18 Fla. L. Weekly Fed. B 306

Footnotes

- 1 The District Court proceedings, including the Report and Recommendation of the Magistrate Judge, the Order of the District Court and the exhibits admitted into evidence are incorporated herein.
- 2 The language in **Han's** plan regarding what property remains property of the estate after confirmation is unclear. Therefore, *Telfair* overrides and all property not necessary for the fulfillment of the plan reverts in the debtor.