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

IN RE:	)	
	)	
DERRIL PALMORE and	)	
TAMMY PALMORE,	)	Case No. 17-02067
	)	
Debtors.	)	

ORDER DENYING MOTION TO REOPEN

This case is before the court on the debtors' motion (doc. 61) to reopen this chapter 13 case. The court held a hearing on the motion on November 28, 2018. The court delaying ruling on the motion pending mediation, which has been unsuccessful. For the reasons discussed below, the court denies the motion to reopen.

The debtors filed this chapter 13 bankruptcy on June 2, 2017. A proof of claim related to a mortgage on the debtors' property located in Trussville, Alabama (hereinafter "the property") was filed by "The Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-10." Specialized Loan Servicing LLC (hereinafter "SLS") serviced the loan on the property. The debtors' chapter 13 plan provided for surrender of the property.

SLS subsequently moved for relief from stay related to the property, which was granted by consent on August 25, 2017. The chapter 13 plan was confirmed on November 27, 2017. Both the chapter 13 trustee and the debtors moved to dismiss the case in March 2018. The court granted the trustee's motion and dismissed the case on April 10, 2018 due to the debtors' failure to make plan payments. The case was closed on June 18, 2018.

In November 2017, SLS foreclosed on the property. It then filed a state court ejectment action. The debtors counterclaimed for wrongful foreclosure and other causes of action, arguing that the mortgage had never been effectively assigned to SLS. On October 26, 2018, the debtors also filed a motion to reopen their dismissed chapter 13 bankruptcy case "to allow them to pursue

violations of law as it relates to the handling of a mortgage on the Debtors' home that arose as a result from a fraud on this court." (Mot. to reopen, doc. 61, at p.1). They argue that the proof of claim was fraudulent and request that the case

> be reopened for the limited purpose of invoking the court's powers to combat the prohibited conduct, to preserve the Debtors' rights and to protect the integrity of the claims and administrative processes provided for in the Bankruptcy Code, to pursue SLS and BNYM [Bank of New York Mellon] for violations of law and to grant such other further and different relief they may be entitled [*sic*].

(*Id.* at p.3). The debtors have not indicated that they intend on making monthly payments if the case is reopened. SLS opposes the debtors' motion.

Under 11 U.S.C. § 350(b), "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." The decision to reopen a bankruptcy case "is left to the sole discretion of the bankruptcy court on a case by case basis looking at the particular circumstances and equities of that specific case." *See Bank of Am., N.A. v. Rodriguez*, 558 B.R. 945, 948 (S.D. Fla. 2016) (citation and quotation marks omitted); *see also In re Long*, 564 B.R. 750, 761 (Bankr. S.D. Ala. 2017). "'When deciding whether to reopen a closed case, courts should generally consider the benefit to creditors, the benefit to the debtor, the prejudice to the affected party, and other equitable factors.'" *Rodriguez*, 558 B.R. at 948 (citation omitted). "Courts also consider the availability of an alternative forum for relief and the length of time between the closing of a case and the motion to reopen." *Id.*

The court has carefully considered the particular circumstances and equities presented in this case and finds that the motion should be denied. Although the debtors' confirmed chapter 13 plan is not entitled to res judicata effect because the bankruptcy was dismissed prior to discharge, *see* 8 *Collier on Bankruptcy* ¶ 1327.02[1], the debtors did agree to relief from stay with respect to the property and a final appealable order granting relief from stay was entered in August 2017. The debtors never appealed that order, and the property was foreclosed on in November 2017. The debtors did not take action to set aside the foreclosure until an ejectment suit was filed against them.

The debtors have state law remedies available to them which they can pursue in state court, and this court finds that it is appropriate to abstain from hearing the claims. *See* 28 U.S.C. § 1334(c).

Additionally, the court does not see any benefit to the debtors or the creditor in reopening this case. As discussed at the hearing, if the court reopened the case and set aside the foreclosure, the debtors would still owe the mortgage amount (regardless of whether SLS or another creditor was the proper party to the mortgage), including approximately $70,000 in pre- and postpetition mortgage arrearages. Paying that arrearage amount in the plan would greatly increase the debtors' plan payment, which they had trouble making even at a lower amount. Further, the debtors listed the property in their sworn schedules as being worth $222,000; considering the amount of the mortgage debt stated in the original proof of claim plus an additional 20 or so months of postpetition arrearage, the court estimates that the debtors would owe around $80,000 or $90,000 more than the property is worth.

Finally, even accepting the debtors' allegations as true, the allegations do not support a finding of fraud on the court. *See generally In re Smith*, No. 10-06841-TOM-13, 2012 WL 4090736 (Bankr. N.D. Ala. Sept. 12, 2012).

For these reasons, the debtors' motion (doc. 61) to reopen is denied.

Dated: January 22, 2019

HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE