

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

IN RE:)		
)	CASE No.	16-51133 (JAM)
JOHNNY RAY MOORE,)	CHAPTER	13
)		
DEBTOR.)	ECF No.	274
)		
)		

ORDER DENYING MOTION FOR STAY PENDING APPEAL¹

I. PROCEDURAL HISTORY

A detailed and lengthy account of the factual and procedural history of this case is set forth in an Order dated September 21, 2017, overruling the Debtor's objections to the secured Proof of Claim No. 10 of Residential Funding Mortgage Securities II, Inc. Home Equity Pass-Through Certificates, Series 2007-HSA2, U.S. Bank National Association, as Trustee, successor in interest to Bank of America N.A., as Trustee, successor by merger to LaSalle National Bank Association, as Trustee, c/o Specialized Loan Servicing LLC ("U.S. Bank"), and the secured Proof of Claim No. 11 of PennyMac Holdings, LLC ("PennyMac") (the "Order Overruling Debtor's Objections to Claim No. 10 and Claim No. 11", ECF No. 215). The secured Proofs of Claim of U.S. Bank and PennyMac relate to the real property commonly known as 15 Sachem Drive, Shelton, CT 06484 (the "Property"), which is the Debtor's principal residence.

Subsequent to entry of the Order Overruling Debtor's Objections to Claim No. 10 and Claim No. 11, the Debtor filed a Motion to Amend and Make Additional Findings of Fact

¹ The Debtor entitled his motion "Motion for Leave to Appeal Interlocutory Order and Motion to Stay Pending Appeal Regarding Claims No. 10 & 11". Because the Debtor sought two forms of relief in one motion, the motion was then docketed as two motions: (i) a Motion for Leave to Appeal (ECF No. 273); and (ii) a Motion To Stay Pending Appeal (ECF No. 274), which the Court deems to be a Motion for Stay Pending Appeal in accordance with Fed. R. Bankr. P. 8007.

pursuant to Fed. R. Bankr. P. 7051, 3008 and 9014 in connection with the Order (the "Motion to Reconsider", ECF No. 227). On November 8, 2017, the Debtor filed an Amended Motion to Reconsider the Order (the "Amended Motion to Reconsider", ECF No. 255). On November 14, 2017, the Motion to Reconsider was denied for failure to show cause why the relief requested should be granted. On November 28, 2017, the Debtor appealed the Order Overruling Debtor's Objections to Claim No. 10 and Claim No. 11 to the United States District Court for the District of Connecticut. In addition to filing a Notice of Appeal (ECF No. 272), the Debtor also filed a Motion for Leave to Appeal and a Motion for Stay Pending Appeal. On December 12, 2017, PennyMac filed an objection to the Motion for Stay Pending Appeal (ECF No. 306).

A hearing on the Amended Motion to Reconsider was scheduled to be held on December 12, 2017, the same date on which PennyMac's Amended Motion for Relief from the Automatic Stay with *In Rem* Relief (the "Amended Motion for Relief") was scheduled for a hearing. On December 1, 2017, the Debtor filed a Motion to Continue the December 12th hearing on PennyMac's Amended Motion for Relief, which was denied on December 6, 2017. Because the Debtor failed to appear at the December 12th hearing, the Court continued the hearing on the Amended Motion to Reconsider and the Amended Motion for Relief to December 14, 2017, the date set for the confirmation hearing on the Debtor's Chapter 13 Plan.

On December 14, 2017, the Debtor also failed to appear at the hearing on the Amended Motion to Reconsider, the Amended Motion for Relief from the Automatic Stay with *In Rem* Relief by PennyMac, the confirmation of the Debtor's Chapter 13 Plan, and the Chapter 13 Trustee's Amended Motion to Dismiss the Debtor's Case for Exceeding the Debt Limits for Chapter 13 Eligibility. Because the Debtor failed to appear at the December 14th hearing, all matters scheduled for hearing were continued to January 10, 2018. On December 15, 2017, an

Order to Appear and Show Cause why case should not be dismissed as a bad faith filing was issued, setting January 10, 2018, at 10:00 a.m. as the hearing date and time on the Order to Appear and Show Cause.

In addition to the hearings scheduled to be held in this case on January 10, 2018, the Debtor's Motion for Stay Pending Appeal has been pending since November 28, 2017, and is now ripe for adjudication.

II. ANALYSIS

When deciding a Motion for a Stay Pending Appeal, a court must consider four factors:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

In re World Trade Ctr. Disaster Site Litig., 503 F.3d 167, 170 (2d Cir. 2007) (footnote omitted) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

Several courts have held that the most significant of the four criteria is the likelihood of success on appeal. *In re MDM Golf of Gillette Ridge, LLC*, No. 3:15cv27 (JBA), 2015 WL 12804567, at *4 (D. Conn. May 8, 2015) (citing *In re Taub*, 470 B.R. 273, 278 (E.D.N.Y. 2012)). However, “[t]he requisite showing of substantial possibility of success is inversely proportional to the amount of irreparable injury [plaintiff] will suffer absent the stay.” *Id.*

Here, the balance of the factors weigh in favor of denying the Motion for Stay Pending Appeal. The Debtor's objection to Claims No. 10 and 11 is based upon his assertion that the debts were discharged in his prior Chapter 7 bankruptcy case. The Debtor's argument is without merit. Although the Debtor's *in personam* liability of the debts in Claims No. 10 and 11 was discharged in his Chapter 7 case, the *in rem* liability was not discharged.

The law on the issue of *in rem* liability is clear. The United States Supreme Court and courts in this jurisdiction have held that a Chapter 7 discharge extinguishes the *in personam* liability on a debt secured by the debtor's property, but the *in rem* liability survives or passes through bankruptcy. *See* 11 U.S.C. § 727(b); *Johnson v. Home State Bank*, 501 U.S. 78, 78-79 (1991); *see also Curwen v. Whiton*, 557 B.R. 39, 42 (D. Conn. 2016). Given this case law—and in particular the *Johnson* case and the cases cited in *Johnson*—a Chapter 7 discharge precludes a secured creditor from pursuing a deficiency judgment against the debtor personally, but it leaves intact the secured creditor's right to pursue an action against the debtor *in rem*, including an action to foreclose its interests in the property securing the debt.

In this case, the Debtor proposes to retain the Property, but does not treat or address the *in rem* liability secured by the Property in his Chapter 13 Plan. The Debtor has two choices: (i) treat Claims No. 10 and 11 as secured claims in his Chapter 13 Plan; or (ii) allow the U.S. Bank and PennyMac to foreclose their interests in the Property under applicable non-bankruptcy law. Simply stated, if the Debtor wants to keep the Property, he must satisfy the *in rem* liability in his Chapter 13 Plan. Because the Debtor's Chapter 13 Plan does not address Claims No. 10 and 11 in *any* manner, and because the *in rem* liability was not discharged in his prior bankruptcy case, the Debtor has failed to show a substantial likelihood of success on the merits.

Although the Debtor may be harmed if a stay is not granted, this factor is outweighed by the other factors to be considered when deciding a motion for stay pending appeal. *See Thapa v. Gonzales*, 460 F.3d 323, 334–35 (2d Cir. 2006) (discussing weighing of stay factors). The third factor weighs against the Debtor because PennyMac has not been able to foreclose on the Property even though there is no equity in the Property, and because “[t]o date, the Debtor’s secured creditor has been carrying this [P]roperty while the Debtor enjoys the use of it rent free.”

PennyMac's Objection at p. 2 (ECF No. 306). The fourth factor also weighs against the Debtor because there is a public interest in the finality of orders. *In re Turner*, 207 B.R. 373, 379 (B.A.P. 2d Cir. 1997).

After consideration of the issues presented, and balancing the relevant factors, PennyMac's objection to the Motion for Stay Pending Appeal is **SUSTAINED**, and the Motion for Stay Pending Appeal is **DENIED**.

The Clerk's Office shall serve this Order on the Debtor via the email address provided by the Debtor on his petition and via first class mail at 15 Sachem Drive, Shelton CT, 06484.

IT IS SO ORDERED at Bridgeport, Connecticut this 5th day of January, 2018.

Julie A. Manning
Chief United States Bankruptcy Judge
District of Connecticut