

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

IN RE:)	CASE No.	19-22132 (JJT)
)		
10-5TH LLC,)	CHAPTER	11
Debtor.)		
)	RE: ECF Nos.	85, 101

ORDER DISMISSING CHAPTER 11 CASE WITH A TWO-YEAR BAR

Upon the Motion of secured creditor Manuel Moutinho, Trustee for the Mark IV Construction Company, Inc., 401(K) Savings Plan (“Moutinho”) to convert this case or dismiss it with a two (2) year bar (ECF No. 85), the Court makes the following findings:

1. On December 30, 2008, Red Buff Rita, Inc. executed a promissory note and mortgage in favor of Moutinho in the principal amount of \$100,000 on certain real estate known as 10 Fifth Avenue, Stratford, CT (the “Property”).
2. Red Buff Rita, Inc. failed to make payments on the note and Moutinho brought suit seeking to foreclose on the mortgage on the Property in the case entitled *Manuel Moutinho, Trustee for Mark IV Construction Co., Inc., 401(K) Savings Plan v. Red Buff Rita, Inc. et al*, pending in Connecticut Superior Court, Docket No. UWY-CV11-6013990-S (Conn. Super. Ct. 2011). In an Order dated July 3, 2013, a judgment of strict foreclosure entered in favor of Moutinho relating to the Property (the “Moutinho Foreclosure Action”). Thereafter the Defendants appealed the judgment.
3. Further frustrating Moutinho’s efforts to foreclose on the Property, on June 6, 2014, an entity known as 500 North Avenue LLC filed a voluntary petition under Chapter 11 of the Bankruptcy Code, wherein the Property was listed as an asset. *See In re 500 North*

Avenue LLC, Case No. 14-31094 (ANH). The ultimately unsuccessful bankruptcy spanned more than four years, during which time Moutinho was granted stay relief as to the Property to complete the prosecution of the Moutinho Foreclosure Action. The bankruptcy case was dismissed with *in rem* relief to certain other creditors regarding different properties on September 7, 2018.

4. Thereafter, an entity known as JRB Holding Co., LLC (“JRB”) brought suit against 500 North Avenue LLC seeking to foreclose on a mortgage interest junior to Moutinho’s mortgage on the Property (the “JRB Foreclosure Action”). *See JRB Holding Co LLC v. 500 North Avenue LLC*, filed in Connecticut Superior Court, Docket No. FBT-CV18-6079033-S (Conn. Super. Ct. 2018). In an Order dated April 8, 2019, a judgment of strict foreclosure entered in favor of JRB.
5. After numerous appeals in the Moutinho Foreclosure Action, the Connecticut Appellate Court ultimately affirmed the judgment of strict foreclosure and remanded the case for the purposes of resetting the law days. On December 3, 2019, the Superior Court re-entered the judgment of strict foreclosure in favor of Moutinho and set the first law date in the Moutinho Foreclosure Action for December 24, 2019 for the mortgagor Red Buff Rita, Inc. (the “Mortgagor”). Red Buff Rita, Inc., failed to redeem the title to the Property by the date of redemption.
6. On December 9, 2019, the Debtor in this case, 10-5TH LLC (the “Debtor”), acquired its title to the Property through a quit claim deed from JRB. James Barrett is listed as the principal for both 10-5TH LLC and JRB.
7. On December 23, 2019—the eve of the law day in the Moutinho Foreclosure Action—the Debtor herein filed this case under Chapter 11 of the Bankruptcy Code.

8. The Debtor is not the original mortgagor that granted a promissory note and mortgage in favor of Moutinho, it is not obligated under any note to Moutinho, and it is not a party to the Moutinho Foreclosure Action. Rather, because Red Buff Rita, Inc., as Mortgagor in the Moutinho Foreclosure Action, never filed for protection under the Bankruptcy Code, the provisions of Conn. Gen. Stat. § 49-15(b), which otherwise would have stayed the running of the law day in the Moutinho Foreclosure Action, never came into force and effect. As a result, 11 U.S.C. § 108(b) provided the Debtor herein with only sixty (60) days from December 24, 2019 to redeem the title to the Property by paying Moutinho the full amount of the judgment debt.
9. The Debtor never exercised its right of redemption within the 60 days provided under § 108(b).
10. Consequently, the Debtor's title to the Property, both legal and equitable, has been extinguished by operation of law.
11. The filing of the Debtor's Chapter 11 case did not further stay or prevent the vesting of title in favor of Moutinho from occurring, as 11 U.S.C. § 108(b) controls over the provisions of 11 U.S.C. § 362(a). *See In re Canney*, 284 F.3d 362 (2d Cir. 2002).
12. The Debtor's argument that Moutinho has asserted inconsistent positions, i.e., by filing a Motion to Reset Law Days in a separate foreclosure proceeding,¹ while also filing the instant Motion to Dismiss in this matter, and thus should be judicially estopped from seeking dismissal, is without merit. Notwithstanding the strategy or conception of the law by Moutinho's counsel in similar proceedings, there is simply no basis for this Court to estop Moutinho from receiving the relief sought herein.

¹ *See Manuel Moutinho, Trustee v. Seventeen Ninety-Four Barnum Avenue, Inc., et al*, pending in Connecticut Superior Court, Docket No. UWY-CV10-6013997-S (Conn. Super. Ct. 2010).

13. In light of the history of the subject Property, the multiplication of unavailing bankruptcy proceedings, and the frustration of foreclosure proceedings, it is appropriate, fair and in the interests of justice, as well as in line with this Court's affirmative obligation to discourage dilatory, wasteful or meritless bankruptcy filings, that this Chapter 11 case be dismissed with a two (2) year bar on any refiling by the Debtor, its affiliates or assignees, as there is no interest in the Property to reorganize herein.

14. The transfer of title in this Property (and the related properties), along with the filing of unsuccessful bankruptcy petitions by various owners, demonstrates a conscious scheme or pattern to delay, hinder, or defraud creditors through the collective or serial stalling of the Moutinho Foreclosure Action as to this Property.

Accordingly, it is hereby:

ORDERED: Pursuant to 11 U.S.C. §§ 349(a) and 1307(c), the Debtor's case is dismissed with prejudice and the Debtor is barred from filing for relief under any chapter of the Bankruptcy Code, in any bankruptcy court, for a period of not less than two (2) years from the date of entry of this Order; it is further

ORDERED: Pursuant to 11 U.S.C. § 362(d)(4) of the Bankruptcy Code, for cause shown, Moutinho is granted *in rem* relief from the automatic stay with respect to the Property. This *in rem* relief shall apply to any person or entity and remain in force and effect notwithstanding this dismissal; it is further

ORDERED: For good and sufficient cause shown, the 14-day stay of execution of this Order imposed by Fed. R. Bankr. P. 4001(a)(3) is waived by the Court so that Moutinho, in the interests of fairness, equity, and justice, may immediately proceed to enforce his foreclosure remedies; and it is further

ORDERED: Moutinho shall be entitled to immediately record this Order on the Land Records of the Town of Stratford, CT.

IT IS SO ORDERED at Hartford, Connecticut this 22nd day of June 2020.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

