

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

IN RE:	)	CHAPTER	7
)		
MARK R. FIELDS,	)	CASE NO.	18-21003 (JJT)
DEBTOR.)		
_____	)	RE: ECF NOS.	32, 41, 44, 45
BONNIE C. MANGAN, CHAPTER 7)		
TRUSTEE,	)	ADV. PRO. NO.	18-02066 (JJT)
PLAINTIFF)		
	)	RE: ECF NO.	1
V.)		
)		
CASTANHO DEVELOPMENT, LLC,)		
THAMES RIVER LANDING, LLC,)		
AND MARK R. FIELDS,)		
DEFENDANTS.)		
_____)		

**RULING AND ORDER ON MOTION FOR RELIEF FROM
STAY TO ENFORCE POSSESSORY INTEREST IN PROPERTY**

APPEARANCES

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I. INTRODUCTION

Nicholas Murray Butler, the longest serving president of Columbia University, once said that “the limited liability [company] is the greatest single discovery of modern times.”¹ In order to live up to such a description, the limited liability company (“LLC”) must have a few special characteristics, for if not, then individuals would simply join partnerships or corporations. Instead, every day, individuals choose to embark into a land of limited risk, where they are shielded from personal liability and responsibility. Even on its worst day, should the LLC succumb to its debts and file bankruptcy, its members are not personally liable for the business’s expenses. The LLC entity and its members are wholly distinct.

Before the Court is one such LLC member, Mark R. Fields (“Debtor”). The Debtor is a member of Thames River Landing, LLC (“TRL”). TRL is an active LLC registered with the Office of the Secretary of the State and lists 626 Laurel Hill Road, Norwich, Connecticut 06360 (“Property”) as its business and mailing addresses. The Debtor is the managing member and holds an 80% interest in TRL, and three other members each hold either 5% or 10% interests in the LLC.

II. PROCEDURAL POSTURE AND JURISDICTION

On August 23, 2018, Castanho Development, LLC (“Castanho”) filed an Amended Motion for Relief from Stay (“Motion,” ECF No. 32) in the Debtor’s case pursuant to 11 U.S.C. § 362(d) for relief from the automatic stay with respect to enforcing its possessory interest in the Property. That same day, Bonnie C. Mangan, Chapter 7 Trustee (“Trustee”) filed a complaint (“Complaint,” ECF No. 1) in an adversary proceeding against Castanho, TRL, and the Debtor seeking declaratory relief to determine the applicability of the automatic stay to the Property. On August 29, 2018, the Court held a hearing (“Hearing”) on the Motion and the Complaint with the Debtor present and

¹ Nicholas Murray Butler, President, Columbia Univ., Politics and Economics at the 143rd Annual Banquet of the Chamber of Commerce of State of New York (1911) (transcript available in the Cornell Univ. Library).

requested that the parties provide supplemental briefing on the issues before it. On September 11, 2018, Castanho filed its Brief in Support of the Motion and the Court's Lack of Jurisdiction Over the Property ("Supplemental Brief," ECF No. 41), bolstering its argument for relief under 11 U.S.C. § 362(d) and asserting that the Court lacks jurisdiction over the Property. The Debtor filed a Brief in Support of Extending the Automatic Stay (ECF No. 44) on September 22, 2018. On September 25, 2018, the Trustee's Reply Brief ("Reply Brief," ECF No. 45) was filed with the Court, which requested a stay of the *status quo ante* to allow the Trustee to bring proceedings to restore title to the Property back to TRL.

The Court has jurisdiction over this proceeding under 28 U.S.C. §§157 and 1334(b). This is a core proceeding pursuant to 28 U.S.C. §§157(b)(2)(G).

III. DISCUSSION

A. Factual Summary

On October 9, 2015, the State of Connecticut conveyed the Property to TRL by quitclaim deed ("Deed"). On October 21, 2015, TRL executed a commercial promissory balloon note ("Note") with Castanho. That same day, TRL executed an Open-End Commercial Mortgage Securing Future Advances ("Mortgage") in favor of Castanho. The Deed and the Mortgage were recorded in the Norwich Land Records on October 21, 2015. Both the Note and the Mortgage state that their proceeds "are to be used solely for business and commercial purposes and not at all for any personal, family, household, or other noncommercial . . . purposes."

TRL subsequently defaulted, and Castanho initiated foreclosure proceedings against TRL in the Superior Court ("Foreclosure Action").² TRL was the only party to the Foreclosure Action. None of TRL's four members, including the Debtor, were named in the Foreclosure Action. On

² The Foreclosure Action is docketed as *Castanho Dev., LLC v. Thames River Landing, LLC*, Superior Court, judicial district of New London, Docket No. CV-17-6031608-S.

March 12, 2018, the Superior Court held a hearing on Castanho's motion for judgment of strict foreclosure, which included an appraisal of the Property. The appraisal stated that the Property requires \$1.1 million of estimated remediation costs for above-ground hazardous materials. TRL affirmatively stated on the record that it did not challenge the appraisal or its valuation of the Property. The Superior Court entered judgment of strict foreclosure ("Judgment") in favor of Castanho finding \$628,969.91 in debt and \$12,544.06 in attorney's fees, totaling \$641,513.97 owed by TRL. The Judgment included a valuation of the Property at \$620,000.00, based on the appraisal, and set the law day for June 19, 2018. TRL did not extend the law day, file an appeal, or file for bankruptcy. Accordingly, title to the Property vested in Castanho on June 20, 2018, with the Certificate of Foreclosure recorded on June 21, 2018. Once its title vested, Castanho subsequently paid \$120,305.18 in outstanding property taxes to the City of Norwich. The Debtor is still in possession of all or some portion of the Property and resides there.

B. Legal Analysis

The Court must decide: (1) whether the bankruptcy court has jurisdiction over the Property; (2) whether the automatic stay pursuant to 11 U.S.C. § 362(a) is applicable to the Motion; and (3) whether there nonetheless is cause to grant relief under 11 U.S.C. § 362(d) from the automatic stay currently protecting the Debtor and his possession.

When a bankruptcy case commences, the debtor's estate includes the property codified in 11 U.S.C. § 541. "Such estate is comprised of all the following property, wherever located and by whomever held: Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). Where a debtor did not have an interest in property when it filed its bankruptcy petition, the bankruptcy estate similarly does not have an interest in such property. *New England Bank &*

Trust Co. v. Loubier (In re Loubier), 6 B.R. 298, 301 (Bankr. D. Conn. 1980). Likewise, the trustee stands in the shoes of the debtor regarding claims and defenses in an action; where a debtor could not make a claim or defense, the trustee also cannot make the claim or defense. 5 COLLIER ON BANKRUPTCY ¶ 541.07[1], p. 541–43 (16th ed. 2017). “A decree of strict foreclosure finds the amount due under the mortgage, orders its payment within a designated time and provides that should such payment not be made, the debtor’s right and equity of redemption will be forever barred and foreclosed. *Most significantly, the effect of strict foreclosure is to vest title to the real property absolutely in the mortgagee and to do so without any sale of the property.* A judgment of strict foreclosure, when it becomes absolute and all rights of redemption are cut off, constitutes an appropriation of the mortgaged property to satisfy the mortgage debt.” *Ocwen Fed. Bank, FSB v. Charles*, 95 Conn. App. 315, 323–24 (2006) (emphasis added; citations and internal quotation marks omitted.) When a third party is vested with title to property, the bankruptcy court has no jurisdiction over the property, since it is not a part of the bankruptcy estate. *In re Loubier*, 6 B.R. at 303; *see also In re Kane*, 236 B.R. 131, 137 (Bankr. D. Conn. 1999). The automatic stay does not apply to actions against property that is neither property of the debtor nor its estate. *Adm’r of Vets.’ Aff. v. Sparkman (In re Sparkman)*, 9 B.R. 359, 363 (Bankr. E.D. Penn. 1981) (citing *In re Loubier*).

Before the Foreclosure Action, TRL held record title to the Property. The Debtor has never owned and has never appeared in the Property’s chain of title. Although the Debtor has a membership interest in TRL, that membership interest does not transform into a property interest to anything that TRL owns. Additionally, TRL has not filed and is not currently in bankruptcy. While TRL may have been the debtor on the Mortgage and Note, TRL is not the Debtor in this Court. Only Mr. Fields, in his individual and personal capacity, is the Debtor before this Court.

Under Connecticut statutory law, “[a] debt, obligation or other liability of a limited liability company is solely the debt, obligation or other liability *of the company*. A member or manager *is not personally liable*, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the company solely by reason of being or acting as a member or manager.” Conn. Gen. Stat. Ann. § 34-251a(a) (emphasis added). This is due to the fact that a LLC “is an entity distinct from its member or members.” Conn. Gen. Stat. Ann. § 34-243g(a). “A member or manager . . . may not sue in an individual capacity to recover for an injury based on a wrong to the limited liability company. . . . [A] member or manager of a limited liability company is not a proper party to a proceeding by or against a limited liability company solely by reason of being a member or manager of the limited liability company[.]” *Bongiorno v. Capone*, 185 Conn. App. 176, 199–200 (2018) (citing *Padawer v. Yur*, 142 Conn. App. 812, 817–18 (2013)).

Much as Castanho must have standing to bring its claims in both the Superior Court and this Court, so too must the Debtor, and through the Debtor, the Trustee. The Debtor was never named as a party defendant in the Superior Court,³ nor did he intervene into the Foreclosure Action. Therefore, he lacked standing to assert defenses or counterclaims in the Foreclosure Action regarding the Property. In the present bankruptcy action, the Debtor and the Trustee cannot now make arguments that should have been made on behalf of TRL in the Foreclosure Action solely because they have standing in this Court. This runs counter to the principles of *res judicata* and the *Rooker-Feldman* doctrine. The time has expired to make such arguments, and Castanho is the record title holder, unless the *Debtor personally* or the Trustee can assert a *bona fide* theory to

³ The Trustee takes issue with the fact that the Debtor is the guarantor under the Note, but was not named in the Foreclosure Action and thus was not afforded a right of redemption. Guarantees are “separate and distinct” contractual agreements from the note or the mortgage, and the “mortgagee cannot enforce a mortgage obligation in a foreclosure proceeding against a guarantor because a guarantor is not a party to such an obligation. . . . The guarantors have no legal interest in the property securing the note and have no equitable or statutory right of redemption in the property.” *JP Morgan Chase Bank, N.A. v. Winthrop Props., LLC*, 312 Conn. 662, 675, 682 (2014).

assail the vesting of title. The prospect that equity, which *might* benefit a LLC member, *may* have been improvidently relinquished in the Foreclosure Action is legally insufficient to trigger an expansive and retroactive extension of the automatic stay so as to void the vesting of title.

In constructing her argument, the Trustee's reliance on *Queenie* is misdirected. The automatic stay *may* apply to a non-debtor, but "only when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate." *Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287 (2d Cir. 2003). There should be "such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant[.]" *Id.* at 288 (quoting *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986)).⁴ This is an extraordinarily high bar meant for "unusual circumstances." *Piccinin*, 788 F.2d at 999. Not only that, but in *Queenie*, the company that was protected by the automatic stay extension was solely owned by the debtor, and the debtor was a party in the underlying case. Apprehension of an adverse result cannot be the sole limiting factor because if that were so, then "there would be vast and unwarranted interference with creditors' enforcement of their rights against non-debtor co-defendants." *Queenie*, 321 F.3d at 288. Here, the Debtor is not even a co-defendant in the Foreclosure Action, nor does he wholly own TRL. Extending the automatic stay to the Debtor "exceeds the bounds of responsible advocacy." *Id.* For the Court to extend the automatic stay, as

⁴ One example of an extenuating circumstance is where the guarantor's obligation is affected in the litigation. *Queenie*, F.3d at 287 (citing *McCartney v. Integra Nat'l Bank N.*, 106 F.3d 506, 511 (3d Cir. 1997) (holding that where the debtor guarantor is a *required co-defendant* in a deficiency judgment action, the automatic stay applies to both the non-debtor and debtor)). Although it is outside of the scope of relief requested by Castanho in its Motion, the Trustee raises a concern that the Debtor could still be held liable for a deficiency judgment since he was a guarantor under the loan documents, and so the Court addresses it briefly. Regarding an action for a deficiency judgment, as Castanho concedes in its Supplemental Brief, the time to file a motion seeking a deficiency judgment has passed. *See* Conn. Gen. Stat. Ann. § 49-14(a). If Castanho now decides to attempt to bring a deficiency judgment action against the Debtor, the automatic stay under 11 U.S.C. § 362(a)(1) will still apply to protect the Debtor, and Castanho would be in violation of the automatic stay.

advocated, it would wreak havoc upon the integrity of the state foreclosure process and the sanctity of final judgments that vest title.

The Debtor does hold a personal property interest in this case, and that is his membership interest in TRL.⁵ That, however, is vastly different from an individual property interest in TRL's past or present real property. An interest in an LLC and all that it entails, which includes, among other things, voting rights, managerial and decision-making powers, agency authority, and signatory power, does not include a legally cognizable personal interest in the LLC's real property.

The Trustee argues here that because the Debtor holds a voting and managing interest in TRL, the Chapter 7 bankruptcy estate has an elevated interest in the LLC. The Trustee cannot conflate the property interest *in* the LLC with the property interest *of* the LLC. Simply because the Debtor holds such interests in TRL does not make his property interest more real than those of the other non-voting members. An LLC does not work as both a shield for its members from personal liability and a sword to assert a personal interest of one of its members. Where the Debtor is not personally liable on the underlying Note and Mortgage on the Property, he cannot now assert a property interest as an individual member of the entity whose property was foreclosed upon in the Foreclosure Action. The Debtor was shielded from any type of liability in the Foreclosure Action and cannot assert with its managing membership sword any legal or equitable right to the Property. Moreover, Castanho's payment of over \$120,000.00 in back property taxes goes even more to the manifestly inequitable effect an ill-advised extension of the automatic stay would perpetrate on Castanho. To allow the Debtor the ability now to unwind a foreclosure or redeem the Property would give this ability to all of TRL's members, whether there were two, ten, or hundreds. It would

⁵ A debtor's membership interest in a LLC is property of the estate under 11 U.S.C. § 541(a). *Assocs. Commercial Corp. v. Rodio (In re Rodio)*, 257 B.R. 699, 701 (Bankr. D. Conn. 2001); *see also* Conn. Gen. Stat. Ann. § 34-259 (transferable LLC membership interest is personal property).

also cause untoward consequences in every foreclosure action where equity interests might be held by debtors.

Despite all of the above, the automatic stay is implicated in this bankruptcy proceeding because of the Debtor's possession of the Property. The "mere possessory interest in real property, without any accompanying legal interest, is sufficient to trigger the protection of the automatic stay." *48th St. Steakhouse, Inc. v. Rockefeller Grp., Inc. (In re 48th St. Steakhouse)*, 835 F.2d 427, 430 (2d Cir. 1987); *but see Policy Realty Corp. v. Treber Realty LLC (In re Policy Realty Corp.)*, 2000 WL 534265, at *3 (2d Cir. 2000) (summary order) (holding that where a debtor has no equitable possessory interest in the premises, the automatic stay may not apply). The passing of the law day to redeem the Property and the Foreclosure Action Judgment extinguished any equitable interest the Trustee may allege the Debtor retains and are both evidence that the Debtor holds nothing more than a mere possessory interest in the Property. Thus, in order to protect its possessory interest in the Property and to file an action to evict the Debtor, Castanho must ask this Court for relief from the automatic stay. The exact parameters of that possession will be defined by state law and can be properly tested in a state court eviction proceeding. Although the Trustee asserts that any eviction action against the Debtor must be stayed, she provides no offer of adequate protection or support as to why. Thus, Castanho has met its burden and made a *prima facie* case for cause for relief from the automatic stay under 11 U.S.C. § 362(d)(1) in order to proceed with an action against the Debtor to extinguish his claimed naked possessory interest in the Property that it now owns.

Lastly, regarding the Trustee's qualms over the valuation of the Property, foreclosure actions are administered under state law, and to allow a federal court to undo a state court's ruling would create a federal cloud on title. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994).

Where the law day has passed and title has vested absolutely in the encumbrancer, a reviewing court cannot revive a mortgagor's interest. *Ocwen*, 95 Conn. App. at 324–25.

Though both the Debtor and the Trustee hope to realize claimed equity in the Property for a LLC member, this Court does not have the jurisdiction to provide such a remedy in this context, upon these facts and legal claims. The Trustee spends much time in the Reply Brief laying out arguments for an increased valuation of the Property, but these arguments unfortunately fall flat because they have been advanced in the wrong context, by the wrong debtor, and, perhaps, at the wrong time. The Trustee may be able to bring these arguments as a claimed fraudulent conveyance in a TRL bankruptcy, or otherwise. However, as that is not the case before the Court, and the Court does not have jurisdiction over the Property, it will not entertain the merits of such arguments in this Debtor's case. This ruling is without prejudice to the parties' respective petitions should TRL file for bankruptcy protection and the Trustee choose to maintain such an avoidance action or other proceeding.

IV. FINDINGS AND CONCLUSIONS

The Debtor wants to have his cake and eat it, too. After devouring the entire cake, he now would like the Trustee to serve him another slice. The Debtor signed up for a limited liability scheme when he formed TRL, and that limited liability protection is precisely a part of the magic of the LLC that President Butler admired in his speech over 100 years ago. The Debtor does not now get to both protect himself and other LLC members from claimed losses as an individual and also act as the LLC entity. If the Debtor wanted to protect the Property before title vested with Castanho, he could have done so in the Foreclosure Action or sought bankruptcy relief for TRL. He has not done so here. Accordingly, after notice and the Hearing, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The Motion is GRANTED for cause under 11 U.S.C. § 362(d)(1);
2. The Court lacks jurisdiction over the Property, as it is not encompassed in the property of the Chapter 7 bankruptcy estate;
3. The automatic stay has not impaired Castanho's, or its assigns', ability to secure its title interest from TRL in the Property, as such potential remedies do not fall under the purview of the Debtor's automatic stay;
4. Relief from the automatic stay is granted to allow Castanho, or its assigns, the opportunity to seek possession of the Property from the Debtor by ejectment or summary process during the pending bankruptcy proceeding due to its Judgment in the Foreclosure Action and the absence of adequate protection or any articulated reason or equity to preserve the right of possession for the Chapter 7 bankruptcy estate;
5. For cause, and in the interests of justice and fundamental fairness, the Court waives the 14-day stay for such relief so that these actions may advance with dispatch and so as to avoid any prejudice in delaying Castanho, or its assigns, from enforcing its Judgment and secure its title and possession.⁶

IT IS SO ORDERED in Hartford, Connecticut this 2nd day of October 2018.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut

⁶ Nothing herein authorizes any action or proceeding to secure a deficiency judgment or collection against the Debtor or the Chapter 7 bankruptcy estate.