

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
Eastern Division

FILED  
2006 JUN 19 PM 4:06  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In Re:

In Proceedings Under Chapter 13

SHEILA MILLER,

Case No.: 07-16465

Debtors.

JUDGE RANDOLPH BAXTER

ORDER

Before the Court is National City Bank's ("Creditor") Motion for "In Rem" Relief from Stay. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and General Order No. 84 of this District. After considering Creditor's Motion and conducting a hearing, the Court rules as follows:

Creditor seeks to preclude the Debtor from including certain real property in any future bankruptcy filings because of Debtor's repetitive filings. Although not specified in its Motion, Creditor indicated at the hearing on the Motion that the statutory basis for the relief sought is 11 U.S.C. § 362(d)(4). Creditor alleges that Debtor has filed three Chapter 13 petitions since 2006 in attempt to frustrate Creditor's attempt to foreclose on certain real property.

11 U.S.C. § 362(d)(4) states:

- (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
  - (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either—
    - (A) the transfer of all or part ownership of, or other interest in, such real

property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

Accordingly, pursuant to 11 U.S.C. § 362(d)(4), Creditor must show that the Debtor intended to defraud it. While the serial filings may be proof that the Debtor acted with the intent to delay and hinder Creditor's foreclosure, there is nothing before the Court to prove that the Debtor intended to defraud Creditor. The elements of fraud are: "1) false representation of material fact; 2) knowledge of or a belief in its falsity by the person making it; 3) belief in its truth by the person to whom it is made; 4) intent that it should be acted upon; and 5) detrimental reliance upon it by the person claiming to have been deceived." *In re Meridia Products Liability Litigation*, 328 F.Supp.2d 791, 820 (N.D. Ohio 2004). Herein, Creditor alleges only that Debtor has filed serial petitions in order to stop foreclosure but fails to make any allegations of fraud.

Accordingly, the Motion is denied.

**IT IS SO ORDERED**

Dated, this 18<sup>th</sup> day of  
January, 2008.

  
RANDOLPH BAXTER  
JUDGE  
UNITED STATES BANKRUPTCY COURT