

IT IS SO ORDERED.

Dated: 02:38 PM August 02 2011


MARILYN SHEA-STONUM *JS*
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 09-52824
)	
JURGEN LEE AND TAMARA LYNN)	CHAPTER 7
CHOPEK-LEE,)	
)	
DEBTORS.)	
)	ADVERSARY NO. 09-5180
HAROLD CORZIN,)	
)	JUDGE MARILYN SHEA-STONUM
PLAINTIFF,)	
)	
vs.)	
)	
CINDY LEE STUTTTLER, <i>ET AL.</i> ,)	ORDER DENYING MOTION TO
)	VACATE
DEFENDANTS.)	

This matter is before the Court on the amended motion (the “Motion to Vacate”) of PHH Mortgage to vacate a default judgment pursuant to Fed. R. Civ. P. 60(b) made applicable in bankruptcy cases and adversary proceeding by Fed. R. Bankr. P. 9024. Harold Corzin, the Chapter 7 Trustee and Plaintiff in the above-referenced adversary proceeding, and

Cindy Stuttler, one of the Defendants in the above-referenced adversary proceeding filed responses to the Motion to Vacate. Following oral argument on the Motion to Vacate, the Court took this matter under advisement.

Jurisdiction

This proceeding arises in a case referred to this Court by General Order No. 84 entered in this district on July 16, 1984 and is determined to be a core proceeding pursuant to 28 U.S.C. §157(b)(2), over which this Court has jurisdiction pursuant to 28 U.S.C. §1334. The Court is authorized to enter final judgment in this proceeding.

Background

On June 25, 2009 (the “Petition Date”), Ms. Lee and her husband filed a Chapter 7 case. Harold Corzin was appointed as trustee. Prior to the Petition Date, Ms. Lee and her sister (“Stuttler”) owned real property. After 2001 only Stuttler resided at the real property.

In 2003, Stuttler borrowed money from BFG Federal Credit Union. She signed a note which reflected that indebtedness and granted a mortgage (the “Mortgage”) on the real property to secure it. The Mortgage was signed by Stuttler and Ms. Lee. PHH Mortgage is allegedly the assignee of BFG Federal Credit Union.

On August 18, 2008, less than one year prior to her bankruptcy filing, Ms. Lee transferred her interest in the real property to Stuttler. In November 2009, Corzin filed an adversary proceeding against Stuttler and PHH Mortgage seeking to: 1) unwind the transfer from Lee to Stuttler, 2) allow the sale of the property pursuant to 363(h), 3) obtain a declaratory judgment as to the rights, interests and title to the real property. The prayer for relief specifically asked for an order “declaring and determining the right, title and interests

of the parties to this proceeding in and/or to the real estate described ...[and] that all parties be required to set forth their interests in said property or be forever barred.”

PHH Mortgage was served with the complaint. Stacie West, the mailroom supervisor at PHH Mortgage signed the mail receipt. According to the Amended Affidavit filed by PHH Mortgage on May 24, 2011, the complaint was “not routed to the correct employees at PHH for processing.” According to the Amended Affidavit, “the improper handling was due to excusable neglect and simple human error despite PHH having established procedures for the handling of complaints and litigated issues.” According to Stuttler’s written objection to the Amended Affidavit, Stacie West, the mailroom supervisor who “mishandled” the complaint, has “mishandled” mail before. *See Darden v. InstaMortgage.com and PHH Mortgage Corp.*, E.D. Mich, S.Div., Case No. 08-14409 (copy attached to Stuttler’s objection).

On April 15, 2010, because PHH Mortgage had not responded to the Complaint, Corzin moved for default judgment against PHH Mortgage asking that PHH Mortgage be deemed to have no interest in the property. On May 4, 2010, the motion for default was granted against PHH Mortgage and declared that PHH Mortgage has no interest in the property.

On January 20, 2010, Stuttler had filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code commencing Case No. 10-50207. She listed PHH Mortgage on her schedules. Robert Thomas was appointed as Trustee. Upon the filing of a notice of assets in Stuttler’s bankruptcy case, a bar date of July 1, 2010 was set and noticed to creditors. PHH Mortgage did not file a proof of claim.

In August 2010, Corzin, the trustee in Ms. Lee’s bankruptcy case, and Thomas, the

trustee in Stuttler's bankruptcy case, reached a compromise with respect to the avoidance action filed by Corzin in November 2009 against Stuttler and PHH Mortgage. Pursuant to the compromise, which was approved after a hearing, the transfer from Lee to Stuttler was unwound and a mortgage was granted from Stuttler to Corzin for the property.

On August 20, 2010, i.e., after the answer date for PHH in this adversary proceeding had passed without any response from PHH, an order approving the compromise was entered in Ms. Lee's bankruptcy case. On September 9, 2010, an order was entered in Adv. Pro. 09-5180 reflecting the compromise. The order also notes that should any court declare that PHH Mortgage has a valid interest in the real property, the compromise would be vacated.

At some point, PHH Mortgage commenced a foreclosure action in state court. On September 15, 2010, Stuttler filed a notice of Stay in the foreclosure action. On December 23, 2010, Corzin filed a second adversary proceeding against PHH Mortgage, Adv. Pro. No. 10-5190. In this adversary, Corzin seeks relief for PHH Mortgage's violation of the automatic stay in connection with the foreclosure action. According to the return receipt, the complaint was served on January 16, 2011. Again, PHH Mortgage received the Complaint, but did not respond. Corzin filed a motion for default judgment against PHH Mortgage.

PHH Mortgage did not participate in either adversary proceeding until during the initial pre-trial conference in the second adversary proceeding, the Court specifically reached out to counsel for PHH Mortgage in the foreclosure proceeding. Finally, on April 13, 2011, PHH Mortgage filed a motion to vacate the default judgment against it in the first adversary proceeding. On May 24, 2011, PHH Mortgage filed an amended motion to vacate which acknowledges that PHH received the complaint and relies on Rule 60 (b)(4) and (6) for relief.

PHH made clear that it is not seeking relief under Rule 60(b)(1).

Discussion

PHH Mortgage's argument is that the default judgment should be vacated because the avoidance of the mortgage is contrary to the letter of the law and the Ohio recording statutes. Further, PHH Mortgage argues that the Trustee's complaint does not state a claim to avoid the mortgage and therefore, the judgment on the complaint cannot provide for the avoidance of the mortgage.

Under Rule 60(b)(6), the Bankruptcy Appellate Panel for the Sixth Circuit rejected the notion that the existence of a meritorious defense, which is essentially what PHH argues it has, provides a basis for relief under Rule 60(b)(6). *See Rogan v. Countrywide Home Loans (In re Brown)*, 413 B.R. 700 (2009) (rejected the use of 60(b)(6) even if there was a meritorious defense absent exceptional circumstances that would trigger the catchall provision). PHH Mortgage has not set forth any exceptional circumstances that would trigger the catchall provision. Therefore, Rule 60(b)(6) does not provide a basis upon which to grant PHH Mortgage relief from the default judgment entered against it.

Under Rule 60(b)(4), PHH Mortgage argues the judgment is void for lack of subject matter jurisdiction. A bankruptcy court's jurisdiction is statutorily defined. Section 1334 confers upon federal courts, exclusive of state courts, original jurisdiction over all matters and proceedings in bankruptcy. Section 157(a) permits a district court to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11" to a bankruptcy judge for the district.

The extent of a bankruptcy judge's power to act in referred matters

turns on whether a matter is classified as a “core” or “noncore” proceeding. Section 157(b)(2) states that “[c]ore proceedings include, but are not limited to-” fifteen categories of proceedings described in sections 157(b)(2)(A)-(O). If a matter is a core proceeding, a bankruptcy court may conduct the entire proceeding and enter final judgment, subject to appellate review by a district court. In a noncore proceeding, the bankruptcy court must submit proposed findings of fact and conclusions of law to the district court. Section 157(C)(1).

In re Trempe, 1990 WL 70043 (N.D. Ill. 1990) (finding that the jurisdictional question was whether the trustee brought an action to avoid a preference). In this case, the bankruptcy court clearly has subject matter jurisdiction over avoidance actions and actions to determine the validity, priority and extent of liens in property of the estate. 28 U.S.C. § 157(b)(2)(F), (H), (K). Really what PHH is arguing is that the Trustee did not state in its complaint that it intended to avoid PHH Mortgage’s Mortgage. However, the Trustee very clearly stated his intent to sell the property, and to that end, asked that all parties set forth their interest, rights and title in and/or to the property or be forever barred from claiming any right in or to the proceeds from the sale of the property. The Court had subject matter jurisdiction to determine the validity, priority and extent of liens in the property of the estate. Thus, Rule 60(b)(4) does not provide a basis for granting PHH Mortgage relief from the default judgment against it.

Conclusion

PHH’s Motion to Vacate is denied.

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cc:

Nathan Swehla, Counsel for PHH
Harold Corzin, Chapter 7 Trustee
Robert Thomas, Chapter 7 Trustee

Peter Tsarnas, Counsel for Stuttler
Michael Moran, Counsel for Corzin, Chapter 7 Trustee