UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 11-17909
	)	
RICHARD ALAN MEDLAR,	)	Chapter 13
	)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER LIFTING AUTOMATIC STAY**[1]

The chapter 13 pro se debtor Richard Medlar and Clareshire Court Condominium Association have a long and unhappy relationship. The Association filed a $41,586.65 secured claim in the debtor's bankruptcy case. The debtor both objects to that claim and proposes a plan that expressly excludes payment to the Association. The Association objects to plan confirmation because its debt will not be paid through the plan and supports its proof of claim.

JURISDICTION

Jurisdiction over this proceeding exists under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (L), and it is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

EVIDENTIARY HEARING

The court held an evidentiary hearing on October 25, 2012 on confirmation and the debtor's objection to the Association's claim. Both sides presented their case through exhibits. The findings of fact are based on that evidence.

[1] This order is not intended for publication, either in print or electronically.

FACTS

A. The State Court Litigation

In 2004, the Association sued in state court to foreclose on three liens against a condominium unit owned by Julie Montilla at 24625 Clareshire Court, North Olmsted, Ohio. The complaint alleged that the property should be sold to pay these liens:

- a lien recorded on January 1, 2001 in the amount of $601.01 plus interest and on-going monthly maintenance fees;
- a lien recorded on June 28, 2002 in the amount of $410.57 plus interest and on-going monthly maintenance fees; and
- a lien recorded on January 10, 2003 in the amount of $728.10 plus interest and on-going monthly maintenance fees;

plus attorney fees. The complaint named Montilla and Third Federal Savings and Loan Association of Cleveland as defendants. After the Association served Montilla with the complaint on May 12, 2005,[2] she filed an answer and a counterclaim against the Association.

On December 9, 2005, the Association filed a second amended complaint again naming Montilla and Third Federal as defendants.[3] This complaint alleged that the Association filed a certificate of lien on August 5, 2005 in the amount of $3,424.77 plus interest at 8% and ongoing monthly maintenance fees, plus attorney fees, with no reference to the earlier liens cited in the original complaint.

---

[2] Assoc. exh. D.

[3] Both the complaint and the second amended complaint refer to the county treasurer as a defendant in the body of the filing, but he is not named as a party in the caption.

Julie Montilla lived in the condominium with the debtor, who stated at the bankruptcy hearing that they married in 2003.[4] Montilla died in 2006, while the foreclosure suit was pending. The judge presiding over that suit ordered Montilla's probate estate substituted as a party. The estate seems to have been represented by counsel for some time, although later the debtor began to file documents in the foreclosure proceeding as the estate's fiduciary.[5] Meanwhile, in 2008 the probate court transferred the condominium unit to the debtor in accord with Montilla's will.

On September 13, 2011, while the foreclosure suit was pending, the debtor filed his bankruptcy case.

On March 29, 2012, the state court granted summary judgment to the Association in the foreclosure case based on adopting the magistrate's decision.[6] Without making factual findings, the judgment dismissed the probate estate's claim against the Association with prejudice. As to the Association's claim, the court found that on August 15, 2005, the Association filed with the county recorder a certificate of lien in the amount of $3,424.77 plus interest at 8% from that date forward, together with the monthly maintenance fee as it accrues in the future. The court went

---

[4] The Association disputes this, and the court is not making a finding on this issue. As a result, this court will not address the property right issues that may arise if the debtor was, in fact, married to Montilla when the foreclosure suit was filed.

[5] Although the debtor is not a lawyer, and was not a named defendant in the foreclosure case, the court seems to have allowed him to file documents and make legal arguments on behalf of the probate estate in the foreclosure case.

[6] To the extent that the debtor had an individual interest in the condominium that would have rendered the property subject to the automatic stay of 11 U.S.C. § 362, the court notes that–for reasons not stated–the state court issued this judgment in the lull between the debtor's bankruptcy case being dismissed and the date on which it was reinstated.

on to find that, through June 14, 2010,[7] the Association was owed on that certificate the amount of $24,264.58 plus interest at 8% from August 15, 2005 forward, "subject to subsequent adjustments, unpaid interest, administrative late fees, enforcement assessments, and collection costs," with attorney fees to be determined by separate order. The attached magistrate's decision states that the judgment amount is based on the incorporated affidavit of Leonard Mauger. That affidavit is not attached to the decision or the judgment. There is no evidence as to any later state court judgment establishing the amount of attorney fees due.

The judgment also ordered that unless the probate estate paid all amounts due within a designated time frame, the estate's equity of redemption in the property would be foreclosed and the property sold.

On appeal to the Court of Appeals of Ohio, Eighth Appellate District, that court stayed the judgment pending appeal and also stayed its own proceedings because of the pending bankruptcy case.

On April 25, 2012, the Association filed a proof of claim in the bankruptcy case, asserting a secured claim in the amount of $41,586.65 based on the state court judgment. The proof of claim does not include an accounting to explain or support the amount claimed.

B. The Proposed Plan

The debtor's plan states that Clareshire will be paid zero through the plan (para 3B) and explains this position further in paragraph 11 Special Provisions:

> Clareshire Court Condominium Unit Owners' Association's claims are invalid and are not to be paid. Civil suits are pending. Larger claim is fraudulent.

---

[7] The significance of this date is not explained in the opinion.

THE POSITIONS OF THE PARTIES

The debtor's hearing brief raises these issues:

1. The Association did not file Form B10 and violated Bankruptcy Rule 3007.

2. The Association violated Ohio Civil Rule 4.1(B).

3. The Association's claims are illegal because the debtor was not a named party in the foreclosure action, thus violating his Fifth and Fourteenth Amendment rights under the United States Constitution.

4. The Association's claim has been denied by the Ohio probate court.

5. The company that handled the Association's bookkeeping committed fraud.

6. The Association's claim is stayed by Ohio Appellate Rule 7.

7. The debtor has valid claims against the Association.

The Association's position is that the state court foreclosure judgment determined all issues relating to the condominium, and the doctrines of lis pendens and *Rooker-Feldman*[8] bar relitigating them. Additionally, the Association argues that the debtor does not have an ownership interest in the property–he has only a right to redeem the property under state law by immediately paying the full amount owed on the liens, although somewhat inconsistently the Association filed a secured proof of claim for more than $41,000.00 and asks that it be paid through the plan.

---

[8] *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

DISCUSSION

State law determines the parties' property rights in this bankruptcy case. *Simon v. Chase Manhattan Bank (In re Zaptocky)*, 250 F.3d 1020, 1024 (6th Cir. 2001). The doctrine of lis pendens as set forth in the Ohio Code states: "When a complaint is filed, the action is pending so as to charge a third person with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title." OHIO REV. CODE § 2703.26.[9] The Bankruptcy Appellate Panel has noted that, "lis pendens operates upon the filing of a judicial foreclosure suit in Ohio, if the subject property is specifically described, and it provides constructive notice to all of the mortgagee's interest, whatever that may be." *Treinish v. Norwest Bank Minnesota, N.A. (In re Periandri)*, 266 B.R. 651, 654 (B.A.P. 6th Cir. 2001).[10] As a result, "one who acquires an interest in property which is at that time involved in litigation in a court having jurisdiction of the subject-matter and of the person of the one from whom the interests are acquired, from a party to the proceeding, takes subject to the judgment or decree, and is conclusively bound by the result of the litigation as if he had been a party thereto from the outset." *Beneficial Ohio, Inc. v. Ellis*, 902 N.E.2d 452, 454 (Ohio 2009). The doctrine extends to a person who acquires his interest in the property by inheritance. *See* 54 C.J.S. Lis Pendens § 146 (Sept. 2012).

The Association's argument regarding the lis pendens doctrine is correct insofar as it addresses the rights the debtor obtained to the property in 2008. Because the foreclosure was

---

[9] A prior version of the statute was in effect when the Association filed its foreclosure complaint in 2004. The effect of both statutes on the issue here is the same.

[10] The foreclosure complaint includes a specific description of the property. Assoc. exh. B.

pending and Montilla had been served with the complaint before the debtor inherited the property, the debtor took his inherited property interest subject to the state court's ultimate determination. A problem arises, however, with the Association's remaining arguments. On the one hand, it argues that the debtor does not have an ownership interest in the property, but only the right to redeem the property under state law by immediately paying the full amount owed on the liens. At the same time (and not in the alternative), the Association asserts a secured claim against the debtor for more than $41,000.00 and the right to be paid through the chapter 13 plan. And it points to the state court judgment to support both positions.

This court cannot, from the record before it, resolve the issues between these parties. The state court did not make any finding as to whether the debtor has a property interest in the condominium and, if so, what the nature of that interest is. While the magistrate's decision refers generally to dower rights, it does not make any meaningful factual finding; it says that the defendants do not have dower rights, but the only defendants are the estate and Third Federal, neither of which is eligible for dower rights in the property. The debtor was not a defendant, although he participated in the litigation in his capacity as a fiduciary for the probate estate even though he is not a lawyer. The state court judgment does not find that the debtor owes any money to the Association–nor could it since the debtor individually was not a party–yet the Association filed a proof of claim in this case. The judgment amount is about $24,000.00, but the proof of claim based on the judgment is more than $43,000.00 without an accounting.

The court is mindful both of its responsibility to decide the bankruptcy issues before it and also to defer to state court judgments under certain circumstances. On balance, the court

finds that the best course is to hold confirmation and the claim objection in abeyance and lift the stay to permit the state appellate court to review the state court judgment.

IT IS, THEREFORE, ORDERED:

(1) that the automatic stay provisions of 11 U.S.C. § 362 are lifted to permit the state appellate court to decide the issues before it; and

(2) confirmation and all objections are adjourned to **January 8, 2013** for docket reporting purposes. If the appeal is resolved before then, the parties are to notify the court.

Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge