

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 03-18733  
 )  
MICHAEL GRISCHKAN, ) Chapter 7  
 )  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 ) **MEMORANDUM OF OPINION**

On April 13, 2004, the court entered an order granting the motion of Mortgage Electronic Registration Systems, Inc. for relief from stay and abandonment (the Order). (Docket 46). Debtor Michael Grishkan and his non-debtor wife request relief from that Order and Mortgage Electronic opposes their request. (Docket 58, 62, 63). For the reasons stated below, the motion for relief from judgment is denied as moot.

**JURISDICTION**

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(G) and (O).

**FACTS**

On February 19, 1999, the debtor's wife Gloria Grischkan signed a note to borrow \$265,000.00 to be used to purchase a house located at 28575 Settlers Lane, Pepper Pike, Ohio (the property). The debtor does not own the property, but has a dower interest in it. See Docket 1, schedule A. The debtor and Ms. Grischkan gave Mortgage Electronic Registration Systems

(the lender) a mortgage on the house to secure payment of the note. Ms. Grischkan has not made any payments under the note.

This is the third in a series of four cases filed by the debtor. *See In re Grischkan*, 320 B.R. 654 (Bankr. N.D. Ohio 2005) (discussing the debtor's bankruptcy filings and dismissing his fourth case with sanctions). The debtor filed this case on July 2, 2003 as a chapter 13 case and then voluntarily converted it to a case under chapter 7. Following the conversion, the lender moved for relief from stay, in rem relief from stay, and abandonment to allow it to exercise its rights with respect to the property under the note and mortgage. The motion was served on all parties in interest, including the debtor and Ms. Grischkan. Despite notice, neither the debtor nor Ms. Grischkan responded or appeared in opposition to the motion.

The trustee objected on the basis that she intended to sell the property. The lender and trustee resolved the matter by agreement and submitted two agreed orders which were entered on April 13, 2004. (Docket 45, 46). One order provides that the lender is granted relief from stay to foreclose its lien interest and that the trustee retains her interest in the proceeds of sale. (Docket 45). The second order—which is the subject of the request for relief from judgment—provides further that “any stay order under § 362(a) of the Bankruptcy Code as to future bankruptcy filings will not be imposed upon the property for a period of 180 days following the entry of the order.” (Docket 46). The debtor and Ms. Grischkan were served with the two orders and did not appeal from them. They filed their motion for relief from judgment on November 9, 2004, more than 180 days after entry of the order.<sup>1</sup>

---

<sup>1</sup> The debtor previously moved for relief from judgment, the lender objected, and the court sustained the objection and denied the motion through a bench ruling made on May 13, 2004. (Docket 50, 57). That ruling was never memorialized in an order.

## THE POSITIONS OF THE PARTIES

The movants request relief from the Order only to the extent that it grants in rem relief from the automatic stay. They argue that, under bankruptcy rule 7001(7), in rem relief can only be granted in the context of an adversary proceeding. The lender argues that relief from judgment is not appropriate because in rem relief may be requested by motion and because the facts of this case merit in rem relief.

## DISCUSSION

The Order, entered on April 13, 2004, provides that any § 362 stay imposed in a bankruptcy filing made within 180 days will not affect the property. By its terms, therefore, the Order does not have any effect on a case filed after October 10, 2004. The debtor did file a fourth case on September 26, 2004 which was subject to the in rem provision, but that case has been dismissed and the 180-day bar elapsed before the debtor and Ms. Grischkan filed their motion for relief from judgment. The Order does not impose a stay on the property for any future filings, which makes the motion for relief moot.

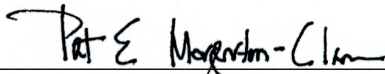
The court gave the parties the opportunity to address the mootness issue. (Docket 64, 66, 67). The movants argue that the issue is not moot because of Ms. Grischkan's status as a non-debtor. This is relevant to the merits of the in rem issue, but not to whether that issue is now moot. The movants and the lender both allude to events that occurred in the state court following the Order; statements of counsel are not, however, facts that the court can consider in this context, especially when the parties have not stipulated to any facts or provided affidavits. While the movants state that if the Order is vacated, they "will be able to seek restitution of their real estate in the Cuyahoga County Court of Common Pleas," no evidence or legal argument is

provided to explain why this is so. Absent evidence that the Order continues to affect the rights of either the debtor or Gloria Grischkan, the motion for relief from judgment is moot.

**CONCLUSION**

For the reasons stated, the motion for relief from judgment is denied as moot. A separate order will be entered reflecting this decision.

Date: 9 May 2005

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

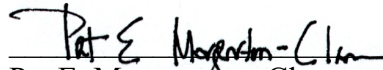


In re: ) Case No. 03-18733  
 )  
MICHAEL GRISCHKAN, ) Chapter 7  
 )  
Debtor. ) Judge Pat E. Morgenstern-Clarren  
 )  
 )  
 )  
 ) **ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the motion for relief from judgment filed by the debtor Michael Grishckan and Gloria Grischkan is denied as moot. (Docket 58).

IT IS SO ORDERED.

Date: 9 May 2005

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center