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MICHAEL B. BROWN
RECORDER

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
Thomas D. Caco) Case No. 19-20843
)
Debtor.)
)
)

Order for In Rem Relief from the Automatic Stay Pursuant to 11 U.S.C. Sec. 362(d)(4) and Abandonment for the Real Estate Located at what is commonly known as 2539 Castlewood

Drive, Dyer, Indiana
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This matter came before this Court on the Motion of Peoples Bank SB, to Modify Automatic Stay In Rem Pursuant to 11 U.S.C. Sec 362(d)(4) and Abandonment filed in the above captioned bankruptcy case on April 8, 2019. A pre-hearing conference was held on May 8, 2019. The final evidentiary hearing for this matter was held on June 13, 2019. The Chapter 13 Trustee appeared by Counsel Amy J. Godshalk. Peoples Bank SB appeared by Counsel Andrew L. Kraemer and with a Senior Vice President. Thomas D. Caco appeared in person for the June 13, 2019 final evidentiary hearing.

This matter is before the Court on the Motion of Peoples Bank SB to Modify Automatic Stay In Rem Pursuant to 11 U.S.C. Sec 362(d)(4) and Abandonment. As such, this is a core proceeding pursuant to 28 U.S.C. Sec. 157(b)(2)(G).

Findings of Fact

1. Thomas D. Caco ("Debtor") is the Debtor in the above captioned bankruptcy. As discussed *supra*, Thomas D. Caco has also been a Debtor in bankruptcy case number 18-20823 and bankruptcy case number 18-22928.

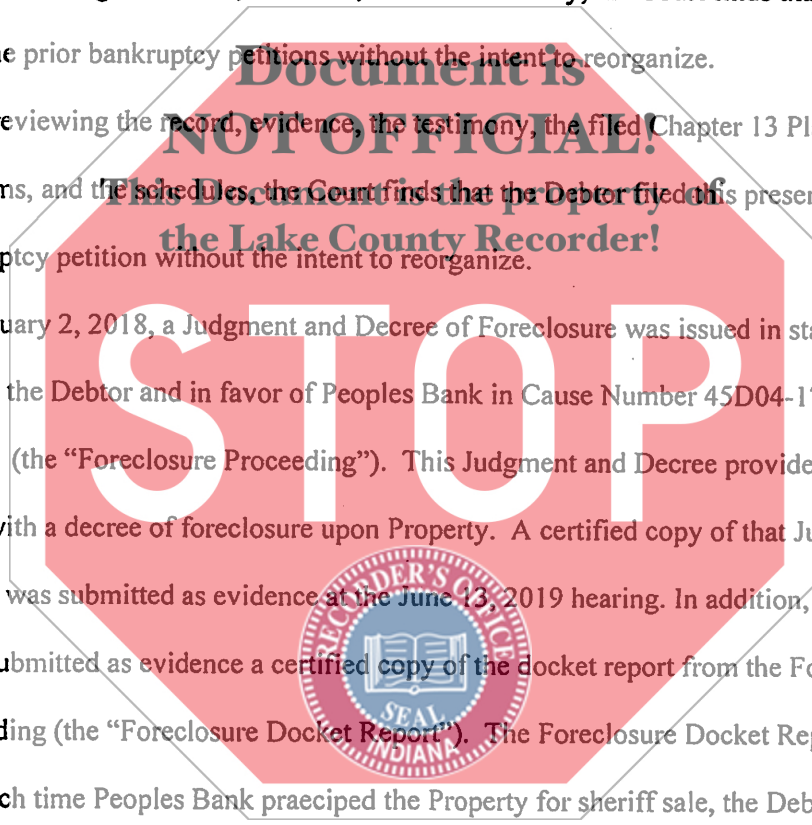
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2. Peoples Bank SB (“Peoples Bank”) is a creditor of the Debtor.
3. Peoples Bank holds a Note, dated June 5, 2009, secured with a Mortgage, dated June 5, 2009 and recorded on June 10, 2009 with the Lake County Recorder, on the property of the Debtor located at 2539 Castlewood Drive, Dyer, Indiana and more particularly described as follows (the “Property”):

Lot 76, in Castlewood Unit 1, an Addition to the Town of Dyer, as per plat thereof, recorded in Plat Book 51 page 30, and as amended by certificate of Correction recorded December 4, 1979 as Document No. 562652, in the Office of the Recorder of Lake County, Indiana.

4. The Court takes judicial notice that the Debtor filed two prior bankruptcy proceedings. The two prior bankruptcies were dismissed due to failures of the Debtor as follows:
 - a. The bankruptcy filed on April 5, 2018 was case number 18-20823. The Debtor failed to file schedules or a plan of reorganization. Moreover, in case number 18-20823, the Debtor failed to provide the tax returns or make any payments to the Chapter 13 Trustee. As such, bankruptcy case number 18-20823 was automatically dismissed on May 23, 2018.
 - b. The bankruptcy filed on October 31, 2018 was case number 18-22928. The Debtor again failed to file schedules, a plan of reorganization, and the required income and tax return documents. On December 19, 2018, a Notice of Automatic Dismissal was entered due to the Debtor’s failure to file all of the documents.
5. At the June 13 evidentiary hearing, Counsel for the Chapter 13 Trustee advised the Court that the Debtor has tendered no funds to the Trustee in any of his two prior Chapter 13 Bankruptcies nor has the Debtor tendered any funds to the Trustee in this present above captioned bankruptcy.

6. The Court takes judicial notice of the proof of claims that have been filed in this case.
The Court also takes judicial notice of the Chapter 13 Plan that has been filed in this case.
7. The Court notes that there have been no objections to any of the proof of claims filed in this above captioned bankruptcy. This is consistent with the Debtor's schedules and the Debtor's testimony at the June 13, 2019 evidentiary hearing.
8. Upon reviewing the record, evidence, and the testimony, the Court finds that the Debtor filed the prior bankruptcy petitions without the intent to reorganize.
9. Upon reviewing the record, evidence, the testimony, the filed Chapter 13 Plan, the proof of claims, and the schedules, the Court finds that the Debtor filed this present captioned bankruptcy petition without the intent to reorganize.
10. On January 2, 2018, a Judgment and Decree of Foreclosure was issued in state court against the Debtor and in favor of Peoples Bank in Cause Number 45D04-1705-MF-000101 (the "Foreclosure Proceeding"). This Judgment and Decree provided Peoples Bank with a decree of foreclosure upon Property. A certified copy of that Judgment and Decree was submitted as evidence at the June 13, 2019 hearing. In addition, Peoples Bank submitted as evidence a certified copy of the docket report from the Foreclosure Proceeding (the "Foreclosure Docket Report"). The Foreclosure Docket Report shows that, each time Peoples Bank praeciped the Property for sheriff sale, the Debtor would file a Chapter 13 bankruptcy, including this present bankruptcy, on the eve of such sheriff sale in order to frustrate the foreclosure process.
11. The Court finds that the Debtor's bankruptcy petitions and maneuvering constitute part of a scheme to delay, hinder or defraud creditors that involved multiple bankruptcy filings affecting the subject real property pursuant to 11 U.S.C. Sec 362(d)(4)(B).



12. The totality of the circumstances show that the Debtor acted in bad faith and that the bankruptcy filings are part of a scheme to delay, hinder, and defraud creditors

Conclusions of Law

1. A Chapter 13 petition may be dismissed “for cause.” A lack of good faith is sufficient cause for dismissal of a Chapter 13. See In re Love, 957 F.2d 1350 (7th Cir. 1992).
2. To find bad faith, the Court will look to the totality of the circumstances. See In re Love, 957 F.2d 1350 (7th Cir. 1992).
3. The clearest case of bad faith warranting dismissal of a case is when the Debtor enters the case knowing that there is no chance to reorganize and is hoping to merely stave off the day when the creditor takes control of the property. See In re James Wilson Associates, 965 F.2d 160 (7th Cir. 1992).
4. The Debtor engaged in bad faith by filing three bankruptcy Petitions, including the present bankruptcy, without any attempt to reorganize. The Debtor’s bankruptcy filings are part of a scheme to delay, hinder, and defraud creditors.
5. For the foregoing reasons, the Motion of Peoples Bank SB, to Modify Automatic Stay In Rem Pursuant to 11 U.S.C. Sec 362(d)(4) and Abandonment, having come before this Court, which Motion requests that this Court enter an Order for In Rem relief from stay for the real estate located at 2539 Castlewood Drive, Dyer, Indiana pursuant to 11 U.S.C. Sec 362(d)(4)(B) is GRANTED.

IT IS THEREFORE ORDERED: the stay of 11 U.S.C. §362 (d)(4) is modified with respect to the property commonly known as 2539 Castlewood Drive, Dyer, Indiana and more particularly described as follows:

Lot 76, in Castlewood Unit 1, an Addition to the Town of Dyer, as per plat thereof, recorded in Plat Book 51 page 30, and as amended by certificate of Correction

recorded December 4, 1979 as Document No. 562652, in the Office of the Recorder of Lake County, Indiana.

IT IS FURTHER ORDERED: that any and all future bankruptcy filings by any person or entity claiming an interest in the real property commonly known as 2539 Castlewood Drive, Dyer, Indiana and more particularly described as follows:

Lot 76, in Castlewood Unit 1, an Addition to the Town of Dyer, as per plat thereof, recorded in Plat Book 51 page 30, and as amended by certificate of Correction recorded December 4, 1979 as Document No. 562652, in the Office of the Recorder of Lake County, Indiana

will not operate as an automatic stay protecting the Debtor, any Co-Debtor, and/or the Debtor's or any such Co-Debtor's successors or assigns for a period of two years after the entry of this Order.

IT IS FURTHER ORDERED: that the Automatic Stay of this bankruptcy case is hereby modified to allow Peoples Bank SB and its successors and/or its assigns, to proceed against the Debtor with respect to the real estate located at 2539 Castlewood Drive, Dyer, Indiana, and

IT IS FURTHER ORDERED: this Order is effective immediately and is not stayed for 14 days pursuant to Bankruptcy Rule 4001(a)(3).

IT IS FURTHER ORDERED: that the Recorder of Lake County Indiana shall accept this Order and record this Order in the Records of Lake County Indiana concerning the subject real estate which is legally described as:

Lot 76, in Castlewood Unit 1, an Addition to the Town of Dyer, as per plat thereof, recorded in Plat Book 51 page 30, and as amended by certificate of Correction recorded December 4, 1979 as Document No. 562652, in the Office of the Recorder of Lake County, Indiana.

SO ORDERED THIS 10 DAY OF June, 2019.

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JUDGE UNITED STATES BANKRUPTCY COURT