

SO ORDERED.

SIGNED this 8th day of March, 2016.



  
LENA MANSORI JAMES  
UNITED STATES BANKRUPTCY JUDGE

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**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
WINSTON-SALEM DIVISION**

Dennis Wade Stainback,  
  
Debtor.

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Case No. 11-50372  
  
Chapter 13

**ORDER DENYING TRUSTEE'S MOTION  
TO DETERMINE DISTRIBUTION OF FUNDS**

This matter came before the Court on February 17, 2016, upon a Motion to Determine Distribution of Funds Held in Chapter 13 Case (the "Motion") filed by the Chapter 13 Trustee, Kathryn L. Bringle, on January 25, 2016. Diana S. Johnson appeared on behalf of Dennis Wade Stainback (the "Debtor"), Robert E. Price, Jr. appeared on behalf of the Bankruptcy Administrator, and Kathryn L. Bringle (the "Trustee") appeared. The Court has reviewed the record in this case, the Motion, and the Debtor's Brief in Support of the Motion and finds as follows:

**1. Background**

The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on March 9, 2011. At the time of filing, the Debtor owned real property located at 306 Barnes Road,

Winston-Salem, North Carolina. On his Schedule D, the Debtor indicated that this real property was encumbered by a first mortgage held by HSBC and second mortgage held by HSBC Mortgage Services.<sup>1</sup>

The Court entered an Order Confirming Plan (the “Plan”) on June 17, 2011. The Plan provided for the Trustee to make ongoing mortgage payments on the Debtor’s residence to the first mortgage holder, HSBC, with a regular ongoing payment of \$342.43 and a payment on arrearages of “all available funds.” In addition, the Plan provided for regular ongoing payments of \$176.00 and a payment on arrearages of “all available funds” to HSBC as the holder of the second deed of trust on the residence.

On April 23, 2011, HSBC filed a secured claim in the amount of \$61,519.25 (Claim Number 4-1), with copies of an Adjustable Rate Note dated June 27, 2000 in the original principal amount of \$48,000.00, and a Deed of Trust of the same date, recorded in Book 2123, Pages 132-141 with the Forsyth County Register of Deeds (the “First Deed of Trust”). On November 23, 2013, HSBC filed a transfer of Claim Number 4-1 to Caliber Home Loans, Inc. (Docket # 29). Then on December 16, 2015, Caliber Home Loans, Inc. filed a transfer of Claim Number 4-1 to Wilmington Savings Fund, FSB as Certificate Trustee for NNPL Trust Series 2012-1, c/o Shellpoint Mortgage Servicing.<sup>2</sup> (Docket # 40).

As to the second mortgage listed on Schedule D, on May 9, 2011 HSBC filed an unsecured claim (Claim Number 5-1) in the amount of \$8,753.18, including copies of a Note

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<sup>1</sup> “HSBC,” “HSBC Mortgage Services,” and “HSBC Mortgage Services, Inc.” appear to be utilized interchangeably in the pleadings in this case, including the two filed proofs of claim, and will simply be referred to as “HSBC” for purposes of this Order.

<sup>2</sup> The Notice of Transfer of Claim from Caliber Home Loans, Inc. to “Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1” was filed on December 16, 2015. The name for where notices and payments should be sent to the transferee is Shellpoint Mortgage Servicing. This transferee is referred to as NNPL Trust Series 2012-1, c/o Shellpoint Mortgage Servicing for purposes of this Order.

dated June 27, 2000 in the original principal amount of \$12,000.00 and an executed but unrecorded Deed of Trust (the “Second Deed of Trust”).

Claim Number 5-1 remained with HSBC during the pendency of the case, and the Trustee disbursed payments to HSBC on this claim through March 31, 2014.<sup>3</sup> Having paid Claim Number 5-1 in full, the Trustee wrote HSBC requesting that it cancel the Second Deed of Trust. HSBC canceled the First Deed of Trust on or about June 20, 2014, but did not cancel the Second Deed of Trust.

Ultimately, the Trustee filed a motion to require cancellation of the Second Deed of Trust, and an order was entered granting that motion on December 1, 2015. On January 11, 2016 HSBC filed an amended claim which stated, “The Creditor has elected to accept the funds received to date on account of Claim Number 5-1 (the “Original Proof of Claim”) and waive any right to additional payments on account of the Original Proof of Claim.”<sup>4</sup>

## **2. The Motion to Determine Distribution of Funds**

In an effort to find some resolution to the convoluted series of events set forth above, Trustee filed the Motion to Determine Distribution of Funds. In the Motion, the Trustee states that she is holding funds in the approximate amount of \$8,250.00 designated for Claim Number 4-1, which was originally secured by the First Deed of Trust. The Trustee alleges that on or about June 20, 2014, HSBC erroneously canceled the First Deed of Trust on the public record through a Certificate of Satisfaction recorded in Book 3184, Page 418 in the Office of the Register of Deeds of Forsyth County. Based on the November 23, 2013 transfer of Claim Number 4-1 to Caliber Home Loans (Docket # 29), it appears that HSBC was not servicing the

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<sup>3</sup> In the Motion, the Trustee states that the second deed of trust encumbering the Debtor’s residence is recorded in Book 2123, Page 142 in the Office of the Register of Deeds of Forsyth County.

<sup>4</sup> Again, the Court notes that the copy of Second Deed of Trust attached to Claim Number 5-1 is unrecorded, and HSBC filed the claim as unsecured.

first mortgage account at the time it canceled the First Deed of Trust. The Trustee contacted HSBC regarding the cancellation of the First Deed of Trust by HSBC, but received no response.<sup>5</sup> According to the Trustee's Motion, on February 19, 2015, Caliber Home Loans refunded \$204.66 to the Trustee, stating that it had been released as servicer of the account. Claim Number 4-1 is now held by NNPL Trust Series 2012-1, c/o Shellpoint Mortgage Servicing.<sup>6</sup> Despite the cancellation of the First Deed of Trust, the Trustee seeks Court authorization to disburse those funds to the current holder of Claim Number 4-1.

The Trustee served the Motion on HSBC, Caliber Home Loans Inc. and Wilmington Savings Fund c/o Shellpoint Mortgage Servicing. None of those entities have responded to the Motion; however, as the Motion seeks authorization to disburse funds on Claim Number 4-1, the lack of a response is not surprising.

Both the Trustee and the Debtor contend that the First Deed of Trust was canceled in error. The Debtor filed a Brief in support of the Trustee's Motion which lists 11 U.S.C. § 502 and N.C. Gen. Stat. § 45-36.3 and N.C. Gen. Stat. § 45-36.6 as the applicable law. The Debtor asserts that it is "likely that at some point in the future, Shellpoint will determine that the satisfaction notice for the deed was filed by a party that lacked the authority to do so..." Debtor's

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<sup>5</sup> The Trustee stated in the Motion that she contacted HSBC on July 8, 2014 about the cancellation of the First Deed of Trust. She also contacted an attorney who represented Caliber Home Loans in other matters in this District on July 13, 2015 but did not receive any response. The Trustee wrote Debtor's counsel about the issue on September 1, 2015. The Court is not aware of any action taken by Debtor's counsel in response. However in his Brief, the Debtor asserts that the Trustee did not become aware of the canceled First Deed of Trust until after November 2015. Debtor's Br. 2.

<sup>6</sup> The Motion states that the account was transferred to Wilmington Savings Fund Society FSB on January 11, 2016. This Notice of Transfer of Claim was actually filed on December 16, 2015.

Br. 4. The Debtor further argues that a finding that Claim Number 4-1 is unsecured would be catastrophic to the Debtor.<sup>7</sup>

As the Debtor highlights in his Brief, the North Carolina General Statutes provide a remedy for where a security instrument is satisfied in error or a release is recorded in error. N.C. Gen. Stat. § 45-36.6(b) states:

If a release is recorded in error or a security instrument is erroneously satisfied of record, then the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgements. Upon recording, the document of rescission either (i) rescinds a release that was recorded in error and deprives the release of any effect or (ii) rescinds the erroneous satisfaction of record of the security instrument and reinstates the security instrument.

The Court determines that it is not appropriate to authorize the Trustee to disburse funds to the current holder of Claim Number 4-1 when both the Trustee and the Debtor agree that a Certificate of Satisfaction is the last recorded instrument on the public record.<sup>8</sup> While the Court recognizes that the Plan provides for payments on this claim as a long-term continuing debt, and that neither the Trustee nor the Debtor has objected to the claim,<sup>9</sup> the parties are now seeking affirmative relief from this Court in the form of authorization to disburse funds. If the Court authorizes the payment of funds on Claim Number 4-1, the Court would be approving the

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<sup>7</sup> A finding that Claim Number 4-1 is unsecured would result in a substantial liquidation value in the estate above exemptions and make it impossible for this Chapter 13 plan to be completed; the Debtor's best interest is served by the Claim Number 4-1 being treated as a long term continuing secured debt.

<sup>8</sup> Neither the Trustee nor the Debtor presented evidence or requested that the Court hold an evidentiary hearing in connection with the sequence of events and the circumstances surrounding the cancellation of the First Deed of Trust.

<sup>9</sup> 11 U.S.C. § 502(a) provides:

A claim or interest, proof of which is filed under section 501 of this title is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

continuation of an unresolved mortgage situation for a debtor trying to complete his Chapter 13 plan and to obtain a fresh start.

As suggested by the Debtor, the recordation of a document of rescission as defined in N.C. Gen. Stat. § 45-36.6(a)(1) would certainly resolve any issues regarding the secured nature of Claim Number 4-1. To the extent that there is concern about whether the filing of a document of rescission on the public record is a violation of the automatic stay of 11 U.S.C. § 362 (a), this order shall lift the automatic stay for this limited purpose.

Based upon the foregoing, the Trustee's Motion is denied without prejudice.

IT IS SO ORDERED.

**END OF DOCUMENT**

PARTIES TO BE SERVED

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11-50372 C-13

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