

COPY

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:

Barbara Yvonne Jones

Debtor.

)  
)  
)  
)  
)  
)  
)

Case No. 99-81173C-13D

ORDER

THIS MATTER came on for hearing before the undersigned bankruptcy judge on August 31, 2000, in Durham, North Carolina upon the Debtor's Motion for Show Cause Order and for Sanctions against The Money Store. James B. Craven, III appeared on behalf of the Debtor, Lawrence S. Maitin appeared on behalf of The Money Store (the "Creditor"), and Richard M. Hutson, II appeared on behalf of the Chapter 13 Trustee. After hearing the evidence presented by the Debtor, the arguments of counsel and reviewing the file, the court makes the following:

FINDINGS OF FACT

1. This Chapter 13 case was filed herein on June 1, 1999, and the Debtor's plan was confirmed on August 19, 1999.
2. The Money Store was duly listed as a secured creditor, with the mortgage lien on the Debtor's home in Durham County. The Money Store filed a proof of claim on July 9, 1999.
3. The confirmation order of August 19, 1999 referenced the claim of The Money Store.
4. The Report of Filed Claims, filed by the Trustee on February 25, 2000, noted a secured claim and an arrearage claim in the name of TMS Mortgage, Inc. (The Money Store).
5. On November 12, 1999, The Money Store filed a motion for relief from the stay seeking leave of court to foreclose its lien on the Debtor's property in Durham County.
6. The motion was set for hearing on December 16, 1999 in Durham but was continued. The matter was resolved by the consent order of March 16, 2000 filed March 20, 2000.
7. Pursuant to the consent order, beginning with the January 1, 2000 payment, the Debtor was to make monthly payments in the amount of \$633.37 directly to The

Money Store. The parties agreed that the payments were due the first day of each month. In addition, the consent order provided that the Debtor would cure the post-petition arrearage in the total amount of \$1,976.10. The Money Store acknowledged receipt of \$1,400.00 at the execution of the consent order, and the Debtor was required to remit an additional \$288.05 for the months of January 1, 2000 and February 1, 2000 with the regular monthly mortgage payments.

8. The consent order further provided that in the event that the Debtor failed to make any payments within the month that the payments were due, then the "Automatic Stay and Restraining order entered in this case is hereby modified without further notice, hearing or Order of the Court and the Debtor's property is hereby released for foreclosure by The Money Store, or its successor or assignee as provided for by the terms of the security instrument."
9. The Debtor's counsel corresponded with The Money Store on May 19, 2000 over the matter of payments made by the Debtor pursuant to the March 16 order. It was agreed that the Debtor was then \$1,118.66 behind. The Debtor agreed to pay the \$1,118.66 directly to The Money Store, by May 25, 2000, to be current through May.
10. On May 26, 2000, Chris Brady, a Workout Officer with The Money Store, wrote to the Debtor directly, with no copy to the Debtor's counsel, and enclosed a Default Forbearance Agreement for her to sign. The Debtor, who is not sophisticated in legal matters, thought she had to sign the agreement, and did so, without consulting her counsel.
11. On May 26, 2000, the Debtor sent \$1,267.00 to The Money Store. The Debtor's counsel did not learn of this until late July 2000 when the Debtor contacted him about receiving telephone calls from The Money Store at her home and place of work, Durham Regional Hospital.
12. Sherrell LNU of The Money Store called the Debtor on July 21, 2000 to complain that she was again behind in her payments. The Debtor paid The Money Store \$733.33 on June 23, 2000, \$768.00 on July 28, 2000, and \$738.00 on August 4, 2000.
13. Yolanda LNU of The Money Store called the Debtor on Saturday, July 22, 2000 at her home. Yolanda left two phone numbers.
14. A representative of The Money Store whose last name begins with a V called the Debtor at her home on Sunday, July 23, 2000.
15. Chris Brady of The Money Store has called the Debtor and left his cell phone number. Mr. Brady has identified himself as a lawyer.
16. There have been numerous phone calls from The Money Store to the Debtor at

Durham Regional Hospital, to the point that her supervisors have complained about it to her.

17. Representatives of The Money Store telephoned the Debtor daily, Saturdays and Sundays included, during the period of July 21 - August 4, 2000, often three times a day, at her home and at Durham Regional Hospital, each time demanding payment. When the Debtor was not at home, The Money Store caller would berate the Debtor's children and her grandmother, Viola Speed, about the past due debt and the absence of the Debtor.
18. The Money Store has known of this Chapter 13 proceeding since early June 1999, as the Debtor's counsel mailed the initial notice to them on June 2, 1999. The Money Store has known since that time that the Debtor has been represented by counsel. The Money Store has been represented by counsel in this case since the filing of the proof of claim on July 9, 1999.
19. Since approximately May 25, 2000, The Money Store has chosen to deal directly with the Debtor, bypassing its own counsel and counsel for the Debtor.
20. The Debtor's counsel was not aware of the direct communication from The Money Store to the Debtor until late July 2000.
21. Debtor's counsel filed this Motion on August 10, 2000. Since the filing of this Motion, the Debtor has continued to receive phone calls from The Money Store and a representative of The Money Store has gone to the Debtor's home demanding payment of the debt.

### **DISCUSSION**

Section 362(a) provides that the filing of a petition under §§ 301, 302, or 303 initiates the operation of the automatic stay of the following:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the

estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

See 11 U.S.C. § 362(a). Relief from the automatic stay may be granted pursuant to 11 U.S.C. § 362(d). In this case, the parties signed a consent order which specified the manner in which the Debtor would cure the arrearage on the loan and make monthly payments to the Creditor. The consent order specifically provides that in the event of default by the Debtor, the "Automatic Stay and Restraining order entered in this case is hereby modified without further notice, hearing or Order of the Court and the Debtor's property is hereby released for foreclosure by The Money Store, or its successor or assignee as provided for by the terms of the security instrument." It is undisputed that the Debtor failed to make payments as provided in the consent order. At that point, the automatic stay was modified and the Debtor's property was released for foreclosure by the Creditor. It is clear from the terms of consent order that the relief from stay was limited in scope to allow the Creditor to proceed in rem against the property through foreclosure proceedings. The consent order was not intended to permit the Creditor to proceed in personam against the Debtor. Other than the limited modification allowing foreclosure against the property, the automatic stay remained fully in force and prevented the Creditor from taking any action to collect from the Debtor. Any action by the Creditor after the Debtor's default which sought to collect from the Debtor was a violation of the automatic stay.

In this case, the conduct of the Creditor was particularly egregious and the techniques employed likely violated state and federal law concerning debt collection practices. Under the Bankruptcy Code, the Creditor's actions constituted not only a violation of the automatic stay but a willful violation. The fact that the Creditor continued collection efforts even after the present motion was filed shows complete disregard for the Debtor and the bankruptcy process.

### CONCLUSION

The court finds that the Debtor's failure to make payments as set forth in the consent order modified the automatic stay and released the property to allow the Creditor to proceed with foreclosure proceedings. The relief from stay was limited in scope to allow the Creditor to

proceed only in rem against the property and in the event a deficiency arose, the Creditor's sole recourse was to file a deficiency claim in the Chapter 13 proceeding. The Creditor's repeated efforts to collect from the Debtor after the default and, in essence, to cause the Debtor to incur additional debt were knowing and willful violations of the automatic stay.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED that The Money Store / TMS Mortgage, Inc. is required to pay monetary sanctions in the amount of \$3,000.00 to the Debtor, Barbara Yvonne Jones, with said funds to be payable to the Chapter 13 office and attorney fees of \$1,500.00 to the Debtor's attorney, James B. Craven, III.

This the 15 day of September, 2000.

**CATHARINE R. CARRUTHERS**

---

Catharine R. Carruthers  
United States Bankruptcy Judge