

SO ORDERED.

SIGNED this 23rd day of April, 2013.



Catharine R Aron

UNITED STATES BANKRUPTCY JUDGE

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

In re:)	
)	
MOOYA OLLIE ASSASEPA,)	Case No. 12-51222
)	
)	
Debtor.)	
_____)	

ORDER DENYING MOTION BY DEBTOR
FOR VIOLATION AND CONTEMPT OF THE AUTOMATIC STAY

THIS MATTER came before the Court on March 27, 2013, in Winston-Salem, North Carolina upon Motion by Debtor for Violation and Contempt of the Automatic Stay. Mooya Ollie Assasepa appeared pro se, Pamela McAfee appeared on behalf of JP Morgan Chase Bank, N.A., and Kathryn L. Bringle appeared as the Chapter 13 Trustee. After considering the motion, arguments of counsel, testimony of Mooya Ollie Assasepa, and evidence on record, this Court makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure:

JURISDICTION

This Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §§ 151, 157, and 1334 and Local Rule 83.11 entered by the United States District Court for the Middle District of North Carolina. This is a core proceeding under 28 U.S.C. § 157 which this Court may hear and determine.

PROCUDURAL HISTORY AND FACTS

Mooya Ollie Assasepa (“Debtor”) filed a Motion for Violation and Contempt of the Automatic Stay (“Motion”) requesting sanctions against JP Morgan Chase Bank, N.A. (“JP Morgan”) for its actions against Debtor in connection with real property located at 22501 Inspiration Point, Canyon Lake, California (“Real Property”).

A. Background

Debtor is a repeat bankruptcy filer. This bankruptcy case (“Petition”), filed on August 28, 2012, is Debtor’s sixth bankruptcy filing and the second bankruptcy filing in the Middle District of North Carolina¹. Prior to this Petition, Debtor filed three cases in Central California, the latter two California cases were dismissed in 2009 for failure to file schedules. Debtor filed chapter 13 in the Southern District of Ohio on March 14, 2011, but requested dismissal on December 30, 2011 due to personal matters and a possible move to Illinois. Debtor’s first bankruptcy case in the Middle District of North Carolina, Case No. 12-50549, was filed April 13, 2012, but was dismissed June 8, 2012 *ab initio* insomuch as Debtor was not eligible to be a debtor in bankruptcy pursuant to 11 U.S.C. § 109(g)(2) (“NC Case”).

¹ The Case was filed as a chapter 7 case, however, upon Debtor’s request, the Court entered an order on November 20, 2012 converting this case to a chapter 13 case.

This Petition was filed eighty-three days after the NC Case. Approximately two weeks after filing the Petition, on September 12, 2012, the Debtor filed the exact same schedules filed in the NC Case, crossing out the old NC Case number, old signatures, old dates, and old filing stamps. The Debtor resides in Forsyth County, Winston-Salem, North Carolina. Debtor's Summary of Schedules shows \$0.00 as real property assets, and \$2,445.00 in personal property assets. On Schedule A, the Debtor lists that her interest in the Real Property is as a lien holder.² Debtor did not list any secured debt on Schedule D. Debtor lists pending state court litigation in California with JP Morgan. On Schedule G, the Debtor does not list any lease interests, either as lessor or lessee.³ The Debtor signed the Petition certifying that the information provided is true and correct. The Debtor did not attend the meeting of creditors until March 15, 2013, almost seven months after filing the Petition.

B. Actions regarding the Real Property

The Debtor's husband executed and delivered a note and deed of trust to JP Morgan regarding the Real Property on or about September 24, 2007. *See* JP Morgan *Exs.* 3-4. The Debtor is not a party to the transaction, and admits that she did not sign the note. Since 2008, the Debtor and other individuals have recorded grant deeds and other documents purporting to convey and encumber the Real Property.⁴ *See* JP Morgan *Exs.* 5-7. On July 6, 2012, JP Morgan filed an unlawful detainer complaint against the Debtor and other parties in California. On September 6, 2012, JP Morgan obtained a judgment

² On Schedule A, Debtor listed an ownership interest in several real properties, but did not list an ownership interest in the Real Property at issue in this Motion.

³ Debtor testified that her nephew resided in the Real Property, and that he did not pay rent, but instead performed work on the Real Property.

⁴ On November 28, 2012, this Court granted *in rem* relief pursuant to 11 U.S.C. § 362(d)(4) regarding the Real Property, finding that the Debtor and other individuals have engaged in a pattern and practice of delaying tactics designed to prevent JP Morgan from exercising its rights with respect to the Real Property. (No. 68).

against Debtor and the other parties. On September 12, 2012 a writ of execution was issued to JP Morgan, and the Sheriff's office in Riverside County, California issued a notice to vacate the Real Property on or before Monday, October 15, 2012.⁵ On October 18, 2012, the Debtor filed the Motion requesting damages in the amount of \$20,500⁶ and sought return of the Real Property. Debtor also stated that she has incurred attorney fees for actions in California state court and emotional distress due to JP Morgan's actions. JP Morgan argued that there is no stay violation because JP Morgan is not a creditor of the Debtor and the Debtor has no interest in the Real Property. In the alternative, JP Morgan argued that the Debtor cannot demonstrate any damages.

ANALYSIS

Property of the estate is comprised of all legal or equitable interest of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a). Pursuant to 11 U.S.C. § 362(a)(3) of the Bankruptcy Code, the filing of a petition for relief operates as a stay of 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. When a debtor has had a single or joint bankruptcy case pending within the preceding one year prior to commencement of another bankruptcy case, pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay, with respect to the debtor, terminates on the thirtieth day after the bankruptcy case is filed. Section 362(k) provides that "an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k).

⁵ The date, Monday, October 15, 2012 is crossed out and replaced with Tuesday, October 16, 2012.

⁶ Specifically, in the Motion, the Debtor requested \$5000.00 per day per person for the loss of use of the Real Property beginning October 16, 2012, \$5000.00 per day per person for actual damages and emotional stress beginning October 16, 2012, punitive damages of \$100,000.00, and attorney's fees and costs of \$3000.00.

A violation of the stay is “willful” under § 362(k) if it is done intentionally and with knowledge of the bankruptcy filing. *Green Tree Servicing, LLC v. Taylor*, 369 B.R. 282, 286 (S.D.W.Va. 2007); *In re Preston*, 333 B.R. 346, 349 (Bankr. M.D.N.C. 2005).

Since the Debtor had one case pending within the previous year prior to the filing of this Petition, the automatic stay as to the Debtor terminated on September 27, 2012. After the filing of the Petition and before September 27, 2012, JP Morgan continued its unlawful detainer action and obtained judgment against the Debtor and a writ of execution pertaining to the Real Property. During this time, the Debtor did not live in the Real Property; in fact, the Debtor did not even live in California at this time. The Debtor failed to provide the Court with any evidence of actual damages.⁷ As such, the Court will not award the Debtor actual or punitive damages.

The automatic stay remained in effect as to property of the estate. However, the automatic stay is not applicable to the Real Property. The Real Property is not property of the estate, because the Debtor, by her own admission and filed Petition schedules, has no ownership interest in the Real Property. *In re Alexieff*, 2012 WL 2064584 (Bankr. E.D.N.C. June 7, 2012) (stating that the “debtor must have had an interest in the property at the time the petition was filed”). If any interest at all, the Debtor may be attempting to claim a possessory interest in the Real Property. However, the Debtor lives in North Carolina and does not have possession of the Real Property; furthermore, a possessory interest alone is insufficient to constitute property of the estate. *In re Brittain*, 435 BR. 318, 322-24 (Bankr. D.S.C. 2010). Therefore, while there was an automatic stay in

⁷ The Debtor filed an Affidavit of Damages on March 27, 2013 (No. 98) and an Affidavit on March 28, 2013 (No. 99) after the hearing on the Motion and the adjournment of Court. The Court will not consider these documents as the documents were untimely filed. This Motion had been set for hearing multiple times and the Debtor had sufficient time to collect and provide the Court with evidence at the hearing on the Motion.

effect as to property of the estate, the automatic stay did not stay actions against the Real Property as the Real Property is not property of the estate.

CONCLUSION

Based upon the foregoing, it is therefore ORDERED that the Debtor's Motion is DENIED.

END OF DOCUMENT

SERVICE LIST

Mooya Ollie Assasepa
Debtor

Pamela McAfee
Attorney for JPMorgan

Kathryn L. Bringle
Trustee

William P. Miller
US Bankruptcy Administrator