

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

PAMELA J. WELLS,

Debtor.

Case No. DG 08-07591

Hon. Scott W. Dales

Chapter 7

_____ /

JEFF A. MOYER, Chapter 7 Trustee,

Plaintiff,

Adversary Pro. No. 09-80267

v.

TAYLOR, BEAN & WHITAKER

MORTGAGE CORP.,

Defendant.

_____ /

ORDER DENYING MOTION TO AMEND
AND CONDITIONALLY DISMISSING ACTION

PRESENT: HONORABLE SCOTT W. DALES

United States Bankruptcy Judge

Plaintiff Chapter 7 Trustee Jeff A. Moyer (“Plaintiff”) commenced this adversary proceeding by filing a complaint against Defendant Taylor, Bean & Whitaker Mortgage Corp. (“Defendant”), which the Defendant answered on July 9, 2009. The court conducted a pretrial conference on August 20, 2009, and issued a pretrial order on August 25, 2009 (DN 9, the “Pretrial Order”), setting deadlines for discovery, summary judgment motions, and a subsequent pretrial conference.

Unbeknownst to counsel or the court, the Defendant filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Middle District of Florida on August 24, 2009. In view of the Defendant's bankruptcy filing, the Plaintiff twice sought a stay of this adversary proceeding, and an extension of the deadlines set forth in the court's Pretrial Order. In response to the first stay and extension request, the court set a ninety-day deadline for the Plaintiff to obtain relief from the automatic stay in Defendant's bankruptcy case; in response to the second, the court extended the deadline to obtain stay relief for an additional sixty days.

More specifically, the court's most recent Order Regarding Motion to Stay Proceedings, dated February 22, 2010 (DN 21, the "Second Stay Order"), provided as follows:

NOW, THEREFORE, IT IS HEREBY ORDERED that this Adversary Proceeding is STAYED for 60 days from entry of this order to permit the Plaintiff to seek relief from the Defendant's automatic stay.

IT IS FURTHER ORDERED that if the Plaintiff does not file with this court a notice that he has obtained relief from the Defendant's automatic stay on or before the expiration of the 60 day period prescribed in this order, then the court shall enter an order dismissing this Adversary Proceeding, without prejudice, and without further notice.

IT IS FURTHER ORDERED that if the Plaintiff files the notice contemplated in the preceding decretal paragraph, the notice shall also request a status conference to consider extending the deadlines for continued prosecution of this Adversary Proceeding.

See Second Stay Order at pp. 1-2. Rather than filing the notice indicating that Plaintiff has obtained relief from the Defendant's automatic stay, Plaintiff instead filed Trustee's Motion for Leave to File First Amended Complaint (DN 22 "Motion to Amend"), seeking to add Mortgage Electronic Registration Systems and Bank of America, N.A. as additional defendants. As explained below, the court is constrained to deny the Motion to Amend.

Ordinarily, when a plaintiff files a motion to amend after a defendant has answered, the court would set the motion for a hearing and, if the motion were contested, consider the defendant's arguments against the proposed amendment. In the present case, however, the Defendant enjoys the protection of the automatic stay under 11 U.S.C. § 362(a)(1), applicable to "all entities" including this court, and cannot be required to attend any such hearing. The court, therefore, cannot grant the Motion to Amend.

Moreover, Plaintiff has not complied with the Second Stay Order by filing the notice indicating that he has obtained relief from the Defendant's automatic stay. Although the Motion to Amend suggests reasons for adding additional defendants, it offers no reasons for failing to comply with the Second Stay Order. Accordingly, unless the Plaintiff promptly offers an explanation for his failure to obtain stay relief, the court "shall enter an order dismissing this Adversary Proceeding, without prejudice, and without further notice." *See* Second Stay Order at p. 2.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion to Amend (DN 22) is hereby DENIED without prejudice.

IT IS FURTHER ORDERED that the Clerk shall enter a judgment dismissing this adversary proceeding without prejudice, unless the Plaintiff files the notice of stay relief contemplated in the Second Stay Order, or an explanation of his failure to obtain stay relief, within 14 days after entry of this Order.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon John T. Piggins, Esq. Rachel L. Hillegonds, Esq., and David A. Lerner, Esq.

IT IS SO ORDERED.





Scott W. Dales
United States Bankruptcy Judge

Dated: April 28, 2010