

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JAN CHRISTIAAN KNIBBE,

Debtor.

Case No. DK 10-14592
Chapter 7
Hon. Scott W. Dales

ORDER GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Jan Christiaan Knibbe, voluntarily and without counsel, filed a bankruptcy petition under chapter 7 on December 14, 2010, together with schedules of assets and debts. On Schedule A, Mr. Knibbe listed his residence in Douglas, Michigan as having a value of \$490,000.00. On Schedule D, he listed Trott & Trott as holding an unsecured claim¹ in an unstated amount but listed the value of his house as \$584,000.00. On Schedule F, he listed Trott & Trott as holding a mortgage on his house with a claim in the amount of \$243,903.00. He did not indicate on the schedules, subscribed under penalty of perjury, he disputed the claim.

Mr. Knibbe's mortgage lender, JP Morgan Chase Bank N.A. ("Chase"), through its counsel (Trott & Trott, P.C.), filed a motion for relief from the automatic stay on November 28, 2012 (the "Motion," DN 100). Chase argues that many months of missed payments and a lack of equity in the property justify relief from the automatic stay. Chase further argues that the property is not necessary to any reorganization because a chapter 7 case entails liquidation, not reorganization. Mr. Knibbe opposes the Motion.

¹ Mr. Knibbe changed the title of Schedule D to read, "Schedule D – Creditors Holding Unsecured Claims," instead of "Schedule D – Creditors Holding *Secured* Claims," thus creating some confusion.

As the moving party, Chase has the burden of proof on the issue of Mr. Knibbe's equity in the property, and Mr. Knibbe, as the party opposing relief from stay, has the burden of proof on all other issues. *See* 11 U.S.C. § 362(g).

As for the absence of equity under 11 U.S.C. § 362(d)(2), Chase's argument is well taken. For what it is worth, the court notes that on May 9, 2011, Mr. Knibbe filed a protective claim on behalf of Paul Jay Vanportvliet with an attachment signed by Mr. Vanportvliet purporting to assert a "maritime lien" for \$680,000.00 against Mr. Knibbe's residence. On that same day, Mr. Knibbe filed an Amended Schedule D² reflecting this lien and changing the value of his residence to \$210,000.00 (DN 29).

Using the property's highest reported value of \$584,000.00, as originally stated at one point in Mr. Knibbe's schedules, and the outstanding liens of Chase (\$243,000.00) and Mr. Vanportvliet (\$680,000.00), Chase posits there is no equity in the property. Indeed, by adopting Mr. Knibbe's property value of \$210,000.00 on amended Schedule D, and his admission on Schedule F regarding Chase's mortgage debt,³ the court finds no equity, even without considering the dubious maritime lien against the residence. Not only do these admissions support Chase's argument on equity, so, too, did the Trustee when he stated during the hearing, based on his fruitless efforts to sell the property over the last two years, he does not believe there is any equity. The Trustee does not oppose the Motion.

The court finds that Chase has met its burden of proof by showing that Mr. Knibbe has no equity in the property and as noted above, the property is not necessary to any reorganization.

² This time, Mr. Knibbe did not change the title on Schedule D.

³ Mr. Knibbe scheduled Chase's debt on Schedule F as a "mortgage" in the undisputed amount of \$243,903.00.

In addition to its argument premised on absence of equity, Chase asks the court to find “cause” to grant relief from stay based on Mr. Knibbe’s failure to make monthly mortgage payments of \$1,831.62 for over 32 months. At the hearing, Mr. Knibbe stated he would rely on his written response to the Motion, including two affidavits with attachments (DN 101). He did not request an opportunity to offer additional proofs.⁴ His written response stated in pertinent part that he or someone on his behalf mailed three separate “electronic funds transfer” instruments to Chase for \$2,733.57, \$250,000.00, and \$41,000.00 to discharge his mortgage. The court has reviewed the submissions (including the attached documents) and observes these supposed payments took the form of personal checks from James Napier with peculiar notations apparently limiting the manner in which Chase could negotiate them. These checks also included the condition they were “for discharge of debt,” evidently in an effort to establish an accord and satisfaction, or similar agreement where there was none. However, the affidavits and attached documents establish, at most, a tender of several irregular and conditional instruments, but certainly not payment or discharge of the Chase debt. Indeed, at the hearing, Chase’s counsel plausibly reported his client does not accept payment from third parties without prior arrangement and approval. Additionally, Chase does not accept instruments that impose conditions such as those that Mr. Napier —evidently a stranger to Chase— sought to impose. Chase stated it returned the checks, presumably to Mr. Napier. In short, Mr. Knibbe did not produce any persuasive proof he discharged his mortgage debt or even that Chase had somehow negotiated these irregular personal checks and applied them against the debt. Therefore, the court finds that Mr. Knibbe did not rebut Chase’s assertion he failed to make payments for over 32 months.

⁴ The court may rely on affidavits in connection with motion practice. Fed. R. Civ. P. 43(c); Fed. R. Bankr. P. 9017.

Based on the Motion, Mr. Knibbe's response, the statements of the Trustee and Chase's counsel, the schedules, and the court's familiarity with the file more generally, the court finds cause to grant relief from the automatic stay. Because Mr. Knibbe opposed the Motion and the court perceives no urgency, the court will not waive the 14-day stay that would otherwise apply under Fed. R. Bankr. P. 4001(a)(3).

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Chase's Motion (DN 100) is GRANTED, except as provided herein;
2. This Order shall be stayed for 14 days from entry as prescribed in Fed. R. Bankr. P. 4001(a)(3).

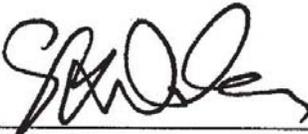
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Jan Christiaan Knibbe, Stephen L. Langeland, Esq., James W. Batchelor, Esq., and the United States Trustee.

END OF ORDER

IT IS SO ORDERED.

Dated January 11, 2013





Scott W. Dales
United States Bankruptcy Judge