

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT HAMMOND

IN RE:)
SERGIO HERNANDEZ RODRIGUEZ)
VELIA AMADOR RODRIGUEZ) BANKRUPTCY NO. 06-61376
Debtors)

MEMORANDUM OPINION
AND
ORDER

Hearing held on December 20, 2006 on Motion for Stay Relief and to Abandon and for Permanent In Rem Relief filed by Aurora Loan Services ("Aurora") on November 2, 2006, on the grounds that the serial Bankruptcy Petitions filed by the Debtors and one Jose Z. Amador were not filed in good faith.

Debtor appears by Attorney Casas.

Aurora appears by Attorney Bengs.

Trustee appears by Attorney Hoham.

Submitted. Evidence and arguments heard.

Trustee reports that he is holding \$2,928.00 in Plan payments by the Debtor, all to be distributed to Aurora. However, the Trustee reports that he made no distribution to Aurora as no claim was filed by it until December 1, 2006, although this case was filed on July 10, 2006 and the last day to file claims was November 15, 2006. A creditor cannot receive Plan payments from the Trustee as disbursing agent in accordance with the Plan until the creditor files a claim and the Plan is confirmed. §1326(a)(2). The Plan of the Debtors was confirmed by Order dated September 26, 2006. If Aurora had filed a timely Claim, the Trustee would have been able to immediately distribute the funds held by him to Aurora after the Debtors' Plan was confirmed on September 26,

2006. If Aurora had checked the Trustee's records as to receipt and disbursement of Plan payments prior to the filing of its Motion or the holding of the hearing, it would have been aware of the substantial Plan payments made by the Debtors to the Trustee for the sole benefit of Aurora.

No objections were filed by Aurora to the Debtors' Confirmed Plan. By confirming the Plan on the recommendation of the Trustee, the Court necessarily found that the Debtors' Plan was proposed in good faith, §1325(a)(3), and that the Petition by the Debtors was filed in good faith, §1325(a)(7). Pursuant to Fed. R. Bk. P. 3015(f), if no objection is timely filed the Court may determine that a Plan has been proposed in good faith without receiving evidence on such issue. An Order confirming a Plan is Res judicata on all issues that could have been and should have been raised pertaining to the Plan. §1327(a), Effect of Confirmation. See, In re Glow, 111 B.R. 209, 224 (Bankr. N. D. Ind. 1999). The confirmation of a Plan binds both the debtor and his creditors to the Plan provisions. Id. Once a Plan has been confirmed neither the Debtor nor a creditor can assert rights that are inconsistent with its provisions. Id. The fact that the confirmation Order may have been erroneous does not preclude the same from being valid and having Res judicata effect as long as the Court had proper jurisdiction over the Debtors' estate and no fraud was committed on the Court. Id. 111 B.R. at 226. See also, In re Harvey, 213 F.3d 318,321-323 (7th Cir. 2000). Matter of Chappell, 984 F.2d 775, 782-83 (7th Cir. 1993) (citing, Matter of Pence, 905 F.2d 1107, 1109 (7th Cir. 1990)); In re Lascia, 294 B.R. 718, 721, 22 (Bankr. N. D. Ill. 2003) (collecting 7th Cir. cases).

Thus, Aurora cannot be granted Stay Relief on the grounds that the Debtors' Petition and/or Plan was not filed in good faith as these issues were decided favorably to the Debtors when their Plan was confirmed.

The Debtors' Confirmed Plan provided for a regular postpetition, Mortgage payment to Aurora in the sum of \$436.93, and the cure of a default in prepetition Mortgage payments in the sum

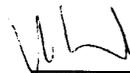
of \$41,191.87. Claim No. 18-1 filed by Aurora asserts that the prepetition arrears is \$56,931.68. Even assuming the amount of the prepetition arrears in the Debtors' Plan is in fact erroneous, the Confirmation of the Plan is Res judicata on the amount of the arrears that the Debtors' estate must pay to Aurora during the remaining term of the Plan. In re Bateman, 331 F.3d 821, 829-30 (11th Cir. 2000). However, upon completion of the Confirmed Plan according to its terms, and the Debtor's discharge, if the amount of the arrears as set out in the Debtors' Plan is erroneous, the Debtors will still be liable to Aurora for any actual prepetition arrears due, which shall survive the Confirmed Plan and Aurora still retains all of its lien rights until its lien is satisfied in full. Id. 331 F.3d at 831-834.

Based on the record the Court decides that Aurora has not shown "cause" pursuant to §362(d)(1) to vacate the Stay at this time. It is therefore,

ORDERED, that the Motion of Aurora should be and is hereby **DENIED** without prejudice to refile a supplemental Motion without an additional filing fee as to any material default in Plan payments by the Debtors subsequent to the entry of this Order.

The Clerk shall enter this Order upon a separate document.

January 7, 2007



JUDGE, U. S. BANKRUPTCY COURT

Distribution:

Debtors
Attorney Casas
Attorney Bengs
Attorney Joseph
Attorney Hoham
Trustee