

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
SERENA NOREEN BROWN,) CASE NO. 08-21606 JPK
) Chapter 13
Debtor.)

ORDER REGARDING CERTIFICATION OF DEBTOR'S
NONCOMPLIANCE OF POST-PETITION MORTGAGE PAYMENTS;
AUTOMATIC TERMINATION OF 11 USC SECTION 362 STAY

On February 5, 2009, U.S. Bank, NA, filed a document entitled "Certification of Debtor's Noncompliance of Post-Petition Mortgage Payments; Automatic Termination of 11 USC Section 362 Stay". This document is geared toward the court's order entered on July 7, 2008, which stated conditions for the continuance in effect of the automatic stay following a hearing held pursuant to 11 U.S.C. § 362(c)(3). The certification references an order entered by the court on July 7, 2008 by which the creditor's Objection to Motion to Continue Stay; Motion to Dismiss with 180 Day Refiling Bar, filed on June 13, 2008 was determined. That order – as far as the record of the court establishes – denied the creditor's objection to the debtor's 11 U.S.C. § 362(c)(3) motion, and allowed the portion of the motion which requested the relief of dismissal of the debtor's case to continue to pend. The order entered on the debtor's motion did require, as stated in the certification, that the debtor "(m)ake every payment required by the terms of the debtor's proposed Chapter 13 plan, or plan as confirmed, to be made to the Chapter 13 Trustee in full within 15 days of its scheduled due date". The last paragraph of the July 7, 2008 Order Continuing Automatic Stay states that in the event the debtor fails to comply with the foregoing provision, "the stay of 11 U.S.C. § 362(a) will be terminated to the extent provided by 11 U.S.C. § 362(c)(3) without further hearing upon the filing of an affidavit of default by the Trustee or by any other creditor or party-in-interest in this case".

First, the Certification is not an affidavit, and thus it does not trigger the effect provided

for by the last paragraph of the July 7, 2008 order. More importantly, the last paragraph of the creditor's Certification evidences that the creditor has misperceived the extent of non-continuance of the automatic stay provided by 11 U.S.C. § 362(c)(3). The stay has not terminated with respect to real estate constituting property of the estate, and contrary to the terms of the proposed form of order submitted by the creditor, 11 U.S.C. § 362(c)(3) has nothing whatever to do with abandonment of property from the bankruptcy estate. Upon the submission of an appropriate affidavit, the court will enter an order that states simply that due to default under the terms of the July 7, 2008 order, "the stay under 11 U.S.C. § 362(a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease" has terminated – whatever that means under the convoluted language of 11 U.S.C. § 362(c)(3)(A).

IT IS ORDERED that the court will take no action with respect to the Certification, in that it is not in the form of an affidavit as required by the July 7, 2008 order.

Dated at Hammond, Indiana on March 3, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
Attorney for Creditor