

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
GEORGE ALLEN POLLITT, JR.) CASE NO. 08-14106
BONNIE VICTORIA POLLITT)
)
Debtors)

DECISION AND ORDER

At Fort Wayne, Indiana, on December 4, 2009.

The matter before the court involves a motion for relief from stay and abandonment filed by BAC Home Loans Servicing, L.P. to which the debtors, although they are represented by counsel, have filed a pro se objection. All creditors and parties in interest have been given notice of both the motion and the opportunity to object thereto and no objections have been filed within the time required – with the exception of the objection from the debtors. Ordinarily, the court would issue an order giving the debtors eight days to refile their objection through counsel before addressing the merits of the underlying motion. See, Fed. R. Bankr. P. Rule 9011(a). However, in this instance, given the motion’s deficiencies, the court sees little point in trying to get a proper objection.¹

With or without an objection, the motion for relief from stay must still state sufficient cause for relief for the court to be able to grant it. In re White, 409 B.R. 491 (Bankr. N.D. Ind. 2009). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested

¹The court notes that a discharge was entered in this case on March 9, 2009. Doing so terminated the automatic stay as to all actions except those against property of the bankruptcy estate. See, 11 U.S.C. § 362(c)(1), (2)(C). Consequently, the only reason that the property subject to the creditor’s lien continues to be protected by the automatic stay is because it remains property of the bankruptcy estate. See, 11 U.S.C. § 362(a)(3), (4). As to that issue, however, the court has previously determined that a chapter 7 debtor lacks standing to object to the abandonment of property from the bankruptcy estate. See, Matter of Drost, 228 B.R. 208 (Bankr. N.D. Ind. 1998).

matters are required to state the grounds for relief “with particularity.” See, Fed. R. Bankr. P. Rule 9013. This requires the movant to allege facts – not conclusory allegations or mechanical recitations – that, if true, would establish a prima facie case. White, 409 B.R. at 494. The present motion fails to do so. For example, it does not:

- a. Provide sufficient information concerning the value of the property, the amounts due on account of the liens and encumbrances against it, and/or any exemption claimed by the debtors. This makes it impossible for the court to determine whether or not there is equity in the property. White, 409 B.R. 491. See also, In re Indian Palms Assoc., Ltd., 61 F.3d 197, 206-207 (3rd Cir. 1995) (“The classic test for determining equity under section 362(d)(2) focuses on a comparison between the total liens against the property and the property’s current value.”).
- b. Identify a sufficient “cause” for relief from the automatic stay. White, 409 B.R. 491. See also, In re Sonnax Industries, Inc., 907 F.2d 1280, 1285 (2nd Cir. 1990); In re Elmiro Litho, Inc., 174 B.R. 892, 902-03 (Bankr. S.D. N.Y. 1994).

Since the motion does not state a claim for relief, it will be denied, cf., Nishimatsu Constr. Co. Ltd. v. Houston Nat’l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975); Weft, Inc. v. G.C. Inv. Assoc., 630 F. Supp. 1138, 1141 (E.D. N.C. 1986), aff’d sub nom Weft, Inc. v. Georgaide, 822 F.2d 56 (4th Cir. 1987); Aldabe v Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (affirming trial court’s denial of motion for default judgment and sua sponte dismissal due to the complaint’s failure to state a claim for relief), see also, In re Taylor, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003), without prejudice and without further notice, unless within seven (7) days of this date, movant requests a hearing at which it will present appropriate evidence in support thereof. See, Fed. R. Civ. P. Rules 55(b)(2)(C), (D); Fed. R. Bankr. P. Rule 9014(c).

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court