

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
JAMES SCOTT RIGDON ) CASE NO. 09-14481  
TINA ROSE RIGDON )  
 )  
Debtors )

**DECISION**

At Fort Wayne, Indiana, on October 28, 2009

The motion for relief from stay and abandonment filed by HSBC Bank USA, National Association in this chapter 7 case is DENIED because it does not allege sufficient facts to state a claim showing its entitlement to the relief sought. See, In re White, 409 B.R. 491 (Bankr. N.D. Ind. 2009). See also, In re Wall, 127 B.R. 353, 355 (Bankr. E.D. Va. 1991) (regarding motions filed pursuant to § 522(f)). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested 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 motion alleges that HSBC is owed \$58,521.43 which is secured by a lien upon real property commonly known as 7603 Saddlewood Drive, Fort Wayne, Indiana 46825. It then contends “there is little or no equity in the property,” but it does not contain any allegations concerning the property’s specific value. Instead, the court’s attention is directed to a broker’s price opinion which is attached to the motion as an exhibit.<sup>1</sup> After pawing through this fourteen-page exhibit, the court discovers that the property’s value is stated to be between \$85,000 - \$95,000. This results in at least

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<sup>1</sup>Since the movant has the information available to it, the court does not understand why the value of the property has not been specifically alleged in the motion.

\$28,000 in equity over and above the amounts due the movant. Since there are no facts stated in the motion which would provide any basis for reducing that number, the additional claim that there is “little or no equity” is nothing more than an unsupported conclusory allegation. See, White, 409 B.R. at 495. As a result, the facts set out in the motion do not suffice to demonstrate that the movant is entitled to relief from stay under § 362(d)(2) or abandonment under § 554.

The movant’s only other articulated cause for relief from stay is the debtors’ failure to make payments. Yet, by itself, given the age of this case where the § 341 meeting has yet to be held, see, In re Szymanski, 344 B.R. 891, 897 (Bankr. N.D. Ind. 2006) (“The trustee is entitled to have a reasonable opportunity for investigation before property passes from the bankruptcy estate.”), and the apparent equity in the property, that is not enough to warrant relief from the automatic stay. See, White, 409 B.R. at 496 (citing Szymanski, 344 B.R. at 897). See also, United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626 (1988) (mere delay in being able to foreclose lien, without more, did not entitle creditor to adequate protection payments or relief from stay); In re Kessler, 76 B.R. 434, 437 (Bankr. E.D. Pa. 1987); In re Tashjian, 42 B.R. 968, 972-73 (Bankr. E.D. Pa. 1987); In re Capodanno, 83 B.R. 285, 288 (Bankr. E.D. Pa. 1988) (failure to make mortgage payments alone insufficient to obtain relief from stay).

HSBC’s motion will therefore be denied. An order doing so will be entered.

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