

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

IN THE MATTER OF:)
)
ANN R. COBB) CASE NO. 05-40380
)
)
Debtor)

DECISION

At Fort Wayne, Indiana, on

In this chapter 7 case, City Mortgage, Inc., has filed a motion for relief from stay and to abandon real estate. The motion has been objected to by Jeffrey Cobb, the debtor’s former husband, and his finance, Stephanie Manns. This objection does not, however, state a legally sufficient basis for denying the creditor’s motion and, as such, it may be overruled without a hearing. See, N.D. Ind. L.B.R. B-9014-1(a).

The only thing that City Mortgage has asked for is that real property located at 107 South R.R. Street, Remington, Indiana, pass out of the bankruptcy estate and that it be given permission to foreclose upon that property. The objectors contend that the debtor has no rights to the property because she deeded it to Jeffrey Cobb in August of 2004. Accepting these facts as being true, the property in question would not be property of the bankruptcy estate, see, 11 U.S.C. § 541(a), and would not be protected by the automatic stay, which only prohibits actions against the debtor, the debtor’s property, or property of the bankruptcy estate. See, 11 U.S.C. § 362(a). From the objectors perspective, City Mortgage’s motion would be unnecessary because the property in question never was property of the bankruptcy estate and has never been protected by the automatic stay; thus, there

is no need to abandon it or for termination of the automatic stay.

It seems that City Mortgage's motion may have been a precautionary measure, or it may never have been informed of the transfer of the Cobbs' former marital residence to Jeffrey Cobb alone. Nonetheless, the ultimate fact upon which the motion is based – that the estate has no equity in the property and that it is not necessary to any effective reorganization – is unchallenged. Accepting this undisputed fact as being true, the motion should be granted. 11 U.S.C. § 362(d)(2). The information contained in the objection not only reinforces the primary basis for the motion, but also indicates that it would be unnecessary. Under these circumstances, the objection should be overruled and, since there are no other outstanding objections following appropriate notice to all creditors and parties in interest, see, N.D.Ind. L.B.R. B-2002-2, the court will enter and order granting the motion.

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