

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
LANA ROCHELLE CODY,) CASE NO. 03-60560 JPK
) Chapter 13
Debtor.)

ORDER FOR HEARING REGARDING DISPOSITION OF REAL ESTATE

This matter came before the Court on December 19, 2005 for pre-hearing conference with respect to the response filed by Ameriquest Mortgage Company to the debtor's Motion to Allow Sale of Real Estate filed on October 7, 2005. The debtor appears by counsel Ricardo Casas; Ameriquest Mortgage Company appears by counsel Scott Yahne; the Chapter 13 Trustee appears by counsel Julia M. Hoham.

Attorney Yahne reports that he has been advised by an attorney in Fort Wayne who generally represents Ameriquest Mortgage Company that the creditor has received proceeds of an apparent sale of the debtor's real estate in the amount of \$44,285.18, and that Ameriquest has not applied those proceeds yet to the debtor's account. Attorney Casas advises that he has received no information from the debtor that any sale of real estate has been consummated, and that he has not had an opportunity to review any payoff statement provided by Ameriquest with respect to the closing apparently held with respect to the sale.

Given the foregoing, the Court has reason to believe that the debtor has transferred property of her bankruptcy estate without authorization from the Court. It is thus necessary to investigate the circumstances of the transfer. However, on the assumption that the transfer was made to an individual or entity who would qualify as a "good faith purchaser" pursuant to 11 U.S.C. § 549(c), and that the sales transaction appears to be for a price generally in conformity with that in the contract for purchase attached to the debtor's motion filed on October 7, 2005, the Court deems it appropriate to allow Ameriquest Mortgage Company to

apply the proceeds received by it to the debtor's account – especially in view of the fact that there is no dispute as to its priority position as a mortgagee. However, as stated in the Court's docket entry of November 28, 2005, the focus of the proceedings between the debtor and Ameriquest Mortgage Company has been the accuracy of the amount of the creditor's payoff balance, and the authorization by the Court of the application of the proceeds to the debtor's account is without prejudice to the debtor's estate with respect to review of that payoff balance and further proceedings in the event the debtor does not deem the payoff balance to be accurate.

IT IS ORDERED that Ameriquest Mortgage Company is authorized to apply proceeds in the amount of \$44,285.18 received from apparent sale of the debtor's real property in which it had a mortgage interest, to the debtor's account; provided, however, that in the event it is ultimately determined that the amount of those proceeds exceeds the accurately computed payoff balance of the creditor, the Court may issue an order providing for disgorgement to the Chapter 13 Trustee of any determined surplus amount.

IT IS FURTHER ORDERED that within 15 days of the date of entry of this order, Ameriquest Mortgage Company shall file a statement of record, and serve that statement upon the debtor's counsel and upon the Chapter 13 Trustee, which attaches any documentation provided by Ameriquest Mortgage Company to the individual or entity who apparently closed the foregoing real property sale, if any; includes a statement of the date of its receipt of the sales proceeds, the mechanism by which that payment was received [e.g., wire transfer, certified check, money order, or other]; states the exact amount of the proceeds received; and has attached all documents received by it which accompanied the payment of the proceeds which it received.

IT IS FURTHER ORDERED that a hearing will be held on **January 23, 2006, at 2:00 P.M.** at which the debtor Lana Rochelle Cody shall personally appear and produce to the Court

at that hearing all documents in her possession which relate to any transaction involving the sale of property which generated the proceeds reportedly received by Ameriquest Mortgage Company.

Dated at Hammond, Indiana on December 22, 2005.

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

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