

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
DAVID WAYNE MILLER and ) CASE NO. 05-64210 JPK  
SANDRA LYNN MILLER, ) Chapter 13  
 )  
Debtors. )

ORDER REGARDING MOTION FOR EMERGENCY HEARING TO REINSTATE  
THE STAY AS TO WELLS FARGO HOME MORTGAGE, INC. ("MOTION")

On July 12, 2006, the debtors, by counsel, filed the above-designated Motion. The Motion states that on March 1, 2006, the Court lifted the automatic stay in response to a motion filed by Wells Fargo Home Mortgage, Inc. due to default by the debtors with respect to payments to be made to that creditor under the terms of their confirmed Chapter 13 plan. The motion further asserts that the debtors "are cashing in an annuity to bring the mortgage current", and that a sheriff's sale has been scheduled for August 4, 2006. The relief requested by the Motion appears to be that the Court enter an order "reinstating" the automatic stay to preclude the August 4, 2006 sale.

First, the order by which Wells Fargo Home Mortgage, Inc. was granted relief from the automatic stay was entered on February 28, 2006, rather than on March 1, 2006. Additionally, the petitioning creditor was Wells Fargo Bank, N.A., and not Wells Fargo Home Mortgage, Inc.

The February 28, 2006 order by which relief from the automatic stay was granted to Wells Fargo Bank, N.A., was a final appealable order. As such, the debtors' remedies with respect to any relief from that order are comprised of an appeal of the order pursuant to 28 U.S.C. § 158 and Part VIII of the Federal Rules of Bankruptcy Procedure; a motion to alter or amend the judgment pursuant to Fed.R.Bankr.P. 9023/Fed.R.Civ.P. 59; or a motion for relief from the order pursuant to Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60. The deadlines for initiating an appeal or for filing a motion to alter or amend the judgment have long since expired, which

essentially leaves the debtor with the provisions of Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60 as a basis for the relief requested by their motion. One might perhaps conjure up a set of facts upon which an action for injunctive relief under 11 U.S.C. § 105(a) could be premised with respect to actions concerning property which was the subject of a prior order lifting the automatic stay; however, any such remedy would require the initiation of an adversary proceeding pursuant to Fed.R.Bankr.P. 7001(7), and under almost all imaginable circumstances would constitute an impermissible collateral attack on an otherwise final judgment.

The bottom line is that the above-designation Motion fails to present any claim for relief to the Court of which the Court can take cognizance.

IT IS ORDERED that the above-designated Motion is denied, without prejudice to the debtors to the seeking of relief which accords with applicable law and rules.<sup>1</sup>

Dated at Hammond, Indiana on July 12, 2006.

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

Distribution:  
Debtors, Attorney for Debtors  
Trustee, US Trustee

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<sup>1</sup> The Court suggests that debtors' counsel may wish to call counsel for the creditor to discuss cure of the default: it has been the Court's experience that in many cases bringing a debt current is more preferable to a creditor than is a sheriff's sale of property.