UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
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In re:

Cecilia Jones,

Case No.: 17-70428-AST
Chapter 7

Debtor.
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ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY AND DENYING MOTION FOR RECONSIDERATION

General Background

On January 26, 2017 (the "Petition Date"), Cecilia Jones ("Debtor") filed a petition for relief under chapter 7 of the Bankruptcy Code. [dkt item 1] Debtor is represented by Darren Aronow ("Debtor's Counsel"). As of the Petition Date, Debtor listed her residence as 3 Teller Avenue, Coram, NY 11727 (the "Property"). Debtor asserts in her bankruptcy schedules, *inter alia*, that she owns the Property as a tenant in common.

On March 13, 2017, Deutsche Bank National Trust Company as Trustee for GSAMP Trust 2007-FM1, Mortgage Pass-Through Certificates, Series 2007-FM1 ("Deutsche") filed a motion for relief from the automatic stay as to the Property seeking relief pursuant to 11 U.S.C. § 362(d)(1), prospective relief against Debtor and any co-habitants so that any future filing by the Debtor or her co-habitants will not result in imposition of the automatic stay as to the Property pursuant to 11 § U.S.C. 105, and waiver of the fourteen-day stay imposed by Federal Rule of Bankruptcy Procedure 4001(a)(3); Deutsche self-calendared a hearing for April 20, 2017 (the "Motion")[1]. [dkt item 16]

[1] The notice of the Motion provides that the hearing will be held in Courtroom 860, which is not the Courtroom of the undersigned bankruptcy judge (Courtroom 960).

Deutsche asserts that it is the owner of the Property and in support has submitted evidence that it is the purchaser of the Property by way of a referee deed dated January 11, 2016 (the "Referee Deed"), issued pursuant to a Judgment of Foreclosure and Sale entered in favor of Deutsche as assignee of Fremont Investment & Loan on September 22, 2015 (the "Foreclosure Judgment").

On April 20, 2017, the Court held a hearing on the Motion, at which counsel for Deutsche appeared and represented that Deutsche did not serve the Motion upon Debtor's Counsel. The Court adjourned the hearing on the Motion to May 11, 2017 and directed Deutsche to serve the Motion on Debtor's Counsel.

On April 21, 2017, Deutsche filed and served a letter of adjournment, scheduling the Motion for hearing on May 11, 2017 at 10:30 am in Courtroom 860. [dkt items 17, 18, 20]

On April 21, 2017, Deutsche filed a certificate of service that it served the Motion on Debtor's Counsel. [dkt item 19]

On May 3, 2017, Debtor received her chapter 7 discharge. [dkt item 21]

On May 11, 2017, the Court held an adjourned hearing on the Motion (the "Adjourned Hearing"), at which counsel for Deutsche appeared, but neither Debtor nor Debtor's Counsel timely appeared. At the Adjourned Hearing, the Court orally granted Deutsche relief pursuant to 11 U.S.C. § 362(d)(1) and denied all other relief in the Motion.

On the same day, on May 11, 2017, Debtor, acting *pro se*, filed her first and only opposition to the Motion by filing a motion to reconsider, requesting the Court vacate the foreclosure and sale of the Property, and issue a cease and desist order to stop Deutsche from evicting Debtor from the Property (the "Motion to Reconsider"). [dkt item 23] In support of her Motion to Reconsider, among other things, she asserts that she arrived at the courthouse at 11:06 a.m., and that Deutsche's

letter of adjournment did not contain the courtroom number for the undersigned judge, which caused her to be late to the Adjourned Hearing. Additionally, Debtor alleges that Deutsche acted in collusion with Fremont Investment & Loan in an attempt to evict her from the Property and that after her bankruptcy case was filed, steps were taken against her and the Property to evict her from the Property.

Based on the entire record before the Court, Deutsche has successfully demonstrated for purposes of the Motion that it has standing to seek relief from the automatic stay, and that stay relief is appropriate. Thus, the Court grants the Motion for cause, including lack of adequate protection, under 11 U.S.C. § 362(d)(1). Debtor's Motion to Reconsider is denied.

Legal Analysis

The Rooker-Feldman doctrine prevents this Court from reviewing the validity of the Foreclosure Judgment. This doctrine bars "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005); *In re Ward*, 423 B.R. 22, 27 (Bankr. E.D.N.Y. 2010). Rooker-Feldman applies to cases satisfying a four part test: (1) the federal-court plaintiff lost in state court; (2) the plaintiff "must complain of injuries caused by a state-court judgment"; (3) the plaintiff "must invite [federal] court review and rejection of that judgment"; and (4) "the state-court judgment must have been rendered before the [federal] court proceedings commenced." *Green v. Mattingly*, 585 F.3d 97, 101 (2d Cir. 2009) (quoting *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 85 (2d Cir. 2005)).

Here, the Rooker-Feldman doctrine applies because Debtor lost in the state court foreclosure action, the Foreclosure Judgment and Referee Deed were rendered before the Debtor commenced this case, and the Debtor seeks this Court's review of the Foreclosure Judgment and Referee Deed in the context of her opposition to the Motion. There is no reason why Debtor's request to vacate the Judgement of Foreclosure and Referee Deed should be heard in bankruptcy court as opposed to state court.

Even if the Court was not precluded from reviewing the referee deed, Debtor has not properly alleged or provided evidence of collusions. New York law permits a court to set aside a foreclosure sale under certain circumstances. "[A] court of equity may set aside its own judicial sale upon grounds otherwise insufficient to confer an absolute legal right to a resale in order to relieve of oppressive or unfair conduct." *Levitin v. Homburger,* 932 F.Supp. 508, 519 (S.D.N.Y. 1996), *aff'd* 107 F.3d 3, 1997 WL 62939 (2d Cir. 1997) (*quoting Guardian Loan Co. v. Early,* 47 N.Y.2d 515, 520–521, 419 N.Y.S.2d 56, 392 N.E.2d 1240 (1979)); *Ward*, 423 B.R. at 30–31. However, "this power should be exercised sparingly and with great caution." *Id.* (*quoting Guardian,* 47 N.Y.2d at 520, 419 N.Y.S.2d 56, 392 N.E.2d 1240). In support of her allegation of collusion, Debtor points to numerous news articles regarding Deutsche's alleged fraud upon homeowners and that she did not receive notice of free legal representation. However, Debtor has not alleged or provided evidence that the referee Donald Novick, Esq., colluded with Deutsche to deprive her of the Property, and she has demonstrated no legal right to free legal counsel.

Courts have broad discretion in granting stay relief. *In re Bennett Funding Group, Inc.*, 212 B.R. 206, 211 (2d Cir. 1997) (citing *Manhattan King David Restaurant, Inc. v. Levine*, 163 B.R. 36, 40 (S.D.N.Y. 1993)); *In re Fierro*, No. 1-14-41439-NHL, 2015 WL 3465753, at *4

(Bankr. E.D.N.Y. May 29, 2015). The automatic stay may be modified "for cause" pursuant to 11 U.S.C. § 362(d)(1). The movant bears the initial burden of showing "cause." *In re Mazzeo*, 167 F.3d 139, 142 (2d Cir. 1999); *Fierro*, 2015 WL 3465753, at *4. If a sufficient showing is made, the burden shifts to the debtor to demonstrate that there is insufficient "cause" to modify the stay. *In re Anton*, 145 B.R. 767, 769 (Bankr. E.D.N.Y. 1992); *Fierro*, 2015 WL 3465753, at *4. Here, Deutsche has submitted uncontroverted evidence that it received title to the Property through the Referee Deed and that its interest in the Property is not adequately protected. Debtor's argument that the stay should not be lifted has no merit; were the stay to remain in effect, there would be no ability for the Debtor to seek relief through the state court to adjudicate the claims and assertions made by Debtor. Thus, cause clearly exists. Additionally, Debtor's argument that she appeared at the courthouse half an hour after the scheduled hearing time repudiates her argument that Deutsche's letter of adjournment did not notify her of the Courtroom number.

Deutsche has also requested prospective relief from the automatic stay in any future bankruptcy case filed by the Debtor so that any future filing by the Debtor or her co-habitants will not result in imposition of the automatic stay as to the Property pursuant to § 105.

Section 105 authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a). "Bankruptcy Courts have relied on this section for authority to grant prospective relief from the automatic stay when the debtor is a 'serial filer' who abuses the bankruptcy process to obtain the benefit of the automatic stay without any intention of completing the process." *Ward*, 423 B.R. at 33 (collecting cases). Here, Deutsche has failed to allege or substantiate that Debtor

is a serial filer who abuses the bankruptcy process. Thus, the motion for prospective relief from the automatic stay is denied.

Finally, although Debtor has not cited to any statute or rule authorizing reconsideration, the Motion to Reconsider should be considered under Bankruptcy Rule 9023, which incorporates Rule 59 of the Federal Rules of Civil Procedure ("FRCP"). A motion to reconsider is properly considered under FRCP 59, which is incorporated into bankruptcy proceedings by Federal Bankruptcy Rule 9023. *See Woodard v. Hardenfelder*, 845 F. Supp. 960, 964-67 (E.D.N.Y. 1994) ("The Second Circuit has noted that 'most substantive motions brought within ten days of the entry of judgment are functionally motions under Rule 59(e), regardless of their label or whether relief might also have been obtained under another provision'") (citing *McCowan v. Sears, Roebuck & Co.*, 908 F.2d 1099, 1103 (2d Cir. 1990)); *In re Jamesway Corp.*, 203 B.R. 543, 545-46 (BANKR. S.D.N.Y. 1996). Accordingly, the Court will deem the Motion to Reconsider to be one under FRCP 59(e) and Bankruptcy Rule 9023.

Generally, motions for reconsideration are not granted unless "the moving party can point to controlling decisions or data that the court overlooked"—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court. *Rafter v. Liddle*, 288 Fed. Appx. 768, 769 (2d Cir. 2008)(citing *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir.1995)). Motions to reconsider under Bankruptcy Rule 9023, as motions to reconsider under Federal Rule of Civil Procedure 59, "are not vehicles for 'taking a second bite at the apple[.]'" *Rafter*, 288 Fed. Appx. at 769 (citing *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir.1998)). Facts that are not in the record of the original hearing cannot be said to be facts that the court "overlooked." *Rafter*, 288 Fed. Appx. at 769.

In the Motion to Reconsider, Debtor has pointed to no facts or case law which were overlooked by this Court in rendering its decision in connection with the Motion. The Motion to Reconsider seems to request a "do-over" of the Motion and Debtor has failed to provide this Court with any analysis or case law that warrants any supplement to any of the Court's decisions. In addition, the court has considered Debtor's late opposition to the Motion and overruled all objections she has raised.

Therefore, the Motion to Reconsider lacks legal merit and should be denied.

Accordingly, it is hereby

ORDERED, that pursuant to Rule 9023 of the Federal Rule of Bankruptcy Procedure, which incorporates FRCP 59, the Motion to Reconsider [dkt item 23] is denied; and it is further

ORDERED, that the automatic stay in effect pursuant to 11 U.S.C. § 362(a), is hereby terminated pursuant to 11 U.S.C. § 362(d)(1) for cause as to Deutsche, its agents, assigns or successors in interest, so that Deutsche, its agents, assigns or successors in interest, may take any and all action under applicable state law to exercise its remedies against the Property; and it is further

ORDERED, the Deutsche's motion for prospective relief from the automatic stay is denied; and it is further

ORDERED, that all other relief sought in the Motion is denied; and it is further

ORDERED, that the Clerk of Court shall serve a copy of this Order upon Debtor, Debtor's Counsel and all parties who filed a notice of appearance in this case.

Dated: June 7, 2017
Central Islip, New York

Alan S. Trust
United States Bankruptcy Judge