

APPENDIX

Volume 1 of 2; Parts: I & II.

- **A.1-2:** Eleventh Circuit Affirmance on 06/11/19.
- **A.3-6:** District court Affirmance on 12/27/17; ECF 40.
- **A.7-11:** Bankruptcy court order appealed from on Apr. 12, 2016 summary dismissal with prejudice of *pre-authorized* Adversary Proceedings; ECF 47.
- **A.12:** Bankruptcy court order on 12/22/15: Order re-opening CH 13 case, and *pre-approval* to file Adversary Proceedings; Dkt. No. 94.
- **A.13-22:** Preapproved Adversary Complaint.

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APPENDIX – I

Filed 06/11/2019

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 18-10255
Non-Argument Calendar

D.C. Docket Nos.9:16-cv-80837-KAM; 9:16-bkc-01046-EPK

In re: JOSEPH LLEWELLYN WORRELL,

Debtor.

JOSEPH LLEWELLYN WORRELL,

Plaintiff-Appellant,

versus

EMIGRANT MORTGAGE COMPANY, RETAINED
REALTY, INC.,

CHAD INGRAM, SAANA INGRAM, ILKKA JUHANI SYSIMETSA,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida
(June 11, 2019)

Before JORDAN, NEWSOM, and FAY, Circuit Judges. PER CURIAM:

Joseph Llewellyn Worrell, proceeding pro se, appeals the district court's order affirming the bankruptcy court's dismissal of his counseled adversary complaint and the denial of his pro se motion for reconsideration. The district court agreed with the bankruptcy court that Emigrant could not have violated stay rules under either 11 U.S.C. § 362, or under the Servicemembers Civil Relief Act, 50 U.S.C. § 3953, "because a stay was not in effect at the time of the foreclosure sale" of Worrell's home.

As the second court of review of a bankruptcy court's decision, we will employ the same standards of review as the district court. *In re Gonzalez*, 832 F.3d 1251, 1253 (11th Cir. 2016). Worrell has not preserved any claim of error, however. Although "we read briefs filed by pro se litigants liberally, ...issues not briefed on appeal by a pro se litigant are deemed abandoned." *Timson v. Sampson*, 518 F.3d

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870, 874 (11th Cir. 2008) (per curiam) (citations omitted). Worrell's brief primarily consists of claims regarding unrelated matters, including the history of the SCRA and various contentions about the validity of the underlying foreclosure sale. At best, he only comments in passing on the district court's conclusion that no stay was in effect. Pro se or not, this is plainly insufficient to preserve his claims. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority.").

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-80837-CTV-MARRA

JOSEPH L. WORRELL,
Appellant,
V.

ECF 40

EMIGRANT MORTGAGE COMPANY, INC. et al.,
Appellee(s).

Filed 12/27/2019

ORDER AFFIRMING ORDERS OF BANKRUPTCY COURT

THIS CAUSE is before the Court on the appeal by prose Appellant Joseph L. Worrell of the various Orders of the Bankruptcy Court¹. The Court has carefully considered the briefs of Appellant (DE 11, 25) and Appellees (DE 21, 22) and is otherwise fully advised in the premises.

I. BACKGROUND

A. Procedural History

Appellant filed an Adversary Complaint, alleging that Appellee Emigrant Mortgage Company, Inc. violated the automatic bankruptcy stay and/or the stay under the Servicemembers' Civil Relief Act as a result of a foreclosure sale of certain real property previously owned by Appellant on August 31, 2009. The Bankruptcy Court entered an Order on April 12, 2016, granting Appellee's motion to dismiss the Adversary Complaint, reasoning that there was no stay in effect at the time of the foreclosure sale. (DE 6-6, at 240.) The Bankruptcy Court also found that the Rooker-Feldman doctrine and the doctrines of res judicata and collateral estoppel precluded it from setting aside the state-court foreclosure sale. (*Id.* at 241.) In an Order entered on May 18, 2016, the Bankruptcy Court denied Appellant's Motion for Reconsideration. (DE 6-9, at 104-07.) Appellant now appeals both the Order dismissing the Adversary Complaint entered on April 12, 2016, and the Order denying reconsideration entered on May 18, 2016².

¹ This Court previously dismissed Appellant's appeal of the Bankruptcy Court's order granting sanctions. (DE 18.)

² Appellant appeals the Bankruptcy Court's Order entered on May 19, 2016, dismissing the appeal for failure to file the designation of items for the record timely or its statement of the issues as required by Bankruptcy Rule 8009. That portion of this appeal is now moot.

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On appeal, Appellant argues that the Servicemembers Civil Relief Act ("SCRA"), 50 App. U.S.C. § 522, protects servicemembers whose military duties prevent them from participating in an action. Appellant also emphasizes the protections of the automatic stay under 11 U.S.C. § 362. Next, Appellant argues that dismissal of his bankruptcy case operated to revest the real estate in question to him pursuant to 11 U.S.C. § 349. Finally, Appellant makes arguments challenging the events and proceedings in state court leading to the foreclosure sale.

B. Factual Background

After Appellant's bankruptcy case was originally dismissed, Appellant filed a Motion to Stay Proceedings and Motion to Vacate Dismissal ("Motion") on July 3, 2009. Appellant's Motion was heard before the Bankruptcy Court on August 27, 2009. At the hearing, after noting that notice of the hearing had not been provided to all parties due to an oversight on the part of Appellant's then counsel, the Bankruptcy Court stated as follows:

So, what I'm going to do is enter the order. The order will be entered in the next couple of days. You'll be required to serve it on all creditors in the case. They'll have a ten-day objection period. If there are any objections, I'll have another hearing about whether or not the standards have been met, if anybody objects.

(DE 6-5, at 77.)

The foreclosure sale occurred on August 31, 2009. After the foreclosure sale had already occurred, the Bankruptcy Court entered its Order granting the Motion on September 1, 2009, which reinstated the bankruptcy case and reimposed a stay.

II. DISCUSSION

Under either a de novo or abuse of discretion standard of review, the Court concludes that the Bankruptcy Court's Order dismissing the Adversary Complaint entered on April 12, 2016 and the Order denying reconsideration entered on May 18, 2016 must be affirmed. This Court agrees with the Bankruptcy Court that Appellee did not violate the automatic bankruptcy stay or the stay under the Servicemembers' Civil Relief Act as a result of a foreclosure sale on August 31, 2009, because a stay was not in effect at the time of the foreclosure sale.

When a court "dismisses a debtor's bankruptcy case, the stay terminates, and a creditor may proceed with foreclosure actions and/or its other legal rights." *In the Matter of Robinson*, No. 13-10244-WHD, 2014 WL 7793688, at *2 (Bankr. N.D. Ga. Oct. 24, 2014). Reinstatement of a case does not reimpose retroactively the stay during the period of time the case was dismissed. *Id.* Creditor actions that take place between dismissal and reinstatement are not affected by the reimposition of the stay. *Id.* Moreover, while the courts may grant stay relief retroactively, no authority exists which authorizes courts to impose a stay retroactively. *Id.*

Here, Appellant's bankruptcy case was originally dismissed on July 1, 2009, at which time the stay terminated. Appellee proceeded with the foreclosure sale during the period of time the case was dismissed. There was no stay in effect at the time of the foreclosure sale on August 31, 2009. While Appellant touts the protections of the SCRA and the automatic stay under 11 U.S.C. § 362, no stay was in effect under which Appellant was protected or which could have been violated.

When the case was reinstated and the stay reimposed by written Order of the Bankruptcy Court on September 1, 2009, the foreclosure sale had already transpired and thus the real estate in question was not owned by Appellant. Further, the Bankruptcy Court's mere oral statements in court on August 27, 2009 indicating that he would enter a written order reinstating the case in a couple of days was not itself effective to reinstate the case, particularly given the fact that the other parties in the case did not have notice of the hearing. *In re Brown*, 290 B.R. 415, 421 (Bankr. M.D. Fla. 2003) ("The USA was not notified of the hearing to reinstate the case. It was not informed when the Court orally ruled that the case was reinstated. Thus, the USA was not and could not have been attempting to circumvent this Court's ruling. Accordingly, the Court does not find any reason to deviate from the well-accepted rule that orders are effective when written and docketed. It then follows that the foreclosure sale occurred when the case was still dismissed and the sale was not in violation of the automatic stay."). Moreover, when the bankruptcy case was later dismissed again, there was no real estate to revest to Appellant and thus Appellant cannot claim that the later dismissal vested the real estate to him.

Finally, to the extent that Appellant challenges the foreclosure sale itself, neither this Court nor the Bankruptcy Court is an appropriate forum to appeal a state court ruling or an avenue to present arguments that should have been presented to the state court. The issue of the validity of the foreclosure sale has been litigated and concluded in Appellee's favor in state court and affirmed on appeal. Both comity and equitable principles of collateral estoppel prevent this Court from entertaining Appellant's collateral attack on the state court's rulings in the foreclosure action. *See In re Gregorakos*, No. 09-72614-MHM, 2009 WL 6499243, at* 1 (Bankr. N.D. Ga. Aug. 3, 2009).³

III. CONCLUSION

For the aforementioned reasons, the Order of the Bankruptcy Court dismissing the Adversary Complaint entered on April 12, 2016 and the Order denying reconsideration entered on May 18, 2016 are

AFFIRMED.

This case is **CLOSED**. All pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 22nd day of December, 2017.



KENNETH A. MARRA
United States District Judge

³ According to the record, Appellant did not raise his claim that "a lien which pre-exists an underlying promissory note may be invalid" in state court. Further, Appellant unsuccessfully sought in state court to void the underlying foreclosure judgment and foreclosure sale on the basis that the automatic stay precluded the foreclosure sale.



ORDERED in the Southern District of Florida on April 12, 2016.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF FLORIDA

IN RE: Chapter 13

Case Number 09-15332-EPK

IN RE JOSEPH LLEWELLYN WORRELL a/k/a JOEY WORRELL,
Debtor.

Adversary Proceeding
Case No.: 16-01046-EPK

JOSEPH LLEWELLYN WORRELL a/k/a JOEY WORRELL.

Plaintiff,

vs.

EMIGRANT MORTGAGE COMPANY, INC., RETAINED REALTY, INC.,
Defendant.

**ORDER GRANTING DEFENDANT EMIGRANT MORTGAGE COMPANY'S
AND RETAINED REALTY, INC.'S MOTION TO DISMISS AND DENYING AS
MOOT CHAD INGRAM, SAANA INGRAM, AND ILKKA JUHANI
SYSIMETSA'S MOTION TO DISMISS**

This Adversary Proceeding having come on for hearing before this Court on March 31, 2016 on Defendants Chad Ingram, Saana Ingram, and Ilkka Juhani Sysimetsa's Motion To Dismiss [Dkt 11] and Defendants Emigrant Mortgage

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Company, Inc. and Retained Realty, Inc.'s Motion to Dismiss Adversary Proceeding [Dkt 16] (collectively, the "Motions to Dismiss"). Plaintiff and all Defendants appeared through counsel. This Court having reviewed the Complaint [Dkt 1], Amended Complaint [Dkt 27], and Motions to Dismiss and this Court having heard argument of counsel for Plaintiff: counsel for Emigrant Mortgage Company, Inc. and Retained Realty, Inc., and counsel for Chad Ingram, Saana Ingram, and Ilkka Juhani Sysimetsa, and, for the reasons stated orally and recorded in open Court, this Court finds and concludes as follows:

This Adversary Proceeding was commenced in Plaintiff's previously dismissed Chapter 13 bankruptcy case. The Plaintiff filed his petition for relief on March 26, 2009 [Dkt 27 ¶9]. Listed on Plaintiff's Schedule A was his interest in real property located at 13993 Caloosa Blvd., West Palm Beach, Florida 33418 and more specifically described as:

Lot 62, SECTION THREE CALOOSA 1st ADDITION, according to the map or plat thereof, as recorded in Plat Book 34, Page(s) 56 through 62, inclusive, of the Public Records of Palm Beach County, Florida. (hereinafter the "Real Property") [Dkt 27 ¶ 11]

Based solely upon the allegations in the Adversary Complaint and Amended Adversary, Complaint, the automatic stay was not in effect at the time of the foreclosure sale of the Real Property. The foreclosure sale occurred on August 31, 2009 [Dkt 27 ¶17] and a Certificate of Sale was issued by the Palm Beach County Clerk of the Court on the same day. On August 31, 2009, there was neither any automatic stay nor was there any Servicemembers' Civil Relief Act stay in effect by this Court or any other court. A review of the docket in this proceeding and in the underlying bankruptcy case reveals that this Court conducted a hearing on August 27, 2009 on the Plaintiff's Motion to Reinstate [Case 09-15332-EPK Dkt 30]. No notice of the hearing was provided to Emigrant Mortgage Company ("Emigrant,") and Emigrant did not appear at the hearing, as evidenced by the transcript of the hearing. The Plaintiff's Counsel (not the current counsel) at the time acknowledged that, in violation of this Court's Local Rules and the applicable Federal Rules of Bankruptcy Procedure, the August 27, 2009 hearing was not properly noticed and

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Plaintiff's counsel did not file a certificate of service for the hearing. [Transcript of August 27, 2009 hearing, Page 4, lines 8-10]. Similarly, there is no indication that Emigrant had any actual notice of the August 27, 2009 hearing either.

Although this Court orally ruled at the August 27, 2009 hearing, the oral ruling was not an order of this Court until reduced to writing. *In re Brown*, 290 B.R. 415, 421 (Bankr. M.D. Fla. 2003). The oral ruling did not result in the imposition of a stay of any court or party's conduct, including the subject foreclosure sale. Similarly, the Debtor failed to request this Court's oral ruling be reduced to writing and docketed on an emergency basis prior to the subject foreclosure sale. This Court's written order was entered on September 1, 2009 [Case 09-15332EPK Dkt 33]. The Court's Order became effective on September 1, 2009, when the Order was docketed. There is no retroactive imposition of the automatic stay. *In re Hill*, 305 B.R. 100, 107-108 (Bankr. M.D. Fla. 2003) ("Clearly, according to the strong weight of authority, vacating the order dismissing the case does not impose or reinstitute or revive the automatic stay retroactively to the date of the vacated order.") A retroactive stay would be troublesome as it could void title to *bona fide* purchasers. Here, the foreclosure sale that took place on August 31, 2009 did not violate either the automatic stay or the Servicemembers' Civil Relief Act stay, as neither of such stays were in effect. The August 31, 2009 foreclosure sale was appropriate to proceed as scheduled, in the absence of any stay, and Emigrant was not required to vacate its foreclosure sale as no stay was in effect when the sale took place.

As there was no violation of the automatic stay, there was no willful violation of the automatic stay. At this Court's December 16, 2015 hearing on Plaintiff's Motion to Reopen Chapter 13 case [Case 09-15332-EPK Dkt 88], this Court granted the Motion, but only for the Plaintiff to seek sanctions for violation of the automatic stay [Transcript of December 16, 2015 hearing, Page 27, lines 12-17] [Case 09-15332-EPK Dkt 94]. Despite this limitation, the Plaintiff's original Adversary Complaint [Dkt 1] sought to challenge ownership and named the current owners of the Real Property as additional Defendants. Although Plaintiff's Amended Adversary Complaint [Dkt 27] removed the current owners, it continued to challenge ownership by seeking to vacate the deed from Emigrant Mortgage Company, Inc. to Retained Realty, Inc., a wholly owned subsidiary of Emigrant Mortgage Company,

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and to vacate the foreclosure sale [Dkt 27, ¶49-¶53]. The relief requested by the Plaintiff would have adversely affected title held by the current owners of the Real Property. Such relief was not only not authorized by the Court's December 16, 2015 order, but this Court specifically admonished the Plaintiff at the December 16, 2015 hearing against seeking relief as to title transferred to *bona fide* purchasers of the Real Property.

At all times material to this litigation, the Circuit Court in and for Palm Beach County, Florida ("State Court") had concurrent jurisdiction, with this Court, as to the scope and extent of both the automatic stay as well as the Servicemembers' Civil Relief Act, but had exclusive jurisdiction over the foreclosure, foreclosure sale, and transfer of title of the Real Property. This Court had exclusive jurisdiction only over the main bankruptcy proceeding pursuant to 28 USC §1334. This Court is barred by the doctrines of *res judicata* and collateral estoppel from setting aside, or otherwise affecting, the foreclosure sale. The State Court ruled multiple times in favor of Emigrant. This Court is further prohibited by the Rooker-Feldman Doctrine from setting aside, or otherwise affecting, the foreclosure sale.

It is therefore ORDERED and ADJUDGED as follows:

1. Emigrant's Motion to Dismiss [Dkt 16] is GRANTED. Plaintiff's Adversary Complaint and Amended Adversary Complaint are dismissed with prejudice. Due to the filing of the Amended Adversary Complaint, Defendants Chad Ingram, Saana Ingram, and Ilkka Juhani Sysimetsa's Motion To Dismiss [Dkt 11] is moot and therefore denied.

2. Regarding the Real Property, to the extent Plaintiff sought to vacate any title documents, this Court declines to do so, and specifically declines to vacate, modify or otherwise alter, any of the documents listed below:

- (a) August 31, 2015 [sic] Certificate of Sale;
- (b) February 1, 2013 Certificate of Title recorded in the Official Records of Palm Beach County in Book 25771 at Page 217;
- (c) September 10, 2015 Quit Claim Deed from Emigrant Mortgage Company, Inc. to Retained Realty, Inc., recorded in the Official Records of Palm

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Beach County in Book 27797 at Page 284;

(d) September 10, 2015 Special Warranty Deed from Retained Realty, Inc. to Chad Ingram and Saana Ingram, husband and wife and Ilkka Juhani Sysimetsa, recorded in the Official Records of Palm Beach County in Book 27797 at Page 286;

3. This Order shall be recorded in the public records of Palm Beach County, Florida.

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Submitted by:

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The party submitting this order is directed to serve copies of this order on the parties listed below and file a certificate of service conforming with Local Rule 2002-1(F).

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ORDERED in the Southern District of Florida on December 18, 2015.

A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE:

Chapter 13

Case Number 09-15332-EPK

IN RE JOSEPH LLEWELLYN WORRELL a/k/a JOEY WORRELL,

Debtor.

ORDER GRANTING IN PART MOTION TO RE-OPEN CASE

THIS MATTER came before the Court for hearing on December 16, 2015 upon the Motion to Reopen Chapter 13 Case and for Adversary Proceedings [ECF No. 88] (the "Motion") filed by Joseph Llewellyn Worrell (the "Debtor"). For the reasons stated on the record, and being otherwise fully advised in the premises, it is ORDERED as follows:

1. The Motion [ECF No. 88] is GRANTED IN PART as provided herein.
2. The above-captioned case is REOPENED solely so that the Debtor may file, no later than 30 days after entry of this Order, an appropriate pleading seeking relief against creditor Emigrant Mortgage Company for alleged violation of the automatic stay.
3. If the Debtor fails to file an appropriate and timely pleading as per paragraph 2, the above-captioned chapter 13 case shall be closed without further notice.
4. All other relief requested in the Motion is denied.

Copies furnished to:
All parties of record.

**Additional material
from this filing is
available in the
Clerk's Office.**