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APPENDIX A VOLUME I.

PAGE NUMBER

OPINIONS BELOW

Cases from federal court:

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Case No.: 1:15-cv-22539-LENARD

ANDREA LIEBMAN,

Appellant,

VS.

OCWEN LOAN SERVICING, INC.,

Appellee.

MEMORANDUM OPINION AND ORDER REMANDING THIS MATTER FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION

THIS MATTER is before the Court on Andrea Liebman's (hereinafter,

"Appellant") Notice of Appeal from the Bankruptcy Court, filed on July 7, 2015.1 (D.E. 1.) Ocwen Loan Servicing, Inc. (hereinafter, "Appellee") filed its Brief in Opposition

(D.E. 33) on June 30, 2016; and Appellant replied (D.E. 41) on July 28, 2016. Having fully considered the parties' pleadings, the Court finds as follows.

I. BACKGROUND

On February 25, 2015, Appellant filed a voluntary bankruptcy petition pursuant to Chapter 13 of the Bankruptcy Code. See Liebman v. Neidich, 15-13372-AJC (Bankr. S.D. Fla) (hereinafter, "Bankr. R.") at D.E. 1. On March 9, 2015, Appellant's bankruptcy case was dismissed for certain filing deficiencies – namely the failure to file a service

1 Appellant's Notice of Appeal was filed in Bankruptcy Court on July 2, 2015. (Bankr. R. at D.E. 108.)

matrix as required by Local Rule 1007-2(A). (Bankr. R. at D.E. 7.) On April 8, 2015, Bankruptcy Judge Cristol reinstated the case, but imposed the following condition: The automatic stay in this reinstated case shall not stay, stop or affect the foreclosure sale currently set for May 14, 2015, in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County Florida in Case No. 10-35247-CA-01;

and the May 14, 2015 foreclosure sale shall proceed as scheduled, in due course, pending further order of this Court, or the state court. (Bankr. R. at D.E. 18.)

In response to Judge Cristol's Order excluding her home from the protection of the automatic stay, Appellant filed a Motion to Stay the May 14, 2015, foreclosure sale of her home. (Bankr. R. at D.E. 24.) On May 13, 2015, Bankruptcy Judge Cristol held a hearing on Appellant's Motion to Stay. (Bankr. R. at D.E. 160.) At the hearing, Appellant agreed to make a vested payment of $3,600.00 – after which Judge Cristol granted her motion to stay the foreclosure of her home.2 (Id. at 12:16–19) ("This was a motion for hearing to stay – well I mean, to enter the automatic stay and it's granted."). Counsel for Appellee, recognizing Judge Cristol's oral ruling, stated on the record, "Your Honor, I will advise foreclosure to staythe sale." (Id. at 12: 14–15.) Despite the representation of Appellee's counsel at the hearing, and in direct contradiction of Judge Cristol's oral Order, Appellee continued with the foreclosure sale of Appellant's home. The home was sold at auction on May 14, 2015 – the day after the hearing.

2 Judge Cristol entered a written order memorializing his oral ruling on May 26, 2015. (Bankr. R. at D.E. 46.)

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On May 26, 2015, Appellant filed an Emergency Motion requesting that the Appellee show cause why it continued with the foreclosure sale in violation of Judge Cristol's oral order staying the foreclosure. (Bankr. R. at D.E. 43.) Judge Cristol held a hearing on Appellant's Emergency Motion on June 3, 2015. (Bankr. R. at D.E. 161.) At the hearing, Judge Cristol criticized Appellant's counsel for not filing a written order before the foreclosure sale took place and stated that, if Appellee did not agree to vacate the sale, he could not offer Appellant any relief.3 (Id. at 8: 12–17) ("What does Ocwen want to do? You have two choices. If you want to agree to vacate the sale, that will let counsel possibly off the hook. If not, the sale is over, and Ms. Liebman is left with a professional liability claim against her attorney."). Appellee's counsel stated that she had previously agreed to vacate the sale and felt ethically obligated to do so, but asked if the Court would hold the foreclosure sale in abeyance until Appellant's bankruptcy plan was either confirmed or rejected. Judge Cristol adopted Appellee's position and held "in abeyance the implementation of the automatic stay pending confirmation of the case."

(Id. at 14: 11–14.) Judge Cristol issued a written order on June 5, 2015, which stated:

3 At the hearing, Judge Cristol criticized counsel for Appellant, Ms. Trzeciecka, for not preparing a written order imposing the automatic stay before the foreclosure

sale took place. Ultimately, he ordered Ms. Trzeciecka "not to appear in Bankruptcy Court again until she has taken at least six credits of continuing legal education in bankruptcy, and has filed a certificate indicating that she understands the rules and the law." Bankr. R., D.E. 161 at 13–14. Having reviewed the record, the undersigned concludes that counsel for Appellant did nothing wrong. She relied upon the Court's ore tenus order and negotiated in good faith with opposing counsel to draft a joint proposed written order. If any lawyer toed the ethical line, it was counsel for Appellee – Ms. Blanco – not Ms. Trzeciecka.

While the Court lacks jurisdiction to overturn Judge Cristol's sanction against Ms. Trzeciecka, it finds such a sanction to be unwarranted, and urges Judge Cristol to vacate said order upon remand.

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The Motion to Vacate Sale pending in Circuit Court, and this Court's oral ruling from May 13, 2015 hearing granting Debtor's Motion to Stay the May 14, 2015 Foreclosure Sale are HELD IN ABEYANCE pending the confirmation hearing on Debtor's Chapter 13 plan scheduled for June 16, 2015.

. . . .

If the plan is not confirmed on June 16, 2015, then the Court's ruling to stay the foreclosure sale shall be vacated, and the foreclosure sale conducted on May 14, 2015 shall be deemed valid, and the Debtor shall withdraw the Motion to Vacate Sale filed in the Circuit Court. Once the Court vacates its ruling to stay the foreclosure sale, all interested parties may proceed with their post-sale rights and remedies, including but not limited to, obtaining a certificate of title and possession of the subject property.

. . . .

If the plan is confirmed on June 16, 2015, the automatic stay will be determined to have been in effect nunc pro tunc to the May 13, 2015 oral ruling, and the sale process in Circuit Court will be determined to be void in violation of the automatic stay, but the violation, if any, is clearly not knowingly or willful and no sanctions will be ordered.

(Bankr. R. at D.E. 61.)

On June 16, 2015, Judge Cristol held a confirmation hearing. (Bankr. R. at D.E. 171.) At the hearing, it became apparent that Appellant and her husband had failed to provide certain information – including her husband's income – in time for the Trustee to certify that they had presented a confirmable plan. Counsel for Appellant

proffered that she had all of the necessary materials and schedules ready to file and, that if granted a short extension, her client's plan would likely be confirmable. Counsel also reminded Judge Cristol that her client had made two vested payment to Appellee on May 13, 2015,

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and had since made a third. Seizing upon the moment, counsel for Appellee urged Judge Cristol to lift the stay on the May 14th foreclosure sale and permit the foreclosure process to proceed to completion. After listening to the arguments of the parties, Judge Cristol held that the stay on the foreclosure sale was lifted and that the foreclosure could proceed unchecked.

4

On June 18, 2015, Appellant filed an Emergency Motion for Reconsideration of Judge Cristol's June 16th oral order retroactively lifting the stay. (Bankr. R. at D.E. 92.) Judge Cristol denied her Motion for Reconsideration on June 22, 2015. (Bankr. R. at D.E. 95.) On June 26, 2015, Appellant filed an Amended Emergency Motion for Rehearing – which Judge Cristol denied four days later. (Bankr. R. at D.E. 95 and 102, respectively.)

On July 2, 2015, Appellant filed her Notice of Appeal from Judge Cristol's Orders denying her motions for rehearing. Her appeal is currently pending before this Court, and having been fully briefed, is now ready for disposition.

II. ANALYSIS

This appeal presents the following issues: (1) was Judge Cristol's ore tenus order implementing the stay binding on the parties as of May 13, 2015; (2) was the sale of Appellant's home voidable or void ab initio; and (3) did Judge Cristol have authority to retroactively annul the automatic stay.

4 Judge Cristol did not enter a written order lifting the stay of the foreclosure sale until after the Appellant filed her Notice of Appeal.

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a. Jurisdiction

A district court has appellate jurisdiction over the Bankruptcy Court pursuant to 28 U.S.C. § 158(a), which provides, in pertinent part, that: (a) The district courts of the

United States shall have jurisdiction to hear appeals (1) from final judgments, orders and decrees; ...; and

(3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 147 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

28 U.S.C. § 158(a). Bankruptcy appeals are also governed by Federal Rules of Bankruptcy Procedure 8001 – 8028. The Appellee raises a series of jurisdictional arguments, asserting that this Court cannot consider the merits of Appellant's claim.

First, Appellee argues that the Appellant's claim is barred because she failed to appeal: (1) Judge Cristol's written order holding the stay in abeyance pending confirmation; or (2) his ore tenus order lifting the stay. (D.E. 33 at 31.) Appellee argues that because Appellant did not identify the "correct" order to appeal, this Court cannot grant her requested relief. (Id.) Appellee's hyper-technical argument ignores the well established rule that courts liberally construe the filings of pro se appellants. See, e.g., Restivo v. Bank of Am. Corp., 618 F. App'x 537, 540 (11th Cir. 2015) ("We liberally construe pro se pleadings and briefs."). While pro se litigants must comply with

procedural rules, Appellant has satisfied the most basic procedural requirement to perfect her appeal. Her Notice of Appeal and Initial Brief clearly inform the Court of the ruling she seeks to have reversed, and that is all that is required. Appellant timely appealed the only written order (at that time) that addressed Judge Cristol's decision to vacate the stay and permit the foreclosure of her home to proceed.5 The Court will not dismiss this pro se Appellant's appeal because she did not know to appeal the oral ruling of the

Bankruptcy Judge.6

Second, Appellee asserts that even if Appellant had appealed Judge Cristol's June 5th order (Bankr. R. at D.E. 61) which held the stay and foreclosure sale in abeyance or his June 16th ore tenus order (Bankr. R. at D.E. 171) lifting the stay and permitting the foreclosure sale to proceed, her Notice of Appeal would have been untimely pursuant to Fed. R.Bankr. P. 8002.7 This position ignores the fact that a motion for reconsideration tolls the deadline to file a notice of appeal. See, e.g., Coe v. RJM, LLC, 372 F. App'x 188, 189 (2d Cir. 2010) ("[A] motion for

reconsideration filed pursuant to Bankruptcy Rule 9024 within 14 days after the entry of judgment . . . tolls the time to appeal."); In re Weston, 41 F.3d 493, 495 (9th Cir. 1994) ("[A] motion for reconsideration is considered to be a Bankruptcy Rule 9023 motion and tolls the time limitation for filing a notice of

5 Appellee's position that Appellant should have appealed Judge Cristol's June 5, 2015 Show Cause Order borders on the absurd. The Show Cause Order was a non-final, non-appealable order which did nothing more than uphold the status quo and defer a ruling until the confirmation hearing.

6 The Court is unsure it would impose the rigorous standard the Appellee suggests on even the most seasoned attorney.

7 Rule 8002 provides a party with fourteen (14) days to appeal an order of the Bankruptcy Court.

appeal."); In re Colomba, 257 B.R. 368, 369 (B.A.P. 1st Cir. 2001). Accounting for the time that was tolled while Appellant's Motion for Reconsideration and Amended Motion for Reconsideration were pending, it is clear that she timely appealed Judge Cristol's June 16th ore tenus order lifting the stay and permitting the foreclosure sale to proceed.

Third, Appellee argues that the appeal is moot because Appellant failed to request a stay of the foreclosure pending appeal.8 This argument is also unavailing. First, the foreclosure sale was void ab initio and therefore there was nothing to stay pending appeal. Second, Appellee's argument would require the Court to make factual decisions – like whether the buyer of Appellant's home was a bona fide purchaser for value – without any evidence on the record and without any decision from the Bankruptcy Court to consider.9 Furthermore, even if it is ultimately determined that Appellant's home cannot be returned to her, this does not foreclose other forms of relief – including damages against Appellee. This is especially so where a mortgagor – like the Appellee here – appears to have willfully violated the automatic stay.10

8 Additionally, as explained infra, the May 14, 2015 foreclosure sale was void ab initio. Accordingly, there was nothing to stay because the foreclosure was a legal nullity. 9 The parties have not briefed whether the defense of a good faith purchaser can validate an otherwise void sale; however, there is at least some case law which suggests that it cannot. See, e.g., In re Ford, 296 B.R. 537, 545 (Bankr. N.D. Ga. 2003).

10 The Court is aware that Judge Cristol found, in passing, that Appellee did not willfully violate the stay. However, this legal conclusion lacks factual support in the record.

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9 Fourth, Appellee argues that this Court lacks jurisdiction because Judge Cristol's two orders denying rehearing are non-final and non-appealable.

11.

11 This argument suffers from the same flaw as the first: hyper-technicality.

12 The Appellee wants to punish this pro se Appellant because she did not appeal Judge Cristol's oral order lifting the stay. However, Appellant's motions for Rehearing directly challenged Judge Cristol's decision to lift the stay; and Judge Cristol's Orders denying those motions were the only written orders (at the time) which addressed his decision to lift the stay. The Appellant, who is untrained in the law, believed that by identifying those two written orders in her Notice of Appeal, she was informing the Court of the decision she wished to appeal. She was correct. The Court is fully apprised of the decision she wishes to appeal. And finally, Appellee argues that the Court cannot consider Appellant's attempts to file amended notices of appeal. The Court need not address this argument, however, because it concludes that the original notice of appeal is sufficient to confer jurisdiction

on this Court.

b. Merits of the Appeal13

The first issue in this appeal is whether Judge Cristol's May 13, 2015, oral order reinstating the automatic stay was binding absent a written order. It undoubtedly was.

11 To the extent that the orders identified in Appellant's Notice of Appeal are non-final, the Court grants her leave to file an interlocutory appeal of those orders.

12 Appellee essentially argues that it can violate Judge Cristol's oral order imposing the stay with impunity, but that this pro se Appellant's appeal

should be dismissed because she failed to appeal an oral order. 13 Notably, Appellee does not address the actual merits of this case in its Answer Brief – but instead presents several red herrings.

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Oral orders are "are just as binding on litigants as written orders; the consequences for violating an oral order are the same as those for violating a written order." See Malautea v. Suzuki Motor Co., 987 F.2d 1536, 1543, n.7 (11th Cir. 1993).

The second issue in this appeal is also easy to resolve. In this Circuit, actions taken in violation of the automatic stay are void ab initio, or lacking legal effect. See Tacoronte v. Cohen, et al., 2016 WL 3439012, at *3 (11th Cir. June 23, 2016); see also In re Jawish, 260 B.R. 564, 570 (Bankr. M.D. Ga. 2000); Matter of Ring, 178 B.R. 570, 577 (Bankr. S.D. Ga. 1995).

The third issue – whether Judge Cristol could retroactively lift the stay – is more difficult and will require more attention. Many courts, including the Eleventh Circuit, have construed the statutory language of 11 U.S.C. § 362(d)14 to permit bankruptcy

14 Section 326 provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--(A) the debtor does not have an equity in such property; and(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later--(A) the debtor has

courts to retroactively lift automatic stays in rare circumstances. See In re Soares, 107 F.3d 969, 976 (1st Cir. 1997) ("We now confirm Smith's adumbration, holding that 11 U.S.C. § 362(d) permits bankruptcy courts to lift the automatic stay retroactively and thereby validate actions which otherwise would be void."); see also In re Nat'l Envtl. Waste Corp., 129 F.3d 1052, 1053 (9th Cir. 1997); In re Albany Partners, Ltd., 749 F.2d 670, 671-73 (11th Cir.1984); In re Boling, No. 6:05-BK-16267-KSJ, 2008 WL 5100204, at *12 (Bankr. M.D. Fla. July 24, 2008);

In re Bright, 334 B.R. 19, 25 (Bankr. D. Mass. 2005); In re WorldCom, Inc., 325 B.R. 511, 515 (Bankr. S.D.N.Y. 2005); In re Stockwell, 262 B.R. 275, 280 (Bankr. D. Vt. 2001); In re Sanders, 198 B.R. 326, 329 (Bankr. S.D. Cal. 1996).

In Albany Partners, the Eleventh Circuit stated: filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or(B) the debtor has commenced monthly payments that--(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or(B) multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362 (emphasis added).

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12 Albany Partners maintains that even if relief from the automatic stay and dismissal of the petition were proper, the bankruptcy court exceeded its power by ordering that the stay be annulled, effective retroactively so as to validate appellees' foreclosure sale of the Ramada Inn property.

It is true that acts taken in violation of the automatic stay are generally deemed void and without effect. Nonetheless, § 362(d) expressly grants bankruptcy courts the option, in fashioning appropriate relief, of "annulling" the automatic stay, in addition to merely "terminating" it. The word "annulling" in this provision evidently contemplates the power of bankruptcy courts to grant relief from the stay which has retroactive effect; otherwise its inclusion, next to "terminating", would be superfluous.

. . . .

Accordingly, we hold that § 362(d) permits bankruptcy courts, in appropriately limited circumstances, to grant retroactive relief from the automatic stay. 749 F.2d at 675 (internal citations omitted).15 Since the Eleventh Circuit's decision in Albany Partners, other courts have developed a series of factors to use when determining whether cause exists to retroactively lift a stay:

(1) if the creditor had actual or constructive knowledge of the bankruptcy filing and, therefore, of the stay;

(2) if the debtor has acted in bad faith;

(3) if there was equity in the property of the estate;

15 In Albany Partners, the Eleventh Circuit did not address the seeming tension between its holdings that: (1) actions taken in violation of the automatic stay are void ab initio; and (2) § 362(d) provides jbankruptcy courts with authority to retroactively lift the automatic stay and give effect to actions taken in violation of the stay. Therefore, the Court is bound by both of these holdings – despite their logical inconsistency. Cf. BroadStar Wind Sys. Grp. Liab. Co. v. Stephens, 459 F. App'x 351, 357 (5th Cir. 2012) (citing Chapman v. Bituminous Ins. Co., 345 F.3d 338, 344 (5th Cir.2003)) (noting that to give effect to § 362's statutory language permitting "annulment" of the stay, an action taken in violation of the stay must be voidable – not void).

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(4) if the property was necessary for an effective reorganization;

(5) if grounds for relief from the stay existed and a motion, if filed, would likely have been granted prior to the automatic stay violation;

(6) if failure to grant retroactive relief would cause unnecessary expense to the creditor; and

(7) if the creditor has detrimentally changed its position on the basis of the action taken.

In re Stockwell, 262 B.R. at 281 (collecting cases).

In this case, the Bankruptcy Court did not consider any of these factors when deciding to annul the stay. Instead, it retroactively lifted the stay based exclusively on the Appellant's failure to prepare a confirmable plan by the June 16, 2015 deadline. The failure to meet a court-ordered deadline is not a "limited" circumstance which warrants retroactively lifting a bankruptcy stay. Because the Bankruptcy Court failed to consider the appropriate factors, it abused its discretion when it retroactively lifted the stay and sanctioned the foreclosure sale of Appellant's home. See Anderson v. Cagle's, Inc., 488 F.3d 945, 953 (11th Cir. 2007) (articulating the abuse of discretion standard). Consequently, this matter is remanded to the Bankruptcy Court to apply the appropriate legal standards and make supplemental findings.

III. CONCLUSION

For the reasons stated herein, this matter is REMANDED for further proceedings consistent with this opinion and the law of the Eleventh Circuit.

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DONE AND ORDERED in Chambers at Miami, Florida, this 7th day of September, 2016.

JOAN A. LENARD

UNITED STATES DISTRICT JUDGE

U.S. COURT OF APPEALS MOTION FOR REHEARING & EN BANC HEARING DENIED ON 3-1-22

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14872-HH

In re: ANDREA ROSEN LIEBMAN,
Debtor.

ANDREA LIEBMAN,
Plaintiff - Appellant,
versus
OCWEN LOAN SERVICING, LLC,
FUTURA MIAMI INVEST LLC,
Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
BEFORE: WILLIAM PRYOR, Chief Judge, WILSON, and ANDERSON, Circuit Judges. PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

U.S. COURT OF APPEALS OPINION DATED 11-2-21 BELOW:

[DO NOT PUBLISH]
In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-14872
Non-Argument Calendar

In re: ANDREA ROSEN LIEBMAN,
Debtor.

ANDREA LIEBMAN,
Plaintiff-Appellant,
versus
OCWEN LOAN SERVICING, LLC,
FUTURA MIAMI INVEST, LLC,
Defendants-Appellees.
USCA11 Case: 20-14872 Date Filed: 11/02/2021 Page: 1 of 5
2 Opinion of the Court 20-14872

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-20322-RNS

Before WILLIAM PRYOR, Chief Judge, WILSON, and ANDERSON, Circuit Judges.
PER CURIAM:

This appeal is Andrea Liebman's second pro se appeal concerning her petition to declare bankruptcy under Chapter 13 of the Bankruptcy Code and the foreclosure sale of her property. Liebman challenges orders affirming the denial of her motion for relief from a judgment refusing to reinstate her bankruptcy case or to retroactively stay the sale of her property, see Fed. R. Civ. P. 60, and her motion to stay the disbursement of funds from the foreclosure sale. We affirm.

"As the second court to review the judgment of the bankruptcy court, we review the order[s] of the bankruptcy court independently of the district court." In re TOUSA, Inc., 680 F.3d 1298, 1310 (11th Cir. 2012). We review the denial of Liebman's motion for relief under Federal Rule of Civil Procedure 60 for abuse of discretion. In re Glob. Energies, LLC, 763 F.3d 1341, 1347 (11th Cir. 2014). We review the decision to deny Liebman's motion to stay the disbursement of funds de novo and its related findings of fact USCA11 Case: 20-14872 Date Filed: 11/02/2021 Page: 2 of 5
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for clear error. See In re McLean, 794 F.3d 1313, 1318 (11th Cir. 2015). The district court did not abuse its discretion when it denied Liebman's postjudgment motion for relief. Because Liebman's motion challenged a judgment that we affirmed in her first appeal, the doctrine of the law of the case bars us from considering that judgment a second time in the *absence of any contrary controlling authority or a clear error in the decision.* See United States v. Stein, 964 F.3d 1313, 1322–23 (11th Cir. 2020). In the earlier appeal, we concluded that Liebman presented no "arguments or evidence suggesting that the bankruptcy court erred by refusing to reinstate her case" or "inappropriately applied . . . the factors [it had to] consider in determining whether to grant [her] a retroactive stay." Liebman v. Ocwen Loan Servicing, LLC, et al., 772 F. App'x 839, 841 (11th Cir. June 7, 2019). The judgment of the bankruptcy court, which Liebman declined to challenge "in a subsequent appeal when the opportunity existed, bec[ame] the law of the case for . . . [her postjudgment] litigation . . . ." See Stein, 964 F.3d at 1324 (quoting United States v. Escobar-Urrego, 110 F.3d 1556, 1560 (11th Cir. 1997)). Liebman argues that the bankruptcy court used a nunc pro tunc order in violation of Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano, 140 S. Ct. 696 (2020), but we disagree. In Acevedo, the Supreme Court reached the unremarkable conclusion that a state court lost jurisdiction to issue orders in an action that had

been removed to federal court and was awaiting USCA11 Case: 20-14872 Date Filed: 11/02/2021 Page: 3 of 5
4 Opinion of the Court 20-14872
remand. Id. at 699–701; see 28 U.S.C. § 1446(d) ("after the filing of [a] notice of removal . . . the State court shall proceed no further unless and until the case is remanded"). The Supreme Court also concluded that a nunc pro tunc order entered by the federal court, which impermissibly "revis[ed] history" by backdating to March 2018 its decision in August 2018 to remand, could not retroactively confer jurisdiction to the state court. Id. at 700–01. In contrast, the nunc pro tunc order the bankruptcy court entered in Liebman's case "reflect[ed] the reality of what [had] already occurred." See id. (internal quotation marks omitted). The nunc pro tunc order clarified that the reinstatement of Liebman's bankruptcy case had not reimposed the automatic stay, see 11 U.S.C. § 362(c)(2)(B)(dismissal terminates the automatic stay), and, in the alternative, that the bankruptcy court had conditioned the stay on Liebman submitting a confirmable Chapter 13 plan, see id. § 362(d) (giving a bankruptcy court power to "grant relief from the stay . . ., such as by terminating, annulling, modifying, or conditioning such stay"). Acevedo is not a contrary decision of law ap . . support[ed]"
Liebman's argument that Ocwen willfully violated the automatic stay when it accepted the proceeds from the foreclosure sale. See 11 U.S.C. § 362(k)(1). Punitive sanctions are appropriate only if a party acts with reckless or callous USCA11 Case: 20-14872 Date Filed: 11/02/2021 Page: 4 of 5
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disregard for the law or rights of others. In re McLean, 794 F.3d 1313, 1325 (11th Cir. 2015).
Liebman accused Ocwen of "conceal[ing] . . . information, [and committing] fraud upon the Court," but the record supports the contrary finding of the bankruptcy court that Ocwen had "done nothing wrong." After the bankruptcy court lifted the stay, Ocwen was not barred from accepting the proceeds. We cannot say that the bankruptcy court erred in determining that, because "the facts of record do not support an award of damages," "no reasonable basis [existed] to stay the disbursements"
to Ocwen.

We AFFIRM the denial of Liebman's post judgment motions.

U.S. Court Of Appeals Opinion Dated 6-7-19 below:

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10495
Non-Argument Calendar

D.C. Docket Nos. 1:17-cv-22874-RNS; 1:15-bkc-13372-AJC
In re:
ANDREA ROSEN LIEBMAN,
Debtor.

ANDREA ROSEN LIEBMAN,
Plaintiff-Appellant,
versus
OCWEN LOAN SERVICING, LLC,
FUTURA MIAMI INVEST LLC,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(June 7, 2019)
USCA11 Case: 18-10495 Date Filed: 06/07/2019 Page: 1 of 5
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Before WILSON, WILLIAM PRYOR, and GRANT, Circuit Judges. PER CURIAM:
Andrea Rosen Liebman filed for bankruptcy under Chapter 13. The bankruptcy court eventually dismissed her case after determining that Liebman's

Chapter 13 payment plan was inadequate. The bankruptcy court denied her second amended emergency motion to reinstate her Chapter 13 bankruptcy case and granted Ocwen Loan Servicing, LLC's (Ocwen) motion to amend the court's prior order denying confirmation of the payment plan and dismissing the case. In the same order, the bankruptcy court determined that Liebman was not entitled to a retroactive stay of the sale of her townhouse. The district court affirmed the bankruptcy court's order, and Liebman appealed.

On appeal, Liebman does not argue that the bankruptcy court erred by not reinstating her case or by refusing to grant a retroactive stay. Rather, her arguments spawn from previous bankruptcy court orders. Specifically, Liebman argues that (1) we should grant relief under Federal Rule of Civil Procedure 60(b) because Ocwen violated appellate jurisdiction; (2) the bankruptcy court erred by refusing to grant her request for punitive damages in her Rule 60(b) motion; (3) the bankruptcy court erred by refusing to acknowledge one of the arguments in her Rule 60(b) motion; and (4) her motion for a stay of disbursement should have been granted. We have previously concluded that we do not have jurisdiction to hear

these arguments. Order Granting Mot. to Dismiss for Lack of Jurisdiction (Sept. 10, 2018), ECF No. 49.

Because Liebman did not sufficiently brief the decisive issues—whether the bankruptcy court erred by refusing to (1) reinstate Liebman's Chapter 13 bankruptcy case or (2) retroactively stay the sale of her townhouse—we affirm.

In an appeal from a district court's order affirming the bankruptcy court, we review the bankruptcy court's factual findings for clear error and its legal conclusions de novo. In re Ocean Warrior, Inc., 835 F.3d 1310, 1315 (11th Cir. 2016). To "brief" a claim, a party must "plainly and prominently" raise it by, for example, devoting a discrete section of her argument to that claim. Sapuppo v. Allstate Floridian Ins. Co., 739 F.3d 678, 681 (11th Cir. 2014) (quotations omitted). A claim is abandoned if the appellant only makes passing references to it or raises it in a perfunctory manner without supporting arguments or authority. Id. We generally do not address arguments made for the first time in a reply brief. Id. at 683. These principles do not change if the appellant is pro se. See Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) (per curiam) ("While we read briefs filed by pro se litigants liberally, issues not briefed on appeal by a pro se litigant are deemed abandoned." (internal citations omitted)); see also id. ("[W]e do not

address arguments raised for the first time in a pro se litigant's reply brief." (citation omitted)).

Liebman has not presented any arguments or evidence suggesting that the bankruptcy court erred by refusing to reinstate her case. Likewise, she has not presented any arguments or evidence suggesting that the bankruptcy court inappropriately applied the Stockwell factors, which are the factors a bankruptcy court must consider in determining whether to grant a retroactive stay. See In re Stockwell, 262 B.R. 275, 281 (Bankr. D. Vt. 2001). Rather, she devotes only one sentence of her initial brief, reply brief, and amended reply briefs to the latter issue. Specifically, the only sentence in Liebman's amended initial brief mentioning the Stockwell factors states, "Futura has no protection from a purchase made in (Willful) Violation of an Automatic Stay nor are they are [sic] a creditor, who could have implemented the Stockwell Factors." And in Liebman's original and amended reply briefs, she frames one of the issues as "[w]hether the [bankruptcy court] correctly applied the facts set forth in In re Stockwell," but only makes a one -sentence argument regarding that issue: "Stockwell factor # 5 in itself invalidated the Stockwell factors . . ." The single sentence in her amended initial brief is insufficient to raise a claim that the bankruptcy court's application of the Stockwell factors was erroneous, and we will not consider the argument raised in her original and amended reply briefs. Sapuppo, 739 F.3d at 681, 683. We

therefore affirm the district court's affirmance of the bankruptcy court's order denying Liebman's second amended emergency motion to reinstate.1

AFFIRMED.

1 Appellant's motion to file an amended reply brief is GRANTED. Both Appellee's and Appellant's motion for sanctions are DENIED. Appellee's motion to dismiss the appeal as frivolous is likewise DENIED.

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court
June 07, 2019
For rules and forms visit
www.ca11.uscourts.gov
MEMORANDUM TO COUNSEL OR PARTIES
Appeal Number: 18-10495-CC
Case Style: Andrea Liebman v. Ocwen Loan Servicing, LLC, et al
District Court Docket No: 1:17-cv-22874-RNS
Secondary Case Number: 1:15-bkc-13372-AJC

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b). The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3. Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the Voucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.
Pursuant to Fed.R.App.P. 39, costs taxed against appellant. Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov. For questions concerning the issuance of the decision of this

court, please call the number referenced in the signature block below. For all other questions, please call Carol R. Lewis, CC at (404) 335-6179.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch

Phone #: 404-335-6151

1.b

United States District Court for the

Southern District of Florida

Bankruptcy Appeal

Case No. 20-20322-Civ-Scola

Andrea Rosen Liebman, Appellant,)

v.) Ocwen Loan Servicing, LLC and

) Futura Miami Invest LLC, Appellees.)

Order Affirming Bankruptcy Court

This matter is before the Court upon Debtor-Appellant Andrea Rosen Liebman's appeal from various final orders entered by the United States Bankruptcy Court for the Southern District of Florida in connection with the Debtor's February 25, 2015 Chapter 13 petition (the "Petition") for bankruptcy protection and the ultimate foreclosure sale of her home. This is the Debtor's third appeal to this Court and, taking into account appeals in related state court proceedings and to the Eleventh Circuit, this is the Debtor's seventh appeal arising from the facts underlying the Petition. While the Petition temporarily delayed the foreclosure of the Debtor's home, that home was eventually foreclosed upon by Appellee Futura Miami Invest, LLC ("Futura"). (ECF No. 27 at 10.) Appellee Ocwen Loan Servicing, LLC ("Ocwen") serviced the loan on behalf of non-party Deutsche Bank National Trust Company, which held the mortgage over the subject property. The crux of this appeal concerns certain collateral aspects of final orders. Although the appeal raises issues relating to the foreclosure itself, those issues, as discussed below, have already been resolved by this Court's rulings, which were subsequently affirmed on appeal to the Eleventh Circuit. Having reviewed the Appellant's amended brief (ECF No. 24), the Appellees' response (ECF No. 27), and the Appellant's amended reply (ECF No. 31), as well as the record and the relevant legal authorities, the Court finds no error and **affirms** the bankruptcy court.

1. Background

This case involves a somewhat complicated procedural history and posture. This is the parties' third appearance before this Court, having been here twice before on appeals from the bankruptcy court. This case has also made two trips to the Eleventh Circuit, one resulting in a dismissal on jurisdictional grounds and the other resulting in an affirmance of this Court's decision on the Debtor's second appeal. Liebman v. Ocwen Loan Servicing, LLC, No. 17-22874-CIV, 2018 WL 527975, at *3 (S.D. Fla. Jan. 22, 2018) (Liebman II) (Scola, J.), aff'd sub nom. In re

Liebman, 772 F. App'x 839 (11th Cir. 2019).Case 1:20-cv-20322-RNS Document 33 Entered on FLSD Docket 12/09/2020 Page 1 of 8

Liebman II details the case's considerable history and what follows is background context to the extent that it is pertinent to the instant appeal.This case began when the Debtor filed a voluntary Chapter 13 Petition in the bankruptcy court on February 25, 2015. (ECF No. 27 at 9.) The commencement of the bankruptcy case stayed the foreclosure sale of real property located at 3732 NE 167 Street, #41, North Miami Beach, Florida 33160 ("Property"), which was scheduled by the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Foreclosure Action"). (Id. at 9-10.) However, the Debtor's bankruptcy case was dismissed and, on April 1, 2015, the state court entered an order resetting the foreclosure sale for May 14, 2015. (ECF No. 27 at 10.)

Liebman II details the case's considerable history and what follows is background context to the extent that it is pertinent to the instant appeal.This case began when the Debtor filed a voluntary Chapter 13 Petition inthe bankruptcy court on February 25, 2015. (ECF No. 27 at 9.) The commencement of the bankruptcy case stayed the foreclosure sale of real property located at 3732 NE 167 Street, #41, North Miami Beach, Florida 33160 ("Property"), which was scheduled by the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida (the "Foreclosure Action"). (Id. at 9-10.) However, the Debtor's bankruptcy case was dismissed and, on April 1, 2015, the state court entered an order resetting the foreclosure sale for May 14, 2015. (ECF No. 27 at 10.)

Appellee Futura was the successful bidder and purchased the Property for $270,500.40. (Id.) From the purchase price, Ocwen was paid $226,352.05 and the condominium association, Beach Club Villas, obtained surplus funds of $37,847.95. (Id.) Following the foreclosure and payments to creditors, the Debtor and her spouse filed four separate state court appeals regarding the Foreclosure Action. (Id.)On April 9, 2015, the bankruptcy court granted an emergency order to reinstate the bankruptcy case. (Id. at 10.) The reinstatement order limited the automatic stay to the reinstated case, specifically excluding the previously pending Foreclosure Action from being stayed. (Id.) However, on April 21, 2015, the bankruptcy court orally granted the Debtor's separate motion to stay the foreclosure sale, which the bankruptcy court granted. (Id.) Notwithstanding the oral order staying the foreclosure sale that was under the auspices of the state court, the Debtor's counsel failed to submit a proposed order memorializing the oral ruling in advance of the foreclosure sale, so the sale proceeded in the state court Foreclosure Action. (Id. at 12.) The Debtor then filed an emergency motion for an order to show cause why Ocwen participated in the foreclosure sale that was forestalled by the bankruptcy

court's oral order. (Id.) That emergency motion was denied because the sale took place "as a result of the failure of counsel for the Debtor to promptly and timely submit" a written order, which was necessary to enable the state court to stay the foreclosure.

(Id.)

Ultimately, the Petition was dismissed because the Debtor failed to present a confirmable plan. (Id. at 14.) The Debtor's first appeal to this Court challenged the bankruptcy court's dismissal of the Petition on various grounds, some of which, as discussed below, are rehashed in this appeal. That first appeal resulted in a partial remand of several issues for the bankruptcy court's reconsideration. Upon reconsideration, the bankruptcy court revisited certain prior rulings, but concluded again that the foreclosure sale to Futura was

properly completed. (Id. at 16-17.) The Debtor again appealed to this Court, which found no merit to the Debtor's arguments and affirmed the bankruptcy court.However, while the second appeal to this Court was pending, the parties were before the bankruptcy court to address "the Chapter 13 Trustee's confusion over how to disburse the funds paid on behalf of [the Debtor] which remain in the Trustee's account." (Id. at 20.) "The Chapter 13 Trustee previously sought clarification as to how she should disburse vested funds paid to her by the Debtor during this case and after dismissal of this case." (Id.)

Specifically, "[t]he Debtor's last proposed plan provided for payments to the secured creditor, Ocwen, and Debtor's homeowners association, but Debtor's property was foreclosed during this case so the Trustee was uncertain as to whether to pay Beach Club and Ocwen any additional amounts from the funds she ha[d] on account." (Id.)

The bankruptcy court "directed that all funds paid by the Debtor after dismissal of the case be refunded or returned to the Debtor." (Id. (emphasis in original).) "The court also authorized payment from the remaining funds to Debtor's former counsel in the amount of $5,000, based on the parties' agreement."

(Id.) The bankruptcy court "further directed Ocwen and Beach Club to account for the funds they received from the Trustee in this case to determine if overpayments were made." Id. At a hearing held on May 24, 2018, Ocwen argued that the "Debtor's incessant litigation caused it great expense, far exceeding any amount sought to be disgorged, but nonetheless agreed to return to the Debtor all funds it received from the Trustee in this case,$11,383.83, in an effort to resolve this

matter." (Id.) The bankruptcy accepted the proffer, to which the Debtor did not object. (Id.) Ocwen further agreed to pay the Debtor within 30 days and she did not need to provide Ocwen with a W-9 in exchange for the disgorgement payment. (Id.)The Debtor thereafter filed a Motion and Amended Motion for Relief from Judgment, Motion for Contempt, Motion for Punitive Damages and Motion forFurther Stay of Execution arguing that she was entitled to damages "as a result of concealment of information, fraud upon the Court and other wrongdoing." (Id. at 21.) The bankruptcy court found "no grounds to support granting [the] Debtor the relief she is requesting" as her "rendition of the facts in this case do not comport with the record facts, and the facts of record do not support an award of damages." (Id.) The bankruptcy court explained that "[t]he secured creditors in this case have done nothing wrong, and the Debtor has not provided a sufficient basis for the various claims for relief that she is requesting." (Id.) The bankruptcy court found "no reasonable basis to stay the disbursements to the Debtor." (Id.) Accordingly, the motion was denied. (Id.)

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Two days after that order was issued, the Debtor filed an Emergency Motion to Stay Disbursement, which the bankruptcy court stated has "no basis stated therein to stay the disbursement of funds to the Debtor by the Chapter 13 Trustee." (Id.) The motion also "fail[ed] to set forth any grounds for a stay"and it was denied. (Id.)

This appeal followed.

2. Standard of Review

A district court functions as an appellate court when reviewing a bankruptcy court's orders. See In re Rudolph, 233 F. App'x 885, 886-87 (11th Cir. 2007) (citing In re JLJ Inc., 988 F.2d 1112, 1116 (11th Cir. 1993)). Interpretations of the Bankruptcy Code are questions of law that this Court reviews de novo. Pollitzer v. Gebhardt, 860 F.3d 1334, 1338 (11th Cir. 2017). Although the bankruptcy court's legal conclusions are reviewed de novo, the district court must accept the bankruptcy court's factual findings unless they are clearly erroneous. In re Rudolph, 233 F. App'x at 886-87. A bankruptcy court's judgment is clearly erroneous where, "although there is evidence to support it, the reviewing court on review of the entire evidence is left with the definite and firm conviction that a mistake has been committed." In re Paramount Citrus, Inc., 268 B.R. 620, 621 (M.D. Fla. 2001)

3. Discussion

The Debtor's brief identifies seven issues on appeal. However, several of those issues are duplicative and, where appropriate, they are addressed collectively below. At the outset, however, the Court will address the Appellants Argument that the Debtor's appeal should be dismissed for failure to comply with the Federal Rules of Bankruptcy Procedure. Rule 8014(a) provides that "[t]he appellant's brief must contain . . . a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record," and "the argument, which must contain the appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Fed. R. Bankr. P. 8014(a)(6)-(8). The Debtor's briefs do not comply with either requirement. The briefs contain almost no clear citations to the record and to the extent that the briefs explain the Debtor's arguments, the briefs generally jump from unadorned legal conclusions to nonbinding legal authority. On an even simpler level, and in violation of Local Rule 5.1(a)(4), the briefs are written entirely in bold font and at times appear to have no page margins at all, resulting in text that at some points runs off the page. (See, e.g., ECF No. 24 at

24-25.) In sum, the first, second, and third versions of the Debtor's opening brief, and the first and second versions of her reply brief (the later being untimely and filed without leave), failed to comply with the applicable Rules are could be dismissed on the basis alone.

"When an [appellant] does not cite to the record in support of assertions of fact, the appeal is subject to dismissal for failure to comply with [Federal Rule of Appellate Procedure] 28(a)(3)," from which Federal Rule of Bankruptcy Procedure 8014 is derived. In re Suncoast Airlines, Inc., 188 B.R. 56, 58 (S.D. Fla. 1994); see also Fed. R. Bankr. P. 8014 advisory committee's note to 2014 amendments. The Court agrees with the Appellees' argument that the degree of the Debtor's noncompliance with the applicable Rules warrants dismissal of her appeal. Morrissey v. Stuteville (In re Morrissey), 349 F.3d 1187, 1190-91 (9th Cir. 2003) (dismissal for noncompliance with procedural rules is proper, without explicit consideration of alternative sanctions, where procedural deficiencies are numerous and egregious). Dismissal is warranted even though the Debtor is proceeding pro se because this particular pro se party has been through at least five appeals in this Court and the Eleventh Circuit in this same case, and all five of the briefs remain exceedingly noncompliant despite the Court's warning concerning the form and

length of the briefs (ECF No. 22).Nevertheless, the Court will rule on the merits as set forth below while, as requested in the Debtor's seventh argument, liberally construing the pro se pleadings.

a. Purported Misapplication of the Stockwell Factors

The Debtor's first argument is that the bankruptcy court misapplied the factors set forth in In re Stockwell, 262 B.R. 275 (Bankr. D. Vt. 2001). This is the third time that the Debtor has appealed to this Court arguing that Stockwell was misapplied below. The first time that issue was brought here, this Court agreed and remanded for, inter alia, reapplication of the Stockwell factors. Liebman II, 2018 WL 527975, at *6. The second time the Stockwell issue was brought here (i.e., after the factors were reapplied on remand), the Court approved of the bankruptcy court's reapplication of the Stockwell factors. Liebman II, 2018 WL 527975, at *5. Indeed, that issue was appealed to the Eleventh Circuit, which held that the Debtor "ha[d] not presented any arguments or evidence suggesting that the bankruptcy court inappropriately applied the Stockwell factors, which are the factors a bankruptcy court must consider in determining whether to grant a retroactive stay." In re Liebman, 772 F. App'x at 841.

The Court finds that the law of the case doctrine precludes review of the Debtor's Stockwell argument for a third time. Original Brooklyn Water Bagel Case 1:20-cv-20322-RNS Document 33 Entered on FLSD Docket 12/09/2020 Page 5 of 8 Co., Inc. v. Bersin Bagel Grp., LLC, 817 F.3d 719, 728 (11th Cir. 2016) (holding that the "law of the case" doctrine establishes that the "conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or on a later appeal"); Heathcoat v. Potts, 905 F.2d 367, 370 (11th Cir. 1990) ("[F]indings of fact and conclusions of law by an appellate court are generally binding in all subsequent proceedings in the same case in the trial court or on a later appeal.") (citation omitted). Accordingly, the Court declines to rehash the Stockwell argument, which was already rejected by the Eleventh Circuit. b. Whether the Bankruptcy Court's Remand Order Was an Abuse of Discretion The Debtor's second and third arguments are that the bankruptcy court abused its discretion when it entered an order (the "Remand Order") modifying an earlier dismissal order. At the outset, this issue is also barred by the law of the case doctrine as set forth above in connection with the Debtor's argument concerning the Stockwell factors. The Debtor seems to be making the argument that the bankruptcy court erred in not reinstating the bankruptcy stay to block the foreclosure of her home. However, these arguments were already presented to, and rejected by, this Court in Liebman v. Ocwen Loan Servicing, LLC, No. 17-22874-CIV, 2018 WL 527975, at *3-4 (S.D. Fla. Jan. 22, 2018) (Scola, J.), aff'd sub nom. In re

Liebman, 772 F. App'x 839 (11th Cir. 2019). This Court reviewed these very same arguments and concluded then, as it does again now, that "Liebman has not convinced the Court that the bankruptcy court erred in declining to vacate the foreclosure sale of her home." Id. at *4. There is no legal basis for the Debtor to receive yet another opportunity to reargue her appeal regarding the Remand Order simply because she continues to disagree with the bankruptcy court, this Court, and the Eleventh Circuit. The Debtor's fourth argument is that reinstatement of the bankruptcy stay "is proper based on Ineffective Assistance of Counsel, Lack of Jurisdiction & Lack of Due Process . . . ." (ECF No. 24 at 25.) This argument appears to be based on the now-pro se Debtor's fee dispute with her own former counsel. (Id. at 27-29.) Although the details of the breakdown in the relationship between the Debtor and her former counsel are not entirely clear, it appears that at some point the relationship broke down and her former counsel stopped representing her. While the Debtor complains that her former counsel "backed down" around the time that the bankruptcy court denied an emergency motion, the Debtor does not explain how the breakdown in that relationship warrants a reversal of any particular lower court order absent a cogent argument (and none has been made) that any such order was made in error. The Court also Case 1:20-cv-20322-RNS Document 33 Entered on FLSD Docket 12/09/2020 Page 6 of 8 denies that portion of the Debtor's fourth argument claiming that her equal protection and due process rights were violated, and that the bankruptcy court lacked jurisdiction. (Id. at 31-32.) There is simply no argument in fact or law to support a purported conspiracy between the bankruptcy court and an attorney to "eliminate" the Debtor's rights. (Id. at 32.)

c. Order Directing Disgorgement of Payments Made to Ocwen

The Debtor's fifth argument is that the bankruptcy court erred in directing disgorgement of payments made to Ocwen. (ECF No. 24 at 32.) The bankruptcy court "directed Ocwen and beach club to account for the funds they received from the Trustee in this case to determine if overpayments were made." (ECF No. 27 at 29.) Ocwen "agreed to return to the Debtor all funds it received from the Trustee in this case, $11,383.83 . . . ." (Id.) The bankruptcy accepted the proffer, to which the Debtor did not object. (Id.) Ocwen claims that it timely made the disgorgement payments, which the Debtor does not dispute. (ECF No. 27 at 12.) While the gist of the Debtor's fifth argument is unclear, it appears that she takes no issue with having received the $11,383.83 disgorged from Ocwen, but she believes Ocwen should have been held in contempt and subject to punitive damages for receiving that amount from the Trustee in the first place. The Debtor claims that Ocwen received those funds in "willful violation[]" of a stay order (ECF No. 24 at 24 (emphasis in original)), but, as the Appellees point out, there was no stay in effect

during the relevant time period. Specifically, although the Debtor appealed the denial of her motion to stay disbursement of trust funds from the Trustee to Ocwen, she never expressly moved for a stay pursuant to Federal Rule of Bankruptcy Procedure 8007. As a rule, an appeal does not automatically stay the enforcement of a judgment or related disbursements. See Fed. R. Civ. P. 62; Fed. R. Bankr. P. 8007. The Debtor offers no authority for the proposition that the Court should, much less may, deviate from these clear rules of procedure. This issue also precludes the Court from agreeing with the Debtor's sixth argument, which challenges the transfer of certain funds from her trust account into an "unclaimed funds" account in the bankruptcy court. It appears that the Debtor is arguing that that transfer violated a stay, but, as explained above, no stay was in effect because a notice of appeal does not automatically stay enforcement of the judgment on appeal. 4. Conclusion The Debtor has not established reversible error and the Court, upon de novo review of all legal determinations, has found no clear error. Having reviewed the parties' briefing, the relevant legal authorities, and the record Case 1:20-cv-20322-RNS Document 33 Entered on FLSD Docket 12/09/2020 Page 7 of 8 before it, the Court **affirms** the bankruptcy court's decision. The Clerk is directed to **close** this case and **deny** any pending motions as moot.

Done and ordered, at Miami, Florida, on December 9, 2020.

Robert N. Scola, Jr.

United States District Judge

United States District Court for the

Southern District of Florida

Bankruptcy Appeal

Case No. 17-22874-Civ-Scola

(BKC Docket No. 15-13372-AJC)

15.

Andrea Rosen Liebman, Appellant,)

v.)

Ocwen Loan Servicing, LLC and) Futura Miami Invest LLC,
Appellees.)

Order Affirming Bankruptcy Court Order

Andrea Roseb Liebman appeals the United States Bankruptcy Court for the Southern District of Florida's July 19, 2017 order: addressing various issues on remand from the district court; denying her motion to reinstate her Chapter 13 bankruptcy; and modifying a prior dismissal order. (Appellant's Am. Initial Br., ECF No. 8,5.) Appellees Ocwen Loan Servicing, LLC, both responded (Ocwen's Appellee Br.. ECF No. 33; Futura's Appellee Br.,, ECF No. 31) Liebman replied to both briefs. (Appellant's Reply, ECF No. 36.) For the following reasons, the Court **affirms** the bankruptcy court's order.

1. Background

This case involves a somewhat complicated procedural history and posture. In February 2015, Liebman filed a voluntary bankruptcy petition pursuant to chapter 13 of the Bankruptcy Code. *See Liebman v. Neidich,* 15-13372-AJC, ECF No.1 (Bank. S.D. Fla. Feb. 25, 2015) (docket entries in the underlying bankruptcy case are hereinafter identified as "Bankr. R." followed by ECF No. of the entry. Less than two weeks later, Liebman's case was dismissed for filing deficiencies. (Bankr. ECF No. 18.) That order, though, specifically excluded from the automatic stay the previously set foreclosure sale of Liebman's townhouse, which had been scheduled to proceed through the circuit court in Miami-Dade County on May 14, 2015. (*Id.* at 2.) The Court directed that sale to "proceed as scheduled, in due course, pending further order of this Court, or the state court." (*Id.*)

Thereafter, Liebman filed a motion to stay the foreclosure sale. (Bankr. R. ECF No. 24.) The bankruptcy court held a hearing on the motion, the day before the scheduled foreclosure sale, and in open court, granted the motion to stay the sale. (May 13, 2015 Hr'g Tr. at 12:16-19, Bankr. R. ECF No. 160.) The court labeled the stay, at one point, an "automatic stay" (*Id.*) Ocwen's counsel represented that she would "advise foreclosure to stay the sale." (*Id.* at 12::14-15.) The court advised Liebman's counsel to confer with Ocwen's counsel to finalize the form of the proposed order, reflecting the stay. (*Id.* at 12:24-13:2.)Despite the Court's oral order, and the parties' apparet agreement to stay the sale, the state court nonetheless proceeded with the foreclosure auction the following day, with the townhome selling to Futura, as the highest bidder. A paper order, reflecting that "[t]he automatic stay continues to be imposed until further order of this Court," was not entered until May 26, 2015, almost two weeks after the sale. (Am. Order, Bankr. R. ECF No. 46.)

After the sale of her home, Liebman filed an emergency motion for an order to show cause, also on May 26th. (Emerg. Mot., Bankr. R. ECF No. 43.) In that motion, Liebman asked the bankruptcy court, among other things, to enter an order

requiring Ocwen to show cause why it failed to comply with the court's order to cancel the May 14th foreclosure sale; and to instruct Ocwen's counsel to cooperate with Liebman's counsel to obtain an order vacating the foreclosure sale. (*Id.* at 4.) At the hearing on that motion, on June 3, 2015 Hr'g Tr., Bankr. R. ECF No. 161, 5:1-3 ("Counsel, it sounds to me like you're confessing to malpractice."), 5:25-6:4 (The order was directed to you if you wanted to stop it, but you failed to represent your client properly, and they may have lost their property.", 6:22-24 ("Where I see the failure is on the part of counsel Ms Liebman to have gotten an order entered and notify the clerk.").) During the hearing, however, Ocwen's counsel agreed to have the foreclosure sale vacated, contingent on the confirmation of Liebman's bankruptcy plan. (Id. at 14:8-10.) Ultimately, in a written order entered on June 5, 2015, the bankruptcy court held in abeyance both the motion to vacate that was then pending in state court as well as the court's order staying the May 14th foreclosure sale. Both abeyance were pending the confirmation of Liebman's Chapter 13 plan which was scheduled for a hearing on June 16, 2015. (Order on Emerg. Mot., Bankr. R. ECF No. 61, 2.) The order provided that should Liebman's plan be confirmed , "the sale process in Circuit Court will be determined to be void in violation of the automatic stay." (*Id.*) On the other hand, the order also specified that if the plan was not confirmed, the court would vacate its order staying the foreclosure sale and the sale "shall be deemed valid." (*Id.*)

At the June 16th hearing, Liebman's plan was not confirmed. (June 16, 2015 Hr'g Tr., Bankr. R. ECF No. 171.) Despite Liebman's counsel's ardent plea that the plan was confirmable, notwithstanding Liebman's failure to timely provide all of the necessary materials and property schedules, the bankruptcy court nonetheless vacated its order staying the foreclosure sale and allowed the sale to proceed unchecked.

After the court denied Liebman's two pro se emergency motions for a rehearing, she filed, also pro se an appeal, in July 2015, which was considered by the United States District Court Judge Joan A. Lenard. Relying on the bankruptcy court labeling of the stay in place when the state court proceeded with the foreclosure sale as an "automatic stay," Judge Lenard found that the sale was void *ab initio*. *Liebman v. Ocwen Loan Serv., Inc.*, 15-cv-22539-JAL, Order, ECF, No. 45 (S.D. Fla. Seo. 7, 2016) ("J. Lenard Order"). On the other hand, however, Judge Lenard also noted that under "rare circumstances", bankruptcy courts could retroactively lift automatic stays. *Id.* at 11. As Judge Lenard opinedj, a court may retroactively lift a stay after evaluating a number of factors as set forth in *In re Stockwell*, 262 B.R. 275 (Bankr. D. Vt. 2001). Judge Lenard noted the bankruptcy court had nonetheless failed to consider any of these *Stockwell* factors when it

decided to "annul the stay." J. Lenard Order at 13. As a result, she concluded, the bankruptcy court had "abused its discretion when it retroactively lifted the stay and sanctioned the foreclosure sale of [Liebman's] home." *Id.* She therefore remanded the case so that the bankruptcy court could "apply the appropriate legal standards and make supplemental findings." *Id.*

After Judge Lenard entered her remand order, Liebman continued to seek confirmation of her bankruptcy plan. Ultimately, however, in February 2017, the bankruptcy court denied confirmation of her proposed plan and dismissed her case with prejudice. (Order Denying Confirmation and Dismissing Ch. 13 Case, Bankr. R. ECF No. 246, 1.) Liebman filed motions to again reinstate her case and Ocwen asked the court to amend its February 2017 dismissal order. In response, and without a hearing, the bankruptcy court entered an order: denying Liebman's motion to reinstate; modifying its February 2017 dismissal order; and addressing the remand issues set forth by Judge Lenard. (Order on Remand, Bankr. R. ECF No. 322.) It is this order that Liebman appeals.

1. The Order Under Appeal

With respect to Judge Lenard's remand, the bankruptcy court's response was basically twofold. On the one hand, the court explained that it had improperly labeled its stay of the May 14, 2015 state court foreclosure sale as an "automatic stay" (as provided for under § 362 of the Bankruptcy Code) when, in fact, the court's true intent had been to enjoin the sale in accordance with § 105. (Order on Remand at 6.) The court clarified: "The amended Order should have omitted the word 'automatic' and simply have stated that the stay (or injunction) continues until further Court order." *(Id.)* By it terms then, the bankruptcy court's order on remand purported to modify the order staying the sale to reflect this change. *(Id.* at 17.) Accordingly, there was no automatic-stay or *Stockwell-related* barrier preventing the bankruptcy court from holding the § 105 stay (or injunction) in abeyance and then later vacating it. In other words, according to the bankruptcy court, there was nothing keeping it, based on the record in the case, from "lift[ing] or dissolv[ing] the injunction when the Debtor failed to confirm a Chapter 13 plan" and "granting relief nunc pro tune" to Ocwen and Futura. *(Id.* at 8.)Alternatively, the bankruptcy court opined, even if the stay imposed stopping the foreclosure sale was immutably deemed an automatic stay under § 362, the court's retroactive relief was nonetheless proper based on an evaluation of the seven *Stockwell* factors. *In re Stockwell,* 262 B.R. at 281 ("(1) if the creditor had actual or constructive knowledge of the bankruptcy filing and, therefore, of the stay; (2) if the debtor has acted in bad faith; (3) if there was equity in the property of the estate; (4) if the property was necessary for an effective reorganization; (5) if grounds for relief from the stay

existed and a motion, if filed, would likely have been granted prior to the automatic stay violation; (6) if failure to grant retroactive relief would cause unnecessary expense to the creditor; and (7) if the creditor has detrimentally changed its position on the basis of the action taken."). The bankruptcy court concluded thatall seven *Stockwell* factors supported retroactive relief.

3. Discussion

In her initial brief, Liebman separates her issues on appeal into the following six concerns. (1) She complains that the bankruptcy court's modification of its foreclosure-sale stay order, changing the automatic stay under § 362 to an injunction or stay under § 105, is internally contradictory and therefore "void on [its] face." (2) Liebman next argues that she was denied due process when her proposed plan was not confirmed and the bankruptcy court dismissed her case. (3) Third, Liebman submits that the bankruptcy court erred in concluding that Ocwen did not violate the automatic stay. (4) She further claims the bankruptcy court improperly evaluated and applied the *Stockwell* factors to the stay. (5) Although it is not entirely clear, it appears Liebman's fifth issue is that the bankruptcy court also erred by not finding the foreclosure sale void *ab initio*. (6) Lastly, Liebman insists that, contrary to the bankruptcy court's decision, her bankruptcy case must be reinstated.

Issues (1) and (5): Liebman has failed to establish that the bankruptcy court erred in declining to vacate the foreclosure of her townhome.

Much of Liebman's appeal rests on her contention that the bankruptcy court erred when it retroactively modified its order staying the May 14, 2015 foreclosure sale of her townhome. In support of this argument, Liebman sets forth two discernible arguments. The Court does not find either of these arguments persuasive.First, Liebman claims the bankruptcy court's modification of its stay order to reflect a stay under § 105 rather than § 362 is directly contradicted by the court's own determination, in the alternative, that the *Stockwel* factors would permit the court to retroactively annul the automatic stay. This argument lacks merit. The bankruptcy court simply presented alternative support for its ultimate conclusion that it had properly lifted or annulled the stay of the foreclosure. On the one hand, according to the bankruptcy court, the court had improperly applied the label of "automatic stay" when in reality the court had instead meant to issue an injunction. On the other hand, the court proceeded to evaluate the *Stockwell* factors in the event that, despite the court's modification, the stay was nonetheless deemed to be an automatic stay. While these two avenues for support of the court's ultimate

conclusion may be mutually exclusive. Liebman has not provided, nor is the Court itself aware of, any justification for her position that a court may not present alternative bases for its ultimate conclusion. *See, e.g., Mays v. Chase Manhattan Mortg. Corp.*, 180 F. App'x. 143, 144 (11th Cir. 2006) (noting without comment that "[t]he court ... presented an alternate basis for dismissal").

Next, Liebman argues that the bankruptcy court's order, modifying the language of its stay order, was in direct conflict with Judge Lenard's order remanding the case. One of Liebman's contentions rests on Judge Lenard's finding that the "foreclosure sale was void ab initio." J. Lenard Order at 8 n. 8. This finding, however, was premised on the bankruptcy court's characterization of the stay imposed as an automatic stay-which, as explained above, has since been modified. Additionally, Judge Lenard herself also acknowledged that, even though, "[i]n this Circuit, actions taken in violation of the automatic stay are void ab initio," the Eleventh Circuit allows courts to nonetheless "retroactively lift automatic stays in rare circumstances." *Id.* at 10- 11.

Aside from this purported conflict, Liebman does not otherwise clarify which part of Judge Lenard's order would prevent the bankruptcy court, upon remand, from modifying its prior order to correct what the bankruptcy court itself described as an erroneous identification of the type of stay that it had imposed. Nor has the Court itself located any such language. To be sure, Judge Lenard concluded that the bankruptcy court had "abused its discretion when it retroactively lifted the stay and sanctioned the foreclosure sale of [Liebman's] home." J. Lenard Order at 13. And accordingly, she remanded the case back to the bankruptcy court "to apply the appropriate legal standards and make supplemental findings." *Id.* Nothing in this directive, however, prevents the bankruptcy court from either (1) correcting its order to reflect the type of stay the court had intended to impose; or (2) in the alternative, applying the *Stockwell* factors. Without more, .the Court does not find the bankruptcy court's order to be in conflict with Judge Lenard's instructions. Liebman has not presented any argument, never mind support, that would undermine the bankruptcy court's authority, upon remand from an appellate court, to modify part of an order that it asserts had been presented in error. *See* Fed. R. Civ. P. 60(a) ("The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record."); *see also In re Solid Rock Dev. Corp., Inc.*, 481 B.R. 221, 228

Bankr. N.D. Ga. 2012) (finding that a court can exercise jurisdiction to construe its own stay-relief order and its effect on a foreclosure sale) (citing *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009)). Ultimately, Liebman has not convinced the Court that the bankruptcy court erred in declining to vacate the foreclosure sale of her home.

B. Issues (2) and (6): Liebman has not established that the Court erred either in (a) not confirming her bankruptcy plan and dismissing her case or (b) declining to reinstate case.

The bankruptcy court, in its order denying Liebman's motion to reinstate her case, explained the following:

> The Debtor's failure to address the large sums owed to Deutsche/Ocwen,[Liebman's homeowners' association] and Futura do not support reinstatement of the case. This Debtor, and the non-debtor spouse, are not acting in good faith. Instead, they have utilized the Foreclosure Lawsuit and Foreclosure Appeals in a voluminous docket to their benefit-achieving substantial delay. After not having paid a mortgage or association fees for over 6 years, the Debtor cannot come to this Court and expect to receive the Bankruptcy Code's associated benefits without addressing the arrearages to Ocwen and Beach Club as well as reimbursement to Futura. The Debtor has been given repeated opportunities, with the assistance of counsel too, to file a confirmable plan. Debtor has failed. The last two plans filed by the Debtor improperly ignore the claims of the creditors, in contravention of this Court's prior orders.

(Order on Remand at 11.) Rather than explain to the Court what error she alleges the bankruptcy court made in dismissing her case, Liebman instead lists a number of expenses she and her husband have incurred and various wrongs she alleges she has suffered at the hands of the bankruptcy court, the bankruptcy trustee, and Ocwen.

However, "[a] district court reviewing a bankruptcy appeal is not authorized to make independent factual findings; that is the function of the bankruptcy court." *In re Spiwak*, 285 B.R. 744, 747-48 (S.D. Fla.2002) (citation omitted). "Factual findings made by the bankruptcy court are subject to a clearly erroneous standard." *Id.* (citation omitted). Conclusions of law are subject to de novo review. *Id.* (citation omitted). Equitable determinations are reviewed for abuse of discretion. *Id.* (citation omitted).Although Liebman disagrees with the bankruptcy court's factual findings, she has not provided any support that would

allow this Court to find that any of the findings are clearly erroneou . And although Liebman describes various hearings, rulings, and decisions as, "the epitome of contradiction," "a farce," "a complete sabotaging," a "fail[ure] to follow due process," "an intentional/fraudulent interference with the Confirmation Process," and "Arbitrary and Whimsical," she never explains why nor does she provide actual support for her ultimate conclusions. (Appellant's Am. Initial Br. at 16, 18-19.) While the Court typically affords a pro se litigant an abundance of leeway, it will not, without more guidance, develop Liebman's arguments on appeal for her. None of what Liebman has presented sufficiently undermines the bankruptcy court's legal conclusions or the facts upon which it based its dismissal and reinstatement denial.

C. Issue (3): Liebman's complaint that the bankruptcy court failed to find that Ocwen willfully violated the stay of the foreclosure sale is unavailing.

The essence of Liebman's argument regarding her allegation that Ocwen willfully violated the bankruptcy court's automatic stay rests on the conflict between Judge Lenard an_d the bankruptcy court's orders regarding the sale during the pendency of the stay. The bankruptcy court, in June 2015, pointedly noted that to the extent Ocwen may have violated the stay order, any such violation that may have occurred was "clearly not knowing or wil[l]ful." (Order on Emerg. Mot. at 2.) In contrast, Judge Lenard, in her decision reviewing that order on appeal, found that Ocwen "appears to have willfully violated the automatic stc;J.y," noting that the bankruptcy court's conclusion to the contrary "lacks factual support in the record." J. Lenard Order at 8, 8 n.10. Upon remand, the bankruptcy court did not address the alleged willfulness of Ocwen's violation of the stay.

Liebman's complaint about this purported deficiency is unavailing. To begin with, Judge Lenard's remand order did not actually find the bankruptcy court's determination that there was no willfulness to be clearly erroneous. Instead, she merely expressed disagreement with the bankruptcy court's conclusion based on the record before her. Thus Liebman's contention that the "direct contradiction" between the two orders is fatal to the bankruptcy court's ultimate conclusion is without merit. More importantly, however, the bankruptcy court's conclusions on remand did not in any way rely on either Ocwen's willfulness or lack of willfulness. Liebman has not argued that the bankruptcy

court's failure to factor the willfulness issue into its analysis was in error.

D. Issue (4): Liebman fails to establish that the bankruptcy court erred in evaluating the *Stockwell* factors.

The Court believes the bankruptcy court properly corrected its stay order to reflect its intent that the stay should not have been labeled an automatic stay. Alternatively, in the event this was improper, the Court will evaluate Liebman's claim that the bankruptcy court erred in concluding the circumstances of this case warranted retroactively lifting the purported automatic stay.

"The Eleventh Circuit Court of Appeals has long recognized that bankruptcy courts may annul the automatic stay in appropriate circumstances in order to grant retroactive relief from the automatic stay to validate a postpetition foreclosure sale." *In re Rivera*, No. 9: 15-BK-08721-FMD, 2016 WL 513900, at *3 (Bankr. M.D. Fla. Feb. 9, 2016) (citing *In re Albany Partners, Ltd.*, 749 F.2d 670, 675 (11th Cir.1984); *In re Williford*, 294 F. App'x. 518, 521 (11th Cir. 2008). Many courts look to the factors set forth in *In re Stockwell* in order to evaluate the propriety of retroactive relief. 262 B.R. 275. In the final analysis, "[t]he bankruptcy court's determination of whether to annul the stay is made on a case-by-case basis and falls within the wide latitude of the court." *In re Rivera*, 2016 WL 513900, at *3 (citing *In re Stockwell*, 262 B.R. at 280). Ultimately, a bankruptcy court's decision to annul an automatic stay will only be disturbed upon a finding of an abuse of discretion. *In re Williford*, 294 F. App'x at 521.

Here, the bankruptcy court noted the following. First, the foreclosure sale proceeded in state court because, at least in part, Liebman failed to timely obtain a written order reflecting the bankruptcy court's stay. (Order on Remand at 11.) Second, Futura had no knowledge of the bankruptcy when it purchased the townhome at the sale. Third, after the sale, the bankruptcy court, recognizing the mix-up, advised Liebman, that it would nevertheless vacate the sale so long as she could confirm a bankruptcy plan. Liebman, however, failed to timely file and confirm a plan. The bankruptcy court also recited a litany of facts and described various convoluted litigation paths pursued by Liebman, and her husband, i both state and federal courts, that supported its finding that Liebman has not proceeded in good faith: "[Liebman] and her non-debtor spouse seek the benefits this Court has to offer . . . but fail to meet their obligations." (*Id.* at 13.) Additionally, the bankruptcy court noted "there is little, if any, equity

in the Property" and the property is not necessary for an effective bankruptcy reorganization. *(Id.* at 14.) Moreover, the bankruptcy court predicted that, in light of Liebman's financial situation, had Ocwen sought relief from the stay, it likely would have been granted prior to the sale. *(Id.)* Further, according to the bankruptcy court, not granting retroactive relief "would bring unnecessary expense to the creditor(s), as the various parties would be left with the expense of undoing the sale, only to find themselves with an unconfirmable plan, a loan obligation ripe for stay relief and thereafter, subject to another foreclosure sale." *(Id.* at 15.) Lastly, based on the record before it, the bankruptcy court found that returning the property to Liebman would be unjustifiably detrimental to both Ocwen and Futura. *(Id.* at 15-16.) And, in that regard, Liebman has utterly failed to address how either of these creditors might be reimbursed for their losses upon a vacation of the sale. *(Id.)*

Liebman details numerous disagreements she has with the bankruptcy court's evaluation of these various *Stockwell* factors. Within Liebman's very long list of grievances against the bankruptcy court, the bankruptcy trustee, Ocwen, Ocwen's attorney, Futura, and Liebman's homeowners' association she fails to establish, or even allege, that the bankruptcy court abused its discretion in evaluating the propriety of retroactive stay relief in this case. The Court is certainly not unsympathetic to the plight of a property owner losing her home to a foreclosure sale. Nor is the Court unmindful of some measure of fault that other actors-aside from Liebman-bear in possibility accelerating or exacerbating this loss. But based on the presentations of the parties, the Court is nevertheless unable to conclude that the bankruptcy court abused its discretion in finding retroactive relief from the purported automatic stay warranted.

1. Conclusion

Liebman has not established reversible error. Having reviewed the parties' briefing, the relevant legal sources, and the record before it, the Court **affirms** the bankruptcy court's decision. The Clerk is directed to **close** this case and **deny** any pending motions as **moot.** Further, based on the Court's order, the need for oral argument has been obviated. The hearing previously set for **January 25, 2018** is thus canceled.

Done and ordered at Miami, Florida, on January 22, 2018.

Robert N. Scola, Jr.
United States District Judge

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