WRITTEN DECISION - NOT FOR PUBLICATION

ENTERED NOV. 9, 2012
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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re STEVEN HARRY LUCORE, SR. and JUDY LYNNE LUCORE, Debtors.	Case No. 11-14196-PB13 R.S. No. M&B2 ORDER ON MOTION FOR RECONSIDERATION
US BANK, NA AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF BANC OF AMERICA FUNDING CORPORATION MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-H, ITS ASSIGNEES AND/OR SUCCESSORS IN INTEREST, Movant, v. STEVEN HARRY LUCORE, SR. and JUDY LYNNE LUCORE, Debtors; DAVID L. SKELTON, Trustee, Respondents.	

This matter came on for hearing on debtors' motion asking this Court to reconsider its decision granting relief

from the automatic stay to U.S. Bank to proceed with its state court unlawful detainer proceeding. Debtors invoke Rule 60 Fed.R.Civ.P. in so moving.

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 312-D of the United States District Court for the Southern District of California. This is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

The central facts are not in dispute. This case was filed on August 25, 2011. Prior to that date the subject property was purchased by U.S. Bank at a nonjudicial foreclosure sale conducted on August 18, 2011. The trustee's deed upon sale was signed (apparently) on August 26, 2011 and recorded on September 2, 2011.

A threshold question is whether execution and/or recordation of the trustee's deed on sale after the filing of the instant petition may relate back to the date of the sale if recorded timely under California Civil Code § 2924h(c). That subsection provides in relevant part:

> For purposes of this subdivision, the trustee's sale shall be deemed final upon the acceptance of the last and highest bid, and shall be deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 15 calendar days after the sale, or the next business day following the 15th day if the county recorder in which the property is located is closed on the 15th day.

This Court explained the purposes of § 2924h(c) in In re Sanders, 198 B.R. 326 (Bankr. S.D. CA 1996), which is factually

distinguishable from the instant case because in Sanders the sale took place hours after the bankruptcy petition was filed. In In re Bebensee-Wong, 248 B.R. 820 (9TH Cir. BAP 2000), the court applied § 2924h(c) in facts similar to the instant case and concluded:

> It is clear that the relation back effect of California Civil Code § 2924h(c) operated to perfect the trustee's sale on the actual date of sale. Because this date preceded the debtor's petition, relief from the automatic stay was proper.

248 B.R. at 823. But see In re Gonzalez, 456 B.R. 429 (Bankr. C.D. CA 2011). It is to be recalled that generally state law determines the property interests of parties. Butner v. United States, 440 U.S. 48 (1979).

Notwithstanding the foregoing, debtors attack the foreclosure process, and even the trustee's deed upon sale. They expressly question the "prudential standing" of U.S. Bank in these proceedings. As noted by the Bankruptcy Appellate Panel in Edwards v. Wells Fargo, 454 B.R. 100, 104 (2011): "One aspect of prudential standing is that a movant must assert its own legal rights, and may not assert the legal rights of others." That court recognized:

> This panel has previously held that "a party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." [Citations omitted.]
>
> Veal essentially recognizes that a movant has a colorable claim sufficient to bestow upon it standing to prosecute a motion

> under § 362 if it either: (a) owns or has another form of property interest in a note secured by the debtor's (or the estate's) property; or (b) is a "person entitled to enforce" ("PETE") such a note under applicable state law.

454 B.R. at 105.

In a case almost identical to Edwards, the court in In re Ho, 2011 WL 4485895 (9th Cir. BAP 2011), explained:

> The issue here is not, as it was in Veal, whether Bank of America has an ownership or other property interest in the debtor's secured note. Indeed, due to the foreclosure, the debtor's note has been satisfied by Bank of America's credit bid. Rather the issue here is the simpler one of whether Bank of America's recorded Trustee's Deed demonstrates that Bank of America has some property interest in the Property. As shown below, under applicable California law, the recorded Trustee's Deed establishes that Bank of America is the presumptive current title owner. As a result, there can be no doubt that Bank of America has a sufficient "colorable" claim required for standing.

See, also, Edwards, 454 B.R. at 105.

After declaring that "[t]he duly-recorded Trustee's Deed provides that Bank of America is the presumptive current record owner" of the property, the court explained that "under California law, Bank of America took title free and clear to the Property upon completion of the Foreclosure Sale." Moreover, "in California, once a foreclosure sale concludes and the purchaser records the deed in accordance with applicable law, the original trustor or borrower no longer has an interest or right in the subject real property." Ho; Edwards, 454 B.R. at 106.

For the foregoing reasons, the Court concludes that its original decision granting relief from stay to continue its unlawful detainer proceeding was correct when made, and debtors have made no showing that supports reconsideration and a different result. The Court has told debtors on multiple occasions that in so ruling the Court is not addressing debtors' claims of wrongful foreclosure, which they may be eligible to assert in a different forum. The Court has determined that U.S. Bank has prudential standing to seek relief from stay to assert its own rights because it has a colorable claim based on the foreclosure sale which occurred prepetition and the trustee's deed on sale recorded postpetition but within the relation-back period and provision of California Civil Code 2924h(c). Accordingly, debtors' motion for reconsideration shall be, and hereby is DENIED.

IT IS SO ORDERED.

DATED: NOV - 9 2012

PETER W. BOWIE, Judge
United States Bankruptcy Court