

FILED
JEANNE A. NAUGHTON, CLERK

MAR 28 2019

U.S. BANKRUPTCY COURT
NEWARK, N.J.
BY James Sherwood DEPUTY

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In Re:

MARILYN A. RICKEY,

Debtor.

Case No.: 19-11592 (RG)

Judge: Sherwood

**DECISION AND ORDER RE:
DEBTOR'S NOTICE OF MOTION TO EXTEND THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362(l)(2)**

The relief set forth on the following pages, numbered two (2) through six (6), is hereby
ORDERED.



HONORABLE JOHN K. SHERWOOD
UNITED STATES BANKRUPTCY JUDGE

Dated: March 28, 2019

WHEREAS:

1. On January 25, 2019, Marilyn A. Rickey ("Debtor") filed her voluntary Chapter 13 petition under the United States Bankruptcy Code. The Debtor is a tenant at the property located at 421 Route 94, Vernon, New Jersey ("the Property"), which she previously owned and lost in foreclosure. The Debtor has filed the present motion to impose the automatic stay seeking additional time to exercise an option to reacquire the Property.
2. The Court has reviewed the pleadings and the arguments of counsel, and for the reasons set forth below (and discussed on the record at the hearing), the Court finds that the Debtor has not met her burden to impose the automatic stay.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

3. The Debtor, the prior owner of the Property, lost the Property as a result of a foreclosure sale to Chase Bank. The Debtor's current landlord, William Brown ("Landlord") purchased the Property from Chase Bank in 2016.¹
4. On November 18, 2016, the Landlord and Debtor entered into an agreement creating an option for the Debtor to purchase the Property from the Landlord for the sum of \$185,850 plus taxes, insurance and 7% interest.² In February of 2017, the parties entered into contracts memorializing the Landlord's agreement to lease the Property to Debtor for the period from February 8, 2017 to August 15, 2017 for the sum of \$1.00 per month.³ These contracts

¹ ECF No. 23, at 73, *Brown v. Rickey* Tr. 38:1-23.

² ECF No. 23, at 21.

³ ECF No. 10, at 24.

reconfirmed that the Debtor had the option to buy back the Property at the price set forth above during the term of the lease (through August 15, 2017).

5. Though the Debtor had failed to purchase the Property by August 8, 2017, the parties entered into another agreement on that date which suggested that she was prepared to do so. This agreement again confirmed the Debtor's option to purchase the Property and extended Debtor's lease from August 15, 2017 to the date of the closing.
6. Following the August 8, 2017 agreement, the Landlord maintains that the Debtor became unresponsive and difficult. On May 23, 2018, the Landlord sent the Debtor a Notice to Quit and Demand for Possession and Notice of Rent Increase, notifying the Debtor of Landlord's proposed increase in monthly rent from \$1.00 to \$2,100.00 per month.⁴
7. On August 6, 2018, the Landlord initiated an eviction proceeding in the Superior Court of New Jersey, Special Civil Part, Sussex County.⁵ In the course of those proceedings, the parties entered into a Consent Judgment of Possession whereby the parties agreed that the Debtor would have until December 28, 2018 to vacate the Property and the Landlord would waive his entitlement to the sum of \$2,100.00.⁶
8. The Debtor did not abide by the terms of the Consent Judgment. Instead, she filed these Chapter 13 proceedings on January 25, 2019.

EVICTION UNDER § 362

9. Under § 362(b)(22), the filing of a petition does not stay an eviction proceeding where "the lessor has obtained before the date of the filing of the bankruptcy petition[] a judgment for

⁴ ECF No. 23, at 49.

⁵ ECF No. 23, at 42.

⁶ ECF No. 23, at 107.

possession of such property.”⁷ An exception to § 362(b)(22) is found in § 362(l) which outlines a procedure that may permit a debtor to obtain a stay when one does not arise automatically.⁸

10. Section 362(l) is two-fold. The statute first contemplates a temporary, 30-day stay.⁹ It requires the debtor to certify that a nonbankruptcy law allows the debtor to cure the default underlying the judgment for possession and requires the debtor to pay, with the filing of the petition, the full monthly rent due for the thirty days after the bankruptcy petition is filed.¹⁰ 11 U.S.C. § 362(l)(1). Official Form 101A relates to this requirement and further instructs that to impose a stay after the initial 30 days, the debtor “must pay the entire delinquent amount to [the] landlord as stated in the eviction judgment before the 30-day period ends. [Debtor] must also fill out *Statement About Payment of an Eviction Judgment Against You* (Official Form 101B), file it with the bankruptcy court, and serve [the] landlord a copy of it before the 30-day period ends.”

11. Here, the Court must determine whether the Debtor is entitled to stay the eviction under the exceptions to § 362(b)(22) provided by § 362(l). The Debtor maintains that she satisfies the exception because she deposited \$1.00 with the Court as satisfaction of her full monthly rent due. However, the Landlord has produced evidence to the Court that he served a Notice of Rent Increase on May 23, 2018 that provided an increase to \$2,100.00 starting August 1, 2018.¹¹ The Debtor cannot dispute that \$2,100.00 is the monthly rental amount. The Debtor has not met her obligation to pay one month's rent under § 362(l).

⁷ § 362(b)(22).

⁸ *In re Maggiore*, 2016 WL 1238852 (Bankr. N.D. Ohio 2016).

⁹ *Id.*

¹⁰ 11 U.S.C. § 362(l)(1).

¹¹ ECF No. 23, at 49.

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12. The Debtor did not meet the other requirements of § 362(l)(2), which requires additional certifications and payment of “the entire monetary default that gave rise to the judgment ...”, which are found on Form 101B. The Debtor did not submit a Form 101B. Moreover, if the Debtor had submitted Form 101B with \$1.00 as the monthly rental, it would have been deficient because the Debtor would owe several months of rent at the \$2,100.00 rate after remaining on the Property after the Notice of Rent Increase was issued in May 2018. Moreover, the Debtor’s petition does not demonstrate how the Debtor can provide payment for \$2,100.00, as the Debtor’s monthly income on *Schedule I* is \$1,089.68.¹²
13. The Debtor has not met her burden of proving that she is entitled the exceptions of § 362(l) and therefore, the court must apply § 362(b)(22). Under § 362(b)(22), no stay is in place because the Landlord obtained a judgment for possession of the Property before the date of the filing of the bankruptcy petition.¹³
14. The Court is not persuaded by the Debtor’s argument that she should be permitted the opportunity to examine the entirety of the transaction for fraud, consumer fraud and fraud in the factum, based on *One West Bank, FSB v. Capo*, 2010 N.J. Super. Unpub. LEXIS 2305. In *One West Bank*, the elderly plaintiff was months behind in her mortgage payments but was not subject to any foreclosure or eviction proceedings. The plaintiff was targeted by the defendants through a website which enabled one of the defendants to visit the plaintiff’s home several times to discuss refinancing her home and to obtain additional information. When the plaintiff was in the hospital, a defendant gave the plaintiff several documents for signature in effort to

¹² ECF 17.

¹³ § 362(b)(22).

sell the plaintiff's home when the plaintiff was at her weakest and most vulnerable state. There, the court recognized that the plaintiff was a victim of a scam. Here, there is no evidence of an elaborate scheme to defraud the Debtor. The record reflects that the Debtor was already evicted from the Property by Chase Bank when the Landlord purchased the Property. The Landlord gave the Debtor the opportunity to buy back the Property via the option but the Debtor could not perform.

15. The Court need not determine whether the option is still viable. It only needs to determine whether a stay was in place and whether that stay should be extended or imposed to allow the Debtor to pursue any potential option to purchase the Property. The Court finds that the exceptions to § 362(b)(22) in § 362(l) have not been satisfied, no stay was in place and no stay should be imposed.
16. The Debtor's Motion to Extend the Automatic Stay pursuant to 11 U.S.C. § 362(b)(22) and § 362(l) is denied.