

**FILED**  
JEANNE A. NAUGHTON, CLERK

JUL 24 2017

U.S. BANKRUPTCY COURT  
NEWARK, N.J.

BY *[Signature]* DEPUTY

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In Re:

**PATRICIA PORTERFIELD,**

Debtor.

Case No.: 17-10890 (JKS)

Chapter: 7

Judge: Hon. John K. Sherwood

**DECISION AND ORDER RE:  
DEBTOR'S MOTION TO VOID SHERIFF'S SALE AND  
FOR DAMAGES FOR VIOLATION OF THE AUTOMATIC STAY**

The relief set forth on the following pages, numbered two (2) through sixteen (16), is hereby **ORDERED**.

7/24/17

*[Signature]*

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**INTRODUCTION**

Patricia Porterfield ("Debtor") filed this Chapter 7 bankruptcy case to protect her home. Although the Debtor has lived in the property for more than 25 years, it is owned solely by her husband. The day after this bankruptcy case was filed, the home was sold by Cenlar, FSB ("Cenlar"), the husband's mortgagee, at a sheriff's sale, to 356 Leslie Street, LLC ("356 Leslie"), which took title to the property and obtained a state court writ of possession to evict its occupants, including the Debtor. On May 11, 2017, the Debtor filed this motion to vacate the sale, transfer of title and writ of possession alleging each incident was in violation of the automatic stay imposed by section 362(a) of the Bankruptcy Code. The Debtor claims Cenlar and 356 Leslie willfully violated the automatic stay by divesting her of her interest in the home and she seeks an award of actual and punitive damages, as well as attorney's fees.

Cenlar and 356 Leslie<sup>1</sup> oppose the Debtor's motion and 356 Leslie has filed a separate cross-motion requesting relief from the automatic stay, *nunc pro tunc* to January 17, 2017, to validate the sheriff's sale, transfer of title and writ of possession. For the reasons discussed below, the Debtor's motion is denied and 356 Leslie's cross-motion is granted.

**JURISDICTION**

The Court has jurisdiction over the motion pursuant to 28 U.S.C. §§ 1334(b), 157(a), and the Standing Order of Reference from the United States District Court for the District of New Jersey. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G) and (O). Venue is proper under 28 U.S.C. §§ 1408 and 1409(a).

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<sup>1</sup> EZ Rent Management, LLC, in its capacity as agent and property manager for 356 Leslie, filed actions against tenants of the home and joins 356 Leslie in both its brief and opposition to the Debtor's motion.

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**FACTS AND PROCEDURAL HISTORY**

On April 30, 1986, Dennis Porterfield ("Porterfield") executed a mortgage in exchange for a \$45,600 loan to finance the purchase of a home located at 356 Leslie Street, Newark, New Jersey.<sup>2</sup> The mortgage was ultimately assigned to Cenlar.<sup>3</sup> By deed dated May 1, 1986, Porterfield acquired title to the home.<sup>4</sup> In 1991, the Debtor and Porterfield were married and have occupied the home as their marital residence ever since.<sup>5</sup> The deed and mortgage remain solely in Porterfield's name. Porterfield defaulted on the mortgage and on October 15, 2013, Cenlar filed a foreclosure action in the Superior Court of New Jersey.<sup>6</sup> On April 28, 2015, Cenlar obtained a final judgment of foreclosure in the amount of \$68,827.77.<sup>7</sup> Thereafter, a writ of execution was issued directing the Essex County Sheriff to sell the home in satisfaction of the judgment.<sup>8</sup>

On April 6, 2016, Porterfield received notice by mail informing him that the home was to be sold at a sheriff's sale on May 10, 2016.<sup>9</sup> Porterfield exercised his statutory right to adjourn the sale and filed a Chapter 13 bankruptcy petition on July 18, 2016.<sup>10</sup> The bankruptcy case was dismissed on August 26, 2016 and the sale was then scheduled for October 25, 2016.<sup>11</sup> On October 24, 2016, Porterfield applied for and was granted a stay of the sale to November 29,

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<sup>2</sup> Certification of Stephen McNally in Support of 356 Leslie's Opposition to Debtor's motion, Ex. "B." ("McNally Certification") [ECF No. 24].

<sup>3</sup> *Id.* at Ex. "C."

<sup>4</sup> *Id.* at Ex. "A."

<sup>5</sup> Certification of Patricia Porterfield in Support of Debtor's motion, ¶ 3 [ECF No. 17]. ("Debtor Certification").

<sup>6</sup> McNally Certification, Ex. "D."

<sup>7</sup> *Id.* at Ex. "K."

<sup>8</sup> *Id.* at Ex. "L."

<sup>9</sup> *Id.* at Ex. "M."

<sup>10</sup> *In re Porterfield* (16-23762).

<sup>11</sup> *Id.* [ECF No. 12].

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2016.<sup>12</sup> A second application to stay the sale was filed by Porterfield on November 28, 2016 and the Superior Court adjourned the sale date to January 17, 2017.<sup>13</sup>

On January 16, 2017, the Debtor filed this Chapter 7 case in an attempt to stay the sheriff's sale so Porterfield could apply to Cenlar for a mortgage loan modification.<sup>14</sup> On the morning of January 17, 2017, Cenlar's foreclosure counsel conducted an automated search of the national PACER bankruptcy database and confirmed that Porterfield, the only person named in deed and mortgage, was not a debtor in an active bankruptcy case.<sup>15</sup> Later that day, the Essex County Sheriff sold the home at a public auction to 356 Leslie for \$86,000.<sup>16</sup>

The following day, attorney Chong S. Kim ("Kim") sent an email to Cenlar's foreclosure counsel advising that the sale was in violation of the automatic stay because the Debtor held a marital interest in the home and her bankruptcy petition was filed before the sale.<sup>17,18</sup> Cenlar's foreclosure counsel researched the relevant case law and statutory authority, specifically N.J.S.A. 3B:29-3, and concluded that the Debtor held only a possessory interest in the home, which was insufficient to stay the sheriff's sale.<sup>19</sup> This position was conveyed via email to Kim on January 19, 2017, to which he responded, "noted."<sup>20</sup>

By deed dated February 15, 2017, the Essex County Sheriff transferred title to the home from Porterfield to 356 Leslie.<sup>21</sup> After receipt of the deed and unaware of the Debtor's bankruptcy

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<sup>12</sup> McNally Certification, Ex. "N."

<sup>13</sup> McNally Certification, Ex. "O."

<sup>14</sup> Debtor Certification, ¶ 5.

<sup>15</sup> Certification of James P. Shay in Support of Cenlar's Opposition to Debtor's motion, ¶ 2 [ECF No. 27]. ("Shay Certification").

<sup>16</sup> McNally Certification, Ex. "P."

<sup>17</sup> The Debtor has been represented by four separate attorneys since the home was sold at the sheriff's sale: (1) Chong S. Kim; (2) Leonard R. Boyer; (3) Edward K. Osei, and; (4) Stephen B. McNally.

<sup>18</sup> Shay Certification, ¶ 3.

<sup>19</sup> *Id.* at ¶ 4.

<sup>20</sup> *Id.* at ¶ 5.

<sup>21</sup> McNally Certification, Ex. "P."

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filing, a member of 356 Leslie, Avraham Zagelbaum ("Zagelbaum"), went to the home to determine who was living there. A man in his late twenties or early thirties answered the door and told Zagelbaum that he and his wife rented the first floor apartment.<sup>22</sup>

On February 16, 2017, Cenlar's foreclosure counsel received an email from attorney Leonard R. Boyer ("Boyer") advising that he had replaced Kim as Debtor's counsel and that the Debtor's possessory interest in the home under N.J.S.A. 3B:29-3 was sufficient to stay the sheriff sale.<sup>23</sup> In response, on February 17, 2017, Cenlar's foreclosure counsel emailed Boyer and reiterated its position that the automatic stay did not prevent the sale of the home. Three days later, for reasons unknown, Cenlar's foreclosure counsel sent a second email to Boyer advising that Cenlar "plans to vacate [the] sale and final judgment in this matter in order to address an issue in the foreclosure action."<sup>24</sup> But Cenlar never vacated the sale.

During this period, Zagelbaum returned to the home and discovered that Porterfield resided at the property and that the young man he had met during his first visit was actually Porterfield's son. Neither Porterfield nor his son told Zagelbaum of the Debtor's existence or that she had recently filed a bankruptcy petition.<sup>25</sup> On February 28, 2017, 356 Leslie obtained a writ of possession from the Superior Court directing the Essex County Sheriff to evict Porterfield and all tenants from the home.<sup>26</sup> The eviction was then scheduled for April 19, 2017.<sup>27</sup>

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<sup>22</sup> Certification of Avraham Zagelbaum in Support of 356 Leslie's Opposition to Debtor's motion, ¶¶ 3-5 [ECF No. 26]. ("Zagelbaum Certification").

<sup>23</sup> Shay Certification, ¶ 3.

<sup>24</sup> Debtor Certification, Ex. "A."

<sup>25</sup> Zagelbaum Certification, ¶¶ 6-7.

<sup>26</sup> Zagelbaum Certification, Ex. "C."

<sup>27</sup> The Debtor indicates that a hearing was scheduled for April 6, 2017. For reasons unknown, the first hearing on 356 Leslie's eviction motion was not until April 19, 2017.

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On April 1, 2017, attorney Edward K. Osei ("Osei") emailed counsel for 356 Leslie advising that the Debtor had filed for bankruptcy and that any further eviction proceedings would result in a motion seeking sanctions for violation of the automatic stay.<sup>28</sup> This was the first time that 356 Leslie became aware of the Debtor or her bankruptcy petition.<sup>29</sup> In addition, Osei copied Cenlar's counsel on the email and suggested that they vacate the sheriff's sale or the Debtor would seek sanctions against Cenlar as well. On April 18, 2017, the Debtor and Porterfield filed a motion in the Superior Court to stay the eviction, alleging that the judgment and sheriff's sale were improper because Cenlar had failed to include the Debtor as a named defendant in the foreclosure action.<sup>30</sup>

At approximately the same time in the bankruptcy case, the Debtor's Chapter 7 Trustee abandoned the home effective April 26, 2017, based on his view that the liens against the property exceeded its fair market value.<sup>31</sup> The Debtor received notice of the proposed abandonment by the Chapter 7 Trustee (including his conclusion that there was no equity in the home) and did not object.

On May 11, 2017, attorney Stephen B. McNally filed this motion on behalf of the Debtor seeking to vacate the sheriff's sale, transfer of title and writ of possession.<sup>32</sup> The Debtor seeks actual and punitive damages against Cenlar and 356 Leslie for willful violation of the automatic stay. Cenlar and 356 Leslie oppose the Debtor's motion and 356 Leslie has filed a separate cross-motion for relief from the automatic stay, *nunc pro tunc* to January 17, 2017, to validate the

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<sup>28</sup> Debtor Certification, Ex. "B."

<sup>29</sup> Zagelbaum Certification, ¶ 9.

<sup>30</sup> McNally Certification, Ex. "R."

<sup>31</sup> [ECF No. 12].

<sup>32</sup> [ECF No. 17].

sheriff's sale, transfer of title and writ of possession. The Superior Court has stayed all eviction proceedings pending the outcome of this matter.

### **THE DEBTOR'S INTEREST IN THE HOME IS PROPERTY OF THE BANKRUPTCY ESTATE**

The Debtor's interest in the home is property of the bankruptcy estate and protected by the automatic stay under section 362(a). Upon the filing of a bankruptcy petition, section 541(a) of the Bankruptcy Code creates an estate consisting of all legal and equitable interests a debtor has in property at the time of filing. The Supreme Court has equated property of the bankruptcy estate to mean "property of the debtor."<sup>33</sup> Section 541(a) "was intended to sweep broadly to include all kinds of property, including tangible or intangible property, and causes of action."<sup>34</sup> Analysis under this section "must begin by focusing directly on the specific interests claimed to constitute the debtor's property."<sup>35</sup> A debtor's property interests are created and defined by state law, which decides not only what becomes property of the estate, but also "the nature, scope and extent of the property rights that come into the hands of the bankruptcy estate."<sup>36</sup> The Third Circuit has found that "a possessory interest in real property is within the ambit of the estate in bankruptcy under [s]ection 541 and thus the protection of the automatic stay of [s]ection 362."<sup>37</sup>

In New Jersey, ownership of real property is usually transferred by deed.<sup>38</sup> But when an individual obtains sole ownership of real property prior to marriage and his spouse is not on the deed, state law provides the spouse with a possessory interest in the property. N.J.S.A. 3B:28-3

<sup>33</sup> *Begier v. I.R.S.*, 496 U.S. 53, 58 (1990).

<sup>34</sup> *In re Kane*, 628 F.3d 631, 637 (3d Cir. 2010) (internal brackets and quotations omitted).

<sup>35</sup> *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 242 (3d Cir. 2001).

<sup>36</sup> *Incorporated Solutions, Inc. v. Service Support Specialties, Inc.*, 124 F.3d 487, 492 (3d Cir. 1997) (quoting *In re Transcon Lines*, 58 F.3d 1432, 1438 (9th Cir. 1995)).

<sup>37</sup> *In re Atlantic Bus. & Cmty. Corp.*, 901 F.2d 325, 328 (3d Cir. 1990).

<sup>38</sup> *Dautel Builders v. Borough of Franklin*, 11 N.J. Tax 353, 357 (1990) (citing N.J.S.A. 46:3-13).

states, in pertinent part, that “every married individual shall be entitled to joint possession with his spouse of any real property they occupy jointly as their principal residence.” By providing married individuals with a right to joint possession in the home, the state legislature sought “to assure that in the event of divorce proceedings, the parties’ principal marital residence, which is likely in most cases to be their most valuable asset, will be available as a source of funds for equitable distribution.”<sup>39</sup> But a non-titled spouse’s possessory interest is subject to the lien of a mortgage placed on the residence before marriage.<sup>40</sup> Even though a mortgage lien is entitled to priority under the statute, the non-titled spouse must be joined in a foreclosure suit for the right of joint possession of that spouse to be extinguished.<sup>41</sup>

Thus, N.J.S.A. 3B:28-3 provides the Debtor with a possessory interest in her home and a potential economic interest – the right to share in the value of the equity in the home for purposes of equitable distribution. The Court finds that these interests are sufficient to qualify as property of the bankruptcy estate under section 541(a) and are protected by the automatic stay pursuant to section 362(a).

### **THE AUTOMATIC STAY WAS VIOLATED**

A major issue is whether the sheriff’s sale of the Debtor’s home, the transfer of title and the issuance of a writ of possession were violations of the automatic stay. Technically, they were. The automatic stay provision of section 362(a) acts as an injunction to prevent creditors from engaging in collection efforts against a debtor or the bankruptcy estate while the case is pending. Upon the filing of a petition, the automatic stay functions to provide a debtor with a “breathing

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<sup>39</sup> *Arnold v. Anyil Realty, Inc.*, 233 N.J. Super. 481, 485 (App. Div. 1989).

<sup>40</sup> *Czyz v. Carrington Mortgage Services, LLC*, 2017 WL 1629438, at \*3 (N.J. Super. Ct. App. Div. May 2, 2017) (citing N.J.S.A. 3B:28-3.1).

<sup>41</sup> 29 N.J. Prac., Law of Mortgages § 10.17 (2d ed.) (citing *Pyle v. Danczewski*, 3 N.J.Misc. 1235 (Ch. 1925)).



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spell” to prevent creditors from pursuing collection efforts.<sup>42</sup> The actions stayed include “any act to obtain possession of property of the estate.”<sup>43</sup>

The Debtor relies upon *In re Rosa*, 261 B.R. 136 (Bankr. D.N.J. 2001), in support of her argument that the automatic stay was violated.<sup>44</sup> The issue in *Rosa* was whether a debtor spouse who is not a mortgagor can bind a mortgagee of the non-debtor spouse under a Chapter 13 plan on the basis of the debtor's right to joint possession under N.J.S.A. 3B:28-3. In *Rosa*, the debtor's wife and her cousin bought a home in Perth Amboy, New Jersey. Though the debtor was not a party to the purchase or mortgage, he and his wife utilized the property as their marital residence. The debtor's wife and her cousin defaulted on mortgage payments and the mortgagee filed a foreclosure complaint and obtained a final judgment of foreclosure. On the eve of the sheriff's sale, the debtor filed a Chapter 13 bankruptcy petition and plan which sought to cure the pre-petition mortgage arrears owed to the mortgagee.

The mortgagee filed an objection to the debtor's plan and sought relief from the automatic stay, arguing that the debtor could not bind his wife's mortgagee under a Chapter 13 plan. But the *Rosa* court recognized that the property interest conferred by N.J.S.A. 3B:28-3 is more than just the right to live in the marital home; it also subjects the property to equitable distribution upon dissolution of marriage. In denying the mortgagee's motion for relief, the court held that the statutory right of joint possession is a form of property interest in the marital residence and

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<sup>42</sup> *In re Siciliano*, 13 F.3d 748, 750 (3d Cir. 1994) (internal citation omitted).

<sup>43</sup> 11 U.S.C. § 362(a)(3).

<sup>44</sup> In support of her motion the Debtor also cites *In re Cohen*, 263 B.R. 724 (2001). The issue in *Cohen* was whether a debtor, who was not the titled owner of the marital residence, was nevertheless entitled to claim an exemption under section 522 due to her joint possessory interest in the home under N.J.S.A. 3B:28-3. In denying the debtor's claimed exemption, the Bankruptcy Court found that the right to joint possession under N.J.S.A. 3B:28-3 is form of property interest in the marital property, but this interest was an insufficient basis upon which to assert an exemption.

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therefore the debtor's home was property of the estate pursuant to section 541(a) of the Bankruptcy Code and subject to inclusion in his Chapter 13 plan.<sup>45</sup>

Here, even though the Debtor is not attempting to cure a mortgage default in a Chapter 13 context, the *Rosa* decision supports this Court's view that the Debtor's interests in her marital home are property of the estate.

Centlar and 356 Leslie argue that since the sheriff's sale and transfer of title had no effect on the Debtor's right to possess the property, these events did not violate the automatic stay. This argument is supported by the District Court's decision in *Twin Rivers Lake Apartments Horizontal Property Regime, Inc. v. Wallner*, 2006 WL 2023188 (D.N.J. 2006). This case addressed the issue of whether a debtor holding a possessory interest in property has a sufficient interest therein to render a sheriff's sale conducted after her bankruptcy filing null and void. In *Twin Rivers*, the debtor's father was the owner of an apartment in East Windsor, New Jersey. While the debtor's parents were in the midst of divorce proceedings, the debtor's father told the debtor that she could move into the property. After moving into the apartment and maintaining it as her principal residence, the apartment association initiated a foreclosure action because the debtor's father had failed to pay common assessment charges. To bring the account current, the debtor entered into a promissory note with the association and made payments for a period of time before defaulting.

The apartment association initiated a second foreclosure action and obtained judgment against the debtor's father. Prior to a sheriff's sale of the property, the debtor filed for bankruptcy. As part of her Chapter 13 plan, the debtor proposed to cure all pre-petition assessment charges owed to the association. Despite being aware of the debtor's bankruptcy filing, the association

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<sup>45</sup> 261 B.R. at 139.

directed the county sheriff to sell the property at auction where it was ultimately sold to a third-party purchaser.

The debtor then filed a motion with the Bankruptcy Court to vacate the sheriff's sale and to set aside the transfer of title to the property. The Bankruptcy Court held that the sheriff's sale was a violation of the automatic stay. The association appealed to the District Court which concluded that the debtor did not have a possessory interest in the apartment sufficient to invoke the automatic stay.<sup>46</sup> The District Court supported its decision on alternate grounds, reasoning that even if the debtor had a sufficient possessory interest in the property to invoke the stay, her interest remained unaffected by the sheriff's sale.

The event at issue in this case is not an eviction, but rather a Sheriff's Sale. Since the sale was subject to whatever rights [the debtor] held at the time of the sale, the Court . . . holds, in the alternative, that [the debtor's] interests remained unaffected by the sale.<sup>47</sup>

Relying on *Twin Rivers*, *Cenlar* and *356 Leslie* suggest that the Debtor's possessory interest in the home pursuant to N.J.S.A. 3B:28-3 remains unaffected by the sheriff's sale and transfer of title. Therefore, these two events did not violate the automatic stay. They could also argue that since the rights of a mortgage lender are superior to the interests of a spouse under N.J.S.A. 3B:28-3, the Debtor's right to share in an equitable distribution award does not exist because there is no equity in the home. Thus, the positions of *Cenlar* and *356 Leslie* concerning the automatic stay have some support in the District Court's *Twin Rivers* decision. The critical distinction, however, is that the debtor in *Twin Rivers* did not have the rights of a spouse under N.J.S.A. 3B:28-3.

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<sup>46</sup> 2006 WL 2023188, at \*9.

<sup>47</sup> *Id.* at \*10.

Here, the Debtor's potential or even theoretical right to share in the equitable distribution of her marital home was a property right under New Jersey law on the petition date and thus property of the estate. This right was protected by the automatic stay when the sheriff's sale occurred and the deed was transferred. By analogy, the Court notes that in countless Chapter 7 cases, debtors list real estate as assets even when they are encumbered by mortgage debt far exceeding their value. These assets are protected by the automatic stay until stay relief is granted or until they are abandoned by the Chapter 7 Trustee. The result should be no different here.

**BUT 356 LESLIE'S REQUEST FOR *NUNC PRO TUNC*  
RELIEF IS APPROPRIATE**

As set forth above, the sheriff's sale, transfer of title and writ of possession were violations of the automatic stay because they were acts to obtain possession of estate property. 356 Leslie was not aware that the Debtor filed for bankruptcy and lived in the home when it purchased the property at sheriff's sale and applied for the writ of possession. Therefore, it requests that the Court annul the stay, *nunc pro tunc* to January 17, 2017, to validate the sheriff's sale, transfer of title and writ of possession. The equities involved in this case strongly support the granting of retroactive relief.

It has long been understood that actions taken in violation of the automatic stay are void. Nevertheless, section 362(d) provides that, "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 for cause." The Third Circuit has interpreted section 362(d) to allow for the revitalization, in appropriate circumstances, of void

acts by retroactive annulment of the stay.<sup>48</sup> Such authority “gives courts flexibility to resolve conflicts involved in the resolution of significant claims and reflects the most logical interpretation of section 362(d).”<sup>49</sup>

Bankruptcy courts are provided with wide latitude “to balance the equities” when granting retroactive relief from the automatic stay.<sup>50</sup> Whether to annul the automatic stay is a decision “committed to the bankruptcy court’s discretion.”<sup>51</sup> The factors to be considered by a court when annulling the stay include: (1) whether the creditor was aware of the bankruptcy filing or encouraged violation of the stay; (2) whether the debtor is guilty of inequitable, unreasonable, or dishonest conduct; and (3) whether the creditor would suffer prejudice.<sup>52</sup>

On the morning of the sheriff’s sale, Cenlar’s foreclosure counsel reviewed the national PACER bankruptcy database and confirmed that Porterfield was not a debtor in an active bankruptcy case. Cenlar had no notice of the Debtor’s bankruptcy filing until the following day. Even then, Cenlar had a good faith basis to assert that the automatic stay did not apply. There is no evidence that Cenlar willfully disregarded the automatic stay when it allowed the property to be sold and its refusal to voluntarily set aside the sale, though wrong in this Court’s view, was supported by good faith legal analysis.

356 Leslie’s agent, Zagelbaum, claims that after purchase of the home, he visited the property on two occasions and neither Porterfield nor his son ever advised that the Debtor lived in the property or that she had filed for bankruptcy. 356 Leslie was unaware of the Debtor’s

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<sup>48</sup> See, e.g. *In re Siciliano*, 13 F.3d 748, 750 (3d Cir. 1994); *Raymark Indus., Inc. v. Lai*, 973 F.2d 1125, 1131 (3d Cir. 1992).

<sup>49</sup> *In re Myers*, 491 F.3d 120, 128 (3d Cir. 2007).

<sup>50</sup> *Id.* at 130.

<sup>51</sup> *Id.* at 128 (citing *In re Brown*, 311 B.R. 409, 412 (E.D. Pa. 2004)).

<sup>52</sup> *In re Snyder*, 292 Fed. Appx. 191, 193 (3d Cir. 2008).

possessory interest in the home until attorney Osei emailed its counsel in early April 2017. The eviction proceeding has been stayed by the Superior Court pending the outcome of this motion. As to 356 Leslie, there is no evidence of willful disregard of the automatic stay. 356 Leslie is an innocent third party who spent time and resources acquiring the property at the sheriff's sale. This makes the "unwinding" of the sale more difficult and less attractive from an equitable standpoint.

Since this is a Chapter 7 case, if the Debtor's interest in the property was of any value to the bankruptcy estate, the Chapter 7 Trustee would have sought to preserve it for the benefit of creditors. However, pursuant to section 554 of the Bankruptcy Code, the Chapter 7 Trustee filed a notice of proposed abandonment based on his view that there was no equity in the home. Despite having the opportunity to object, the Debtor never did and the property was abandoned by the Chapter 7 Trustee on April 26, 2017.<sup>53</sup> Accordingly, the Debtor's interest in the home is no longer property of the bankruptcy estate and the automatic stay is not in effect.<sup>54</sup> Thus, the Debtor is asking this Court to revisit issues concerning a property interest which, since April 26, 2017, was not property of the estate and not protected by the automatic stay. Though this does not excuse the initial stay violations, it is relevant for purposes of considering retroactive annulment of the stay. Under these circumstances, the Bankruptcy Court's jurisdiction is limited at best. Issues concerning the Debtor's interests under N.J.S.A. 3B:28-3 in the context of the foreclosure and eviction proceedings are best left to the sound judgment of the Superior Court of New Jersey.

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<sup>53</sup> See FED. R. BANKR. P. 6007(A).

<sup>54</sup> 11 U.S.C. § 361(c)(1). See, e.g. *In re Lyn*, 483 B.R. 440, 451 (Bankr. D. Del. 2012); *In re Jones*, 396 B.R. 638, 648 (Bankr. W.D. Pa. 2008).

The Debtor has alleged that there is equity in the home because it is worth \$173,507.<sup>55</sup> The Court is not persuaded by the Debtor's lay opinion on the value of her husband's property in this case. First, the Essex County Sheriff sold the home at a public auction to 356 Leslie for \$86,000. The Supreme Court has held that "a fair and proper price, or a reasonably equivalent value, for foreclosed property, is the price in fact received at the foreclosure sale."<sup>56</sup> Also, when the Chapter 7 Trustee abandoned the home, he listed its value at \$86,000 and the amount owed Cenlar as approximately \$96,000.<sup>57</sup> These are strong indicators that there was no equity in the property over the Cenlar mortgage debt.

Finally, the Debtor filed for bankruptcy solely to provide her husband with additional time to seek a modification of his mortgage. Final judgment of foreclosure was entered against Porterfield in April 2015 and the sheriff's sale had been adjourned multiple times since May 2016. He had nearly two years to apply for and obtain a loan modification. Indeed, Porterfield himself filed bankruptcy proceedings to address his mortgage default (and could have entered into the Bankruptcy Court's loss mitigation program) but those proceedings were dismissed. The delays by Porterfield cannot be overlooked. He had the time and numerous opportunities to preserve the equity in the property (if there was any) and to prevent foreclosure, but was unable to do so. Under the unique facts of this case, it would be inequitable to allow the bankruptcy process to be used to prolong this any further.

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<sup>55</sup> The Court takes judicial notice of the fact that in his 2016 bankruptcy petition, Porterfield certified under penalty of perjury that his assets (including the home) were worth less than \$50,000.

<sup>56</sup> *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 545 (1994).

<sup>57</sup> [ECF No. 12].

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For the above reasons, the Court will exercise its discretion and grant relief from the automatic stay, *nunc pro tunc* to January 17, 2017, to validate the sheriff's sale, transfer of title and writ of possession.

**CONCLUSION**

The Debtor's motion to vacate the sheriff's sale, transfer of title and writ of possession, and for actual and punitive damages for willful violation of the automatic stay is denied. 356 Leslie's cross-motion for relief from the automatic stay, *nunc pro tunc* to January 17, 2017, to validate the sheriff's sale, transfer of title and writ of possession is granted.