



Order Filed on August 18, 2023  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

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

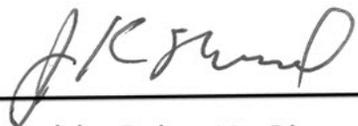
In Re:  
  
**HERBERT PERERA,**  
  
Debtor.

Case No.: 22-19885  
Chapter: 13  
Judge: John K. Sherwood

**ORDER RE: SECURED CREDITOR’S MOTION TO VACATE AUTOMATIC STAY,  
CO-DEBTOR STAY, AND FOR PROSPECTIVE RELIEF**

The relief set forth on the following pages is hereby **ORDERED**.

**DATED: August 18, 2023**

  
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Honorable John K. Sherwood  
United States Bankruptcy Court

Page 2

Debtor: Herbert Perera

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**WHEREAS:**

- A. On July 12, 2023, LPP Mortgage, Inc. f/k/a LPP Mortgage LTD (“Secured Creditor”), the secured creditor in this Chapter 13 case, filed a Motion to vacate the automatic stay as to Herbert Perera’s (“Debtor”) real property; for relief from the co-debtor stay as to the Debtor’s non-filing spouse, Thamara Perera (“Co-Debtor”); and for prospective relief. [ECF No. 23]. The Court held a hearing on this Motion on August 10, 2023.
- B. This is the Debtor’s third bankruptcy case. On August 31, 2011, the Debtor and Co-Debtor filed a Chapter 13 bankruptcy petition. They completed the plan and, on March 11, 2015, received a discharge. On September 1, 2015, the case was terminated. [ECF No. 23-1, ¶ 2]. On September 9, 2019, the Debtor filed another Chapter 13 bankruptcy petition. The Court dismissed the case on July 12, 2021, because the Debtor was delinquent on his Chapter 13 trustee payments. [ECF No. 23-1, ¶ 3]. The Debtor filed his current Chapter 13 bankruptcy petition on December 15, 2022. [ECF No. 1].
- C. The Debtor and the Co-Debtor own property located at 146 North Central Avenue, Ramsey, New Jersey worth \$625,000. [ECF No. 9, p. 3]. The Secured Creditor filed a proof of claim for \$859,467.20. The annual rate of interest is eight percent. The Debtor is \$191,299.67 in arrears. [Claim No. 5-1]. The Debtor has only made two post-petition mortgage payments. He owes at least \$17,692.36 in post-petition arrears. In sum, as of July 2023, the Debtor owes \$878,861.22 to the Secured Creditor. [ECF No. 23-1, ¶¶ 9-13].
- D. On the request of a party, a court can grant relief from the automatic stay “for cause, including the lack of adequate protection of an interest in property of such party in interest.” Additionally, a court can grant relief from the automatic stay with respect to property if the debtor does not have equity in such property and the property is not necessary for an effective reorganization. 11 U.S.C. § 362(d)(1) and (2). The “lack of any realistic prospect of effective reorganization will require § 362(d)(2) relief.” *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 376 (1988). A key consideration is whether a debtor will be able to confirm a plan of reorganization. *In re King*, 643 B.R. 75, 90 (Bankr. D.N.J. 2022).
- E. The Secured Creditor is entitled to relief from the automatic stay. The Secured Creditor is undersecured and the Debtor has failed to make mortgage payments. The Debtor had a July 15, 2023, deadline to obtain a loan modification or sell his property to fund the plan. To date, he has failed to receive a loan modification. He is also \$1,608 behind on Chapter 13 trustee payments. [ECF No. 24]. The Court also notes that the Debtor does not oppose relief from the automatic stay. [ECF No. 26].

Page 3

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- F. The Debtor opposes the Secured Creditor's request for prospective relief under § 362(d)(4) of the Bankruptcy Code which would leave the property owned by the Debtor and Co-Debtor unprotected by the automatic stay for a period of 2 years. He claims that the Co-Debtor was only part of the 2011 bankruptcy case – that case was completed, and the Debtor and the Co-Debtor received a discharge. In the 2019 case, the Debtor claims that a plan was confirmed, but he missed his trustee payments. He claims that this filing history does not justify the Court granting prospective relief to the Secured Creditor.
- G. A court will grant prospective relief if it “finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved . . . multiple bankruptcy filings affecting such real property.” 11 U.S.C. § 362(d)(4). After the entry of an order granting prospective relief, section 362(b)(20) will provide an exception from the automatic stay in all subsequent filings seeking to impose the stay with respect to the debtor's real property for a period of 2 years. However, a debtor in a subsequent case may move for relief from a prospective relief order by demonstrating changed circumstances or for good cause shown. 11 U.S.C. § 362(d)(4).
- H. A creditor seeking stay relief pursuant to section 362(d)(4) has the initial burden to establish a prima facie case that a debtor engaged in a scheme to delay, hinder, or defraud creditors. *In re Lindsay*, No. 20-10339-JLG, 2021 WL 278317, at \*7 (Bankr. S.D.N.Y. Jan. 27, 2021). That said, the Court “may infer an intent to hinder, delay and defraud creditors from the fact of the serial filings alone.” *In re Procel*, 467 B.R. 297, 308 (S.D.N.Y. 2012). There are several factors that courts use to make that inference, namely, the timing and sequence of the bankruptcy filings and the extent of the debtor's efforts to prosecute each case. *See In re Richmond*, 516 B.R. 229, 235 (Bankr. E.D.N.Y. 2014).
- I. The Secured Creditor relies primarily on the Debtor's prior bankruptcies to establish a prima facie case that the Debtor engaged in a scheme to delay, hinder, or defraud creditors. The Debtor and Co-Debtor have filed three bankruptcy cases in the last twelve years. While it is concerning that the Debtor and Co-Debtor have filed three cases and remain consistently in arrears on their mortgage, three cases in twelve years is relatively modest compared to some other debtors. *See In re Gray*, 558 Fed. Appx. 163, 167, 169 (3d Cir. 2014) (the bankruptcy court did not grant prospective relief where a debtor filed four cases in a six-year period); *In re Montalvo*, 416 B.R. 381, 383-85 (Bankr. E.D.N.Y. 2009) (the court granted prospective relief where the debtor filed five cases in a three-year period); *In re Najieb*, 80 F. App'x 734, 735 (3d Cir. 2003) (the court granted prospective relief where the debtor filed eight bankruptcy cases). The Debtor, who filed three cases, and the Co-Debtor, who filed only one case, are not serial filers.

Page 4

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- J. The Court presumes that the prior cases were filed by the Debtor and the Co-Debtor to save their home from foreclosure and restructure their mortgage debt. There is no evidence that they filed the bankruptcy cases to merely delay creditors. *See In re Lindsay*, No. 20-10339, WL 278317, at \*7 (Bankr. S.D.N.Y. Jan. 27, 2021) (The court found that each of the debtor's multiple bankruptcies was filed just before the day by which the debtor was to pay off the mortgage debt, a procedural requirement in New York foreclosure proceedings. The debtor also did not prosecute any of her prior cases.). Here, the Debtor and Co-Debtor completed their first case. The Debtor confirmed a plan and made multiple plan payments in the second case. In this case, the Debtor's confirmed plan relied on a loan modification, which he failed to receive. From the record available to the Court, the Debtor and the Co-Debtor prosecuted all their filed bankruptcy cases to some extent.
- K. In light of the above, the Court finds that prospective relief is not appropriate at this time. The Secured Creditor has not met its burden to establish that the Debtor and the Co-Debtor engaged in a scheme to delay, hinder, or defraud creditors. Because the Co-Debtor is on the mortgage and has an interest in the property [ECF No. 23-3], the Court will grant relief from the Co-Debtor stay pursuant to 11 U.S.C. § 1301(c).

**THEREFORE, IT IS ORDERED:**

1. The Secured Creditor's Motion for relief from the automatic stay is granted.
2. The Secured Creditor's request for prospective relief under 11 U.S.C. § 362(d)(4) is denied.
3. The Secured Creditor's request for relief from the Co-Debtor stay is granted.