

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

In re HENRY LEE BOLLING,) Case No. 09-60353-LYN
)
Debtor.)
_____)

ORDER ON MOTION TO CLARIFY

This matter comes before the Court on the motion of American National Bank and Trust (“ANB”) for relief from the automatic stay. ANB seeks an order permitting it to proceed to judgment in state court on a deficiency claim against Henry Lee Bolling (“the Debtor”) and to record any such judgment so obtained in the county land records. The Chapter 13 trustee does not oppose the request to proceed to judgment but opposes the motion to record any such judgment.

Jurisdiction

This Court has jurisdiction over this matter. 28 U.S.C. § 1334(a) & 157(a). This proceeding is a core proceeding. 28 U.S.C. § 157(b)(2)(A). This Court may enter a final order. This memorandum shall constitute the Court’s findings of fact and conclusions of law as required by Fed. R. Civ. P. 52, which is made applicable in this proceeding by Fed. R. Bankr. P. 7052.

Facts

ANB loaned monies to Bolling Properties, Ltd. The Debtor guaranteed the payment of the debts due under the loan agreements.

On February 4, 2009, the Debtor filed a Chapter 13 petition. ANB asserts that it was not given notice of the filing. The Debtor scheduled seven real properties (“the Real Properties”) valued at \$329,400.00. The Debtor scheduled claims secured by the Real Properties in the amount of \$85,500.00. The Debtor had approximately \$243,900.00 in equity in the Real Properties as of the date of petition.

Post-petition, Bolling Properties, Ltd., failed to make payments under the loan agreements. The Debtor is now indebted to ANB in the amount of \$158,248.06 under his guarantees.

ANB now seeks relief from the stay to reduce the guarantees to judgment and to record that judgment.

Discussion

The Chapter 13 trustee does not oppose granting relief from the stay to permit ANB to obtain a judgment against the Debtor. He does, however, object to the recordation of any judgment so obtained. The objection is based on the fact that the recordation would create a lien on the property of the Debtor that would allow the Debtor to file a motion to amend his plan based on changed circumstances thus reducing the amount that he would have to pay under the Chapter 7 test. *See* 11 U.S.C. § 1325(a)(4). While any such motion would be subject to consideration by the court, the possibility would remain.

Further, were this case converted to Chapter 7, the recordation would have the effect of placing ANB, an unsecured creditor, ahead of all of the other unsecured creditors. There is no provision in the Bankruptcy Code for such a change in priority. In fact, under the facts of this case, ANB has no more right to such a lien than any of the other unsecured creditors in this case.

Accordingly, ANB will not be permitted to record any such judgment so obtained.


ORDER

The motion of American National Bank and Trust for relief from the stay to take such actions as necessary to obtain a judgment in state court against the Debtor based on pre-petition guarantees is GRANTED. The motion of American National Bank and Trust for relief from the stay to record any such judgment so obtained is DENIED.

So ORDERED.

Upon entry of this memorandum and order the Clerk shall forward copies of this memorandum and order to Darren W. Bentley, Esq., Michael W. Cannaday, Esq., and the Chapter 13 trustee.

Entered on this 25th day of October, 2012.



William E. Anderson
United States Bankruptcy Judge

