

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

LEROY LOLLEY and  
DOROTHY LOLLEY

BK 91-12819 K

Debtors  
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DECISION AND ORDER

Upon the motion of KeyCorp seeking relief from the automatic stay to allow foreclosure of the mortgage on the premises at 4705 Model City Road, Lewiston, New York, the debtors appeared through counsel on October 17, 1991 and argued that the stay should not be lifted because the mortgage loan in question is fully insured by the Federal Housing Administration (FHA) and that such insurance provides KeyCorp with "adequate protection" against any decrease in the value of its interest. 11 U.S.C. § 362(d)(1).

I reserved decision in order to determine whether the existence of such insurance does of itself constitute adequate protection. After reflection, I now conclude that that question need not be reached if "cause" exists for the lifting of the stay despite the existence of adequate protection. In other words, even if one assumes for the sake of argument that adequate protection exists, sec. 362(d) relief must be granted if "cause" exists therefor.

The stay of an act against property of the estate that has been duly scheduled automatically ceases when the property is abandoned or the case is closed. See 11 U.S.C. § 362(c)(1). The Trustee represents the estate, not the debtors. Where, as here, the Trustee has been duly served with the motion to lift stay and has not opposed, it may be presumed that the Trustee has concluded that no interest of the estate in the property would be served by continuing the automatic stay.

This leaves, then, only the question of what interest of the debtor is served by continuing the stay that outweighs the Bank's interest in either regaining an income stream or obtaining the authority to sell the property. In a Chapter 7 case concerning natural persons, the stay of any act other than an act against property of the estate automatically ceases when the debtor's discharge is granted or denied or when the case is closed or dismissed, whichever is earlier. See 11 U.S.C. § 362(c)(2). In this case the last day to file a complaint objecting to the discharge of the debtors is November 12, 1991. If no such complaint is filed, then it may be expected that the debtors will be discharged shortly after that date.

It has not been disputed that in the meantime, the debtors are not making payments on the mortgage and that they have made no payments since approximately one year before the filing of

the Chapter 7 petition.

I find that when no mortgage payments are made for such a period of time prior to the filing of a Chapter 7 petition, and none are made after the filing, and when under circumstances most favorable to the debtors (inasmuch as they would certainly hope that no-one objects to their discharge) denial of the lender's motion will only continue the stay for an additional three weeks or so, "cause" exists for the lifting of the stay regardless of whether the lender is adequately protected by FHA mortgage insurance or not.

The stay is lifted.

SO ORDERED.

Dated: Buffalo, New York  
November 1, 1991

**/S/ MICHAEL J. KAPLAN**

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U.S.B.J.