
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 13 Case
LEON M. HILDRETH)	
)	Number <u>97-42543</u>
<i>Debtor</i>)	
)	
)	
FEDERAL NATIONAL)	
MORTGAGE ASSOCIATION)	
)	
<i>Movant</i>)	
)	
v.)	
)	
LEON M. HILDRETH)	
and)	
SYLVIA FORD BROWN, TRUSTEE)	
)	
<i>Respondents</i>)	

ORDER DISMISSING MOTION FOR RELIEF FROM STAY

Debtor's Chapter 13 case was filed August 27, 1997, and scheduled for confirmation on February 3, 1998. A Motion for Relief from Stay was filed on January 22, 1998, on behalf of Federal National Mortgage Association ("FNMA") represented by McCalla, Raymer, Padrick, Cobb, Nichols & Clark ("McCalla Raymer"), attorneys at law. In response to the Motion the Clerk issued, on January 23, 1998, a notice of hearing

scheduling the stay relief matter for the same date and time as confirmation. An accompanying Order directed McCalla Raymer to serve the notice of the hearing, together with a copy of the Motion, on the Trustee, the Debtor, the Debtor's attorney, and those persons specified by the Bankruptcy Rules.

At the call of the case the Trustee stated that there were no unresolved objections to confirmation and that the Trustee recommended confirmation. However, the case remained on the Court's calendar because of the unresolved Motion for Relief from Stay. An examination of the file revealed there had been no certificate of service filed in Court by McCalla Raymer. Because of the short turnaround time between the filing of the Motion, the issuance of the notice and the normal mailing time between the Clerk's Office in Savannah and Movant's counsel's office in Atlanta, it appeared possible that McCalla Raymer simply had not had time to serve the Motion and the notice of hearing. Thus the Court inquired of Debtor's counsel, Mr. John Pytte, whether he had received a service copy of the notice and the motion. Debtor's counsel responded that he in fact had received from McCalla Raymer a copy of the notice and the Motion bearing a certificate of service date of January 27. When the case was called no attorney from McCalla Raymer was present in the courtroom. Debtor's counsel stated, because he was aware that Steve Greenberg serves as local counsel to McCalla Raymer on a regular basis, that he had made a courtesy call to Mr. Greenberg prior to the court session commencing to inquire whether the case had been referred to him. Mr. Greenberg informed Debtor's counsel that he was unaware

of any referral on this case.¹ McCalla Raymer is the only counsel of record for Movant and a courtesy inquiry by Debtor's counsel to regularly associated local counsel was not productive. Debtor's counsel informed the Court that Debtor was present in Court and was in a position to offer a cure to the lender, but the failure of the lender or its attorney to appear prevented that offer from being consummated.

In light of McCalla Raymer's failure to appear, to timely seek a continuance, to timely associate local counsel, to contact Debtor's counsel, or take any other action in prosecution of its Motion, the Motion for Relief from Stay of Federal National Mortgage Association is hereby dismissed for lack of prosecution. McCalla Raymer is barred from refileing this Motion on behalf of this lender in this case.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 1998.

¹ Mr. Greenberg called later in the day to advise the Court that the case had in fact been forwarded on January 28 to his office by mail from McCalla Raymer. However, the mail was not received until mid-day on February 3, the day of the hearing and at the time of Mr. Pytte's call Mr. Greenberg had not seen the mail.