IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | |
|---|---|
| In re: DEBORAH A. MADERA, Debtor | Civil Action No. 07-CV-1396 |
| and | Bankruptcy No. 06-13000 |
| DEBORAH A. MADERA and MICHAEL MADERA, Plaintiffs | Adversary No. 06-417 |
| vs. | |
| AMERIQUEST MORTGAGE COMPANY, Defendant | |

* * *

APPEARANCES:

DAVID A. SCHOLL, ESQUIRE
On behalf of Appellants

SANDHYA M. FELTES, ESQUIRE
On behalf of Appellee

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the Court on the Motion of Appellants to Stay Sheriff's Sale of Their Home, which motion was filed January 28, 2008. By Order dated December 5, 2007, I scheduled a hearing on the underlying bankruptcy appeal in this

matter. On February 1, 2008 I conducted an oral argument on the underlying appeal. During this proceeding I also conducted an oral argument on appellants' motion for a stay.

For the reasons expressed below, I deny the Motion of Appellants to Stay Sheriff's Sale of Their Home.[1]

---

[1] Federal Rule of Bankruptcy Procedure 8011 governs motion practice in bankruptcy appeals. As applicable here, Rule 8011 provides:

> (a) Content of motions; response; reply.
>
> A request for an order or other relief shall be made by filing with the clerk of the district court...a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion....
>
> * * *
>
> (c) Determination of all motions.
>
> All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.
>
> (d) Emergency motions.
>
> Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

Fed.R.Bankr.P. 8011.

JURISDICTION

This Court has subject matter jurisdiction of this bankruptcy appeal pursuant to 28 U.S.C. § 158(a)(1). This is an appeal from a final Order of the United States Bankruptcy Court for the Eastern District of Pennsylvania dated February 27, 2007 which denied appellants' motion for reconsideration. The February 27, 2007 Order upheld the bankruptcy court's prior February 8, 2007 Order and accompanying Memorandum Opinion which granted summary judgment against appellants and in favor of appellee in bankruptcy adversary number 06-417.[2]

---

[2] Appellants filed their first Notice of Appeal on March 9, 2007. This appeal was limited to the bankruptcy court's disposition of adversary number 06-417. By Amended Notice of Appeal dated March 12, 2007, however, appellants also sought to appeal adversary number 07-001. Adversary number 07-001 was a related adversary proceeding brought by plaintiffs Deborah A. Madera and Michael Madera against defendants Ameriquest Mortgage Company and AMC Mortgage Services, Inc.

This bankruptcy appeal (which originally encompassed both adversary proceedings) was docketed in the United States District Court for the Eastern District of Pennsylvania on April 6, 2007. On April 9, 2007 Ameriquest Mortgage Company and AMC Mortgage Services, Inc. (as appellees) filed a Motion to Quash Appeal. The Motion to Quash Appeal sought dismissal of the appeal of adversary number 07-001 because the bankruptcy court had not entered a final appealable Order when the Amended Notice of Appeal was filed.

Appellants' response to Appellees' Motion to Quash Appeal was filed on April 23, 2007. Appellants' response indicated that they would withdraw their appeal regarding adversary number 07-001 with the understanding that any appeal from a final Order in that adversary proceeding would be preserved. During oral argument conducted on February 1, 2007, I dismissed the appeal of adversary number 07-001 by mutual consent of the parties.

Accordingly, the underlying bankruptcy appeal in this matter is now limited to the final Order issued in adversary number 06-417. The parties involved in this appeal are appellees Deborah A. Madera and Michael Madera and appellee Ameriquest Mortgage Company.

## FACTUAL[3] AND PROCEDURAL HISTORY

Appellants are co-owners of real property located at 401 Twin Streams Drive, Warminster, Pennsylvania. Appellants reside at this property. In January 2005 appellants obtained a loan from Option One Mortgage Company secured by a mortgage upon their home ("Option One loan"). Appellants utilized the Option One loan to pay off a prior mortgage. The Option One loan also provided appellants with a cash payout which they used to pay for their son's college tuition.

Appellants do not recall the basic facts of the Option One loan such as the loan amount or interest rate. Neither appellant recalls whether they were issued title insurance with respect to the Option One mortgage. Moreover, prior to the within bankruptcy appeal, appellants did not present any documentary evidence which showed the existence of title insurance for the Option One loan.[4]

---

[3] The facts presented herein are drawn from the February 8, 2007 Order and accompanying Memorandum Opinion of the bankruptcy court as well as the uncontested facts presented in the Brief of Appellants filed May 14, 2007; Brief of Appellees filed June 15, 2007; Reply Brief of Appellants filed July 2, 2007; Motion of Appellants to Stay Sheriff's Sale of Their Home filed January 28, 2008; Ameriquest Mortgage Company and AMC Mortgage Services, Inc.'s Response in Opposition to Appellants' Motion to Stay Sheriff's Sale filed January 29, 2008; and the uncontested statements of counsel at oral argument.

[4] Appendix A to the Brief of Appellants is an unsigned Settlement Statement form produced by the United States Department of Housing and Urban Development. Appellants contend that this is the settlement statement form from appellants' Option One loan transaction. At item number 1108, this statement reflects that appellants were required to pay for title insurance in connection with repayment of the Option One loan.

(Footnote 4 continued):

Subsequently, appellants entered into a new loan transaction with appellee Ameriquest Mortgage Company on June 23, 2005 ("Ameriquest loan"). Appellants used the loan proceeds to satisfy their prior Option One loan. The loan also provided appellants with a cash payout. Appellants made one payment under the Ameriquest loan.

Default and Foreclosure Judgment

On March 25, 2006 Deutsche Bank National Trust Company, as assignee of the loan, initiated foreclosure proceedings in the Court of Common Pleas of Bucks County, Pennsylvania. A default foreclosure judgment was entered against appellants on May 9, 2006. Based upon this foreclosure judgment, a sheriff's sale of the property is scheduled to take place on February 8, 2008.

Appellants have not moved in the Court of Common Pleas of Bucks County, Pennsylvania or in the Pennsylvania Superior Court to vacate or set aside the default judgment, to appeal the

---

(Continuation of footnote 4):

Appellee vehemently opposes this court's consideration of this evidence. Appellee asserts that this evidence was never presented to the district court and it is not part of the appellate record. Moreover, appellee argues that there is no evidence that this Settlement Statement or any other evidence showing the existence of prior title insurance was ever provided to appellee.

"[W]hen a party fails to raise an issue in the bankruptcy court, the issue is waived and may not be considered by the district court on appeal." In re Kaiser Group International, Inc., 399 F.3d 558, 565 (3d Cir. 2005). Accordingly, this court will not consider evidence which has not been made a part of the appellate record as part of its disposition of the underlying appeal. Additionally, this evidence is not relevant to appellants' motion for a stay of the sheriff's sale.

judgment or to stay the impending sheriff's sale.

Appellants aver that they served a pro se Answer to the Complaint, which was docketed by the Court of Common Pleas on April 24, 2006. Appellants contend that this Answer was not correctly docketed by the Court of Common Pleas, but it should have prevented the default and foreclosure judgment. However, appellee asserts that appellants were aware of the mortgage foreclosure action and never defended against it.

Pre-Petition Request for Information

By letter dated June 5, 2006 appellants' counsel, David A. School, Esquire, sent a letter to appellee which alleged violations of federal and state law by appellee and asserts a right to rescind the Ameriquest loan. The letter purports to be a qualified written request pursuant to the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(5)(e), seeking information regarding unpaid interest and escrow balances, monthly payments, and the method by which payments were credited by appellee.

By letter dated August 2, 2006, appellee acknowledged receipt of appellants' letter. However, appellee avers that the letter was not received until July 27, 2006.

Appellants' Bankruptcy and Adversary Proceedings

On July 19, 2006 appellant Deborah A. Madera filed a voluntary petition for Chapter 13 bankruptcy (case number

06-13000). On August 2, 2006 appellants Deborah A. Madera and Michael Madera commenced an adversary proceeding (adversary number 06-417) against appellee Ameriquest Mortgage Company.

The four-Count adversary Complaint contained the following claims:

(I) Ameriquest violated 15 U.S.C. § 1638(a) of the federal Truth-in-Lending Act ("TILA") by overcharging appellants for title insurance and failing to include the overcharge in their TILA "finance charge" disclosure statement, which violations entitle appellants to statutory recoupment of damages and costs against Ameriquest pursuant to 15 U.S.C. § 1640;

(II) Ameriquest's TILA disclosure violations entitle appellants to rescind the Ameriquest loan pursuant to 15 U.S.C. § 1635(b) and entitle appellants to statutory damages pursuant to 15 U.S.C. § 1640;

(III) Ameriquest failed to comply with 12 U.S.C. §§ 2605(e) and (f) of the Real Estate Settlement Procedures Act ("RESPA") by failing to respond to appellants' Qualified Written Request for rescission; and

(IV) Ameriquest violated 15 U.S.C. § 1691 of the Equal Credit Opportunity Act ("ECOA") by substituting

different, less favorable loan terms without advising appellants on the date of settlement.

On August 22, 2006 appellee Ameriquest filed an Answer to the adversary Complaint. Thereafter, discovery commenced and the bankruptcy court set October 20, 2006 as the deadline to file pre-trial motions. On October 20, 2006, after discovery had concluded, Defendant Ameriquest Mortgage Company's Motion for Summary Judgment was filed. Appellee's motion sought summary judgment on all of appellants' claims.

On October 30, 2006 Plaintiff's Expedited Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment and for Permission to Amend Complaint was filed. This motion sought an extension of time to respond to appellee's summary judgment motion, sought a delay of the hearing on the summary judgment motion and sought leave to file an Amended Complaint in adversary number 06-617.

In appellants' proposed Amended Complaint, appellants withdrew their ECOA claim. Appellants also withdrew their RESPA claim against appellee Ameriquest, and instead asserted the claim against AMC Mortgage Services, Inc. The Amended Complaint also asserted a new TILA disclosure violation based upon appellee's issuance of a one-week-to-cancel notice. Finally, the Amended Complaint asserted a new claim against appellee for violations of

the Pennsylvania Unfair Trade Practices Act and Consumer Protection Law, 73 P.S. § 201-1.

On November 28, 2006 a hearing on appellee's summary judgment motion and appellants' motion for leave to amend the Complaint was held before Chief Judge Diane W. Sigmund of the United States Bankruptcy Court for the Eastern District of Pennsylvania.[5] At the hearing, appellants withdrew their claim for damages and costs related to appellee's alleged violation of ECOA and Chief Judge Sigmund orally denied appellants' motion for leave to amend the adversary Complaint.

On February 8, 2007 Chief Judge Sigmund issued an Order and accompanying Memorandum Opinion which granted appellee's motion for summary judgment on all remaining counts. As pertinent to this bankruptcy appeal, the court held that the Rooker-Feldman doctrine[6] barred appellants' claims for rescission in Counts II and III. The court also concluded that appellants had presented insufficient evidence to show that they had obtained title insurance with the Option One loan or to show that

---

[5] Although Chief Judge Sigmund refers to the proceeding as a hearing, it appears to have been solely an oral argument.

[6] As most recently explained by the United States Supreme Court, the Rooker-Feldman doctrine is a statutory-based abstention doctrine which precludes lower federal courts from exercising appellate jurisdiction over final state-court judgments. Lance v. Dennis, 546 U.S. 459, 463, 126 S.Ct. 1198, 1201, 163 L.Ed.2d 1059, 1064 (2006)(per curiam). See Rooker v. Fidelity Trust Company, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

appellee had notice of any such title insurance. Therefore, the court dismissed the TILA claim in Count I.

The February 8, 2007 Order and accompanying Memorandum Opinion also explained the court's rationale for denying appellants leave to amend their Complaint. The court held that the amendment was untimely because appellants were fully aware of the basis of the new claims and their need to add an additional party before the conclusion of discovery. The court also concluded that the proposed amendments would be futile.

On February 16, 2007 appellants filed Plaintiff's Motion Requesting Reconsideration of Memorandum Opinion and Order of February 2, 2007. Defendant Ameriquest Mortgage Company's Response in Opposition to Plaintiffs' Motion for Reconsideration was filed on February 19, 2007. By Order dated February 27, 2007, Chief Judge Sigmund denied appellants' motion for reconsideration. On March 9, 2007 appellants filed a Notice of Appeal of the Bankruptcy Court's February 27, 2007 Order.

Appellants have not moved for a stay pending appeal before the bankruptcy court.

Subsequent Developments

Subsequent to the filing this bankruptcy appeal from the adversary proceeding, appellant Deborah A. Madera's individual Chapter 13 bankruptcy case was voluntarily dismissed on August 14, 2007. Appellant Michael Madera has a pending

Chapter 13 bankruptcy case (bankruptcy number 07-17296). Pursuant to the automatic bankruptcy stay, 11 U.S.C. § 362(a), the sheriff's sale of appellants home cannot proceed because of Michael Madera's pending bankruptcy action.

However, Deutsche Bank National Trust Company has moved to dismiss Michael Madera's bankruptcy action on the ground that the action was filed in bad faith. Oral argument was held by the bankruptcy court on January 24, 2008 on the motion to dismiss.

CONTENTIONS OF THE PARTIES

Appellants' Contentions

Appellants aver that in the event appellant Michael Madera's bankruptcy action is dismissed, the sheriff's sale of their home will proceed. Appellants contend that the completion of the sheriff's sale would preclude this court from awarding the federal remedy of rescission of their Ameriquest loan, which would invalidate the state foreclosure judgment that is the basis of the sheriff's sale.

Appellants assert that if the bankruptcy court erred in granting summary judgment to appellee on appellants' TILA rescission claim, the bankruptcy court will be reversed and appellants will ultimately prevail on this claim which would nullify the foreclosure judgment. Thus, in order to preserve the rescission remedy, appellants assert that this court must stay

the Bucks County sheriff's sale pending resolution of this bankruptcy appeal.

Appellants contend that this court has the inherent power to stay the sheriff's sale of their home. Appellants aver that this power stems from the court's inherent power to prevent irreparable harm from inuring to a litigant before the court has had an opportunity to decide the case on its merits pursuant to Federal Rule of Civil Procedure 65. Appellants assert that federal district courts within this district have stayed the execution of state court judgments pending the disposition of matters before them in the past.[7]

Appellants argue the following in support of their motion: the invalidity of the mortgage foreclosure judgment entered by default without regard to appellants' pro se Answer; appellants' equity in their home; appellants' expectation that they will shortly receive sufficient funds to satisfy any arrears owed; and their belief that, if successful in this appeal, appellants may ultimately invalidate the mortgage which is the basis for the foreclosure.

[7] Appellants cite Swarb v. Lennox, 314 F.Supp. 1091 (E.D.Pa. 1970) and Piper v. Portnoff Law Associates, 262 F.Supp.2d 520 (E.D.Pa. 2003) for this proposition. Appellants also refer to an unpublished Order dated November 14, 2006 by Judge Legrome D. Davis in the case of Williams v. Wells Fargo Home Mortgage, Inc., Civ.A.No. 06-3861 (E.D.Pa. 2006) in support of their assertion.

Appellee's Contentions

Appellee contends that appellants' motion to stay the sheriff's sale must be denied. Appellee asserts that (1) this court is prohibited from enjoining a pending state court proceeding under the Anti-Injunction Act; (2) this court must apply Younger abstention[8] and decline to exercise its jurisdiction; and (3) appellants' requested relief is beyond the scope of the underlying appeal.

Appellee argues that a federal district court is prohibited by the Anti-Injunction Act from enjoining a pending state court proceeding, including a sheriff's sale, unless one of three narrow exceptions to the Act apply. Appellee asserts that none of the exceptions to the Act apply here.

Appellee further asserts that Younger abstention applies to appellants' request for a stay and this court must decline to exercise its jurisdiction irrespective of the Anti-Injunction Act. Appellee contends that the sheriff's sale is a state court judicial proceeding involving the appellants which implicates important state interests and in which appellants could have raised their rescission claim.

Finally, appellee avers that the only issues before this court are those contained within adversary number 06-417 which have been appealed and briefed. Appellee contends that the

[8] Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).

court does not have jurisdiction to challenge the underlying foreclosure action because it is not within the province of the appeal.

DISCUSSION

Appellants' motion for a stay of the sheriff's sale is in the nature of an emergency motion for stay pending resolution of their bankruptcy appeal.[9] The test for determining whether to grant a stay pending appeal under Federal Rule of Bankruptcy Procedure 8005 mirrors the standard applicable to stay orders pursuant to Federal Rule of Bankruptcy Procedure 8017 as well as the standard for preliminary injunctions pursuant to Federal Rule of Civil Procedure 65(a). In re 641 Associates, Ltd, Civ.A.No. 93-2099, 1993 WL 246024, at *1 (E.D.Pa. June 30, 1993)

---

[9] Federal Rule of Bankruptcy Procedure 8005 governs the issuance of stays pending appeal. Rule 8005 provides in part:

> A motion for a stay of the judgment, order, or decree of a bankruptcy judge,...or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance....A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court..., but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court...may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court....

Fed.R.Bankr.P. 8005.

Although appellants offered no information regarding whether they first sought a stay in the bankruptcy court, it may be inferred from the procedural history offered in their motion for a stay that the stay only became necessary when it appeared that appellant Michael Madera's bankruptcy action had the possibility of being dismissed. By this juncture, the underlying bankruptcy appeal in this court had already been perfected and was ripe for decision following oral argument.

Accordingly, I exercise my discretion and find appellants' averments to be sufficient to explain their decision to forego motion practice in the bankruptcy court.

(Kelly, James McGirr, J.); In re Olick, Civ.A.No. 96-784, 1996 WL 287344, at *1 (E.D.Pa. May 29, 1996)(Yohn, J.).[10]

However, because I conclude that the requested injunctive relief is not available to appellants pursuant to the Anti-Injunction Act, 28 U.S.C. § 2283, and because I conclude that Younger abstention applies, I will not engage in a Rule 8005 analysis.

Anti-Injunction Act

The Anti-Injunction Act states that "[a] court of the Untied States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. The three exceptions to the Anti-Injunction Act must be construed narrowly with any doubts as to the propriety of granting the federal injunction against state court proceedings resolved in favor of permitting the state courts to proceed. In re Diet Drugs, 282 F.3d 220, 231 (3d Cir. 2002).

A federal court injunctive Order directed at the parties and their representatives, but not at the state court

[10] In determining whether to grant a stay pending appeal, the court must consider four factors: (1) whether the applicant has made a strong showing of likely success on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether a stay will substantially injure the other parties; and (4) how the public interest will be affected. Floyd v. Clark, 266 B.R. 61, 63 n.3 (E.D.Pa. 2001)(Surrick, J.)(internal citations omitted). A party must satisfy all four elements to qualify for a stay pursuant to Fed.R.Bankr.P. 8005. In re Blackwell, 162 B.R. 117, 120 (E.D.Pa. 1993)(Joyner, J.).

itself, does not remove it from the scope of the Anti-Injunction Act. In re Diet Drugs, 282 F.3d at 233. Thus, it is well-settled law that the prohibition of the Anti-Injunction Act cannot be "evaded by addressing the order to the parties." Atlantic Coastline Railroad Company v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 287, 90 S.Ct. 1739, 1743, 26 L.Ed.2d 234, 241 (1970).

Only the "necessary in aid of jurisdiction" exception is arguably applicable to this bankruptcy appeal.[11] For the necessary-in-aid-of-jurisdiction exception to apply, the state court proceedings must "so interfer[e] with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility to decide that case." 1975 Salaried Employees Retirement Plan for Eligible Employee of Crucible, Inc. v. Nobers, 968 F.2d 401, 408 (3d Cir. 1992)(internal citation and quotations omitted). However, the in-aid-of-jurisdiction exception may not be invoked merely because of the prospect that a concurrent state proceeding might result in a judgment inconsistent with the judgment of the district court. Atlantic Coastline Railroad Company v. Brotherhood of Locomotive Engineers, 398 U.S. at 295-296, 90 S.Ct. at 1747-1748, 26 L.Ed.2d at 246.

[11] The parties have not advised this court of any act of Congress authorizing an injunction based upon a claim for TILA rescission. There is also no federal court judgment seeking to be effectuated.

The traditional applications of the necessary-in-aid-of-jurisdiction exception have been in "removal cases (where a district court must ensure its exclusive government of the particular litigation removed) and *in rem* cases (where, under the traditional view, only one court can entertain jurisdiction over a particular physical res)." 1975 Salaried Employees Retirement Plan for Eligible Employee of Crucible, Inc. v. Nobers, 968 F.2d at 407.[12]

In addition to the traditional exceptions, the United States Court of Appeals for the Third Circuit has held that, in the context of complex class actions and multi-district litigation, where a federal court expends considerable time and resources and a pending state action threatens to derail a tentative settlement, the necessary-in-aid-of-jurisdiction exception will apply. Carlough v. Amchem Products, Inc., 10 F.3d 189, 204 (3d Cir. 1993).

The Third Circuit has also opined that an injunction may issue where the state court action threatens to frustrate proceedings and disrupt the orderly resolution of the federal litigation. In re Diet Drugs, 282 F.3d at 234. When deciding

[12] In construing the limits of the in rem exception, courts have held that "the mere fact that debts secured by real property are at issue in the dispute does not transform it into an *in rem* proceeding." Phillips v. Chas. Schreiner Bank, 894 F.2d 127, 132 (5th Cir. 1990)(holding that the Anti-Injunction Act precluded the district court below from enjoining state court foreclosure proceedings); see also Smith v. ABN Amro Mortgage Group, Inc., Civ.A.No. 1:06cv45, 2007 WL 2029044, at *4 (S.D.Ohio July 10, 2007)(slip op.) (denying a temporary restraining order and preliminary injunction which would prevent the sale of plaintiffs' home pursuant to a confirmed bankruptcy plan).

whether the state court proceedings sufficiently interfere with the federal court's jurisdiction:

> First, we look to the nature of the federal action to determine what kinds of state court interference would sufficiently impair the federal proceeding. Second, we assess the state court's actions, in order to determine whether they present a sufficient threat to the federal action. And finally, we consider principles of federalism and comity, for a primary aim of the Anti-Injunction Act is to prevent needless friction between the state and federal courts.

In re Diet Drugs, 282 F.3d at 234 (internal citations and quotations omitted).

Courts within the Eastern District of Pennsylvania have declined to enjoin state court proceedings involving foreclosures and sheriff's sales involving both real property and personalty pursuant to the Anti-Injunction Act. Valle v. Etemad, Civ.A.No. 04-969, 2005 WL 579813, at *1 (E.D.Pa. March 11, 2005) (Bartle, J.); Smith v. Litton Loan Servicing, LP, Civ.A.No. 04-2846, 2005 WL 289927, at *8 (E.D.Pa. Feb. 4, 2005) (Pratter, J.); Clark v. U.S. Bank National Association, Civ.A.No. 03-5452, 2004 WL 1380166, at *3 (E.D.Pa. June 18, 2004)(Kelly, Robert F., J.); see also Becker v. Evans, 496 F.Supp. 20, 21 (M.D.Pa. 1980).

Significantly, in Clark v. U.S. Bank National Association, 2004 WL 1380166, at *3, a proceeding involving a single plaintiff asserting a TILA claim (as well as state claims), District Judge Robert F. Kelly denied plaintiff's motion

for preliminary injunction to prevent foreclosure and the sheriff's sale of his home. The court reasoned that "[t]he Anti-Injunction Act simply does not allow federal courts to enjoin state court proceedings, including mortgage foreclosure actions, absent the application of an exception under the statute." Clark v. U.S. Bank National Association, 2004 WL 1380166, at *3.

However, in contrast, in Piper v. Portnoff Law Associates, 262 F.Supp.2d 520, 530 (E.D.Pa. 2003), Senior Judge Marvin Katz utilized the Third Circuit's criteria for the necessary-in-aid-of-jurisdiction exception and enjoined a defendant law firm from proceeding with an impending state sheriff's sale of plaintiff's home. The court held that "[i]f the sheriff's sale were to proceed, the state court proceeding would 'present a sufficient threat to the federal action' in that [plaintiff] would lose her home even though the fees and costs assessed against her property were unlawful." Piper v. Portnoff Law Associates, 262 F.Supp.2d at 530.

Comparing the Clark v. U.S. Bank National Association and Piper v. Portnoff Law Associates decisions, the former is more apt to the within matter and more consistent with Third Circuit jurisprudence narrowly construing the exceptions to the Anti-Injunction Act.

Piper was a class action under the federal Fair Debt Collection Practices Act ("FDCPA") and Pennsylvania Fair Credit

Extension Uniformity Act. On the other hand, Clark was brought on behalf of an individual pursuant to TILA, similar to the within matter. Moreover, the plaintiff in Clark had filed for bankruptcy in a separate proceeding, and the bankruptcy judge had specifically granted defendant relief from the automatic bankruptcy stay (and plaintiff had never appealed that Order).

The within matter is an appeal from a bankruptcy adversary proceeding. This case is simply an in personam action by debtors against their creditor which seeks to invalidate the creditor's security interest in the debtors' real property which appellants commenced as an adversary proceeding within appellant Deborah A. Madera's Chapter 13 bankruptcy.

The case markedly differs from the cases in which the narrow exceptions to the Anti-Injunction Act have been recognized by the Third Circuit and Supreme Court. This matter does not involve the removal of a state court action and, unlike the related state court proceeding (the final part of which is the sheriff's sale), it is not an in rem proceeding. This case is also not a class action, nor is it a multi-district litigation.

Thus, in light of the cases outlined above as well as the principles of federalism and comity, I conclude that the sheriff's sale of appellants' home will not sufficiently interfere with this court's jurisdiction so as to justify the issuance of an injunction. The completion of the sheriff's sale

will not prevent this court from issuing a decision that the Ameriquest loan may be rescinded. Although appellants' home may be conveyed to a third-party as a result of the sheriff's sale, this court will remain able to effectuate its judgment because this transaction may be reversed as a result of this court's subsequent judgment.

If appellants are successful in their appeal and the bankruptcy court ultimately concludes that appellants are entitled to rescind the Ameriquest loan transaction, appellants will then obtain a federal judgment. After judgment is entered, it can be effectuated either by resort to state court procedures or through other appropriate federal relief.

Although the result of these two concurrent actions could be inconsistent judgments, this is not a sufficient basis to expand the exceptions Anti-Injunction Act. Moreover, this is a mere possibility. This court may conclude that the bankruptcy court correctly granted appellee's summary judgment motion and did not err. If this court so concludes, the state proceedings will remain unaffected and any needless friction between the state and federal courts will have been avoided.

Accordingly, the Motion of Appellants to Stay Sheriff's Sale of Their Home is denied because I conclude that the Anti-

Injunction Act, 28 U.S.C. § 2283, precludes the relief requested in appellants' motion.[13]

Younger Abstention

Notwithstanding the effect of the Anti-Injunction Act, I conclude that this court must decline to exercise its jurisdiction and stay the sheriff's sale of appellants' home based upon the abstention doctrine enunciated in Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and its progeny.

Based upon principles of equity, comity and federalism, Younger abstention is a prudential limitation on a federal court's jurisdiction which applies when a party seeks to have a federal court interfere with ongoing state proceedings. Marran v. Marran, 376 F.3d 143, 154 (3d Cir. 2004). The Third Circuit has stated:

> Abstention under *Younger* is appropriate only if (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the

[13] It is not at all clear that appellants may not obtain relief from the sheriff's sale prospectively by resort to state court procedures. If the automatic bankruptcy stay is lifted because Michael Madera's bankruptcy case is dismissed, appellants will be free to challenge the state court foreclosure judgment in the courts of the Commonwealth of Pennsylvania. Appellants may also seek relief from the automatic bankruptcy stay directly from the bankruptcy court notwithstanding the disposition of Michael Madera's bankruptcy proceeding.

Moreover, if appellant Michael Madera's bankruptcy case is involuntarily dismissed, he may also seek a stay pending appeal of the bankruptcy court's Order pursuant to Fed.R.Bankr.P. 8005. I express no opinion regarding whether the Anti-Injunction Act would bar such relief.

> state proceedings afford an adequate opportunity to raise federal claims....
>
> Even if the necessary three predicates exist, however, *Younger* abstention is not appropriate if the federal plaintiff can establish that (1) the state proceedings are being undertaken in bad faith or for purposes of harassment or (2) some other extraordinary circumstances exist, such as proceedings pursuant to a flagrantly unconstitutional statute, such that deference to the state proceeding will present a significant and immediate potential for irreparable harm to the federal interests asserted....

Schall v. Joyce, 885 F.2d 101, 106 (3d Cir. 1989)(internal citations omitted ).

In Clark v. Court of Common Pleas of the County of Chester, Civ.A.No. 91-6246, 1991 WL 209781, at *1 (E.D.Pa. Oct. 11, 1991), Senior Judge VanArtsdalen applied Younger abstention and declined to issue a temporary restraining order enjoining a municipal sheriff's sale. The reasoning of this case is persuasive and is explained below.

First, the court held that a sheriff's sale is an ongoing judicial proceeding (specifically, the last step in a judicial proceeding) that is regulated by the laws of the Commonwealth of Pennsylvania. Clark v. Court of Common Pleas, 1991 WL 209781, at *2. Moreover, the court concluded that under Pennsylvania law, a sheriff is a part of the Commonwealth of Pennsylvania's unified judicial system. Rosenwald v. Barbieri, 501 Pa. 563, 569 462 A.2d 644, 647 (1983).

Second, relying on Penzoil Company v. Texaco, Inc., 481 U.S. 1, 13-14, 107 S.Ct. 1519, 1527, 95 L.Ed.2d 1, 17-18 (1987), the court held that the Commonwealth's ability to enforce its Orders and judgments implicates important state interests which are properly considered under Younger. Clark v. Court of Common Pleas, 1991 WL 209781, at *3.

Third, the court found that the state proceedings had afforded plaintiff an adequate opportunity to raise any federal claims challenging the enforcement of the judgment. The court held such claims or defenses could have been raised in the trial court or on appeal (or had already been raised). Clark v. Court of Common Pleas, 1991 WL 209781, at *3.

After finding that the three necessary predicates for Younger abstention applied, the court also concluded that the exceptions to Younger abstention did not apply. Thus, the court found that there was no allegation that the state proceedings were undertaken in bad faith or with the intention to harass.

Finally, the court concluded that there was no evidence which demonstrated that any extraordinary circumstances existed in the case which could lead to the conclusion that federal court intervention was appropriate. Plaintiff retained the option of pursuing state court remedies at both the trial and appellate levels.

The analysis of Younger abstention in the within matter largely mirrors the analysis offered by Senior Judge Katz in Clark v. Court of Common Pleas. The sheriff's sale of appellants' property is the last stage of the foreclosure proceedings instituted by Deutsche Bank National Trust Company. The Commonwealth of Pennsylvania has a significant and important interest in giving effect to its Orders and judgments.

The Court of Common Pleas of Bucks County, Pennsylvania, offers a proper forum in which appellants may assert their claims for rescission of the Ameriquest loan. See 15 U.S.C. § 1640(e) which provides: "Jurisdiction of courts.... Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction...." See also In re Simmons, 13 B.R. 429, 431 (Bankr.D.Minn. 1981), where the court stated: "This Court does not have exclusive jurisdiction of Truth in Lending Act violations."

Appellants have provided no evidence that the state foreclosure proceedings and sheriff's sale were instituted in bad faith or with the intention to harass. Deutsche Bank National Trust Company appears to be properly asserting its rights and protecting its security interest in appellants' home in both state and federal fora.

Appellants assertion that the default judgment in foreclosure was improperly entered by the Court of Common Pleas of Bucks County, Pennsylvania, is insufficient to raise the extraordinary circumstances exception to Younger abstention. The Commonwealth of Pennsylvania's foreclosure statute is not blatantly unconstitutional, nor does it appear that the Commonwealth is administering its statutory regime in an unconstitutional manner.

Appellants have submitted no evidence other than conclusory assertions that the Court of Common Pleas failed to properly file appellants' pro se Answer to the state court Complaint. This situation is not one in which appellants have pursued their state court remedies and in which the state courts at the trial and appellate levels have refused to adhere to even a modicum of due process.

If appellants face the prospect of irreparable harm, it is very much of their own making. Appellants have not pursued any remedies in state court to set aside the default judgment or prevent the sheriff's sale of their home. Appellants have not sought any relief from the automatic stay in any bankruptcy court proceeding in order to pursue their state remedies (in the event that appellants believe they could not pursue these remedies while the automatic bankruptcy stay was in effect). Thus, appellants have demonstrated a lack of vigilance in their pursuit

of state court remedies, and a failure to appreciate the principles of equity, comity and federalism which underlie Younger abstention.

Accordingly, the Motion of Appellants to Stay Sheriff's Sale of Their Home is denied because I must abstain and decline to exercise jurisdiction of this court to enjoin and interfere with ongoing state proceedings pursuant to Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and its progeny.

CONCLUSION

For all the foregoing reasons I deny the Motion of Appellants to Stay Sheriff's Sale of Their Home.