

**U.S. BANKRUPTCY COURT  
District of South Carolina**

Case Number: **24-02341-hb**

**ORDER GRANTING RELIEF PURSUANT TO 11 U.S.C. § 362(d)(1) AND IN REM RELIEF  
PURSUANT TO 11 U.S.C. § 362(d)(4)(B)**

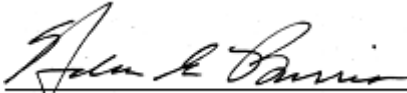
The relief set forth on the following pages, for a total of 9 pages including this page, is hereby ORDERED.

---

**FILED BY THE COURT  
08/20/2024**



Entered: 08/20/2024

  
Chief US Bankruptcy Judge  
District of South Carolina

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

IN RE:

Michael Ronald Hudgens,

Debtor(s).

C/A No. 24-02341-HB

Chapter 13

**ORDER GRANTING RELIEF  
PURSUANT TO 11 U.S.C. § 362(d)(1)  
AND  
IN REM RELIEF PURSUANT TO  
11 U.S.C. § 362(d)(4)(B)**

**THIS MATTER** came before the Court for hearing to consider the Motion for Relief from Automatic Stay pursuant to 11 U.S.C. § 362(d)(1), and *in rem* relief pursuant to 11 U.S.C. § 362(d)(4)(B) (the “Motion”) filed by U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust (“Movant”).<sup>1</sup> Debtor Michael Ronald Hudgens (“Hudgens”) objected.<sup>2</sup> Appearances at the hearing were made by J. Pamela Price on behalf of Movant and Vaughan R. Perry on behalf of Hudgens. Hudgens did not appear at the hearing. At the conclusion of the hearing the Court advised the parties that it would review historical filings related to this case and without objection to that review, took the matter under advisement. After careful review, the Court finds as follows.

**FINDINGS OF FACT**

Movant holds a lien on property in which Hudgens claims an ownership interest, located at 610 Garden Rose Court, Greer, SC 29651 (the “Property”). The mortgage and note attached to the Motion were executed by Hudgens and Gretta Y. Hudgens in 2007 in the original amount of \$262,300.00.

---

<sup>1</sup> ECF No. 18, filed July 17, 2024.

<sup>2</sup> ECF No. 31, filed July 30, 2024.

A name and social security number search of the Court's records reflect that on August 7, 2017, Hudgens filed a Chapter 13 petition to halt a foreclosure sale of the Property. That case was dismissed for non-payment on November 8, 2017.<sup>3</sup>

Movant resumed the foreclosure action, and a sale was scheduled for February 5, 2018. On that date Hudgens again filed a Chapter 13 petition, halting the foreclosure. That case was dismissed on June 1, 2018.<sup>4</sup>

A foreclosure sale was again scheduled for September 4, 2018. The Court's records indicate that "Gretitude" Yvette Hudgens-- listing the Property as her address-- filed a Chapter 13 petition with the Court, *pro se*, on August 31, 2018. The Court's internal notes recorded on CM/ECF indicate that petition was delivered in person to the Court by "spouse." On August 31, 2018, the Court issued a notice that debtor must submit proof of identification, which is required to confirm proper identity of the filer and confirm the filer's legal name. No proof was provided. That case was dismissed, and at the request of mortgage holder Wilmington Savings Fund Society, FSP, d/b/a Christiana Trust as Owner Trustee for the Residential Credit Opportunities Trust III, ("Wilmington") that creditor was granted *in rem* relief regarding the Property due to repeated filings through that date. Wilmington's Motion referenced foreclosure actions regarding the Property that were initiated in 2011, which included delays due to efforts toward loss mitigation and contested litigation in state court.<sup>5</sup> The first foreclosure sale scheduled for August 7, 2017, was halted the day Hudgens' 2017 case reference above was filed.<sup>6</sup>

---

<sup>3</sup> C/A No. 17-03924-hb.

<sup>4</sup> C/A No. 18-00559-hb.

<sup>5</sup> C/A No. 18-04487, *see* ECF Nos. 19 & 37.

<sup>6</sup> A search of the Court's records indicates two additional prior filings by Hudgens not directly relevant here: C/A No. 01-11857-jw and 02-06605-jw.

Movant's Motion attaches a Loan Modification Agreement dated January 2, 2019, and an Assignment of Mortgage from Wilmington to Movant in 2020.

Foreclosure proceedings regarding the Property were again initiated by this Movant and a sale set for August 2, 2021. On August 2, 2021, Hudgens filed a petition for relief under Chapter 13, staying the foreclosure.<sup>7</sup> That case was dismissed on January 19, 2022, for failure to make plan payments, without a confirmed plan.

A foreclosure sale was then set for April 3, 2023. On March 31, 2023, Hudgens filed a petition for relief under Chapter 13, staying the foreclosure. On July 7, 2023, Movant's uncontested Motion for Relief from Stay as to the Property was granted. On September 18, 2023, that case was dismissed for failure to make plan payments, without a confirmed plan.<sup>8</sup>

Foreclosure proceedings resumed and a sale was scheduled for July 1, 2024. On June 28, 2024, Hudgens filed a petition for relief under Chapter 13. On the same date, he filed a Motion to Extend Automatic Stay that was later amended.<sup>9</sup> On July 10, 2024, he filed schedules and statements.<sup>10</sup> On Schedule A/B (Property), he indicates the Property is owned by him and another person and lists a value for the Property of \$450,000.00. Schedule D lists the following liens on the Property: (1) Movant's lien in the amount of \$784,452.82; (2) a tax lien held by the South Carolina Department of Revenue ("SC DOR") in the amount of \$10,268.04;<sup>11</sup> and (3) a judgment lien held by Vital Federal Credit Union ("Vital FCU") in the amount of \$521.78. The filed claims do not indicate any other liens on the Property, though the deadlines for non-governmental and governmental creditors to file claims have not yet passed.

---

<sup>7</sup> C/A No. 21-02025-hb.

<sup>8</sup> C/A No. 23-00932-hb.

<sup>9</sup> ECF Nos. 7, 11.

<sup>10</sup> ECF No. 14.

<sup>11</sup> See also SC DOR's Claim No. 2-1 for \$27,005.18, with \$10,268.04 listed as secured, \$15,694.64 listed as priority unsecured pursuant to 11 U.S.C. § 507(a)(8), and \$1,042.50 listed as non-priority unsecured.

On July 10, 2024, Hudgens filed a proposed 13 plan.<sup>12</sup> He proposes to pay the Chapter 13 Trustee \$1,145.00 per month for sixty (60) months. The plan provides SC DOR's claim will be paid in full plus nine percent (9.00%) interest through the Chapter 13 Trustee without valuation or lien avoidance and provides Vital FCU's judgment lien will be avoided. The plan proposes regular contract payments in the amount of \$2,365.40 directly to Movant beginning August 1, 2024, and continuing during the pendency of the plan, and to address the significant arrearage he will submit a loss mitigation application within one hundred and twenty (120) days of the entry of an order confirming plan, and upon the failure to do so or if the application is denied, Movant may file a request for an order lifting the stay as to the Property. At the hearing, Hudgens' counsel indicated that a loan modification is the only way Hudgens can address his pre-petition arrearage to Movant. Movant objects to the plan on the basis that it fails to provide for the pre-petition arrearage on its claim and the proposed treatment constitutes an impermissible modification of its claim in violation of 11 U.S.C. § 1322(b)(2) & (5).<sup>13</sup> A confirmation hearing has not yet been held.

On July 17, 2024, Movant filed the Motion pursuant to § 362(d)(1) and (d)(4)(B). On the same date Movant filed a Motion to Terminate Co-Debtor Stay as to Gretta Y. Hudgens<sup>14</sup> under 11 U.S.C. § 1301 regarding the Property ("1301 Motion"). That 1301 Motion was served on Hudgens, his counsel, and co-debtor.

On July 19, 2024, the automatic stay was extended without objection per Hudgens' Motion, including a provision that if this case is dismissed for any reason within twelve (12) months of its commencement, dismissal shall be with prejudice as to any subsequent filing by Debtor under Chapters 11, 12, and 13 of the Bankruptcy Code for a period of one (1) year.<sup>15</sup> On July 30, 2024,

---

<sup>12</sup> ECF No. 15.

<sup>13</sup> ECF No. 30.

<sup>14</sup> This is the name listed on the documents attached to the Motion.

<sup>15</sup> ECF No. 23.

a routine *ex parte* Order lifting the automatic stay of § 362 “to the extent necessary for Debtor(s) and Creditor, at their discretion, to engage in and complete any loss mitigation related to the Property, and to negotiate and enter into any consensual loan modification agreement”.<sup>16</sup>

No objection to the 1301 Motion was filed and an Order Granting Motion for Relief from Co-Debtor Stay was entered on August 8, 2024.<sup>17</sup>

On August 13, 2024, Movant filed Claim No. 7-1 for \$795,509.41, secured by the Property and Debtor’s pre-petition arrearage on the claim listed as \$178,903.67.

The Motion alleges that Hudgens is contractually due for the July 1, 2019, payment. Movant’s counsel stated at the hearing that Movant has not received any payments from any party post-petition. Hudgens’ written objection did not address any specific allegation and he did not appear at the August 15, 2024, hearing.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G), and the Court may enter a final order.

The issues before the Court are whether to grant Movant relief from stay pursuant to § 362(d)(1) and *in rem* relief from stay pursuant to § 362(d)(4)(B).<sup>18</sup>

Section 362 of the Bankruptcy Code provides the Court shall grant relief from stay “for cause, including the lack of adequate protection of an interest in property of” the party requesting relief from stay. 11 U.S.C. § 362(d)(1). “The party requesting relief has the initial burden of

---

<sup>16</sup> ECF No. 29.

<sup>17</sup> ECF No. 34.

<sup>18</sup> The requests for an order of abandonment regarding the Property pursuant to § 554(b), and for a waiver of the Fed. R. Bankr. P. 4001(a)(3) stay were not supported by any factual or legal grounds or pursued at the hearing.

proving cause exists for relief from the automatic stay, including lack of adequate protection, and lack of equity in the property.” *In re Morgan*, 630 B.R. 476, 479 (Bankr. D.S.C. 2021) (citing 11 U.S.C. § 362(g); *In re Toomer*, C/A No. 10-07273-JW, 2011 WL 8899488, at \*2 (Bankr. D.S.C. Oct. 5, 2011)). “Once the creditor makes a *prima facie* case, the burden shifts to the debtor on all other issues.” *Id.* (quoting *In re Garcia*, 584 B.R. 483, 488-89 (Bankr. S.D.N.Y. 2018)).

Section 362(d) further provides,

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(4)with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

11 U.S.C. § 362(d)(4). “A scheme, for purposes of § 362(d)(4), is an intentional artful plot or plan to delay, hinder [or] defraud creditors.” *In re Moss*, 625 B.R. 305, 307 (Bankr. D.S.C. 2021) (internal quotation marks omitted) (quoting *In re Ford*, 522 B.R. 829, 840 (Bankr. D.S.C. 2014)). “In determining whether a debtor acted in bad faith to warrant *in rem* relief, the Court also

considers: ‘1) strategic filing of bankruptcy petitions to prevent collection; 2) multiple petitions by multiple parties to protect common property; 3) lack of evidence of changed circumstances between filings; and 4) inability to fund a plan.’” *Id.* (quoting *In re Henderson*, 395 B.R. 893, 901 (Bankr. D.S.C. 2008)). “The creditor bears the initial burden of showing cause for relief from the stay exists under § 362(d)(4). Upon such a showing, the burden shifts to the debtor to demonstrate the filing of the petition was not part of a scheme to delay, hinder, or defraud the creditor.” *Id.* (citing 11 U.S.C. § 362(g); *Henderson*, 395 B.R. at 898).

The Court concludes that cause exists to grant relief from stay pursuant to § 362(d)(1). Hudgens is significantly delinquent on mortgage payments even after the prior mortgage modification, and there is no indication that he can properly address the debt in this case. Moreover, Movant’s interest is not adequately protected by any equity in the Property. Hudgens’ counsel did not make any persuasive arguments as to why relief from stay should not be granted under these circumstances, and Hudgens did not take the time to appear at the hearing.

Further, the Court’s records indicate that *in rem* relief under § 362(d)(4)(B) is necessary and appropriate regarding the Property. The unsuccessful bankruptcy filings by Hudgens and co-debtor since 2021 that repeatedly ceased foreclosure proceedings, with no demonstrated change in circumstances, would be enough to warrant *in rem* relief. A deeper review of prior filings listed on the bankruptcy schedules and found in the Court’s records leaves no doubt that the filing of this petition was part of a scheme to delay, hinder, or defraud creditors involving multiple bankruptcy filings affecting the Property.

**IT IS, THEREFORE, ORDERED:**

1. Relief from the automatic stay of 11 U.S.C. § 362(a) is granted pursuant to 11 U.S.C. § 362(d)(1) to permit U.S. Bank Trust National Association, as Trustee of the Bungalow



Series IV Trust, any successors and/or assigns, to pursue any remedies available under applicable state law with respect to the Property located at 610 Garden Rose Court, Greer, SC 29651;

2. *In rem* relief from the automatic stay of 11 U.S.C. § 362(a) is granted to U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust, any successors and/or assigns, pursuant to 11 U.S.C. § 362(d)(4)(B) with respect to the Property located at 610 Garden Rose Court, Greer, SC 29651;
3. If recorded in compliance with applicable state laws governing notices of interests or liens in real property, this Order shall be binding in any other case filed under the Bankruptcy Code purporting to affect 610 Garden Rose Court, Greer, SC 29651, filed not later than two (2) years after the date of the entry of this Order by the Court. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording; and
4. The Clerk of Court shall serve a copy of this Order on the Office of the United States Trustee for this region for review to determine if any further action is necessary or appropriate regarding C/A No. 18-04487-hb, considering the variance in name in that petition when compared to that of co-debtor set forth in the documents referenced herein, given that the petition was not delivered to the Court by the named debtor, and given the failure of the named debtor “Grettitude Y. Hudgens” to produce identification to the Court.