

Bankruptcy Court Denies Debtor Automatic Stay

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The automatic stay is the first line of protection from creditors for a debtor filing for bankruptcy protection. The Bankruptcy Court (Maine) lifted the automatic stay when a debtor filed her fifth bankruptcy over a thirteen year span. *In re Anderson*, Docket No. 18-20376 (Bankr. D. Me. Nov. 20, 2018).

In 2005, the debtor filed her first bankruptcy the day before the bank scheduled its foreclosure auction. The automatic stay prevented the sale. The debtor never filed a chapter 13 plan and the case was dismissed. The day after dismissal, the debtor filed her second chapter 13 bankruptcy case. Two months later, the debtor voluntarily dismissed her case. Months thereafter, the debtor filed her third chapter 13 case which halted the bank's efforts to sell the property. The case was later converted a chapter 7 bankruptcy and the debtor received a discharge. When the bank attempted again to sell the property - in March 2014 - the debtor filed her fourth chapter 13 case. The bankruptcy court approved a loan modification, however, the debtor refused to enter into a final agreement as she disputed the unpaid principal balance. The case was later dismissed. In July 2018, three days before another scheduled foreclosure sale, the debtor filed her fifth chapter 13 case.

The bank argued it was entitled to relief from the automatic stay under Bankruptcy Code section 362(d)(4) on grounds that this latest bankruptcy petition was part of a "scheme to delay" the bank from exercising its rights to sell the property. The Bankruptcy Court agreed with the bank. Despite the lack of First Circuit precedent, the Bankruptcy Court explained that the debtor on several occasions "strategically filed on the eve of a scheduled foreclosure sale." The Court reasoned that this fifth bankruptcy was part of an intentional effort by the debtor to prevent the bank from completing the sale.

This case is a reminder that while a bankruptcy case triggers the automatic stay, the debtor's right to it is not unfettered. Practitioners are urged to review the record of all prior bankruptcy cases.