UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2830

September Term, 2014

RUBEN MAXWELL

v.

DONALD P. MAZOR

Meredith,
Nazarian,
Arthur,
JJ.

Opinion by Meredith, J.

Filed: April 18, 2016

Ruben Maxwell (sometimes referred to in the record as "Reuben" Maxwell), appellant, challenges a foreclosure sale of property owned by 4110 Garrison, LLC. The sale was conducted by Donald P. Mazor, appellee, the substituted trustee for the grantee of an indemnity deed of trust that was a second lien upon the property located at 4110 West Garrison Avenue, Baltimore City. Maxwell contends that the foreclosure sale was void because he filed a personal bankruptcy action the day before the sale was conducted, and he asserts that the automatic stay should have precluded any further proceedings in the Circuit Court for Baltimore City. But, because he was not the owner of the real property that was the subject of the indemnity deed of trust, we agree with the circuit court's conclusion that the automatic stay of 11 U.S.C. § 362(a) did not bar the foreclosure sale of property owned by 4110 Garrison, LLC, even though Maxwell owned an interest in the LLC.

QUESTION PRESENTED

Maxwell presents a single question for our review:

> Whether the trial court erred by overruling Appellant's exception to the foreclosure sale based o[n] the violation of automatic stay pursuant to 11 U.S.C. § 362[?]

Detecting no error, we affirm the judgment of the Circuit Court for Baltimore City.

FACTS

Ruben Maxwell and Carla McClean are the sole members of 4110 Garrison, LLC. On August 24, 2005, 4110 Garrison, LLC, purchased the real property located at 4110 West Garrison Avenue, Baltimore, Maryland 21215 ("the property"). The deed dated August 24, 2005, reflects the transfer of the property from IB Property Holdings, LLC, grantor, to 4110 Garrison, LLC, as grantee. The purchase was financed by way of a loan from Palladium

Lending, LLC, in the amount of $275,000. The property was 1.2765 acres, more or less, of industrial property, zoned M-2-1, improved by three automotive shop buildings.

On May 30, 2008, Aaron Lichtman and Howard Sobkov made a loan to Maxwell and McLean in the amount of $174,700.00, evidenced by a promissory note that indicated that the "final and absolute maturity date of this Note ('Maturity Date') shall be August 30, 2009." Repayment of the loan was secured by an Indemnity Deed of Trust ("IDOT") executed by 4110 Garrison, LLC, granting a lien upon the property known as 4110 West Garrison Avenue in favor of the lenders, Lichtman and Sobkov. The IDOT provides, in part, that Lichtman and Sobkov had made a loan of $174,700 to Maxwell and McLean, and, as a condition of that loan, the lenders had required that 4100 Garrison, LLC guaranty the repayment of the loan and grant to the lenders the indemnity deed of trust "as security for the payment and performance of all the Grantor's obligations to the Lender pursuant to the terms of the Guaranty." The documents in the record reflect that Maxwell and McClean executed the promissory note in their personal names, but the IDOT was executed by 4110 Garrison, LLC, as "Grantor." Explicitly identifying their representative capacity as "Members" of 4110 Garrison, LLC, Maxwell and McClean executed the IDOT on behalf of 4110 Garrison, LLC.

The promissory note was not paid in accordance with its terms, and on August 28, 2013, the substituted trustee filed an Order to Docket Suit to initiate foreclosure proceedings in the Circuit Court for Baltimore City. Because 4110 Garrison, LLC, was not in good standing in Maryland, and its charter had been forfeited, the cover page of the suit listed as

defendants: "4110 GARRISON, LLC, a forfeited Maryland Limited Liability Company," and "RUBEN AND CARLA McLEAN, Last known Members of 4110 Garrison, LLC, a forfeited Maryland Limited Liability Company." The Order to Docket Suit was docketed on September 4, 2013. The papers filed by the substituted trustee included no complaint, and asserted no claim for relief other than foreclosure upon the property known as 4110 West Garrison Avenue. The property was sold at an auction conducted on April 17, 2014, but, because the trustee's bond had not been filed timely, a second foreclosure sale was scheduled to be held on August 26, 2014.

On August 25, 2014, one day prior to the scheduled foreclosure sale, Ruben Maxwell filed a petition under Chapter 13 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maryland. Even though Maxwell gave notice of his bankruptcy filing to the substituted trustee, the foreclosure sale proceeded as scheduled on August 26, 2014, at which time the property was purchased by Shale II, LLC, an entity created by Howard Sobkov, one of the lenders and a holder of the IDOT. Shale II, LLC purchased the Property for $10,000.00, subject to the first mortgage held by Lexington National Insurance Company. The Substituted Trustee filed the Report of Sale on September 11, 2014.

On November 7, 2014, Maxwell, McLean, and 4110 Garrison, LLC, filed exceptions to the foreclosure sale pursuant to Maryland Rule 14-305(d), in which they asserted that the August 26, 2014, foreclosure sale violated the automatic stay provided by 11 U.S.C. § 362(a). The exceptions filed in the circuit court stated:

> 2. Specifically, on August 25, 2014, Rueben [sic] Maxwell represented by Michael Patrick Coyle, filed for Chapter 13 protection under

> the United States Bankruptcy Code. The matter was assigned Case No.: 14-23316. Immediately upon filing of the bankruptcy, the protection afforded by the "automatic stay" pursuant to 11 U.S.C. § 362 was in effect. Notice of the bankruptcy filing was given to the Substituted Trustee, Donald P. Mazor.
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> 3. Notwithstanding on August 26, 2014, Substituted Trustee Donald P. Mazor, even after having been notified of the bankruptcy filing by one of the named defendants in the foreclosure matter, proceeded to sell the property at foreclosure. The conduct of the Substituted Trustee, Donald P. Mazor was in clear violation of the "automatic stay" provisions of the 11 U.S.C. §[]362. Accordingly, the sale of the property should be voided and not ratified by this Court.

On December 1, 2014, the substituted trustee filed an opposition to the exceptions, and, on January 8, 2015, the exceptions were overruled by the Circuit Court for Baltimore City, which explained:

> The property of the estate does not include any power that the debtor may exercise for the benefit of an entity other than the debtor. 11 U.S.C. § 541(b)(1). Further, Reuben [sic] Maxwell, a member of 4110 Garrison, LLC, filed a Chapter 13 bankruptcy on August 25, 2014. **However, 4110 Garrison, LLC, the owner of the property, has not filed for bankruptcy. Therefore, the sale that was conducted on August 26, 2014 by the Substituted Trustee was a valid foreclosure sale. The actual owner of the subject property has not filed for bankruptcy, and the filing of a bankruptcy by the other named defendants in the matter is irrelevant.**

(Emphasis added.)

Following the court's ruling on the exceptions, the sale was ratified on January 16, 2015. Maxwell (alone) filed a notice of appeal on February 6, 2015. No brief was filed by any other party. After oral argument, Maxwell filed a supplement to his brief and record extract to address some of the Court's questions.

STANDARD OF REVIEW

When ruling on post-sale exceptions to a foreclosure sale and determining whether to ratify the sale, "trial courts may consider both questions of fact and law." *Jones v. Rosenberg*, 178 Md. App. 54, 68 (2008). When we review the circuit court's findings of fact, "we do 'not substitute our judgment for that of the lower court unless it was clearly erroneous' and [we] give due consideration to the trial court's 'opportunity to observe the demeanor of the witnesses, to judge their credibility and to pass upon the weight to be given their testimony.'" *Id.* (quoting *Young v. Young*, 37 Md. App. 211, 220 (1977)). In contrast, "[q]uestions of law decided by the trial court are subject to a *de novo* standard of review." *Id.*

DISCUSSION

Maxwell contends that the trial judge erred in ratifying the foreclosure sale because, he asserts, the foreclosure action was automatically stayed upon the filing of his bankruptcy petition under Chapter 13 of the Bankruptcy Code. The automatic stay arises by operation of law pursuant to 11 U.S.C. § 362(a)(1), which provides, in pertinent part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title . . . operates as a stay applicable to all entities, of —
>
> > (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding **against the Debtor** that was or could have been commenced before the commencement of the case.
> >
> > (2) the enforcement, **against the debtor or against property of the estate**, of a judgment obtained before the commencement of the case under this title;

> (3) any act to obtain possession of **property of the estate** or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect, or enforce any lien against **property of the estate** . . . .

(Emphasis added.)

The automatic stay arises automatically upon the filing of a petition in bankruptcy. Once triggered by a debtor's bankruptcy petition, the automatic stay suspends any non-bankruptcy court's authority to continue judicial proceedings then pending against the debtor or property of the debtor that is part of the debtor's estate. The purpose of the automatic stay is to give the debtor a "breathing spell" from his creditors, to allow time to formulate a repayment or reorganization plan, and to prevent piecemeal litigation by creditors. *See Klass v. Klass*, 377 Md. 13, 22 (2003).

Upon the filing of a bankruptcy petition, the bankruptcy estate is created, and "is comprised of all . . . **legal or equitable interests of the debtor** in property as of the commencement of the case." 11 U.S.C. § 541(a) (emphasis added). The automatic stay applies only to actions against the debtor and the estate. A "debtor" is defined as the "person or municipality concerning which a case under this title has been commenced." 11 U.S.C. § 101(13). Accordingly, the debtor in this case is Ruben Maxwell, not 4110 Garrison, LLC, which has not filed a petition. *Cf. In re Rodio*, 257 B.R. (Bankr. D. Conn. 2001) (although "the debtor's membership interest in [an LLC] is property of the debtor's estate, property of [the LLC] is not") (footnote omitted).

In his brief, Maxwell contends: "One of the violations of [the] automatic stay at issue here is not based upon Appellant being a title owner or having an ownership interest in the Property but, rather, on Appellant **being a named defendant** in the Foreclosure Action which arose from Appellant's status as a borrower of the debt owed by him and Carla McClean to Aaron Lichtman and Howard Sobkov." (Emphasis added.) But, as the circuit court noted in overruling the exceptions, the evidence in the court's file in this case clearly shows that the foreclosed property was owned by a forfeited LLC of which Maxwell was a member, and no claim for personal relief against Maxwell was asserted in the foreclosure case. He (like McLean, the other surviving member of the LLC) was named only in a representative capacity in the caption of the suit. The action was an *in rem* proceeding against a parcel of real estate in which he held no title. In *In re Christakis*, 291 B.R. 9, 17 (Bankr. D. Mass. 2003), the court emphasized that the stay under 11 U.S.C. § 362(a)(1) applies to actions and claims "*against the debtor*," and the court stated: "The statute is clear. The stay applies only to the debtor and not to co-defendants."

Maxwell's bankruptcy estate included his interest in 4110 Garrison, LLC, but not the property owned by the LLC. The general rule regarding the effect of the automatic stay upon an action against a separate entity owned by the debtor (such as a limited liability company) is stated as follows in 9 AM. JUR. 2D *Bankruptcy* § 1747 (February 2016 Update):

> Except in certain Chapter 12 and 13 cases, **the automatic stay does not affect litigation against a codefendant of the debtor. Likewise, the stay generally does not apply to actions against the debtor's principals or to partners**, officers, directors, shareholders, or employees of the debtor. **Neither does the bankruptcy filing automatically stay an action against separate entities associated with a debtor, such as a** wholly owned

> subsidiary, parent company, or **limited liability company in which the debtor allegedly had some interest**.
>
> Despite the extensive authority that the stay does not apply to actions against nondebtor third parties, there is authority that an "unusual situation," which entitles a nondebtor third party to the protection of the stay, arises when there is such identity between the debtor and the third party that a judgment against the third party will, in effect, be a judgment or finding against the debtor. An illustration of such a situation would be a suit against a third party who is entitled to absolute indemnity by the debtor on account of any judgment that might result; to refuse the application of the stay in that case would defeat the very purpose and intent of the stay. A creditor's attempt to recover on a prepetition claim against a debtor, arising out of the debtor's alleged wrongdoing, was subject to the automatic stay, even though the creditor was not attempting to recover from the financial resources of the debtor or estate, but was seeking compensation only from a professional disciplinary commission fund, it being said that the fact that the creditor seeks limited relief from the automatic stay to pursue recovery from the fund does not change the nature of the claim nor does it remove the claim from the scope of the automatic stay of the commencement or continuation of proceedings. Similarly, the stay has been held to apply to a suit against a guarantor, where the guarantor had a right to indemnification for any sums for which the guarantor became liable as a result of that obligation. It has also been held that **bankruptcy courts, in the exercise of their authority to enter necessary or appropriate orders, may extend the automatic stay to enjoin suits against third parties, if the suits threaten to thwart or frustrate the debtor's reorganization efforts**.
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> **By its terms, the automatic-stay provision applies only to the debtor and is rarely a valid basis upon which to stay actions against nondebtors. A stay of the commencement or continuation of actions may be extended to protect a debtor's codefendants only under unusual or limited circumstances.**

(Emphasis added; footnotes omitted.) *See also* 2B BANKR. SERVICE L. ED. § 19.126 (April 2016 Update) ("Automatic stay generally is limited to debtor and does not apply to actions against non-debtor third parties.").

We applied this distinction in *Dates v. Harbor Bank of Maryland*, 107 Md. App. 362 (1995), holding that the bankruptcy stay that arose when a shareholder of a corporation filed a Chapter 13 bankruptcy petition did not stay foreclosure upon real property titled in the name of the corporation. We observed: "As we have indicated, while he may have owned stock in the corporation, it, not he, owned the property at issue. . . . If [the debtor], in fact, listed the corporation's property in his estate, . . . it would have been . . . improper for him to have done so. The property was not part of his estate." *Id*. at 368. Accordingly, we stated:

> [B]ecause [the debtor] did not have a legal or equitable interest in these properties . . . , these properties were not a part of his bankruptcy estate. **The automatic stay of § 362 only operates to stay actions taken against the estate of the debtor; as the properties the Bank foreclosed upon were not part of [the debtor's] bankruptcy estate, the foreclosure could not have been stayed by § 362.**

(Emphasis added.)

In *In re Christakis, supra*, the Massachusetts bankruptcy court recognized the line of cases extending the stay to parties having an unusual identity of interest — *e.g., A.H. Robbins Co., Inc. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986) — but the court emphasized that, "even **in such cases, the debtor must initiate the request, asking the Court to extend the stay or issue an injunction**." 291 B.R. at 18 n.8 (emphasis added). In this case, Maxwell did not ever ask the bankruptcy court to extend the stay to apply to actions against 4110 Garrison, LLC or its property.

We are satisfied that, under the principles applied in *In re Ebadi*, 448 B.R. 308 (Bankr. E.D.N.Y 2011), the automatic stay that arose when Maxwell filed his petition for bankruptcy did not extend to the foreclosure action against 4110 Garrison, LLC. In that case,

Ebadi owned an interest in an LLC that, in turn, owned certain real property. Ebadi did not hold title to the real property at the time a foreclosure action was initiated, but he was a guarantor on the mortgage debt. After the LLC defaulted on the loan, the lender filed a foreclosure action against the property, but also included Ebadi as a party defendant in the suit and sought a judgment against him on the guaranty. New York has a two-step foreclosure process that determines certain issues prior to a foreclosure sale. In this case, the court entered a "Foreclosure Judgment" which "included a determination that, if the proceeds of the sale were insufficient to satisfy the entire debt owed to [the lender], including costs and interest, 'the plaintiff shall recover from [the LLC *and* Ebadi] the whole deficiency . . . provided a motion for a deficiency judgment shall be made . . . .'" 448 B.R. at 312. Immediately before the scheduled foreclosure sale, Ebadi filed for bankruptcy under Chapter 13 and notified the referee conducting the sale of the fact. But the sale went forward. Ebadi subsequently filed a motion in the bankruptcy court asking that the court take action to vacate the sale. Because the Foreclosure Judgment had determined prior to the sale that Ebadi would be personally liable for any deficiency, the bankruptcy court concluded that the sale constituted the continuation of a legal action against him as well as the LLC, and that was a violation of the stay. As a result, the sale was declared void.

In explaining why the foreclosure sale in Ebadi's case was violative of the stay even though the property was owned by a co-obligor, the court stated:

> It is a well established principle of bankruptcy law that a creditor is generally not barred from pursuing collection of a debt from a non-filing co-obligor or guarantor, even if one of the obligors, or the principal obligor, is a debtor in bankruptcy and is therefore shielded from collection efforts by

> the automatic stay. *See Lynch v. Johns–Manville Sales Corp*., 710 F.2d 1194, 1196 (6th Cir.1983) ("It is universally acknowledged that an automatic stay of proceeding accorded by § 362 may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the Chapter 11 debtor."); *Uto v. Job Site Servs., Inc*., No. CV 10–0529 SJF ETB, 2011 WL 446738, at *1 (E.D.N.Y. Feb.9, 2011) (citing *Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287 (2d Cir.2003)); 3 COLLIER ON BANKRUPTCY 362.03[8][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011) ("Section 362(a)(6) stays collection from the debtor. It does not stay actions against sureties to recover property in which the debtor has no interest." (citing *Advanced Ribbons & Office Prods., Inc. v. U.S. Interstate Distrib., Inc*. (*In re Advanced Ribbons & Office Prods., Inc*.), 125 B.R. 259, 264 & n. 8 (9th Cir. BAP 1991) and *Smith v. Conn. Student Loan Found.* (*In re Smith*), 14 B.R. at 957–58)).
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> Though at first glance the circumstances in the present case may seem sufficiently analogous to collecting a debt from a non-filing obligor so as to not deem [the lien holder's] Foreclosure Sale of the Property a stay violation, ***this case is distinguishable***, and the Foreclosure Sale is indeed a stay violation. **The stay violation in this case is predicated on [the lien holder's] actions taken in furtherance of the Foreclosure Judgment against, *inter alia*, Debtor himself**. Had LP dismissed Debtor from the Foreclosure Action and removed Debtor from the Foreclosure Judgment prior to the sale going forward, the case would likely have been sufficiently analogous to collecting from a non-filing co-obligor such that LP would likely not have been stayed from collecting from [the LLC]. That is not the case here, though. **Here, [the lien holder] pursued a Foreclosure Judgment against Debtor** while Debtor was protected by the automatic stay.

448 B.R. at 316 (emphasis added; footnotes omitted).

The *Ebadi* court further acknowledged that, if the creditor (LP) had not pursued a personal judgment against Ebadi, the foreclosure action would not have been affected by the automatic stay. The court explained:

> **An *in rem* action against property in which a debtor does not have an ownership interest would likely not run afoul with the automatic stay**. *See St. Clair v. Beneficial Mortg. Co.* (*In re St. Clair*), 251 B.R. 660 (D.N.J.2000) (holding that enforcing a foreclosure action, which under New Jersey law was purely *quasi in rem*, on property in which debtor already had

> no proprietary interest was not stayed by Section 362(a)). As noted above, such an action would likely be governed by the principle that **a creditor can generally pursue non-bankrupt obligors freely**. An action that is at least partially *in personam* against a debtor, on the other hand, is stayed by the Bankruptcy Code, and continuing such an action constitutes a violation of the automatic stay. 11 U.S.C. § 362(a).

Id. at 318 (emphasis added).

Unlike the proceedings pursued by the lien holder in the foreclosure litigation in *Ebadi*, there was no claim asserted against Maxwell individually for personal liability in the present foreclosure proceedings. There was no count seeking relief on the promissory note. Consequently, we conclude that the circuit court did not err in applying the general principle that permits a creditor to pursue non-bankrupt obligors even if one of their co-obligors has filed a bankruptcy petition.

Finally, we observe that the forfeiture of the LLC's charter does not change our view of the case. In *Price v. Upper Chesapeake Health Ventures*, 192 Md. App. 695 (2010), we explained that an LLC does not cease to exist upon the forfeiture of its charter. We observed that Maryland Code (1975, 2014 Repl. Vol.), Corporations and Associations Article, § 4A–911(d) provides that an LLC that fails to file a tax report forfeits "the right to do business in Maryland and the right to the use of [its] name," but we also quoted, 192 Md. App. at 705, Corporations and Associations Article § 4A–920, which provides:

> The forfeiture of the right to do business in Maryland and the right to the use of the name of the limited liability company under this title does not impair the validity of a contract or act of the limited liability company entered into or done either before or after the forfeiture, or prevent the limited liability company from defending any action, suit, or proceedings in a court of this State.

As *Price* makes plain, even though the charter of 4110 Garrison, LLC has been forfeited, the entity continues to exist as a legal person with capacity to be a defendant in a lawsuit.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.