



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Matthew G. Fairweather,
Debtor.

Case No.: 2:12-bk-16760-ER
Chapter: 7

**MEMORANDUM OF DECISION
DENYING MOTION TO REOPEN**

[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

On May 29, 2018, Matthew G. Fairweather (the “Debtor”) filed a *pro se* motion captioned *Motion Request to Re-Open Chapter 7 Case; Debtor Request to Re-Open and File an Adversary Compliant [sic] Against the Non-Creditor’s Wells Fargo, NA, Filling [sic] False Claims Against Debtor Estate* [Doc. No. 40] (the “Motion to Reopen”).¹ Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),² the Court finds this matter suitable for disposition without oral argument. For the reasons set forth below, the Motion to Reopen is DENIED.

¹ The Debtor filed the Motion to Reopen twice, *see* Doc. Nos. 39–40; both versions of the motion are substantially identical, except that Doc. No. 40 contains additional exhibits that appear to have been inadvertently omitted from Doc. No. 39. The Court construes the filings as a single Motion to Reopen. All citations to the Motion to Reopen are to Doc. No. 40.

² Unless otherwise indicated, all “Civil Rule” references are to the Federal Rules of Civil Procedure, Rules 1–86; all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all “Evidence Rule” references are to the Federal Rules of Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

I. Background

On December 20, 2011, Debtor commenced a Chapter 13 petition, Case No. 2:11-bk-61627-NB (the “First Petition”). On February 3, 2012, the Court granted Wells Fargo Bank, N.A. (“Wells Fargo”) relief from the automatic stay pursuant to §362(d)(1). Stay-relief was granted to enable Wells Fargo to pursue a state court unlawful detainer action against the Debtor, pertaining to property located at 1325 9th Street, Unit 7, Santa Monica, CA 90401 (the “Property”). *See* Doc. No. 20, Case No. 2:11-bk-61627-NB. On February 2, 2012, the First Petition was dismissed, based upon the Debtor’s failure to appear at the §341(a) meeting of creditors. *See* Doc. No. 19, Case No. 2:11-bk-61627-NB.

On February 26, 2012, Debtor commenced a second Chapter 13 petition, Case No. 2:12-bk-16760-ER (the “Second Petition”). On March 14, 2012, the Debtor converted the case to Chapter 7. *See* Doc. No. 14, Case No. 2:12-bk-16760-ER. On April 27, 2012, the Court granted Wells Fargo stay-relief, pursuant to §362(d)(1). Stay-relief was once again granted to enable Wells Fargo to pursue a state court unlawful detainer action against the Debtor with respect to the Property. *See* Doc. No. 32, Case No. 2:12-bk-16760-ER (the “RFS Order”). The Court found that Wells Fargo had not violated the automatic stay by obtaining an unlawful detainer judgment in the state court on February 9, 2012, given that Wells Fargo obtained the unlawful detainer judgment subsequent to being granted stay-relief in the First Petition but prior to the filing of the Second Petition. *See* RFS Order at ¶G. However, the Court found that a Writ of Possession that Wells Fargo obtained on March 5, 2012, was void for having been obtained in violation of the automatic stay, and that Wells Fargo was required to obtain a new Writ of Possession. *Id.* On July 5, 2012, the Second Petition was dismissed, again based upon the Debtor’s failure to appear at the §341(a) meeting of creditors. *See* Doc. No. 36, Case No. 2:12-bk-16760-ER.

II. Summary of the Debtor’s Motion to Reopen

The Debtor moves to reopen the Second Petition. The Debtor alleges that Wells Fargo violated the automatic stay by foreclosing upon the Property while the Debtor was in bankruptcy. The Debtor states that the Second Petition should be reopened so that the Debtor can commence an adversary proceeding against Wells Fargo for violating the automatic stay. The Debtor further asserts that Wells Fargo is not a creditor of the Debtor, and that Wells Fargo falsely represented to the Court that it was a creditor in order to obtain stay-relief.

III. Findings and Conclusions

Section 350(b) provides: “A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” In determining whether a case should be reopened, the Court must consider “whether further administration appears to be warranted” and “whether a trustee should be appointed.” *Lopez v. Specialty Restaurants Corp. (In re Lopez)*, 283 B.R. 22, 26 (B.A.P. 9th Cir. 2002). A case must be reopened “where ‘assets of such probability, administrability, and substance’ appear to exist ‘as to make it unreasonable under all the circumstances for the court not to deal with them.’” A motion to reopen can be denied, however, where the chance of any substantial recovery for creditors appears “too remote to make the effort worth the risk.” *Id.* at 27 (internal citations omitted).

In *Cortez v. American Wheel (In re Cortez)*, 191 B.R. 174, 179 (B.A.P. 9th Cir. 1995), the Court found that it was appropriate to deny a motion to reopen where there was no legal basis for granting the relief sought by the debtors. In *Cortez*, the debtors sought to reopen their Chapter 7

case to avoid a creditor's lien and to enjoin the creditor's foreclosure action. *Id.* at 176. Examining the facts of the case, the *Cortez* court found that the debtors would not be able to avoid the creditor's lien or to enjoin the foreclosure action. *Id.* at 177–79. Given the debtors' inability to obtain the relief they were seeking, the court upheld denial of the motion to reopen. *Id.* at 179. *See also Kvassay v. Kvassay (In re Richard Stephen Kvassay)*, No. 2:11-BK-11698-DS, 2016 WL 5845674, at *3 (B.A.P. 9th Cir. Oct. 6, 2016) (“[W]hen the undisputed facts in the record unequivocally establish that reopening the case would be a ‘pointless exercise,’ the bankruptcy court may deny the motion to reopen on that basis”) (citing *Beezley v. Cal. Land Title Co. (In re Beezley)*, 994 F.2d 1433, 1437 (9th Cir. 1993)).

Here, the Debtor has failed to establish cause to reopen the case. Similar to the situation in *In re Cortez*, there is no legal basis upon which the Court could grant the relief sought by the Debtor. The Debtor seeks to reopen the case so that he can commence proceedings against Wells Fargo for allegedly violating the automatic stay in connection with the foreclosure of the Property. As set forth above, Wells Fargo did not violate the stay in connection with the foreclosure, because it obtained stay-relief before proceeding with the foreclosure. It is true that Wells Fargo violated the stay when it obtained a Writ of Possession with respect to the Property on March 5, 2012, during the pendency of the Second Petition. However, the Debtor suffered no damages in connection with this violation, because the Court found that the Writ of Possession was void and ordered Wells Fargo to obtain a new Writ of Possession. *See* RFS Order at ¶G. Consequently, proceedings by the Debtor against Wells Fargo seeking damages for an alleged stay-violation would be a “pointless exercise.” *Beezley*, 944 F.2d at 1437.

The Debtor's conclusory allegation that Wells Fargo was not a creditor of the estate, and that Wells Fargo falsely “presented themselves as true creditors to steal and damage the debtor,” Motion to Reopen at 1, does not establish cause to reopen the cause. The Debtor does not elaborate upon the relief he seeks to obtain from Wells Fargo based upon the allegation that Wells Fargo was not a creditor.

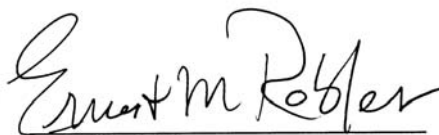
Construing the Debtor's *pro se* pleading liberally, *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), it appears that the Debtor is attempting to assert that Wells Fargo lacked standing to obtain stay-relief. Therefore, the Court will construe the Debtor's allegation that Wells Fargo was not a creditor as a request for reconsideration of the orders granting Wells Fargo stay-relief.

The request for reconsideration of the stay-relief orders entered in the First Petition and Second Petition is DENIED. To obtain the stay-relief orders that were entered in the First and Second Petitions, Wells Fargo submitted a *Trustee's Deed Upon Sale* that was recorded in the Los Angeles County Recorder's Office on October 5, 2011, at 8:00 a.m. *See* Doc. No. 13 at Ex. A, Case No. 2:11-bk-61627-NB; Doc. No. 28 at Ex. A, Case No. 2:12-bk-16760-ER. The *Trustee's Deed Upon Sale* shows that Wells Fargo, as foreclosing beneficiary, acquired the Property on October 3, 2011, in connection with a non-judicial foreclosure sale. Consequently, Wells Fargo had standing to seek stay-relief in order to pursue its remedies against the Property. The Debtor's conclusory assertion that Wells Fargo was not a creditor of the estate is completely without merit.

Based upon the foregoing, the Motion to Reopen is DENIED. The Court will enter an order consistent with this Memorandum of Decision.

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Date: June 1, 2018

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge