

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

Michael Alan Bark,
Dena Rae Bark,
Debtors.

Case No.: 2:12-bk-25248-ER

Chapter: 7

MEMORANDUM DECISION

**(1) DENYING DEBTORS' MOTION IN
INDIVIDUAL CASE FOR ORDER
IMPOSING A STAY OR CONTINUING
THE AUTOMATIC STAY AS THE
COURT DEEMS APPROPRIATE,**

**(2) DENYING DEBTORS'
APPLICATION FOR ORDER SETTING
HEARING ON SHORTENED NOTICE,
AND**

**(3) DENYING DEBTORS' MOTION TO
AVOID JUDICIAL LIEN**

[Doc Nos. 37, 40 & 41]

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

I. FACTS AND SUMMARY OF PLEADINGS

Michael Alan Bark and Dena Rae Bark (together, the “Debtors”) filed a voluntary chapter 7 case on April 30, 2012 (the “Petition Date”). On June 6, 2012, the chapter 7 trustee issued his *Report of No Distribution*. On September 21, 2012, the Court entered the Debtors’ discharge [Doc. Nos. 16 & 17]. The Debtors’ case was closed on October 2, 2012.

On August 8, 2018, the case was reopened to allow the Debtors to file a motion to avoid a judicial lien against their residential real property located at 1217 6th Street, Manhattan Beach, CA 90266 (the “Property”) [Doc. No. 21].

A. Summary of Efforts to Avoid Judicial Lien

On September 12, 2018, the Debtors filed a *Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* [Doc. No. 25] (the “First Lien Avoidance Motion”). For the reasons set forth in this Court’s *Order Denying Without Prejudice Debtors’ Motion to Avoid Lien Under § 11U.S.C. § 522(f) (Real Property)* [Doc. No. 26], this Court denied the First Lien Avoidance Motion without prejudice to the Debtors refiling an amended motion.

On October 26, 2018, the Debtors filed a second *Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* [Doc. No. 31] (the “Second Lien Avoidance Motion”). For the reasons set forth in this Court’s *Order Denying Without Prejudice Debtors’ Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* [Doc. No. 34] (the “Order Denying Second Lien Avoidance Motion”), this Court denied the Second Lien Avoidance Motion without prejudice to the Debtors refiling an amended motion. However, that Order stated that “[i]f the Debtors fail to obtain approval of an amended motion, the Court’s denial will be with prejudice.” *Id.*

On February 15, 2019, the Debtors filed their third *Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* [Doc. No. 37] (the “Third Lien Avoidance Motion”). This Court has not yet ruled on the Third Lien Avoidance Motion because applicable opposition deadlines have not yet run.

B. Summary of Motion to Impose or Continue Stay

On February 25, 2019, the Debtors filed a *Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate* [Doc. No. 40] (the “Impose Stay Motion”) and a related *Application for Order Setting Hearing on Shortened Notice* [Doc. No. 41] (the “App for OST”). Pursuant to those filings, the Debtors seek an order imposing and/or continuing the automatic stay under § 362(c)(3) and (4) with respect to the Property. The Debtors state:

This is a 2012 case that was reopened in 2018 by the court. The case remains open. Despite the reopening of this case on August 18, 2018 C&HTrust Deed Service SOLD THE PROPERTY OVER THE BANKRUPTCY AND MAGNUM PROPERTY INVESTMENTS, INC., THE SUCCESSFUL BIDDER

COMMENCED AN UNLAWFUL DETAINER ACTION AGAINST DEBTOR
DESPITE KNOWLEDGE OF THE AUTOMATIC STAY

Doc. No. 40.

In support of the Impose Stay Motion, the Debtors attached a copies of: (i) a *Trustee's Deed Upon Sale* (the "Trustee's Deed"), dated October 11, 2018, conveying the Property to Magnum Property Investments, LLC ("Magnum"); (ii) Magnum's *Notice of Unlawful Detainer* filed against the Debtors on October 25, 2018 in Los Angeles Superior Court (the "UD Notice"); and (iii) a *Notice to Vacate* issued by the Los Angeles Sheriff's Department that states in relevant part "[b]y virtue of a Writ of Possession of Real Property, a copy of which is attached, YOU ARE ORDERED TO VACATE THE PREMISES DESCRIBED IN THE WRIT NOT LATER THAN 1/2/2019." Doc. No. 40.

The Debtors also acknowledge that Magnum purchased their home through a non-judicial foreclosure sale in October 2018, initiated an unlawful detainer proceeding and obtained a writ of possession after the state court "ruled that no stay existed." Doc. No. 41. Nevertheless, the Debtors' contend that the state court lacked jurisdiction to rule on bankruptcy issues. *Id.*

The Debtors seek a hearing on shortened notice to avoid being evicted from the Property.

II. FINDINGS AND CONCLUSIONS

A. The Debtors Are Not Entitled to Relief Under § 362(c)

Section 362(c)(3) limits the duration of the automatic stay in a case filed by a debtor who has had a prior case dismissed within the year. 11 U.S.C. § 362(c)(3). Similarly, section 362(c)(4) prevents the automatic stay from taking effect in a case filed by a debtor who has had two or more prior cases dismissed within the year. 11 U.S.C. § 362(c)(4).

In this case, neither section is applicable since the Debtors did not have *any* prior cases dismissed within the year preceding the Petition Date.

B. There is No Automatic Stay in This Case

The Debtors are incorrect that the automatic stay arose when their case was reopened on August 8, 2018. It is true that the filing of the bankruptcy case imposed an automatic stay on virtually all creditor debt collection activities. *See* § 362(a). However, "the automatic stay does not last indefinitely." *Motley v. Equity Title Co., (In re Motley)*, 268 B.R. 237, 241 n.2 (Bankr. C.D. Cal. 2001). "In a chapter 7 case for an individual, the automatic stay terminates when a discharge is granted or denied." *Id.*

In this case, the Debtors received their discharge on September 21, 2012. Upon the grant of their discharge, the automatic stay was replaced by a discharge injunction pursuant to § 524(a). Since the Debtors arguments relate to conduct that occurred in 2018, *after* the discharge

injunction arose, the only available remedy for the Debtors would be to pursue relief under § 524.

C. The Discharge Injunction Did Not Discharge Debtors' *In Rem* Liability

The Debtors have not established that this Court could provide them any relief under § 524(a) with respect to the Property. A discharge in bankruptcy “operates as an injunction against the commencement or continuation of an action, the employment process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor.” 11 U.S.C. § 524(a)(2) (emphasis added). A creditor who “knowingly violates the discharge injunction” can be “held in contempt under § 105(a).” *In re Taggart*, 548 B.R. 275, 286 (B.A.P. 9th Cir. 2017) (citations and internal quotation marks omitted). Because the discharge injunction only prohibits efforts to collect debts as a personal liability of the debtor, “secured creditors can foreclose their liens after the discharge is entered.” *In re Marino*, 577 B.R. 772, 783-784 (B.A.P. 9th Cir. 2017) (citations and internal quotation marks omitted).

Here, the Debtors argue that Magnum’s purchase of the Property through a non-judicial foreclosure sale was in violation of the automatic stay. However, for the reasons set forth above, neither the automatic stay nor the discharge injunction would have prevented the foreclosure sale from occurring or render the Trustee’s Deed void. Furthermore, the Debtors’ evidence establishes that the state court has already determined that the Debtors no longer have *any* interest in the Property. Therefore, on this record, there is no further relief that this Court could grant the Debtors with respect to the Property.

D. The Third Lien Avoidance Motion is Mooted by the Foreclosure Sale


In light of Magnum’s purchase of the Property in October 2018 at a foreclosure sale, the Debtors’ request to avoid AA’s judicial lien is now moot.

III. CONCLUSION

For the foregoing reasons, the Court will enter separate orders: (1) Denying the Impose Stay Motion; (2) Denying the App for OST; and (3) Denying the Third Lien Avoidance Motion.

###

Date: February 27, 2019

A handwritten signature in black ink, appearing to read "Ernest M. Robles", written over a horizontal line.

Ernest M. Robles
United States Bankruptcy Judge