

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

IN RE : CHAPTER 7  
DAVID M. GARZA, a/k/a David :  
Michael Garza, a/k/a David Garza :  
DEBTOR : CASE NO. 07-16198-JR

**ORDER ON DEBTOR'S MOTION TO HOLD CREDITOR, OPTION ONE  
MORTGAGE COMPANY, IN CONTEMPT OF COURT FOR FAILING TO  
COMPLY WITH THE BANKRUPTCY COURT'S ORDER DATED JANUARY 8,  
2008, TO RESTRAIN AND ENJOIN THE SCHEDULED FORECLOSURE SALE  
AND FOR COSTS AND SANCTIONS.**

**INTRODUCTION**

This motion comes before the Court on the Debtor's Motion to hold Creditor in Contempt of Court for Failing to Comply with the Bankruptcy Court's Order Dated January 8, 2008, to Restrain and Enjoin the Scheduled Foreclosure Sale and for Costs and Sanctions (Docket #60) ("Motion").

**FACTS**

The subject of this dispute is the Court's January 8, 2008 order on Option One Mortgage Company's ("Creditor") Motion for Relief from Automatic Stay ("Order"). The Court denied the motion subject to David M. Garza ("Debtor") making adequate protection payments equal to one and one-third times the regular monthly mortgage payment until all outstanding arrearages are cured. The Creditor was to file an affidavit of non-compliance if the Debtor failed to make the ordered payments. After the closing

of the case, the Creditor initiated foreclosure proceedings and, in response, the Debtor filed a Motion to Reopen Case for Purpose of Compelling Creditor to Comply with the Court Order Dated January 8, 2008 (Docket #59), which the Court granted. The Court further instructed the parties to file memoranda of law regarding the Order's enforceability.

## **DISCUSSION**

As a preliminary matter, the Court acknowledges that it would be meaningless to require the Creditor to comply with the portion of the Order requiring the Creditor to file an affidavit of non-compliance, the purpose of which would be to obtain relief from the automatic stay, as the automatic stay had already terminated pursuant to 11 U.S.C. § 362(c)(2).

With respect to the portion of the order allowing the Debtor to cure the arrears, a court order entered during a bankruptcy proceeding generally survives the closing of the bankruptcy case. While no case in the First Circuit addresses this particular question, an Oklahoma bankruptcy court held that "bankruptcy courts inherently have the power to enforce their own orders, regardless of whether a case is open or closed." *In re Commercial Financial Services, Inc.*, 247 B.R. 828, 844 (Bankr. N.D.Okla. 2000). The case cited by the Creditor to support the opposite proposition makes no mention of court orders, holding instead that it is the automatic stay which is terminated upon the closing of the case. *In re Donald J. Trevino, d/b/a Don's Wood Products*, 78 B.R. 29, 36 (Bankr. D.Pa. 1987).

Although some have expressed concern that an order similar to the one at hand amounts to an impermissible loan modification or extension of the automatic stay, *In re*

*Aime*, 2008 WL 570946 at \*3 (Bkrcty.E.D.Va. Feb. 28, 2008), the Court need not decide this issue as it finds the Debtor has failed to make the payments called for in the Order. The Debtor, in his Motion, claims he is in compliance while the Creditor asserts that the Debtor has violated the order. At the non-evidentiary hearing before the Court, the Debtor's counsel stated she was prepared to trust the Creditor's record and agree that the Debtor might be in default. The Court advised her that she should not make that concession if she was not certain her client was, in fact, in default. In his June 5 Memorandum, however, the Debtor admits being in default; he states he wishes more time to cure the default.

#### **CONCLUSION**

As a result of the Debtor's default, the Creditor would be entitled to initiate foreclosure proceedings even under the Order. The Court hereby denies the Debtor's Motion to hold the Creditor in contempt and to enjoin the sale.

The hearing scheduled for June 25, 2008 is cancelled.

The case shall be closed.

Dated: June 18, 2008

By the Court,

A handwritten signature in black ink that reads "Joel B. Rosenthal". The signature is written in a cursive, flowing style.

Joel B. Rosenthal  
United States Bankruptcy Judge