

The Case Management Order imposed an indefinite stay³ of all mortgage foreclosure cases. (ECF No. 2 at ¶ 4.) It further provided that the Order would apply to all cases on an appended list – which specifically included this one – and to “all mortgage foreclosure cases filed here in the future.” (*Id.* at ¶¶ 2, 3.) Indeed, that Case Management Order is the genesis of the instant Motion before the Court, as Mr. Bullock alleges he has been willfully and intentionally violated by Defendants’ conduct because they caused a foreclosure to occur on his property during the stay and, therefore, in violation thereof.

The stay applied to two categories of activities: any and all events related to foreclosure proceedings occurring outside the courthouse and all filings and judicial proceedings happening inside the courthouse with respect to the affected cases. A March 21, 2012 Order made crystal clear that the stay prevented foreclosure activity and applied in all pending cases:

The stay remains in effect and **prevents Defendants from foreclosing on properties that are the subject of a pending complaint** in the *In re: Mortgage Foreclosure Master Docket*. All parties and counsel are hereby reminded that holding all cases in the *In re: Mortgage Foreclosure Master Docket* in temporary abeyance while the organized settlement program directed by Special Master Merrill Sherman proceeds is in the best interest of all parties, this Court and the cause of justice. Because this is the first time that a request for sanctions in connection with an alleged violation of the stay has come before this Court, this Court will deny the Motion. From this point forward, any violations of the stay will subject offending parties and offending counsel to sanctions.

(*In re: Mortgage Foreclosure Cases*, Misc. No. 11-mc-88-M, ECF No. 404 at 4.) (emphasis supplied). See *Cooke v. Option One Mortg. Corp*, C.A. No. 12-176 (ECF No. 11)).

³ As explicated *infra*, the First Circuit subsequently declared the stay to be an injunction *Fryzel v. Mortg. Elec. Registration Sys., Inc.*, 719 F.3d 40, 43 (1st Cir. 2013). At the time of these events and in the relevant documents, it was referred to as a stay and will be so characterized here.

Mr. Bullock alleges that on March 30, 2012, some two weeks after the incorporation of the stay into this matter, FNMA carried out a foreclosure auction and that such action not only constituted contempt that should subject FNMA to sanctions, but also justifies certain remedial action by the Court.⁴ Defendants make two arguments in response: (1) that the motion was untimely, having been filed after a court-specified deadline; and (2) that because Defendants were not served until after the foreclosure occurred, they had no knowledge of the Complaint and therefore did not deliberately violate the stay.

Untimeliness

The time limitation for filing Mr. Bullock's motion was a result of the confluence of two constraints. First, he was required to seek leave of the district court because of the general "no-filing stay" in effect in the Mortgage Foreclosure Cases.⁵ The Court accepted the Special Master's recommendation that leave be granted and, on February 20, 2014, Mr. Bullock was granted ten days from the date of that order in which to file his motion to adjudge in contempt. The second constraint is Rule 6(a)(1) of the Federal Rules of Civil Procedure, which governs the computation of time. Pursuant to that Rule, the tenth day was Sunday, March 2, 2014⁶ and, as specifically required, the time was thus extended to the next business day – Monday, March 3, 2014. Mr. Bullock's motion was by his own certification filed on Tuesday, March 4, 2014.

⁴ Mr. Bullock seeks rescission of the foreclosure, attorneys' fees for prosecuting its contempt motion, and any other appropriate remedy including requiring Defendants to consider his case for a loan modification. FNMA has, according to Mr. Bullock, refused to re-review his case for a loan modification because of the foreclosure, among other reasons.

⁵ Although the portion of the stay that prohibited foreclosure activity was vacated, the general stay prohibiting filings while cases remain on the Special Master docket has not been lifted. There is a procedure in effect that Mr. Bullock followed, for obtaining relief from that stay in order to present a motion to the court. *See infra* at n.2.

⁶ Contrary to the calculation in Defendants' response, the tenth day was not Saturday because February 20, 2014 is excluded from the calculation. The difference is, however, of no consequence.

While the time can be extended *sua sponte* within the prescribed period, a request for extension is required otherwise and there has been no such request. Therefore, the Court finds that the motion was untimely.

Contempt

Even if the motion were timely, the Court would decline to find Defendants in contempt for the reasons that follow. However, because the core of the lawsuit is directly impacted by the timing of the filing of this Complaint, the Court will also address the effect of the stay upon the foreclosure.

A. Defendants' conduct was not contemptuous

Contempt requires proof of deliberate disobedience of a valid court order. *Star Fin. Serv., Inc. v. AASTAR Mortg. Corp.*, 89 F.3d 5, 13 (1st Cir. 1996). In this context, what is required is only (a) knowledge of the stay and (b) an intentional action that violates it. *Pratt v. GMAC, Inc.*, 462 F.3d 14, 21 (1st Cir. 2006) (citing *Fleet Mortg. Grp, Inc. v. Kaneb*, 196 F.3d 265, 265 (1st Cir. 1999) (even a good faith mistake can support contempt)).

With respect to the second criterion, it is not disputed that the foreclosure was undertaken and carried out as an intentional act. It is with respect to the first criterion that Mr. Bullock fails in his burden. On a surface level, Defendants certainly had knowledge of the automatic stay, as they were also defendants in dozens of other actions on the consolidated docket.⁷ Indeed, Defendants concede as much. (ECF No. 9 at 5.) (“[i]n this case, while Defendants may have known of the existence of the stay generally,...”) However, knowledge that an automatic stay

⁷ MERS was a named defendant in a case among the very first filed, to which the stay was applicable the moment it was issued. See *McLaughlin v. Mortg. Elec. Registration Sys., Inc.*, C.A. No. 10-123, filed 3/15/2010. FNMA seems to have been first brought in as a party on December 1, 2010, when *Houey v. GMAC Mortg. Corp.*, C.A. No. 10-483 was filed. Because they were party defendants in these cases, they were on actual notice that that the stay against foreclosures applied automatically to every case filed on this docket after the stay was issued.

may exist is insufficient to support a contempt adjudication, unless defendant also knows that the stay applies to a specific contemplated foreclosure by virtue of the knowledge that an action has been filed that implicates the automatic stay.

The Court notes that Mr. Bullock has failed to acknowledge that the Complaint was not served until April 17, 2012, well after the foreclosure took place. (See ECF No. 5, Plaintiff's Affidavit of Service.) Unlike the situation in *Cooke*, there is no allegation of actual notice that the Complaint was filed by any other means.⁸ In this case, the evidence is to the contrary: Defendants did not learn that Mr. Bullock had filed a Complaint that entitled him to the benefit of the stay until after the foreclosure.

This difference is outcome-determinative. The Court agrees that “[a] court order...can only compel action from those who have adequate notice that they are within the order’s ambit.” *Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 16-17 (1st Cir. 1991). At the time of the foreclosure, that knowledge was lacking. Therefore, this Court cannot say that Defendants here deliberately violated its order by foreclosing on the property in violation of the stay.

B. Application of the Stay to the Foreclosure

Although Defendants’ lack of knowledge that Mr. Bullock filed a Complaint saves them from contempt, it does not necessarily salvage the foreclosure. It would not be appropriate to use the vehicle of this contempt motion, particularly when declining to find Defendants in contempt, to adjudicate the validity of the foreclosure; there are no allegations in the Complaint that squarely raise the issue discussed here. On the other hand, because the timing of the foreclosure

⁸ In *Cooke*, the plaintiff’s counsel notified the defendants’ counsel prior to the foreclosure sale; in this case, according to Defendants’ memorandum, they were verbally notified twelve minutes after the sale.

relative to the filing of the Complaint, and the viability of the stay itself at that time, are before the Court, the Court deems it helpful to provide further commentary.

First, any suggestion that the stay was not binding because it was ultimately vacated, would be untenable. *United States v. Mourad*, 289 F.3d 174, 178 (1st Cir. 2002). Unless an order is “transparently invalid,” it must be obeyed and cannot be challenged as a defense to contempt. *Id.* Transparent invalid exists when a “court is acting so far in excess of its authority that it has no right to expect compliance ...” *Id.* An order is “transparently invalid” only if “the court reviewing the order finds the order to have had [no] pretense to validity at the time it was issued.” *In re Providence Journal Co.*, 820 F.2d 1342, 1347 (1st Cir. 1986). The First Circuit’s decision in *Fryzel* found the stay to be an injunction, but did not determine that this Court’s order was transparently invalid. *See Fryzel*, 719 F.3d 40.

Second, the automatic stay did not forbid foreclosures in cases where *service* was accomplished after its effective date; rather, it forbade foreclosures in cases *filed* after its effective date. Its purpose was not punitive, which might have required notice of a case filing; rather, it was remedial in an attempt to afford time for settlement efforts before resorting to continued litigation. Thus, it operated akin to the automatic stay of foreclosures in bankruptcy actions. In that scenario, ignorance of a pending bankruptcy *could* warrant retroactive relief from the stay against foreclosures, but it does not automatically void the foreclosure absent such discretionary relief. *Soares v. Brockton Credit Union*, 107 F.3d 969, 976 (1st Cir. 1997). Indeed, the First Circuit noted that in light of the purpose of the automatic stay, voiding the foreclosure even where the violation of the stay was inadvertent should be reserved for situations that are “unusual and unusually compelling.” *Id.*

Although Defendants recite thus far an unsuccessful settlement mediation before the Special Master, Mr. Bullock alleges that the foreclosure has limited the range of options and has influenced Defendants' refusal to re-review his case for a loan modification. Because the Court has held that Defendants' conduct was not contemptuous, it cannot order rescission of the foreclosure sale as relief within the confines of this motion. This matter will return, however, to the Rhode Island Special Master's docket and the parties may consider the Court's comments about the lawfulness of the foreclosure with respect to the automatic stay as relevant to their settlement discussions. If those discussions do not produce a settlement, the Court will re-address Mr. Bullock's allegations when it addresses the Complaint on the merits, assuming the issue is before it at that time, and the parties will have sufficient opportunity to address whether the stay was in fact violated by the foreclosure.

Mr. Bullock's Motion to Adjudge in Contempt and for Sanctions (ECF No. 8) is DENIED in all respects.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "John J. McConnell, Jr.", written in a cursive style. The signature is positioned above a horizontal line.

John J. McConnell, Jr.
United States District Judge
April 2, 2014