

The Supreme Court of South Carolina

Justin O'Toole Lucey, Justin O'Toole Lucey, P.A.,
Respondents,

v.

Amy Meyer, Petitioner,

And Lorcan Lucey, GMAC Mortgage Corporation,
Citimortgage, Inc., and John Doe Finance, Third Party
Defendants.

Appellate Case No. 2012-213397

Lower Court Case No. 2009-CP-10-06873

ORDER

Third party defendant GMAC Mortgage has notified this Court that it filed a petition for relief under Chapter 11 of the Bankruptcy Code, triggering the protections of the automatic stay set forth in 11 U.S.C. § 362(a). GMAC asserts petitioner Meyer's claim for a constructive trust is not a permitted claim, is subject to the automatic stay, and the continued prosecution of the claim is prohibited.

By way of return, Meyer concedes a constructive trust is not a permitted claim and is therefore subject to an automatic stay as to GMAC. However, Meyer also notes GMAC has never filed any briefs in this case and the appeal can proceed without it. Accordingly, she requests the matter be stayed only as to GMAC. Respondents concur with Meyer's position.

Third party defendant CitiMortgage, by way of return, does not take a position as to the applicability of the automatic stay to the real property over which GMAC may have a recorded mortgage. However, CitiMortgage does not consent to the application of the automatic stay to any real property over which GMAC does not have a recorded mortgage interest.

We agree that the automatic stay applies solely to GMAC and petitioner Meyer's claim for a constructive trust on property for which GMAC is the mortgagee. This action may otherwise proceed.


C.J.
FOR THE COURT

Columbia, South Carolina

April 16, 2014

cc:

Cherie W. Blackburn, Esquire
Nancy Bloodgood, Esquire
Michael Patrick Scott, Esquire
Thad H. Westbrook, Esquire
James H. Burns, Esquire
Ronald L. Richter, Jr., Esquire
Eric Steven Bland, Esquire
Michael Casin Griffin, Esquire
Mark Steven Wierman, Esquire
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