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## The Automatic Stay Does Not Preclude A Foreclosure Committee From Seeking Fees From A Non-Debtor Party In A Foreclosure Action Pending Against a Debtor

*Posted by Jessica Grossarth  
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On January 5, 2015, the Honorable Albert S. Dabrowski issued a decision concerning the applicability of the automatic stay of Bankruptcy Code Section 362(a) (the "Automatic Stay"), which decision highlights and clarifies divergent views between the Connecticut Appellate Court and the Connecticut bankruptcy courts. The issue is whether the Automatic Stay precludes a foreclosure committee ("Committee of Sale") from conducting a foreclosure sale seeking fees and costs from a non-debtor plaintiff in a state court foreclosure action that is pending against a debtor in bankruptcy.

The Committee of Sale appointed in a Connecticut foreclosure action entitled CT Tax Liens 2, LLC v. Tosillo et al, Docket No. HHD-CV-12-6035369-S (the "Foreclosure Action"), filed a Motion to Lift the Automatic Stay or to Determine that the Stay Doesn't Apply (the "Lift Stay Motion") in Mr. Tosillo's Chapter 13 bankruptcy case as a result of the foreclosure court's reliance on a recent decision, Equity One, Inc. v. Shivers, 150 Conn. App. 745, 753-56 (2014), wherein Connecticut's Appellate Court held that the Automatic Stay precludes the Superior Court from acting upon a Committee for Sale's fee request. Citing Shivers, the court in the Foreclosure Action denied the Committee for Sale's motion for committee fees and expenses.

In In Re Tosillo, when addressing the Lift Stay Motion, Judge Dabrowski recapped and reconsidered two prior bankruptcy court decisions which held that an order directed to a non-debtor to pay committee fees and expenses in a state court foreclosure proceeding pending against a debtor was not a violation of the

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automatic stay. See In re VCM Real Estate, C, 2012 WL 836724 at \*2 (Bankr. D. Conn. 2012, Dabrowski, J.); In re Rubenstein, 105 B.R. 198 (Bankr. D. Conn. 1989, Schiff, J.). The rationale from Rubenstein, which was adopted in VCM and reaffirmed in Tosillo, is that despite the fact that a debtor may ultimately be liable for the creditor's costs of foreclosure, the debtor is not automatically bound by any judgment against the creditor, and in any case, the allowance of fees and costs are subject to independent review by a bankruptcy court and subject to its evaluation as to reasonableness. In light of these decisions, in Tosillo, Judge Dabrowski held that the Automatic Stay does not apply, and ordered that a declaratory judgment shall enter in favor of the Committee of Sale that the Automatic Stay does not operate to bar or preclude it from seeking fees and costs from the non-debtor plaintiff.

It is not clear why the parties in Shivers did not cite to or discuss Rubenstein and VCM. Perhaps, now with Tosillo as yet another ruling on the topic, state court practitioners and judges will be more inclined to follow this line of cases, instead of Shivers. While the bankruptcy court decisions are not binding on the state courts, these decisions do provide solid guidance that will save parties time and costs by avoiding needless lift stay motions.

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