

NO. D-1 -GV-08-000050

THE STATE OF TEXAS, § IN THE DISTRICT COURT
Plaintiff,
V. § TRAVIS COUNTY, TEXAS
WEBB COUNTY TITLE
& ABSTRACT COMPANY, INC.,
Defendant. § 201st JUDICIAL DISTRICT

MOTION FOR RELIEF FROM AUTOMATIC STAY
PURSUANT TO TEX. INS. CODE § 443.008

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES THE INTERNATIONAL BANK OF COMMERCE, ("IBC"), Claimant herein, to file its Request for Relief from Automatic Stay (the "Motion") Pursuant to Tex. Ins. Code § 443.008(f) and in support thereof would show unto the Court as follows:

I. INTRODUCTION

1.1 On the 11th day of January 2008, an Agreed Order was entered, appointing liquidator and granting a permanent injunction, which placed Webb County Title & Abstract Company, Inc., Defendant herein, ("Webb County Title" or "Defendant") into a liquidation pursuant to Tex. Ins. Code § 443.151 et seq., and appointed the Commissioner of Insurance for the State of Texas, ("Commissioner of Insurance") as liquidator of the Defendant. The permanent injunction was issued pursuant to Tex. Ins. Code § 443.008(a) restraining Defendant and its agents from conducting Defendants' business, and restraining other parties from taking any action against Defendant or its property.

1.2 Thereafter, on the 11th day of August 2008, an Application to Provide Notice of Liquidation, Set Claims Filing Deadline, and Establish Claims Procedure was filed by Cantillo & Bennett, LLP, Special Deputy Receiver of Webb County Title & Abstract

Company, Inc., (the "SDR"). Instructions were issued, advising parties-in-interest that a claims bar deadline was set for October 14, 2008.

1.3 IBC timely filed its Proof of Claim by serving such claim upon the SDR, which service was received on October 7, 2008. IBC asserts a secured claim relating to a real estate lien note, (the "Note"), dated December 6, 2006, executed by Raquel Gonzalez, ("Borrower") in the amount of \$1,010,869.64, payable to the Order of IBC, secured by Lot 7-A, Block 311, Western Division, City of Laredo, Webb County, Texas, being a plat of Lot 1 and the So., 1/3 of Lot 3 of said Block 311, (the "Real Property"), and by 45,096 shares of common stock of Webb County Title.

1.4 The claim filed by IBC, reflected a secured claim with a principal balance of as of September 30, 2008 in the amount of \$998,091.58, with accrued interest of \$75,207.48, and late charges of \$8,800. Additional attorneys' fees and costs of collection amounted to \$22,498 for a total claim as of September 30, 2008 in the amount of \$1,104,597.06. IBC's secured claim has increased as a result of interest accrual, fees, late charges, and taxes. These additional amounts as of June 9, 2009 amount to:

- i. Accrued interest - \$117,610;
- ii. Late Charges - \$13,875;
- iii. Taxes, penalties, and interest - \$114,714.87; and
- iv. Attorneys' Fees - \$32,453.

The total indebtedness owed to IBC as of June 9, 2009 amounts to \$1,276,743.

1.5 Tex. Ins. Code § 443.008(h) provides that:

"Upon request of a party-in-interest and after notice and any hearing, the receivership court determines is appropriate, the receivership court may grant relief from the stay of such Section (c) or (d), such as by terminating, annulling, modifying, and conditioning the stay:

- (1) for causes described in sub-section (i); or
- (2) with respect to the stay of an act against property of Section (c) if:
 - a. The insured does not have equity in the property; and
 - b. The property is not necessary for an effective rehabilitation plan.”

1.6 IBC has ordered an appraisal dated January 30, 2009, prepared by Southwest Appraisal Group, LLC, relating to the Real Property, which indicates the fair market value of the Real Property is \$1,260,000.

II. ARGUMENTS/AUTHORITIES

- 2.1 IBC asserts that the stay should be lifted for cause on the following basis:
- a. IBC is a secured lien creditor, having filed a valid claim;
 - b. IBC’s per diem accrues at the rate of \$166.35 per day, or approximately \$60,717.75 per annum;
 - c. IBC’s interest in the Real Property is deteriorating. Taxes and interest are accruing without being paid by the Receiver;
 - d. Insurance, is not being paid by the Receiver, and must be force paid by IBC;
 - e. The Real Property is partially occupied, however, rents, also serving as IBC’s collateral, are not being turned over to IBC, rather, such rents are being maintained by the Receiver without account and without IBC’s permission.
 - f. The Real Property is deteriorating in value. The Receiver has not provided any evidence to show that the Property is being kept in proper repair and is being adequately maintained.
- 2.2 IBC also requests relief from the stay under Tex. Ins. Code § 443.008(h)(2),

since there is no equity in the property and the property is not necessary for an effective rehabilitation plan.

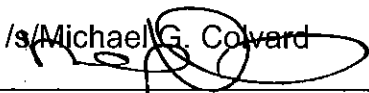
2.3 IBC has timely filed its Proof of Claim. The Receiver has not taken any action on IBC's claim despite the fact that it has been on file for a period in excess of six (6) months. Upon allowance of IBC's claim, IBC is entitled to pursue all its remedies, including foreclosure.

PRAYER

WHEREFORE, PREMISES CONSIDERED, IBC respectfully request that upon due consideration, this Court grant relief from automatic stay under sub-section (c) or (d), by terminating, annulling, modifying said stay, and by permitting IBC to foreclose on its collateral, including any and all real and/or personal property, requiring the Receiver to provide an accounting for all rents received, requiring the Receiver to turn-over rents received, authorizing and allowing the IBC secured claim thereby entitling IBC to pursue its claims under its loan documents, without regard to the stay, including foreclosure, accounting, and turnover of rents, and by providing unto IBC such other relief at law and in equity to which IBC may be justly entitled.

Respectfully submitted,


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By: 
MICHAEL G. COLVARD
State Bar No. 04629200

**ATTORNEYS FOR THE
INTERNATIONAL BANK OF COMMERCE**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded via E-Mail, where an email address is indicated and via United States Mail, First Class, postage prepaid to the parties on the attached Service List on June 9, 2009.


/s/Michael G. Colvard
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