

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:)	Chapter 13
)	
BRIAN WELSH,)	Case No. 14-11503 (BLS)
)	
Debtor,)	
-----)	
)	
BRIAN WELSH,)	
)	
Plaintiff,)	
)	Adversary No. 15-51335-BLS
v.)	
)	
)	Docket Ref. # 1, 9, 15, 18,
BANK OF AMERICA, N.A. AND)	23, 54, 55, 60, 63
LSF9 MASTER PARTICIPATION)	
TRUST (TRANSFEREE);)	
ATLANTIC LAW GROUP,)	
)	
Defendants.)	
-----)	

MEMORANDUM ORDER¹

The matters before the Court are two Motions to Dismiss Complaint for Failure to State a Claim Upon Which Relief Can be Granted (“Motions to Dismiss”) [Adv. No. 15-51335] filed by Defendants Atlantic Law Group, LLC (“Atlantic Law”) and Bank of America, N.A. (“BofA”) respectively. Plaintiff seeks damages for emotional distress, and punitive damages, for alleged violations of the automatic stay committed by Atlantic Law and BofA. For the reasons that follow, the Motions to Dismiss will be denied.

BACKGROUND

1. Plaintiff Brian J. Welsh (“Debtor” or the “Plaintiff”) resides at 1908 Gheen Road, Wilmington, DE 19808 (the “Property”). On April 19, 2007, he granted a

¹ Pursuant to Rule 7052(a)(3), the Court is not required to state findings of fact or conclusions of law when ruling on a Rule 12(b)(6) motion.

promissory note to C&F Mortgage for \$205,000, securing the note with a Deed of Trust to Mortgage Electronic Registration Systems, Inc. (“MERS”) as nominee for C&F Mortgage Corporate, its successors and assigns. This mortgage was recorded in the Office of the New Castle Recorder of Deeds on April 25, 2007. MERS assigned this mortgage to Bank of America, N.A. (“BofA”) on November 1, 2011.

2. Thereafter, on April 13, 2012, despite the mortgage being in default, BofA mistakenly recorded a satisfaction of mortgage in the Office of the New Castle County Recorder of Deeds (the “Satisfaction”). This removed the lien from the parcel of property, clearing any notice to the public at large or to any person searching the title records as to lienholder status. Because the Satisfaction was actually intended for a property in Pennsylvania (owned by a different Brian Welsh), on February 7, 2014, BofA filed a complaint in the Superior Court in the State of Delaware to set aside the Satisfaction pursuant to Del. Code 2122. The record reflects that BofA did not file a *lis pendens* when it commenced the state court action.

3. On June 18, 2014, prior to any disposition in the Superior Court litigation, Plaintiff filed his Chapter 13 petition. On November 3, 2014, in order to protect its interest, BofA filed a proof of claim on account of the mortgage (“Claim 9”). The Debtor filed an objection to Claim 9 on November 6, 2014. Additionally, BofA, acting through counsel Atlantic Law, filed an adversary complaint to determine the validity, priority or extent of its lien. *See* Adversary No. 14-50944, D.I. No. 1. This Adversary Proceeding led to the Court’s decision issued on October 1, 2015, in which this Court found that a bona fide purchaser would not have been on notice of the state court action as of the

Petition Date, and the lien was therefore avoided pursuant to Section 544(a)(3) (hereinafter “*Welsh I*”).

4. Prior to the issuance of this Court’s decision in *Welsh I*, the lien on the home was in dispute, and BofA continued to assert that it had a secured first mortgage on the property. On September 1, 2015, one of BofA’s attorneys filed a transfer of claim to defendant LSF9 reflecting the assignment from BofA to LSF9 of the original 2007 mortgage and its subsequent satisfaction in April 2012 (the “Assignment”). The record reflects that the Debtor received a Notice of Lien Transfer and proof of its recordation via email on July 21, 2015 (the “Recording”).

5. When this Court ruled on October 1, 2015 in *Welsh I*, it granted summary judgment for Plaintiff and effectively awarded Mr. Welsh the property unencumbered by the mortgage. In so ruling, this Court acknowledged that the Plaintiff “will benefit mightily due to [Defendant’s] honest mistake” [Adv. Pro. No. 14-50944 (BLS), D.I. No. 19]. Following this Court’s decision in *Welsh I*, LSF9 withdrew Claim 9. [D.I. No. 65].

6. Mr. Welsh has now filed a Complaint seeking damages and attorney fees for violations under 11 U.S.C. Section 362, as well as an award of punitive damages. Both Atlantic Law and BofA filed Motions to Dismiss the Complaint. For the reasons that follow, the Court will deny the Motions to Dismiss.

JURISDICTION & VENUE

7. The Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b)(1). Venue is proper in this Court pursuant to 28 U.S.C. § 1409. This is a core proceeding pursuant to 28 USC 157(b)(2)(A), (C), and (O).

ANALYSIS

A. Legal Standard

8. Under Federal Rule of Civil Procedure 12(b)(6) (made applicable to this Court pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure), a complaint may be dismissed “for failure to state a claim upon which relief can be granted.” Dismissal for failure to state a claim is appropriate when it clearly appears that a plaintiff can prove no set of facts to support the claim entitling him to relief. *See Conley v Gibson*, 344 U.S. 41, 45-46 (1957). To decide a motion to dismiss under Rule 12(b)(6), the Court must “accept all well-pleaded allegations in the complaint as true, and view them in the light most favorable to the plaintiff.” *Carino v. Stefan*, 376 F.3d 156, 159 (3d Cir. 2004); *see also Phillips v. County of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (stating that the Supreme Court has reaffirmed that, on a Rule 12(b)(6) motion, the facts alleged must be taken as true and a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits.” In addition, all reasonable inferences are drawn in favor of the plaintiff. *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993). Legal conclusions, however, are not entitled to a presumption of truth. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1946, 173 L.Ed.2d 868 (2009). Federal Rule of Civil Procedure 8(a)(2) “requires a ‘showing’ rather than a blanket assertion of an entitlement to relief ... [because] without some factual allegation in the complaint, a claimant cannot satisfy the requirement that he or she provide not only ‘fair notice,’ but also the ‘grounds’ on which the claim rests.” *Phillips*, 515 F.3d at 232 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 at n. 3, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)).

B. Discussion

9. The Plaintiff has alleged that the Defendants' behavior, namely their postpetition assignment and recording of a mortgage, were in violation of the automatic stay. Plaintiff maintains that these actions collectively served to "affirmatively plac[e] a new lien against the Debtor's real property" after a bankruptcy petition had already been filed. Response at ¶2.

10. The Defendants respond that a mere assignment, or recording of that assignment, are not stay violations, and thus provide no grounds for relief. Instead, they argue, a stay violation can only occur when an underlying foreclosure action is commenced.

11. The Court concludes that the Plaintiff has adequately pled a stay violation by the Defendants for purposes of surviving a motion to dismiss under Rule 12(b)(6). The language of 11 U.S.C. §362(a) is deliberately broad: the filing of a petition operates as a stay of

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]

11 U.S.C. §362(a)(3)-(6).

12. In the Complaint, Debtor alleges that, on a post-petition basis, Defendants recorded the Assignment and took other steps to memorialize and enforce their claim.

These allegations are sufficient, construed in the light most favorable to the Plaintiff, to survive a motion to dismiss.

13. However, the Court notes that, by operation of this Court's prior decision in *Welsh I*, the Plaintiff has effectively obtained a house for free. The Court further emphasizes its sentiment, as expressed in the *Welsh I* ruling, that Mr. Welsh has benefited mightily from the honest mistake of the Defendants.

14. The Court is mindful of the frustration that the Plaintiff may have endured based upon the Defendants' actions while *Welsh I* was under advisement, as well as after the issuance of that decision, particularly while the Plaintiff was attempting to clear title to the Property. The record reflects that title has now been cleared and the secured claims of the Defendants have been disallowed and are to be treated in this Chapter 13 case as unsecured claims.

15. Candor requires that the Court advise the parties that it is highly unlikely that, at trial, this Court would award damages to the Plaintiff beyond the free house he has already obtained.

Accordingly, it is hereby ORDERED that the Motions to Dismiss are DENIED.
An appropriate order follows.

BY THE COURT:

Dated: Wilmington, Delaware
August 23, 2017



Brendan Linehan Shannon
Chief United States Bankruptcy Judge

