

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

In the Matter of:

RICHARD LOUIS ALEXANDER,
Debtor,

MEMORANDUM AND ORDER

RICHARD LOUIS ALEXANDER,

Appellant,

10-cv-310-wmc

v.

KONDAUR CAPITAL,

Appellee.

Appellant Richard Alexander has filed this interlocutory appeal pursuant to 28 U.S.C. § 158(a)(3) from decisions by the Honorable Robert D. Martin in the United States Bankruptcy Court for the Western District of Wisconsin denying his request for an extension of time to object to Kondaur Capital's motion for relief from a stay. Since Kondaur Capital does not urge the court to deny debtor leave to appeal, and it appearing some efficiency may be served by addressing the straitforward issues presented now, the court will take up the appeal and affirm Judge Martin's decision.

FACTS

On February 18, 2010, in a Chapter 11 proceeding, appellee Kondaur Capital moved for relief from an automatic stay in order to continue its state court mortgage foreclosure action on two properties owned by Alexander. On March 4, 2010, Alexander filed a motion for an extension of time to file an objection and, on March 11, he filed a late objection to the motion for relief from stay.

On March 22, 2010, Judge Martin held a hearing on the motions, considering both the

request for an extension of time *and* the merits of the untimely filed objection. After hearing the arguments of counsel for Kondaur Capital's and the testimony and arguments of Alexander, Judge Martin indicated he would deny the motion for an extension of time and grant Kondaur Capital's motion for relief from stay on the grounds that (1) the value properties of at least one, if not both, was less than a third of the debt it secured, and (2) the debtor made *no* showing that either property was necessary for an effective reorganization.

Alexander filed a motion on April 1, 2010, asking the court to reconsider the denial of his motion for extension of time. Judge Martin heard the motion on April 12, receiving further evidence that both properties were substantially underwater, as well as likely uninsured, and that no provision for repayment of mortgage, insurance or taxes was included in the debtor's proposed budget for either property. After giving Alexander three opportunities during the April 12 hearing to refute the evidence that he lacked any remaining equity in either property or the properties' importance to his reorganization, Alexander continued to have no response of substance on any of these issues. As a result, Judge Martin granted relief from stay as to both properties.

On May 10, Judge Martin also formally denied Alexander's motion for reconsideration of his order denying motion to extend time to respond to creditor's motion for relief from stay.

OPINION

Bankruptcy Rule 8013 states:

On appeal, the district court . . . may affirm, modify or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the

opportunity of the bankruptcy court to judge the credibility of the witnesses,

Questions of law in bankruptcy appeals are reviewed de novo. *Department of Treasury of Com. of Puerto Rico v. Galarza Pagan*, 279 B.R. 43, 46 (D. Puerto Rico, 2002). Discretionary decisions by the bankruptcy court, however, may not be set aside unless there is plain error or an abuse of discretion. *Id.*

Alexander is appealing the decision of Judge Martin denying his motion for reconsideration of the order denying his request for an extension of time to file an objection to Kondaur Capital's motion for relief from a stay. At the time Judge Martin ruled on Alexander's motion for an extension of time, he also considered the merits of Alexander's untimely objection to the motion for relief from stay and articulated persuasive grounds for granting Kondaur Capital's motion for relief from stay. Further, when Alexander moved for reconsideration, he cited to no new law or facts.

In denying Alexander's objection to the lift of stay and his motion for reconsideration, Judge Martin's ruling was consistent with, if not compelled by, the undisputed facts, and plainly did not abuse his discretion. Thus, his decision will be affirmed.

ORDER

IT IS ORDERED that the order of the Bankruptcy Court denying Alexander's motion for reconsideration of the denial of his request for an extension of time to object to Kondaur Capital's motion for relief from stay is AFFIRMED.

Entered this 28th day of September, 2010.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge