


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 18, 2020

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 19-17814-MKN
) Chapter 13
COLLETTE JEAN SHERBINO)
aka COLLETTE SHERBINO) Date: March 4, 2020
aka COLLETE JEAN SHERBINO,) Time: 2:30 p.m.
)
Debtor.)

ORDER ON SELECT PORTFOLIO SERVICING, INC.’S MOTION FOR RECONSIDERATION OF ORDER GRANTING EX PARTE MOTION FOR REFERRAL TO MORTGAGE MODIFICATION MEDIATION PROGRAM¹

On March 4, 2020, the court heard Select Portfolio Servicing, Inc.’s Motion for Reconsideration of Order Granting Ex Parte Motion for Referral to Mortgage Modification Mediation Program (“Reconsideration Motion”). The appearances of counsel were noted on the record. After the presentation of arguments, the matter was taken under submission.

BACKGROUND

On March 29, 2019, Collette Jean Sherbino (“Debtor”) filed in pro se a “skeleton” Chapter 13 petition, i.e., unaccompanied by schedules of assets and liabilities (“Schedules”) or other required information, initiating Case No. 19-11893 (“First Case”). On that petition, Debtor listed her residential address as 10005 Sharp Ridge Avenue, Las Vegas, Nevada 89149 (“Residence”). On May 3, 2019, an order was entered granting Debtor’s request in pro se to participate in the Mortgage Modification Mediation Program (“MMM Program”) with respect to

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

1 the Residence. Shortly thereafter, however, the First Case was automatically dismissed under
2 Section 521(i) because the Debtor had not filed her Schedules within 45 days of filing her
3 bankruptcy petition. The First Case was closed on July 25, 2019.

4 On July 12, 2019, Debtor filed in pro se a “skeleton” joint Chapter 13 petition along with
5 Michael Lewis Coskey (“Joint Petition”), initiating Case No. 19-14477 (“Second Case”). No
6 request for participation in the MMM Program was made because the Second Case also was
7 automatically dismissed on September 10, 2019. The Second Case was closed on September 25,
8 2019.

9 On December 11, 2019, Debtor filed in pro se another “skeleton” Chapter 13 petition
10 initiating the above-captioned case (“Current Case”). (ECF No. 1). That petition lists the same
11 residential address.

12 On January 17, 2020, bankruptcy counsel for the Debtor filed Schedules and other
13 information required by Section 521(a)(1), along with a Chapter 13 statement of current monthly
14 income, and a proposed Chapter 13 Plan. (ECF Nos. 22, 24, and 25). On her property Schedule
15 “A/B,” Debtor lists an interest in the Residence. On her secured creditor Schedule “D,” Debtor
16 lists Select Portfolio Servicing, Inc. (“SPS”) as having a claim in the amount of \$275,000
17 secured by a lien against the Residence.²

18 On January 17, 2020, bankruptcy counsel for the Debtor also filed an Ex Parte Motion to
19 refer the case to the MMM Program (“Ex Parte Motion”) with respect to the Residence. (ECF
20 No. 26).

21 On January 22, 2020, an order was entered granting the Ex Parte Motion (“MMM
22 Order”). (ECF No. 38). The MMM Order specifies the applicable requirements for both the
23 Debtor and SPS to participate in the Mortgage Modification Mediation Program (“MMMP”).
24
25
26

27 ² Included with her Schedules is the Debtor’s Statement of Financial Affairs (“SOFA”).
28 Item 9 of the SOFA requires the Debtor to disclose any lawsuit, court action, or administrative
proceeding in which she was a party within one year before the bankruptcy was filed. Debtor
discloses only the prior bankruptcy cases, but not any proceedings in state court.

1 On January 30, 2020, SPS filed the instant Reconsideration Motion seeking to vacate the
2 MMM Order. (ECF No. 43). SPS noticed the Reconsideration Motion to be heard on March 4,
3 2020. (ECF No. 44).

4 On February 19, 2020, Debtor filed opposition to the instant Reconsideration Motion to
5 which is attached as Exhibit "1" a lengthy affidavit of the Debtor. (ECF No. 50).

6 On February 20, 2020, the hearing on confirmation of Debtor's proposed Chapter 13 plan
7 was continued to April 16, 2020. (ECF No. 51).

8 On February 25, 2020, SPS filed a reply in support of the Reconsideration Motion. (ECF
9 No. 53).

10 On March 4, 2020, Debtor filed another affidavit in support of her opposition. (ECF No.
11 55).

12 DISCUSSION

13 The court has considered the written and oral arguments of counsel, along with the
14 exhibits, declarations, and affidavits presented. The court also has considered the Debtor's
15 history of bankruptcy filings in this district. Based on those considerations, the court concludes
16 that the Reconsideration Motion should be denied and that the parties should proceed under the
17 MMM Program.

18 Although this is the Debtor's third Chapter 13 case, it is the first in which she is
19 represented by experienced bankruptcy counsel. Debtor requested relief through the MMM
20 Program in her First Case, but that case was dismissed shortly after the order was entered
21 approving her request. Neither joint debtor sought relief through the MMM Program in the
22 Second Case before that proceeding was dismissed. In each of the first two cases, dismissal
23 occurred automatically under Section 521(i), a fate well-known to experienced bankruptcy
24 counsel. In the Current Case, counsel avoided the same fate by timely filing the information
25 required.

26 Moreover, Debtor's bankruptcy counsel timely filed the Ex Parte Motion. Whatever
27 previous negotiation failures may have occurred between SPS and its counsel on the one hand,
28 and the pro se Debtor on the other, does not appear to have involved bankruptcy counsel.

1 Additionally, whatever previous litigation may have been pursued by the Debtor in state court
2 also does not appear to have involved bankruptcy counsel.

3 The MMM Program in this district is designed to provide an effective avenue where
4 adequate loan information available to a residential lender and a borrower is shared before a
5 neutral mediator. If the mediation produces an agreed path going forward, disputes are
6 effectively resolved. If the mediation does not produce an agreed path, then the disputes return
7 to the bankruptcy court for direction or resolution under applicable bankruptcy and
8 nonbankruptcy law.

9 In this instance, the Debtor and SPS never completed the MMM Program. Moreover,
10 there is no evidence that the Debtor is manipulating the process by seeking repeated access to the
11 program after receiving disappointing results in a prior bankruptcy. Under these circumstances,
12 SPS has failed to demonstrate that it is entitled to relief from the MMM Order.

13 **IT IS THEREFORE ORDERED** that Select Portfolio Servicing, Inc.'s Motion for
14 Reconsideration of Order Granting Ex Parte Motion for Referral to Mortgage Modification
15 Mediation Program, Docket No. 43, be, and the same hereby is, **DENIED**.

16
17
18 Copies sent via CM/ECF ELECTRONIC FILING

19 Copies sent via BNC to:
20 COLLETTE JEAN SHERBINO
21 10005 SHARP RIDGE AVE
22 LAS VEGAS, NV 89149

23
24
25
26
27
28
###