



Opinion 558

Published on District of Utah (<https://www.utb.uscourts.gov>)

Opinion Title: 06/13/2012 UNPUBLISHED In re Fehrenbacker, 12-20883, Judge Thurman.

Body: In this chapter 7 case, the Creditor filed a motion for relief from stay on the Debtor's real property. The Debtor alleged that the Creditor did not have standing as a party in interest to request relief from stay because the Creditor did not provide evidence that the original promissory note was in the Creditor's possession. The Court relied on In re Thomas, No. 10-17039, 2012 WL 1574418, at *1 (10th Cir. B.A.P. May 7, 2012), which held that while the original note is not required to be placed into evidence, "the bankruptcy court must make a cognizable determination of standing in a contested matter . . . which requires some review of the standing documents, whether they be admitted into evidence or proffered to the court without objection." In re Thomas, 2012 WL 1574418, at *5 n.32. In this case, the Creditor's attorney represented that the original note was on its way to his office, but could not provide evidence that the Creditor was otherwise in possession of the original note. Moreover, the Court determined that under 11 U.S.C. § 362(c)(1) the motion for relief from the automatic stay was not moot as to property of the estate when the Debtor received a discharge. The Court continued the Creditor's motion without date and ordered the stay remain in place pending further order of the Court.

File:  [558.pdf](#) [1]

Judge: [Judge William T. Thurman](#) [2]

Date: Wednesday, June 13, 2012

Source URL: <https://www.utb.uscourts.gov/opinions/opinion-558#comment-0>

Links

[1] <https://www.utb.uscourts.gov/sites/default/files/opinions/558.pdf>

[2] <https://www.utb.uscourts.gov/content/judge-william-t-thurman>