

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Leonard Green  
Clerk

100 EAST FIFTH STREET, ROOM 540  
POTTER STEWART U.S. COURTHOUSE  
CINCINNATI, OHIO 45202-3988

REC-111  
Tel. (513) 564-7000  
[www.ca6.uscourts.gov](http://www.ca6.uscourts.gov)

08 OCT 27 AM 10: 21

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS  
Filed: October 24, 2008

Mr. Andrew S. Friedman  
Bonnet, Fairbourne, Friedman & Balint  
2901 N. Central Avenue  
Suite 1000  
Phoenix, AZ 85012-0000

Ms. Jennifer Shorb Hagerman  
Burch, Porter & Johnson  
130 N. Court Avenue  
Memphis, TN 38103

Mr. J. Andrew Meyer  
James, Hoyer, Newcomber & Smiljanich  
4830 W. Kennedy Boulevard  
Suite 550  
Tampa, FL 33609-0000

Mr. B. J. Wade  
Glassman, Edwards, Wade & Wyatt  
26 N. Second Street  
Memphis, TN 38103

Re: Case No. 08-511, *Novastar Mortgage, Inc.*  
Originating Case No. : 06-02249

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Julie Brock  
Case Manager  
Direct Dial No. 513-564-7036  
Fax No. 513-564-7094

cc: Mr. Thomas M. Gould

Enclosure

No mandate to issue

No. 08-0511

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Oct 24, 2008  
LEONARD GREEN, Clerk

In re: NOVASTAR MORTGAGE, INC., )  
 )  
Petitioner. )  
 )  
 )  
 )

ORDER

Before: KEITH, COLE, and COOK, Circuit Judges.

The defendant petitions for leave to appeal the denial of its motion to dismiss in this action alleging racial discrimination in the offering and sale of residential mortgages and asserting claims under the Fair Housing Act and Equal Credit Opportunities Act. The district court certified its order under 28 U.S.C. § 1292(b) on August 6, 2008. The plaintiff opposes the petition for leave to appeal. On September 12, 2008, an involuntary bankruptcy was filed against the petitioner in the United States Bankruptcy Court for the District of Delaware.

To obtain permission to appeal the petitioner must show that: (1) the question involved is a question of law; (2) the question is controlling; (3) there is substantial ground for difference of opinion respecting the correctness of the district court’s decision; and (4) an immediate appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b); *In re City of Memphis*, 293 F.3d 345, 350 (6th Cir. 2002); *Cardwell v. Chesapeake & Ohio Ry. Co.*, 504 F.2d 444, 446 (6th Cir. 1974). “Review under § 1292(b) is granted sparingly and only in exceptional cases.” *In re City of Memphis*, 293 F.3d at 350; see *Kraus v. Bd. of County Rd. Comm’rs for Kent County*, 364 F.2d 919, 922 (6th Cir. 1966).

The filing of the involuntary bankruptcy petition against the petitioner operates as a stay of “the commencement or continuation . . . of a judicial, administrative, or other action or proceeding

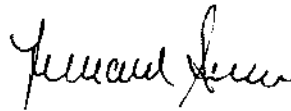
No. 08-0511

- 2 -

against the debtor.” 11 U.S.C. § 362(a). The automatic stay bars the plaintiff from pursuing her action in district court against the petitioner. The automatic stay also bars the petitioner for pursuing an interlocutory appeal of the district court’s order because to determine if an appeal is “‘against the debtor,’ the court examines the posture of the case as it existed in the district court.” *See In re Delta Air Lines*, 310 F.3d 953, 956 (6th Cir. 2002); *Cathey v. Johns-Manville Sales Corp.*, 711 F.2d 60, 62 (6th Cir. 1983) (holding that “whether a case is subject to the automatic stay must be determined at its inception”).

Under the circumstances, the petition for leave to appeal is **DENIED**.

ENTERED BY ORDER OF THE COURT



Leonard Green  
Clerk