

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re: CLYDE LOVATO,
Debtor.

No. 7-16-11980 JS


**ORDER DENYING MOTION TO STRIKE MOTION
FOR RELIEF FROM STAY AND TO ABANDON PROPERTY
KNOWN AS SR 68 CR 44 HOUSE 72, ALCALDE, NM 87511**

THIS MATTER is before the Court on the Motion to Strike Motion for Relief from Stay and to Abandon Property Known as SR 68 CR 44 House 72, Alcalde NNM 87511 (“Motion to Strike”) filed by the Debtor, Clyde Lovato, through his counsel of record, Tami Schneider. *See* Docket No. 15. Debtor contends that MTGLQ Investors LP (“MTGLQ”) lacks standing to file a motion for relief from stay in the Debtor’s bankruptcy case because the assignment of mortgage to MTGLQ occurred on August 17, 2016, nine days after Debtor filed his voluntary petition under Chapter 7 of the Bankruptcy Code. Debtor reasons further that the assignment violated the automatic stay and, consequently, is *void ab initio*. This Court disagrees.

Courts have consistently held, and this Court agrees, that the post-petition transfer of an existing, pre-petition mortgage and note, including the recording of an assignment of mortgage in the real property records, does not constitute a stay violation. *See, e.g., Hamilton v. CitiMortgage, Inc. (In re Lieurance)*, 458 B.R. 757, 766 (Bankr. D. Kan. 2011) (post-petition recording of an assignment of mortgage did not violate the stay; the perfection of the security interest occurred pre-petition when the original mortgage was recorded); *In re Samuels*, 415 B.R. 8, 22 (Bankr. D. Mass. 2009) (post-petition assignment of note and mortgage does not violate the automatic stay); *Ahmadi v. CitiMortgage, Inc. (In re Ahmadi)*, 467 B.R. 782, 792 (Bankr. M.D. Pa. 2012) (same). *See also Patton v. State Street Bank (In re Patton)*, 314 B.R. 826, 834 (Bankr. D. Kan. 2004) (noting “that any act to record the assignment of a previously perfected mortgage

in Kansas would . . . not be stayed pursuant to section 362.”) (citation omitted). A post-petition assignment of mortgage and note does not violate the automatic stay because such assignment does not transfer the bankruptcy estate’s nor the debtor’s interest in property. *Lieurance*, 458 B.R. at 763 (rejecting trustee’s argument that the transfer of a mortgage “from one lender to another represents a transfer of Debtor’s property or property of the bankruptcy estate.”); *Samuels*, 415 B.R. at 22 (“The post petition assignment of a mortgage and the related note from one holder to another is not a transfer of property of the estate.”). Rather, an assignment transfers the mortgage holder’s interest in the mortgage. *See Samuels*, 415 B.R. at 22 (“The mortgage and note are assets of the creditor mortgagee, not of the Debtor the assignment merely transfers the claim from one entity to another.”). Consequently, the post-petition assignment of an existing pre-petition note and recorded mortgage “is not an act to create, perfect, or enforce a lien against property of the estate or property of the debtor.” *Ahmadi*, 467 B.R. at 792. Debtor’s argument that MTGLQ is lacks standing to file a motion for relief from stay because it acquired its interest in the mortgage post-petition therefore fails.

WHEREFORE, IT IS HEREBY ORDERED that the Motion to Strike is DENIED.


ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: January 30, 2017

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