

In re Elkouby

14-23934-BKC-LMI

The Debtor filed a statement of intention to surrender certain real property during the chapter 7 bankruptcy case but continued to defend a foreclosure action after the bankruptcy case was closed. At issue was whether a chapter 7 debtor who indicates surrender of real property in his statement of intention is obligated to surrender that property to the lienholder. The Debtor argued that “surrender” under chapter 7 only required him to surrender to the trustee. The secured lienholder argued that “surrender” barred the Debtor from defending the ongoing foreclosure action. The Court held that a chapter 7 debtor performs his stated intention to surrender by not interfering with the chapter 7 trustee’s administration of the real property and that surrender in chapter 7 does not require the debtor to surrender the property to the lienholder if the trustee does not administer the property during the chapter 7 case.