

ENTERED ON DOCK #1
8-4-05 Jij

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF: : CASE NUMBER
: :
SHONN KENARD, : 05-94380-WHD
: :
: IN PROCEEDINGS UNDER
: CHAPTER 13 OF THE
DEBTOR. : BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Validate Foreclosure, filed by Tower Financial Services (hereinafter the "Movant"), in the above-captioned bankruptcy proceeding. The Court held a hearing on the Motion on July 25, 2005, and orally granted the motion, conditioned upon the Debtor's payment of \$65,000 to the Movant within one week. On July 29, 2005, the Debtor filed a request for additional time to pay the \$65,000.

From the limited facts presented at the hearing, it appears that the Movant holds a deed to secure debt on real property located at 3427 Main Street, College Park, Georgia (the "Property"). This deed secures a debt owed to the Movant by Lawrence Latson. At the hearing, the Movant proffered the fact that the Debtor had no contractual obligation on the debt owed to the Movant. Apparently, Latson defaulted on the debt owed, and the Movant made various attempts to foreclose on the Property. These attempts were stalled by the filing of two Chapter 13 petitions by Latson. On May 6, 2005, the Movant obtained relief from the automatic stay in Latson's second case. On June 24, 2005, Latson's second case was dismissed pursuant to section 109(g) as to all Chapters. *See* Case Number 05-92088-JEM.

Movant scheduled a foreclosure sale for July 5, 2005. On June 26, 2005, just two days after Latson's case was dismissed with prejudice, Latson conveyed the Property via a quit claim deed, to the Debtor. The Debtor filed the instant case on July 5, 2005. The Movant filed an emergency motion for relief from the automatic stay seeking authority to go forward with the foreclosure sale. The Court modified the stay to permit the sale, but required the Movant to return to Court to seek further relief from the stay to permit the Movant to record the deed. Movant contends that the pre-petition arrearage on the debt exceeds \$65,000.

At the hearing, the Court was persuaded to allow the Debtor a week to raise the necessary funds to pay the arrearage. The Debtor now seeks an additional week to do so. The Court cannot grant this request. First, the facts surrounding this case indicate that the Debtor may have filed his petition in bad faith by accepting title to the Property and immediately filing a bankruptcy petition in order to stop the scheduled foreclosure. *See In re Wainwright*, 85 B.R. 456 (Bankr. N.D. Ohio 1988) (holding that the debtor filed her petition in bad faith because she received a conveyance of real property solely for the purpose of filing a bankruptcy petition to stop a foreclosure and she was not personally obligated on the underlying debt). The Debtor has not filed a plan or schedules, which were due by July 20, 2005, and has not paid any filing fee in this case. It does not appear that the Debtor actually intends to prosecute this case. Second, and more importantly, the initial filing fee installment of \$75 has come due and has not been paid. Consequently, the

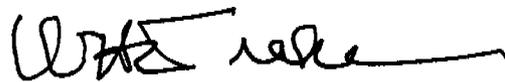
Debtor's case is due to be dismissed. *See* Order Granting Application to Pay Filing Fee in Installment, Docket Number 8 (directing that case shall be dismissed without further notice or hearing if the Debtor fails to pay \$75 within ten days of entry of the order).

For the reasons stated above, the Motion to Validate Foreclosure Sale, filed by Tower Financial Services, is hereby **GRANTED**. The automatic stay is lifted to permit Tower Financial Services to record its foreclosure sale deed.

IT IS FURTHER ORDERED that the Debtor's case is hereby **DISMISSED** for failure to pay the filing fee.

IT IS SO ORDERED.

At Atlanta, Georgia, this 4 day of August, 2005.



W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE