

4-18-07

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
JOE HAYNES	:	07-10365-WHD
JUDY CLARE HAYNES,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTORS.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Relief from the Automatic Stay filed by Citifinancial Services, Inc. (hereinafter the "Movant"). This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(G); § 1334.

FINDINGS OF FACT AND PROCEDURAL HISTORY

The Movant was the holder of a first mortgage deed to secure debt on real property known as 18 Ruby Drive, Woodbury, Georgia (hereinafter the "Property"). Pursuant to the power of sale contained within the deed to secure debt, Movant conducted a foreclosure sale of the Property on February 6, 2007. As the highest bidder, Movant purchased the Property for \$39,900. On February 10, 2007, the Movant mailed an executed deed under power of sale to the Meriweather County for recording. The Debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code on February 11, 2007. The deed under power of sale was recorded in the real estate records of Meriweather County on February 15, 2007.

On February 15, 2007, Movant filed the instant motion for relief from the automatic

stay, seeking to proceed with a dispossessory action in the state court of Meriweather County. On March 6, 2007, the Debtors filed a response to the motion in which they assert that the foreclosure was not completed prior to the time the Debtors filed their bankruptcy petition and, therefore, Movant lacks standing to seek relief for the purpose of dispossessing them from the Property. The Debtors base this position on the lack of a “duly executed and recorded Deed Under Power prior to the Debtor’s filing for relief in the instant case.” This matter came before the Court at a hearing held on March 8, 2007, following which the Court took under advisement the issue of whether the Debtors’ interest in the subject property was extinguished by the foreclosure sale so as to preclude the Debtors from curing and reinstating the mortgage through their Chapter 13 plan.

CONCLUSIONS OF LAW

Section 362(a)(1) of the Code provides that the filing of a bankruptcy petition operates as a stay as to the “commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.” 11 U.S.C. § 362(a)(1). Under certain circumstances, the Court may “grant relief from the stay” by “terminating, annulling, modifying, or conditioning” the stay. 11 U.S.C. § 362(d). In this case, cause for lifting the automatic stay to permit Movant

to proceed with its dispossessory proceeding exists if the Debtors' estate holds no interest in the Property that would enable the Debtors to cure and reinstate their mortgage through a Chapter 13 plan. *Accord Matter of Morgan*, 115 B.R. 399 (Bankr. M.D. Ga. 1990) (granting relief from the stay to permit eviction after concluding that debtor's equity of redemption expired with regard to property); *In re Dillard*, 2007 WL 521888 (Bankr. M.D. Ga. 2007) (refusing to extend the automatic stay with regard to mortgage creditor's dispossessory action after concluding that debtor's equity of redemption had expired prior to bankruptcy filing).

The question of whether the Debtors' bankruptcy estate holds any interest in the Property turns on whether, under Georgia law, the Debtors' equity of redemption was terminated by the foreclosure sale prior to the commencement of the Debtor's bankruptcy case. *See Matter of Morgan*, 115 B.R. 399 (Bankr. M.D. Ga. 1990); *In re Bell*, 279 B.R. 890 (Bankr. N.D. Ga. 2002) (Bonapfel, J.) (citing *Butner v. United States*, 440 U.S. 48 (1979)). This Court has previously held that, under Georgia law, "the equity of redemption expires when the high bid is received at the foreclosure sale." *In re Pearson*, 75 B.R. 254 (Bankr. N.D. Ga. 1985) (citing *Carrington v. Citizens Bank of Waynesboro*, 144 Ga. 52 (1915); *McKinney v. South Boston Savs. Bank*, 156 Ga. App. 114 (1980)). More recent authority from the Bankruptcy Court for the Middle District of Georgia holds that the acceptance of the high bid at the foreclosure sale "merely forms a contract for sale at the bid price" and does not terminate the debtor's equity of redemption. *In re Geiger*, 340 B.R. 422 (Bankr. M.D. Ga. 2006). Relying on *Champs-Elysses, Inc., v. Fulton Fed. Savs. & Loan Assoc.*, 247 Ga. 127

(1981) and *Federal Deposit Ins. Corp. v. Dye*, 642 F.2d 837 (5th Cir. Unit B Apr. 17, 1981), the *Geiger* court required a showing that some event occurred after the acceptance of the high bid to consummate the foreclosure sale, such as the execution of the foreclosure deed or the tender of consideration. See *Geiger*, 340 B.R. at 425.

Prior to its holding in *Pearson*, this Court also employed an objective standard to determine whether the equity of redemption had expired. See *In re Gooden*, 21 B.R. 456 (Bankr. N.D. Ga. 1982). However, in *Pearson* the Court relied on its earlier criticism of *Gooden*, as stated in *In re Gray*, 37 B.R. 532 (Bankr. N.D. Ga. 1984), to reject such a requirement as being inconsistent with Georgia law. See *Pearson*, 75 B.R. at 255. In doing so, the Court relied on *McKinney v. South Boston Savs. Bank*, 156 Ga. App. 114 (1980), in which the Georgia Court of Appeals held that the appellant "had become a tenant at sufferance . . . by the terms of the security deed and by operation of law when appellee bid in the property at the foreclosure sale." The Court also cited *Carrington v. Citizens Bank of Waynesboro*, for the proposition that the equity of redemption is terminated upon the acceptance of the bid, regardless of whether a foreclosure sale deed has been executed. See *Carrington v. Citizens Bank of Waynesboro*, 144 Ga. 52 (1915) ("Where a sale of land is made under a power contained in a security deed, and by permission of the grantor contained in the deed the grantee purchases the land at such sale, the grantor cannot defeat the purchaser's right to have the sale fully consummated, by tender of the amount of his indebtedness to the grantee before the actual execution of the deed pursuant to the terms of the sale.").

The Court need not decide whether to reassess the holding of *Pearson*, as even under the objective standard required by the *Geiger* court, Movant can demonstrate that the foreclosure sale was final prior to the filing of the Debtors' bankruptcy petition. The executed deed provides sufficient evidence that, under Georgia law, the Debtors' equity of redemption was terminated prior to commencement of the Debtors' bankruptcy case. Accordingly, the Debtors' bankruptcy estate obtained no interest in the Property, and cause exists to lift the automatic stay to permit Movant to proceed with a dispossessory action.

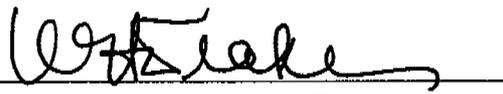
CONCLUSION

For the reasons stated above, the Motion for Relief filed by Citifinancial Services, Inc., is **GRANTED**. Citifinancial Services, Inc. shall be permitted to exercise its state law rights with regard to a dispossessory action.

In accordance with Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, the instant order shall be stayed for ten (10) days after entry.

IT IS SO ORDERED.

At Newnan, Georgia, this 18 day of April, 2007.



W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE