



IT IS ORDERED as set forth below:

Date: December 20, 2010

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

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

In re:	:	CASE NUMBER
	:	
IAN CEDRIC HENDERSON,	:	10-89458-MGD
	:	
Debtor.	:	CHAPTER 13
	:	
-----	:	
WELLS FARGO BANK N.A., AS	:	
TRUSTEE FOR CARRINGTON	:	
MORTGAGE LOAN TRUST, SERIES	:	
2006-NC1 ASSET-BACKED PASS-	:	
THROUGH CERTIFICATES,	:	
	:	
Movant,	:	
	:	
v.	:	CONTESTED MATTER
	:	
IAN CEDRIC HENDERSON and	:	
CHAPTER 13 TRUSTEE MARY IDA	:	
TOWNSON,	:	
	:	
Respondents.	:	

ORDER ANNULLING THE AUTOMATIC STAY AND

VALIDATING FORECLOSURE SALE

Before the Court is Movant's "Motion To Annul the Automatic Stay, Validate Foreclosure Sale, or, in the Alternative, for In Rem Relief" ("Motion") filed December 3, 2010. (Docket No. 11). The matter came on for hearing on December 14, 2010.¹ Present at the hearing were counsel for Movant, Deetric M. Hicks, and counsel for the Chapter 13 Trustee, Ed Safir. Richard Valdejuli, counsel for Terrance Beasley, the purported co-debtor in this case, also appeared in opposition to the Motion. Mr. Beasley is the occupant of the property at issue, commonly known as 2868 Lloyd Road, Decatur, Georgia 30034 ("Property"). Mr. Beasley executed the security deed dated September 20, 2005 to Movant. No appearance was made by or on behalf of the Debtor, Ian Cedric Henderson.

The above-styled Chapter 13 case was filed on October 4, 2010. Debtor has taken no further action in prosecution of this case. No schedules, statements, or plan have been filed. There has been no meeting of creditors. The Property was sold at a November 2, 2010 foreclosure sale. Movant purchased the Property at the foreclosure sale and has not recorded the deed under power of sale. The Motion seeks to annul the automatic stay and validate the November 2, 2010 foreclosure sale. The Court heard testimony from Mr. Beasley and argument from counsel before granting Movant's Motion.² This Order memorializes the Court's ruling.

This is a core proceeding under 28 U.S.C. § 157(b)(2) and jurisdiction and venue are proper.

Mr. Beasley argues that Movant had notice of Debtor's asserted interest in the Property prior to the foreclosure sale. The basis of Debtor's purported interest in the Property is an unrecorded "Joint Tenancy Deed," which was admitted into evidence without objection as part of Exhibit A.

¹ Debtor's confirmation hearing occurred concurrently with this hearing. An order denying confirmation and dismissing the case will be entered separately.

² This Order shall also dispose of Movant's Motion for an Emergency Hearing on the Motion. (Docket No. 12). It is denied as moot.

Exhibit A consists of the described faxed documents purportedly sent to Movant's attorney in advance of the foreclosure sale. The first page is a cover sheet with the bolded words, "Stop Foreclosure" and basic information, including the Property address, case number, a fax number, sender, and recipient. The second page is the first page of Debtor's bankruptcy petition, which includes the case number. The third page is an unrecorded Joint Tenancy Deed. Under the terms of the Joint Tenancy Deed, it appears that on January 3, 2009, Mr. Beasley conveyed a joint tenancy interest in the Property to the Debtor for \$1.00. The Joint Tenancy Deed is unrecorded. It is signed by a witness and includes a notary stamp. However, there is neither a notary seal nor is the notarization dated. The fourth page is a notice of bankruptcy filing issued by the clerk of court, and the fifth page lists addresses of mortgage companies and mortgage servicers that appear to be a portion of the creditor matrix filed by Debtor.

Mr. Beasley testified that he faxed Exhibit A on November 1, 2010 to Johnson & Freedman, the law firm representing the Movant, and that he personally received a phone call regarding its receipt. He did not remember from whom he received the confirmation phone call. On cross examination, Mr. Beasley stated that he faxed these documents from his office. He also testified that typically a fax confirmation sheet is generated after a fax is sent, and that he did not have a fax confirmation sheet.

In response to questioning by the Court, Ms. Hicks stated that she was not aware of what specific date Movant learned of Debtor's purported interest in the Property, only that Movant learned of Debtor's purported interest after the foreclosure sale. The title search on the Property did not reveal any interest by the Debtor in the Property.

Section 362(d)(4) gives authority to annul, or otherwise modify, the automatic stay with respect to a stay of an act against real property by a secured creditor holding an interest in such real

property if :

the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either -

(A) transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

11 U.S.C. § 364(d)(4).

Under the facts in this case and upon consideration of the evidence presented to the Court, annulling the stay is appropriate. Mr. Beasley failed to establish by preponderance of the evidence that Movant had any notice of Debtor's interest in the Property. Movant has no relationship with Debtor. Debtor does not appear on the security deed executed by Mr. Beasley. It is undisputed that the Joint Tenancy Deed is unrecorded and incomplete. It is signed and stamped by a notary public, but there is neither a notary seal nor a date corresponding to the execution of the document or the notarized act. Additionally, Mr. Beasley's testimony lacks credibility, and the Joint Tenancy Deed is suspicious given its terms and Mr. Beasley's own bankruptcy history.

Mr. Beasley has seven bankruptcy filings, with five filings affecting this property. The five relevant bankruptcy cases have spanned the period from June 2, 2008, the date of his first filing affecting the Property, to June 29, 2010, the date Mr. Beasley's last bankruptcy case was dismissed. (Case Nos. 08-72205-PWB & 10-69910-PWB). Mr. Beasley's last case was dismissed with prejudice under § 109(g), rendering him ineligible to file another Chapter 13 case for 180 days. (Case No. 10-69910-PWB, Docket No. 24).

Because Mr. Beasley's bankruptcy history evidences that his intentions in this action are not taken in good faith and because the evidence presented failed to establish that Movant had any notice of Debtor's interest in the Property, there are sufficient grounds to annul the automatic stay and

validate the foreclosure sale to the extent otherwise valid under Georgia law. Accordingly, it is

ORDERED that Movant's Motion is **GRANTED**.

It is **FURTHER ORDERED** that the automatic stay is annulled with respect to Movant's actions against the Property and the November 2, 2010 foreclosure sale is validated to the extent otherwise valid under Georgia law. Movant is authorized to record its Deed Under Power of Sale and exercise any of its state law remedies.

It is **FURTHER ORDERED** that Movant's request for attorneys' fees is **DENIED**.

The Clerk shall serve a copy of this Order upon Debtor, Movant, counsel for Movant, the Chapter 13 Trustee, and the parties on the attached distribution list.

END OF DOCUMENT

Distribution List

Richard Valldejuli
Valldejuli & Associates, LLC
Suite A
2199 Lenox Road, NE
Atlanta, GA 30324

Terrance Beasley
2868 Llotd Road
Decatur, GA 30034