



**IT IS ORDERED as set forth below:**

**Date: December 13, 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         |
|                                  | : |                     |
| <b>MARIA BRYANT,</b>             | : | <b>10-95778-MGD</b> |
|                                  | : |                     |
| Debtor.                          | : | CHAPTER 13          |
| -----                            | : |                     |
|                                  | : |                     |
| <b>GMAC MORTGAGE, LLC,</b>       | : |                     |
|                                  | : |                     |
| Movant,                          | : |                     |
| v.                               | : | CONTESTED MATTER    |
|                                  | : |                     |
| <b>MARIA BRYANT</b>              | : |                     |
| <b>MARY IDA TOWNSON, CHAPTER</b> | : |                     |
| <b>13 TRUSTEE,</b>               | : |                     |
|                                  | : |                     |
| Respondents.                     | : |                     |

**ORDER CONFIRMING NO AUTOMATIC STAY IS IN EFFECT**

GMAC Mortgage, LLC (“Movant”) seeks an Order confirming the automatic stay is not in effect. Movant filed a “Motion for Order Under 11 U.S.C. § 109(g)(2) Confirming no Automatic Stay is in Effect” (“Motion”) on December 8, 2010. (Docket No. 6). The Motion states that Debtor’s prior Chapter 13 case, 10-13364-WLH, was voluntarily dismissed on December 1, 2010, following Movant’s Motion for Relief From Stay. (Case No. 10-13364-WLH. Docket Nos. 27 & 30). Movant’s Motion was scheduled for hearing on December 9, 2010. (Case No. 10-13364-WLH. Docket No. 27). Movant sought relief from the automatic stay with respect to the real property commonly known as 250 Pharr Rd. NE, Unit 1310, Atlanta, Fulton County, Georgia (“Property”). Debtor filed the above-styled Chapter 13 case on December 2, 2010.

Pursuant to § 109(g)(2), Debtor is ineligible to be a debtor. Section 109(g)(2) provides:

Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

....

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

Debtor’s ineligibility does not necessarily mean that the automatic stay is not in effect with respect to the Property. *See, e.g., In re Ross*, 338 B.R. 134, 137-38 & n.5 (Bankr. N.D. Ga. 2006). However, under § 362(b)(21), no stay is in effect with respect to the Property. Section 362(b)(21)(A) states:

The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

...

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109 (g) to be a debtor in a case under this title

Based on Debtor's ineligibility under § 109(g) and § 362(b)(21), it is hereby

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

It is **FURTHER ORDERED** that Debtor's petition in the above-styled Chapter 13 case did not invoke the automatic stay with respect to Movant's acts to enforce its security interest in the Property.

The Clerk shall serve a copy of this Order upon Movant, Respondents, and their respective counsel.

**END OF DOCUMENT**