



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

**Date: July 08, 2011**

**Paul W. Bonapfel**  
**U.S. Bankruptcy Court Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE: :  
JOSE I. and GIOVANA M. BUILES, : Case No. 11-56714-pwb  
Debtors. : Chapter 7  
:

**ORDER**

Wells Fargo Bank, NA, (“Wells Fargo”) held a security deed on real property owned by the Debtors known generally as 2662 Back Creek Chase, Dacula, Georgia (the “Property”) and conducted a foreclosure sale pursuant to a power of sale in the security deed at 11:10 a.m. on March 1, 2011, at which it was the high bidder. The Debtors filed this Chapter 7 bankruptcy case on the same day, but at 3:41 p.m., after the foreclosure sale.

Wells Fargo has filed a motion [11] seeking a determination that its foreclosure sale was valid to the extent it is valid under state law and that the Property is not property of the estate. The Debtors oppose the motion on the ground that Wells Fargo has not established that the foreclosure sale was concluded. They contend, therefore, that the Property was property of the estate at the time of the filing of their case.

The motion thus presents the legal question whether, under Georgia law, the conclusion of the bidding at a foreclosure sale at which the foreclosing lender is the successful bidder, without more, results in the termination of any interest of the borrower in the property. At a hearing held on May 4, 2011, the parties agreed that the Court could decide this legal question on the basis of the undisputed facts just recited.

It is unclear under Georgia law as to whether the mere conclusion of bidding at a foreclosure sale terminates a debtor's equity of redemption when the lender is the high bidder. Compare *Federal Deposit Insurance Corp. v. Dye*, 642 F.2d 837 (5<sup>th</sup> Cir., Unit B, April 17, 1981)<sup>1</sup> and *Chase Home Finance, LLC v. Geiger (In re Geiger)*, 340 B.R. 422 (Bankr. M.D. Ga. 2006) with *In re Dillard*, 2007 WL 521888 (Bankr. M.D. Ga. 2007); *First Nationwide Mortgage Corp. v. Davis (In re Davis)*, 1998 WL 34066146 (Bankr. S.D. Ga. 1998); *Sanders v. Amsouth Mortgage Co. (In re Sanders)*, 108 B.R. 847, 849 (Bankr. S.D. Ga. 1989); and *Pearson v. Fleet Finance Center, Inc.*, 75 B.R. 254, 255 (Bankr. N.D. Ga. 1985).

The circumstances of this case make it unnecessary for the Court to decide this legal issue. The Chapter 7 trustee has filed a report of no distribution, indicating that the estate has no interest in the Property. The time for objections to the Debtors' discharges or to determination of dischargeability of certain debts has expired, and the case is ready for closing. The Debtors' Schedule D reflects that the Property has a value at least \$36,000 less than the amount of the debt, so they clearly have no economic interest in the Property. They filed their case under Chapter 7, not Chapter 13, clearly indicating that they have no interest in a payment plan that could permit them to retain the Property.

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<sup>1</sup>Decisions rendered by the Fifth Circuit prior to October 1, 1981, are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981).

In these circumstances, it would be inequitable and unjust to require the Lender to repeat its foreclosure sale, even if the Court were to determine that it had not been concluded. The proper remedy here, therefore, is to grant retroactive relief from the automatic stay by annulling it as of the date of the filing of the petition with regard to any acts relating to the foreclosure of the Property. *See In re Howard*, 391 B.R. 511 (Bankr. N.D. Ga. 2008).

Accordingly, it is hereby **ORDERED and ADJUDGED** as follows:

1. To the extent that the automatic stay of 11 U.S.C. § 362(a) was in effect and applied to the foreclosure of the Property, it is hereby annulled, pursuant to 11 U.S.C. § 362(d), retroactively to the date of the filing of the Debtors' petition initiating this case, March 1, 2011.

2. Without limiting the generality of the foregoing, the foreclosure proceedings with regard to the Property on March 1, 2011, and all legal consequences with regard thereto, shall not be affected by the filing of this case or by the application of the automatic stay of 11 U.S.C. § 362(a) but shall instead be determined as if the automatic stay did not come into effect.

**[End of Order]**