

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 01-65822
Peachtree Stratford, LP,	
	CHAPTER 11
Debtor.	JUDGE MASSEY

ORDER DENYING MOTIONS TO REOPEN CASE AND FOR RELIEF FROM STAY

The Court dismissed this case in June 2003 on the motion of Phoenix Life Insurance Company, a creditor secured by property located on Peachtree Road in Atlanta, Georgia titled in the name of Peachtree Stratford, LP (“PSLP”), the Debtor in this case. According to pleadings recently filed in this case, Phoenix ran one of four foreclosure advertisements after the hearing on the dismissal motion held on June 3, 2003, but prior to the entry of the order of dismissal on June 9, 2003. PSLP did not appeal the order, and it became final and not subject to appeal on June 20, 2003. In July, 2003, Phoenix foreclosed on the property and sold it. The building was demolished, the property was sold again, and the new purchaser is now in the process of constructing a new building on the property. Imagine that entity’s surprise to learn that PSLP contends that it is still the owner of the property.

PSLP contends that the foreclosure sale was invalid because, it says, Phoenix violated the automatic stay intentionally and willfully by running that first advertisement prior to the entry of the dismissal order. It further contends that acts in violation of the automatic stay are void. PSLP

commenced litigation in the State Court of Fulton County, Georgia seeking to establish its rights in the property and wants the State Court to determine its rights, if any, in the property.

The contention of PSLP that Movant deliberately and willfully violated the automatic stay is open to question. Under section 362(c)(2)(B), the automatic stay “continues until the . . . time the case is dismissed.” This Court granted Phoenix’s motion to dismiss on June 3, 2005 at a hearing held in open court attended by counsel for Phoenix and counsel for the Debtor. The only relief demanded in the motion and the only relief granted was dismissal of the case. The Eleventh Circuit has held in a bankruptcy case that “a court's order is complete when made, not when it is reduced to paper and entered on the docket.” *In re International Administrative Services, Inc.*, 408 F.3d 689, 700 (11th Cir. 2005). This raises the issue, which is not before this Court, whether the automatic stay was discontinued on June 3, 2003, at least as between the parties to the motion to dismiss. Phoenix argues that the State Court lacks jurisdiction to modify the automatic stay imposed under section 362 of the Bankruptcy Code; nonetheless, it is clear that a state court has jurisdiction to determine the extent of the automatic stay. *See, e.g., NationsBank of Georgia v. Shaheen and Co.*, 264 Ga. 533, 448 S.E.2d 688 (1994).

Against this factual backdrop, Phoenix filed motions here to reopen this case under section 350(b) of the Bankruptcy Code, 11 U.S.C. § 350(b), and to annul or lift the automatic stay as of June 3, 2003. The Court held a hearing on the motions on October 25, 2005.

As announced at the hearing, the Court lacks the power under section 350 to reopen a dismissed case to take action in that case as if it had never been dismissed. *In re Income Property Builders, Inc.*, 699 F.2d 963 (9th Cir.1982), *reh'g denied*, 699 F.2d 965 (9th Cir.1983); *In re Critical Care Support Services*,. 236 B.R. 137,140-141 (E.D.N.Y.1999); *In re Woodhaven, Ltd.*;

139 B.R. 745, 748 (Bankr. N.D.Ala. 1992); *Matter of Garcia*, 115 B.R. 169 (Bankr. N.D.Ind.1990). For this reason, the Court must deny the motion to reopen. It follows that the motion to annul or modify the stay is moot. It might or might not be possible for Movant to take a different procedural approach to bring the issues raised in the motions before this Court.

For these reasons, it is

ORDERED that the motion of Phoenix Life Insurance Company to reopen this case pursuant to 11 U.S.C. § 350(b) is DENIED and its motion for relief from the automatic stay is DENIED as moot.

Dated: October 25, 2005.


JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE