

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF: : CASE NUMBER: A05-95808-PWB
: :
ANGELA CARTER, : :
: : IN PROCEEDINGS UNDER
: : CHAPTER 13 OF THE
Debtor. : BANKRUPTCY CODE

**ORDER DENYING MOTION TO RECONSIDER; DENYING MOTION TO VACATE
FORECLOSURE SALE; AND REMANDING CASE**

On January 3, 2007, over 15 months since this case was dismissed, the Debtor filed a "Motion to Reconsider Bankruptcy Petition," "Motion to Vacate Foreclosure Sale," "Petition for Removal and Answer," and "Notice of Removal and Federal Stay pursuant to 28 U.S.C.A. 1446(D) & 28 U.S.C.A. 1452." On January 4, 2007, the Debtor filed an "Amended Notice of Removal and Federal stay Pursuant to 28 U.S.C.A. 1446(D) & 28 U.S.C.A. 1452" to clarify that she is seeking to remove her dispossessory proceeding to the bankruptcy court, not the district court. For the reasons stated herein, the Debtor's motions are denied and the state court case which the Debtor has attempted to remove is remanded to the State Court of Dekalb County, Georgia.

The Debtor filed the above-styled case on September 6, 2005. On September 20, 2005, the Court entered an Order of dismissal in the case because the Debtor was ineligible for relief under Title 11 based upon an Order entered in her previous case, A05-90607-PWB, which dismissed the case pursuant to 11 U.S.C. §§ 105 and 109(g) and rendered her ineligible to file for relief under Title 11 for 180 days from the entry date of the Order, that being June 24, 2005. The Debtor did not file a motion for reconsideration or an appeal of the dismissal Order.¹

¹The Debtor has a pending Chapter 13 bankruptcy case, that being 06-74851-PWB, filed November 17, 2006. A hearing on NetBank's "Motion for *In Rem* Relief from the Automatic Stay, Motion to Hold Case Open Until Order is Entered, and Request for Waiver of Bankruptcy Rule 4001(a)(3)" is scheduled for January 10, 2007.

The Debtor has now filed a "Motion to Reconsider Bankruptcy Petition," which the Court construes as a motion to reopen the case, so that she may contest the validity of a foreclosure sale conducted by NetBank and remove an action pending in the State Court of Dekalb County, Georgia. The Court concludes, however, that this motion must be denied. The Debtor has failed to pay the required fee for reopening a bankruptcy case. Further, reopening this case would appear to serve no purpose inasmuch as the Debtor was ineligible for bankruptcy relief at the time she commenced the case. Because the Court declines to reopen the case, there is no basis for considering the "Motion to Vacate Foreclosure Sale." Accordingly, this motion is denied as well.

Finally, the Debtor has filed a "Petition for Removal and Answer," "Notice of Removal and Federal Stay pursuant to 28 U.S.C.A. 1446(D) & 28 U.S.C.A. 1452," and "Amended Notice of Removal and Federal stay Pursuant to 28 U.S.C.A. 1446(D) & 28 U.S.C.A. 1452." It appears that the Debtor is attempting to remove a dispossessory proceeding, *NetBank v. Angela Carter*, Case No. 05-DO-84656, from the State Court of Dekalb County, Georgia, though the pleadings do not comply with the requirements of FED. R. BANKR. P. 9027. Based on the record of the United States District Court, Northern District of Georgia, it appears that the Debtor has removed this dispossessory action to the District Court on multiple occasions. On November 3, 2006, in *NetBank v. Angela Carter*, Civil Action No. 1:06-CV-2558-CAP, the District Court entered an Order on a 28 U.S.C. § 1915(e)(2) frivolity screening prompted by the Debtor's most recently filed notice of removal of the dispossessory action. The District Court set forth the history of the Debtor's removal attempts and appeals and concluded that it did not have subject matter jurisdiction of the dispossessory action and that the action was frivolous. The court observed that the Debtor had "systematically used the federal court system in an attempt to avoid the foreclosure of her property" and restricted her from filing any civil complaints in the district court or removing any cases to the district court without payment of the full statutory filing fee. (November 3, 2006

Order at 3-4). In a separate action in which the Debtor removed the same state court dispossessory action, that being *NetBank v. Angela Carter*, Civil Action No. 1:06-CV-200-CAP, the District Court entered an order on November 21, 2006, based on the Debtor's vexatious conduct, which provided that "any subsequent removal actions filed by [the Debtor] must be accompanied by a \$10,000 cash bond or corporate surety bond acceptable to the Clerk sufficient to cover the costs of any further actions found to be wrongfully removed. The Clerk is DIRECTED not to accept for filing any removal actions not accompanied by such a bond." (November 21, 2006 Order at 2).

The Court takes judicial notice of these orders. It is the clear intent of the District Court that this dispossessory proceeding remain in state court. This Court can think of no reason why that should not be the case here. Therefore, to the extent the Debtor has attempted to remove the dispossessory proceeding to the Bankruptcy Court, this Court remands this action to the State Court of Dekalb County, Georgia, where it was originally filed. Pursuant to 28 U.S.C. § 1452(b), this order remanding the dispossessory proceeding is not reviewable by appeal or otherwise by the court of appeals under 28 U.S.C. §§ 158(d), 1291, or 1292. Accordingly, it is

ORDERED that the Debtor's motion to reconsider is DENIED; it is

FURTHER ORDERED that the Debtor's motion to vacate foreclosure sale is DENIED;
and it is

FURTHER ORDERED that to the extent the Debtor sought removal of *NetBank v. Angela Carter*, Case No. 05-DO-84656, from the State Court of Dekalb County, Georgia, such proceeding is REMANDED to the State Court of Dekalb County, Georgia, where the action was originally filed. Pursuant to 28 U.S.C. § 1452(b), this order remanding the dispossessory proceeding is not reviewable by appeal or otherwise by the court of appeals under 28 U.S.C. §§ 158(d), 1291, or 1292.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Atlanta, Georgia, this 5 day of January, 2007.

A handwritten signature in black ink, appearing to read "Paul W. Bonapfel", is written over a horizontal line.

PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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