

IT IS ORDERED as set forth below:



Date: September 28, 2012

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

**W. Homer Drake**  
**U.S. Bankruptcy Court Judge**

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

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
PHILIP HAROLD BEEGLE, JR.	:	11-13716-WHD
	:	
Debtor.	:	
	:	
	:	
	:	
	:	
SYNOVOUS BANK	:	CONTESTED MATTER
	:	
Movant,	:	
	:	
V.	:	
	:	
	:	IN PROCEEDINGS UNDER
PHILIP HAROLD BEEGLE, JR.	:	CHAPTER 11 OF THE
	:	BANKRUPTCY CODE
Respondent	:	

**ORDER**

Before the Court are the Motions to Lift Automatic Stay filed by Synovous Bank

(formerly known as Columbus Bank and Trust Company) as successor in interest through name change and by merger with Bank of Coweta (hereinafter “Movant”) in the above-captioned bankruptcy proceeding. After conducting a hearing on Movant’s motions on August 3, 2012, the Court took this case under advisement. At issue in this controversy is whether Movant is entitled to relief from the automatic stay. This matter is a core proceeding, which falls within the subject matter jurisdiction of the Court. *See* 28 U.S.C. § 157(b)(2)(G); § 1334.

#### **FINDINGS OF FACT**

On November 7, 2011, Dr. Philip Harold Beegle, Jr. (hereinafter “Respondent”) filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. On March 1, 2012, Movant filed a Motion for Relief from Stay seeking relief from the automatic stay concerning several loans held by the Respondent. The Movant seeks relief from the automatic stay regarding loan No.: xxxxx779/11, in which a 2006 Robinson R44 helicopter secures Movant’s first priority lien (hereinafter “helicopter loan”). The helicopter loan is cross-collateralized with a Note and Security Agreement No.: xxxxx774/22 (hereinafter “Coweta County Property loan”) which is initially secured by two pieces of real property pursuant to a Commercial Deed to Secure Debt: 45.46 acres known as Tax Parcel No. 044 5254 001, (hereinafter “Coweta County Tract 1”) and 117.6 acres known as Tax Parcel No. 044 5225 001 (hereinafter “Coweta County Tract 2”) (collectively “Coweta County Property”).

Additionally, the Movant filed a Motion for Relief from Stay on March 14, 2012 seeking relief from the automatic stay in relation to the Coweta County Property and real property known as 9047 Selborne Lane, Fulton County, Georgia (hereinafter “Fulton County Property”), which secures Home Equity Line of Credit Agreement No. xxxxx6883 pursuant to a Commercial Deed to Secure Debt. The maker of the note for the Fulton County Property and Coweta County Property is Respondent, P.H. Beegle, Jr. M.D. The maker of the Helicopter note is Great Southeastern Aircraft Leasing Co, P.H. Beagle Jr., M.D., President and P.H. Beegle, Jr., M.D.

In support of Movant’s Motions for Relief of Stay, the Movant argues that it is entitled to relief from stay because (1) the Movant lacks adequate protection of its interest in the property, and (2) the Debtor has little or no equity in the property and the property is not necessary for an effective reorganization under Chapter 11 of the United States Bankruptcy Code. The Respondent opposes the Motions for Relief based on his claim that he has provided Movant adequate protection, the properties have equity, and/or the properties are necessary for an effective reorganization of the Bankruptcy estate.

The Respondent is in possession of a 2006 Robinson R4 helicopter (hereinafter “helicopter”), which is the collateral of the helicopter loan that is cross collateralized with the Coweta County Property Loan. Movant’s Ex. 8, at 2. The helicopter is currently inoperable due to engine failure. Trial Tr. 04:06:30, August 13, 2012. The fair market value of the helicopter “as-is”, without repairing the engine, has been appraised for

\$203,235. Movant's Ex. 10, at 1. Once repaired, the fair market value of the helicopter should be between \$216,000 and \$270,000. Trial Tr. 3:40:50, August 13, 2012. The principal amount of the Helicopter Loan was \$263,955.11. Movant's Ex. 8, at 1.

The Coweta County Property comprises over 163 acres of property that incorporates part of Cedergate Farms and is subject to a first priority Commercial Deed to Secure Debt and Security Agreement held by Synovus Bank. As of February 1, 2012, the balance of the Coweta County Property loan was \$844,517.62 (of which \$835,453.39 is principal). Movant's Ex. 2, at 10. The Coweta County Tract 1 property comprises approximately 45.6 acres located in Coweta County zoned for rural agricultural use. Trial Tr. 2:48:25, August 13, 2012. Based on a recent appraisal, the fair market value for Coweta County Tract 1 is \$115,000. Trial Tr. 2:51:22, August 13, 2012.

The Coweta County Tract 2 property comprises approximately 117.6 acres of unimproved land and is zoned for rural agricultural use. Trial Tr. 2:49:18, August 13, 2012. A recent appraisal stated that the fair market value for Tract 2 is \$175,000. Trial Tr. 2:51:30, August 13, 2012. However, that appraisal assumed that Tract 2 had road access, which it does not possess, and the value should be reduced accordingly. Trial Tr. 3:06:30, August 13, 2012. Based on the appraisal, with an adequate deduction for lack of access, the fair market value of the Coweta County Property, subject to loans held by Synovus Bank, is less than \$290,000. Trial Tr. 3:13:14, August 13, 2012.

The Fulton County Property is subject to a first priority lien, in the amount of

\$412,929.20, held by a deed to secure debt in favor of Bank of America. Resp't's Bankr. Pet., Schedule D. Synovous Bank holds a second in priority lien on the Fulton County Property in the form of a home equity line of credit with a balance, as of February 1, 2012, of \$75,808.56 (of which \$74,283.77 is principal). According to Fulton County Tax Assessors, the Fulton County Property is valued at \$481,700. Movant's Ex. 5, at 1.

### **CONCLUSIONS OF LAW**

Section 362(a)(1) of the Code provides that the filing of a bankruptcy petition operates as a stay as to the "commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1). Additionally, the automatic stay prevents an entity from taking "any act to obtain property of the estate" or to "exercise control over property of the estate." 11 U.S.C. § 362(a)(3).

#### *Adequate Protection under Section 362(d)(1) of the United States Bankruptcy Code.*

The first issue before the Court is whether Synovous Bank is adequately protected, and if not, entitled to relief from stay as to the helicopter, Coweta County Property and, the Fulton County Property. Adequate protection is necessary when the value of the collateral at the time of the petition is depreciating or declining. However, where instances arise with a potential for damage to the property, resulting in a decline in value, the Court

may require protection against such loss. 11 U.S.C. § 362(d)(1) provides that “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . 1) “for cause, including the lack of adequate protection of an interest in property of such party in interest,” 11 U.S.C. § 362(d)(1).

The Court finds, according to the evidence presented at the hearing, that the properties are not declining in value. Trial Tr. 03:14:14, August 13, 2012; Trial Tr. 03:38:43, August 13, 2012; Trial Tr. 04:01:18, August 13, 2012. Because of the conceivable damage to the properties through the inactivity of the Respondent, section 361(3) of the United States Bankruptcy Code authorizes the Court to find that parties are adequately protected by “granting relief, other than an administrative priority claim, as would give the objecting party the indubitable equivalent of the objector’s interest in the property in question.” 11 U.S.C. § 361(3). Courts have held that adequate protection under this third option may be informal and can include the giving of information, maintenance of insurance, payment of senior liens, replacement of management, and the like. See, e.g., In re Carpet Center Leasing Co., Inc., 4F.3d 840 (11<sup>th</sup> Cir. 1993); In re Stien, 19 B.R. 458 (Bankr. E.D. Pa. 1982) (growing crops and reproducing cattle held to constitute adequate protection for use of cash collateral).

The Court finds that the helicopter and the real properties owned by the Respondent in Coweta County and Fulton County are adequately protected, as these properties are not

declining in value. Additionally, through the payment of property taxes and the providing of insurance, Respondent has protected creditors from unrealized harm to the value of the real properties in accordance with 11 U.S.C. § 362(d)(1). Respondent is also paying taxes and insurance on the helicopter. Furthermore, the Respondent stated that he intends to repair the engine of the helicopter, which would result in an increase in the value of the collateral, providing additional protection. Trial Tr. 04:07:28, August 13, 2012. The Respondent stated that all properties have been properly maintained and that he intends to pay all property taxes due as of 2012. Trial Tr. 04:07:47, August 13, 2012. The Court, therefore, holds that the property owned by the Respondent is adequately protected within the definition of section 361(3).

Section 362(d)(2) of the United States Bankruptcy Code.

Next, the Court will address whether Movant is entitled to relief from the automatic stay as to the helicopter and real property located in Coweta County and Fulton County in accordance with section 362(d)(2). Section 362(d)(2) provides that “[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay 2) "with respect to a stay of an act against property . . . if (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization". 11 U.S.C. § 362(d)(2).

Lack of Equity under Section 362(d)(2)(A) of the United States Bankruptcy Code.

The Court finds, under the facts discussed above, that the collateral in this proceeding secures debts that exceed the actual fair market value. The helicopter loan does not have equity since the debt exceeds the fair market value of the helicopter and the loan is cross collateralized with the Coweta County Loan. The balance of the helicopter loan as of February 1, 2012 was \$250,305.73 (of which \$248,758.65 is principal). Movant's Ex. 8, at 10. Based on the information provided in Court from the Movant's appraiser, the value of the helicopter is "between \$216,000 and \$270,000," depending on the functional use of the collateral. Trial Tr. 3:40:50, August 13, 2012. However, the value of the helicopter in the current state of disrepair is \$203,000. Movant's Ex. 10, at 1. Given the current deficiency on the helicopter loan, as well as the current value of the collateral, the Court finds that the helicopter loan does not have equity. Additionally, the helicopter loan is cross collateralized with the Coweta County Property Loan, which also lacks equity per the discussion below, and therefore completely eradicates any equity that could exist.

The appraisal of the Coweta County Property indicated that the fair market value of Coweta County Tract 1 is \$115,000 and the value of Coweta County Tract 2 is \$175,000. Trial Tr. 2:51:22, August 13, 2012. The fair market value of the Coweta County Property, with an adequate deduction for lack of access, is less than \$290,000. Trial Tr. 3:13:14, August 13, 2012. Synovus Bank has a secured claim on the Coweta County Property in excess of \$844,517.62. The debt owed to Synovus Bank exceeds the fair



market value of the property and, therefore has no equity.

The parties have jointly stated that the Fulton County Property does not have any equity. Trial Tr. 2:10:24, August 13, 2012. As stated above, the combined debt of the first mortgage held by Bank of America on the Fulton County Property and the Home Equity Line of Credit held by Synovus Bank is greater than \$520,000, which sum is greater than the scheduled fair market value of the house (\$482,000). Resp't's Bankr. Pet., Schedule D; Movant's Ex. 5, at 1; Trial Tr. 2:29:29, August 13, 2012. Therefore, the Court finds that no equity exists in the property.

Necessary for Effective Reorganization under section 362(d)(2)(B) of the United States Bankruptcy Code.

In the event that the property lacks equity, section 362(d)(2) of the Bankruptcy Code requires the Court to determine whether the property is necessary for an effective reorganization. Inasmuch as the Court has found that the helicopter, the Coweta County Property, and the Fulton County property all lack equity, the question becomes whether the properties are necessary for an effective reorganization.

In the Court's opinion, the helicopter, the Coweta County Property, and the Fulton County Property are all necessary for an effective reorganization of Respondent's Bankruptcy estate. In order for Respondent to prove that the property is necessary for an effective reorganization it must show that "it is not merely conceivable for an effective reorganization, but the property is essential for an effective reorganization that is in prospect." See U.S. Sav. Ass'n. of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484

U.S. 365, 375-76 (1988). The Supreme Court in the Timbers case further added that “there must be a reasonable possibility of successful organization within a reasonable time.” Id.

By virtue of the evidence presented at the hearing, the Court finds that the helicopter is necessary for an effective reorganization. The Respondent is a plastic surgeon who lives in Newnan, GA and works in Atlanta, GA. Trial Tr. 3:47:50, August 13, 2012. He stated that he is able to save two hours by commuting to work in a helicopter, which consequently allows him to more efficiently operate his medical practice, resulting in greater income necessary to fund the reorganization of the Bankruptcy estate. Trial Tr. 04:06:20, August 13, 2012. Therefore, the helicopter is essential for an effective reorganization of the Bankruptcy estate.

Likewise, the Coweta County Property is necessary for an effective reorganization. As stated above, the Coweta County Property (Coweta County Tract 1 and Coweta County Tract 2) comprises a part of Cedergate Farms, which is owned by the Respondent. The Respondent testified that Cedergate Farms is a working farm that produces income from hay and cattle operations, Trial Tr. 3:49:50, August 13, 2012, and stated further that the income from Cedergate Farms will be used to fund the reorganization of the Bankruptcy estate. Trial Tr. 04:12:58, August 13, 2012. Since the Coweta County Property is essential for farming operations associated with Cedergate Farms, Trial Tr. 4:00:15, August 13, 2012, the Coweta County Property is also necessary for an effective reorganization of the Bankruptcy estate.

The Court finds that the property located in Fulton County is necessary for an effective reorganization. The Fulton County Property is subject to a first mortgage held by the Bank of America and a second mortgage held by Synovous Bank, with debts totaling in excess of \$520,000. The Respondent has hired a real estate agent with the intent to sell the property in order to pay off both the first and second mortgage debts, Trial Tr. 4:02:15, August 13, 2012, and has received several offers for the property, including two offers for \$450,000 and \$480,000. Trial Tr. 4:02:03, August 13, 2012. Because nonbankruptcy remedies often result in lower sales prices and because of the effort Respondent has already displayed in marketing the property, the Court finds that, for now, the Respondent is in the better position to sell the house in order to pay off the first mortgage held by Bank of America and the second mortgage held by Synovous Bank. Therefore, the Court holds that the Fulton County Property is necessary for an effective reorganization.

The Court finds that the Movant is adequately protected in all these properties according to section 362(d)(1) of the Bankruptcy Code, for although the Court finds no equity in the properties, the Court does find that they are all necessary for an effective reorganization in accordance with section 362(d)(2)(B) and the factors set forth in U.S. Sav. Ass'n. of Texas, 484 U.S. 365, 375-76 (1988). Consequently at this time, the Court denies the Movant's Motions for Relief from Stay as to the Helicopter, the Coweta County Property, and the Fulton County Property. However, should the Respondent fail to proceed

promptly in formulating and filing his plan, the Court will reconsider the motions filed by the Movant.

Pursuant to the forgoing, IT IS THE ORDER OF THIS COURT that the Motions for Relief from Stay filed by MOVANT, Synovous Bank, are hereby DENIED.

**END OF DOCUMENT**

## **DISTRIBUTION LIST**

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