

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CASE NO. 04-97724
)
RONALD E. ALEXANDER,) CHAPTER 13
)
Debtor.)

ORDER

This Chapter 13 case came before the Court on March 29, 2005 for a hearing on a motion filed by the debtor *pro se* for a stay pending appeal of the Court's Order of January 24, 2005. In the January 24, 2005 Order, the Court granted the request of creditor Homecomings Financial and Soon Napur, Inc. and Navin S. Patel to have this case dismissed under 11 U.S.C. § 109(g)(1) with a finding that the debtor is ineligible for bankruptcy relief for one hundred eighty (180) days. Debtor filed a notice of appeal on January 28, 2005.

In early March, 2005, it came to the attention of the Court that the debtor had filed a one-line pleading entitled "Motion of Stay" on January 28, 2005, the same day debtor filed the notice of appeal of the Order dismissing this Chapter 13 case. The Court entered an Order with respect to that "motion" on March 9, 2005, concluding that debtor's one-sentence motion did not show any of the factors relevant in a motion for a stay pending appeal and the motion was denied. The Order stated that it was entered without prejudice to the debtor's right to file a proper motion under Rule 8005 of the Federal Rules of Bankruptcy Procedure. On March 22, 2005, the debtor filed a "Motion for a Stay" in the Bankruptcy Court, rather

than the District Court, and pursuant to Rule 8005, the Bankruptcy Court scheduled a hearing on March 29, 2005.

At the March 29, 2005, hearing, debtor appeared as did Homecomings Financial through its counsel, Sidney Gelertner; Ocwen Federal Bank FSB through its counsel, Lynn Wood; Soon Napur, Inc. and Navin Patel, through their counsel, Marilyn Bright; and the Chapter 13 Trustee, James Bone. Debtor's essential request was that the Court prevent creditors from foreclosing on real estate, as he argued that his real estate has significant equity which could be realized for the benefit of creditors. Homecomings Financial has scheduled a foreclosure sale for April 5, 2005. No other creditors appeared to announce any planned foreclosure for April of 2005.

It is clear that this debtor cannot perform in this Chapter 13 case. The debtor has made no payments to the Chapter 13 Trustee, and debtor's wife has had three unsuccessful Chapter 13 cases filed between October of 2003 and August of 2004. Accordingly, it is entirely appropriate that this debtor be ineligible for filing any reorganization case under either Chapter 13 or Chapter 11 for one hundred eighty (180) days. *See* 11 U.S.C. § 109(g).

The question arises as to whether debtor should be permitted to file a Chapter 7 in order to have a Chapter 7 trustee liquidate any real estate that might have equity for distribution to unsecured creditors. Based on the presentations made by counsel and the debtor, it is appropriate to modify the January 24, 2005 Order, which provided that the debtor is ineligible for bankruptcy relief under all chapters for a period of 180 days, and to allow the debtor to file for relief under Chapter 7. If, however, the debtor files a Chapter 7 case prior to

April 5, 2005, Homecomings Financial is permitted to cry out the foreclosure sale scheduled for April 5, 2005, but it may not record any deed until it has either received written permission from the Chapter 7 Trustee or has been granted relief from the automatic stay to do so.

Accordingly, it is ORDERED that

(1) the Order of January 24, 2005 is modified to allow the debtor to file a Chapter 7 case at this time, but the debtor is prohibited from filing bankruptcy under any other Chapter for 180 days from the date of the entry of this Order;

(2) Homecomings Financial may cry its foreclosure sale on April 5, 2005, but in the event the debtor files a Chapter 7 case before that date, Homecomings Financial may not record any deed without written permission from the Chapter 7 Trustee or Court approval; and

(3) any other relief requested in debtor's motion for stay pending appeal is denied.

IT IS SO ORDERED, this 30th day of March, 2005.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order mailed by United States Mail to the following:

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Date: March 30, 2005