



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

**Date: October 24, 2014**

**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>          |
|   | : |                             |
| ANTWANE DEMETRIS ROBINSON               | : | 13-10244-WHD                |
| ARMEALIA FLORENCE ROBINSON,             | : |                             |
|   | : |                             |
| Debtors.                                | : |                             |
|   | : |                             |
| U.S. BANK, N.A., as legal title trustee | : | <b>CONTESTED MATTER</b>     |
| for Truman 2013 SC4 Title Trust,        | : |                             |
|   | : |                             |
| Movant.                                 | : |                             |
|   | : |                             |
| v.                                      | : |                             |
|   | : |                             |
| ANTWANE DEMETRIS ROBINSON               | : | <b>IN PROCEEDINGS UNDER</b> |
| ARMEALIA FLORENCE ROBINSON,             | : | <b>CHAPTER 13 OF THE</b>    |
|   | : | <b>BANKRUPTCY CODE</b>      |
| Respondents.                            | : |                             |

**ORDER**

The above-referenced Chapter 13 case comes before the Court on the motion of U.S. Bank, N.A. (hereinafter the "Movant") to validate a foreclosure sale

conducted on August 5, 2014, or, alternatively, to annul the automatic stay (hereinafter the “Motion”). The Debtors oppose the relief requested. At a hearing held on October 16, 2014, the Court orally ruled in favor of the Movant. This Order memorializes that ruling for the reasons set forth hereafter.

### **Background**

On February 1, 2013, the Debtors filed a petition for relief under Chapter 13 of the United States Bankruptcy Code.<sup>1</sup> The Court confirmed the Debtors’ Chapter 13 plan of reorganization (hereinafter the “Plan”) on July 25, 2013. After the Debtors defaulted on their obligation to make all Plan payments as required, on November 22, 2013, the Chapter 13 Trustee (hereinafter the “Trustee”) moved to dismiss the case. The Court entered a “strict compliance” order, under which the Debtors were required to make all payments over the next twelve months in a timely manner (hereinafter the “Order”). Per the Order, the Debtors’ failure to submit timely payments authorized the Trustee to submit a supplemental report recommending dismissal, upon receipt of which, the Clerk of Court was instructed to enter a dismissal order without further notice or hearing. On June 2, 2014, the Trustee submitted a supplementary report, stating that the Debtors had become delinquent in the amount of \$1,565.00 and requesting dismissal of the case. The

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<sup>1</sup> 11 U.S.C. § 101 *et. seq.*

Court dismissed the case by order entered on June 3, 2014 (hereinafter the "Dismissal Order").

On June 16, 2014, the Debtors filed a motion to vacate the Dismissal Order, and using the Court's open-calendar procedure, self selected a hearing date of July 24, 2014. The attached certificate of service indicates that the Debtors served the motion to vacate the Dismissal Order on the Trustee and "all creditors and interested parties," but does not actually identify the parties or addresses served.<sup>2</sup>

The Movant holds a first priority mortgage on the Debtors' real property, commonly referred to as 421 Jefferson Street, Lagrange, Georgia 30240 (hereinafter the "Property"). Following dismissal of the Debtors' case, the Movant scheduled a foreclosure sale of the Property for August 5, 2014.

On July 24, 2014, the Court held the hearing on the Debtors' motion to vacate the Dismissal Order. No party filed a written response or appeared in opposition to

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<sup>2</sup> The Court makes note of this only because it cannot be certain that all service requirements were met. Rule 9014 provides that reasonable notice and opportunity for hearing is required before the Court may dispose of a contested matter. See FED. R. BANKR. P. 9014(a). The motion must be served "in the manner provided for service of a summons and complaint by Rule 7004." See FED. R. BANKR. P. 9014(b). Rule 7004(h) requires service of a motion upon an "insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)" to be made by certified mail addressed to an officer of the institution unless: 1) the institution has appeared by its attorney in the action; 2) the court has ordered otherwise; or 3) the institution has waived its right to service by certified mail by designating an officer to receive service. FED. R. BANKR. P. 7004(h).

the Debtors' motion during the calendar call. Accordingly, the Clerk directed the Debtors to submit a proposed order for the Court's review.<sup>3</sup> No order was submitted until August 20, 2014, which, upon receipt, the Court subsequently signed and the Clerk docketed on August 21, 2014 (hereinafter the "August Order"). The August Order states that "the case is reinstated as if the dismissal did not occur." See Ct.'s Order, August 21, 2014, ECF No. 49. The Debtors' motion to vacate the Dismissal Order did not request such extraordinary relief or otherwise put the Movant on notice that the Debtors were seeking retroactive re-imposition of the automatic stay.

During the interim, on August 5, 2014, the Movant foreclosed on the Property. Out of an abundance of caution, and in light of the language used in the August Order, the Movant filed the instant Motion, seeking clarification and, if necessary, relief from the Court. The Movant contends that at the time of the foreclosure, the Property was not property of the estate, and, therefore, the automatic stay was not in effect. Alternatively, if the Court were to find that the stay was in effect, the Movant asks the Court to annul the automatic stay, validate the sale, and permit the Movant to record the deed.

The Debtors filed a written response to the Motion, asserting that the Movant

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<sup>3</sup> Counsel for the Debtors, however, did not request that the Court hear the matter so that it might establish a record, and no oral ruling was rendered by the Court.

knew that the motion to vacate the dismissal had been "granted" at the calendar call, that the Movant was watching for an order to come through up until the foreclosure sale was cried, and, furthermore, that the proposed order was submitted within the time provided by this Court's local rules.

### Legal Conclusions

The issue before the Court, therefore, is whether a foreclosure sale conducted between the time a case is dismissed and the entry of an order vacating the dismissal violates the automatic stay.

Upon filing a voluntary petition under the Bankruptcy Code, a debtor receives the benefit of the automatic stay. [11 U.S.C. § 362(a)]. The stay of an act against property of the estate, such as a foreclosure proceeding on a debtor's residence, continues until such property is no longer property of the estate. See 11 U.S.C. § 362(c)(1). When a case is dismissed, property of the estate reverts in the entity in which such property was vested immediately before the case commenced, and as a result is no longer considered property of the estate. See 11 U.S.C. § 349(b)(3). The automatic stay of an act against a debtor or property of a debtor continues until the case is dismissed, or when a discharge is granted or denied. See 11 U.S.C. § 362(c)(2).

In re Parks, 2005 WL 6491918, at \*2 (Bankr. N.D. Ga. Feb. 4, 2005) (Diehl, B.J.). Consequently, when the Court dismisses a debtor's bankruptcy case, the stay terminates, and a creditor may proceed with foreclosure actions and/or its other legal rights. In re Lomagno, 429 F.3d 16, 17 (1st Cir. 2005).

When a case is reinstated, the automatic stay is also reimposed. In re Parks, 2005 WL 6491918, at \*2. However, reinstatement of a case does not reimpose

retroactively the stay during the period of time the case was dismissed. Id. Creditor actions that take place between dismissal and reinstatement are not affected by the reimposition of the stay. Id. (citing In re Searcy, 313 B.R. 439, 443 (Bankr. W.D. Ark. 2004)). Moreover, while the Code permits courts to grant stay relief retroactively, no authority exists which authorizes courts to impose a stay retroactively. Id.; see also In re Lashley, 825 F.2d 362, 364 (11th Cir. 1987).

In the matter at hand, the foreclosure sale occurred on August 5, 2014, while the case was dismissed and before it was reinstated. Thus, no stay existed at the time of the sale. For the reasons stated above, and because the Movant could have had no notice that the Debtors were requesting such relief, the inclusion of language in the August Order by the Debtors' counsel that purported to reinstate the case "as if the dismissal did not occur" did not retroactively impose a stay during the time the case stood dismissed.

This matter highlights the importance of promptly submitting proposed orders for the Court's review. Contrary to the Debtors' understanding, the Local Rules for the Northern District of Georgia state that proposed orders shall "be submitted to the Bankruptcy Judge within seven days from the date of pronouncement or scheduled hearing . . . ." BLR 9013-2, N.D.Ga. This Court frequently signs "no opposition" orders upon their submission, and in fact did so in this case when the order was eventually submitted on August 20, 2014. Nevertheless, had the August Order been

submitted within the time prescribed by the Local Rules, the August Order would have been received and entered before the scheduled foreclosure sale, thus, reinstating the automatic stay and preventing the sale.

Finally, as to the Debtors' characterization that the Court "granted" the Debtors' motion to vacate on July 24, 2014, when the Court's Clerk directed the Debtors to submit a proposed order, the Court notes that "[o]rders do not become final until they are docketed; [t]he reasons for respecting finality of judgments do not apply to undocketed orders[;] [and] [t]hey cannot be enforced."<sup>4</sup> In re Parks, 2005 WL 6491918, at \*4 (quoting In re Nail, 195 B.R. 922, 930 (Bankr. N.D. Ala. 1996)) (internal quotations omitted). A Court may change its decision until an order is docketed, id., thus underlying the importance of promptly acquiring entry of a written order.

### **Conclusion**

For the reasons stated above, it is hereby

**ORDERED** that the Movant's Motion to validate the foreclosure sale conducted on August 5, 2014, or, alternatively, to annul the automatic stay is **GRANTED**. Any actions taken by the Movant against the Property during the period that this case was dismissed were free from any stay imposed by this Court.

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<sup>4</sup> This is not to say that a party cannot request to have a record made or present the case for an oral ruling.

This Order addresses only the applicability of the automatic stay, as reinstated, to the foreclosure sale conducted by the Movant on August 5, 2014, and makes no determination as to whether the Movant's foreclosure sale complied with otherwise applicable non-bankruptcy law.

The Clerk is **DIRECTED** to serve a copy of this Order on the Debtors, the Movant, respective counsel, and the Chapter 13 Trustee.

**END OF DOCUMENT**