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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

C/A No. 99-08796-B

IN RE:

Leon Holmes,

JUDGMENT
Chapter 13

Debtor

Based on the Findings of Fact and Conclusions of Law in the attached Order of the Court, GE Capital Mortgage Services' Motion for Relief From Automatic Stay is granted to be effective on December 10, 1999, but the Court denies the request to sanction Debtor for filing the Chapter 13 case in bad faith.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 19, 1999.

...

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

NOV 28 1999

✓ DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE RGL

LISA BAUGHMAN

Deputy Clerk

-white

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IN RE:

Leon Holmes,

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ORDER

Chapter 13

THIS MATTER comes before the Court upon GE Capital Mortgage Services' ("GE Capital") Motion for Relief From Automatic Stay ("Motion") filed with the Court on October 15, 1999. Based upon the arguments of counsel and the evidence presented at the hearing on this matter, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. An action to foreclose on Debtor's property located at 3346 Stone Haven Drive, Charleston, South Carolina was commenced on September 25, 1998. The action was brought by GE Capital to satisfy an outstanding purchase money first mortgage lien on the subject property.¹
2. According to Debtor's Certification of Facts filed on October 26, 1999, the amount of Debtor's estimated net equity in the property is \$25,000.00.
2. A Judgment of Foreclosure and Sale was entered in the Court of Common Pleas for Charleston County, South Carolina, on June 14, 1999.
3. GE Capital was the successful bidder at a foreclosure sale held on July 15, 1999 pursuant to the Judgment.

¹ At the hearing on the Motion, Debtor represented to the Court that the mortgage was both in his and his father's names, who is now deceased. His family and his eighty-four-year-old mother presently reside with him.

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4. A Master's Deed was signed on July 21, 1999 but has not been recorded in the RMC Office for Charleston County.

4. The Judgment of Foreclosure and Sale states that "Service was made upon the Defendants named in this report shown by the proof(s) of services filed herein." Debtor² objected to the Motion, claiming that service of process was improperly performed in the foreclosure action.

6. Debtor filed a Petition for Relief under Chapter 13 of the United States Bankruptcy Code on October 14, 1999.

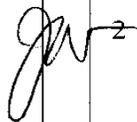
CONCLUSIONS OF LAW

The issues now before this Court are whether the subject property constitutes property of the estate pursuant to 11 U.S.C. §541,³ whether GE Capital is entitled to relief from the automatic stay pursuant to §362(d), and whether Debtor can collaterally attack the judgment of the state court due to a claim of improper service.

Section 541(a)(1) provides that "all legal or equitable interests of the debtor in property as of the commencement of the case" constitute property of the estate. Courts have emphasized that where the foreclosure action has proceeded to sale, but the deed has yet to be properly executed, the property in question is no longer considered property of the estate. See Commonwealth Mortgage Co. v. Brown (In re Brown), 87-02507-B; C-87-0281-B (Bankr. D.S.C. 01/28/1988); Agripen Grain Co v. Peacock Fruit & Cattle Co. (In re Agripen Grain Co.), 86-03606-D; C-86-

² Debtor was represented by counsel at the hearing on the Motion, but a Motion to be Relieved as Counsel was granted by the Court at the end of the hearing.

³ Further references to the Bankruptcy Code shall be by section number only.



0413-D (Bankr. D.S.C. 07/31/1987); see also Davisson v. Engles (In re Engles), 193 B.R. 23, 28 (S.D. Cal. 1996); Abdelhaq v. Pflug, 82 B.R. 807, 810 (E.D. Va. 1988).

The facts now before this Court are very similar to the facts in two cases previously decided in this District. In In re Brown and In re Agripen Grain Co., mortgage creditors commenced an action in the Court of Common Pleas to foreclose their security interests against the property at issue. A judgment ordering the foreclosure and sale of the property was entered by the state court in both cases. After the entry of the judgment, but prior to the execution of the deed, the debtor filed for relief under the Bankruptcy Code. In concluding that the property in question did not constitute part of the bankruptcy estate, both decisions recognized that courts have construed the definition of “property of the estate” very broadly; however, they also emphasized that such definition is limited in that property in which the debtor has only a “minor interest” cannot be deemed to constitute property of the estate.

A debtor whose property has been foreclosed on is divested of all equitable interest because the purchaser could demand that the deed be recorded even if the debtor offers to pay off the lienholder. In re Brown, 87-02507-B; C-87-0281-B. Section 15-39-830 of the South Carolina Code provides that “[u]pon a judicial sale being made and the terms complied with, the officer making the sale must execute a conveyance to the purchaser which shall be effectual to pass the rights and interest adjudged to be sold.” S.C. CODE ANN. §15-39-830 (Law Co-op. 1976). A pre-petition foreclosure sale generally terminates all interest that a debtor may have in the property, “regardless of when the deed to the property is delivered.” Abdelhaq, 82 B.R. at 810. “[Debtors] possess[. . .] neither a legal nor an equitable interest in the property once the auctioneer’s hammer [falls] and the memorandum of sale [is] signed.” Id.; see also Southwest

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Products Co v. IRS, 882 F.2d 113, 117 (4th Cir. 1989).

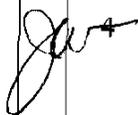
Upon foreclosure on the property, a debtor is also divested of the equity of redemption. In re Brown, 87-02507-B; C-87-02810-B. "Equity of redemption allows the debtor to pay the indebtedness and require the secured party to reconvey the property to him free of the deed. Once the property is sold, the debtor's equitable interest is extinguished, unless he can show that there was some deficiency in the sale process." Abdelhaq, 82 B.R. at 809. In this case, the Judgment of Foreclosure and Sale was entered and a Master's Deed was executed but not recorded prior to the filing of the Chapter 13 relief. GE Capital has satisfied the terms of the sale set forth in the Judgment of Foreclosure and Sale; thus, Debtor is left with neither equitable nor legal interest in the property. A right to cure the default is no longer available to him; all he has is bare legal title in the property.⁴

Pursuant to §362(d), the court may grant relief from the automatic stay after notice and a hearing "for cause." The Court concludes that Mr. Holmes' lack of equitable and legal interest in the subject property and the fact that a foreclosure sale has already taken place in this case constitute sufficient cause to grant GE Capital's Motion. See, e.g., Grimes v. Green Point Savings Bank (In re Grimes), 147 B.R. 307, 316 (Bankr. E.D.N.Y. 1992).

Debtor objected to the Motion by claiming that service of process was performed improperly.⁵ GE Capital cites this Court's decision in In re Epps, 99-00026-W (Bankr. D.S.C.

⁴ Paragraph 32 of the Judgment of Foreclosure and Sale provides: "The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is/are forever barred and foreclosed of all right, title, interest, *equity of redemption* or lien in the said mortgaged premises so sold, or any part thereof" (emphasis added).

⁵ At the hearing, Debtor testified that he was unaware of the foreclosure action and he questioned GE Capital's claim that they served the documents on his mother due to her



07/9/1999) in arguing that the Court lacks jurisdiction to consider Debtor's objection to the extent that it attacks the Judgment of Foreclosure and Sale entered by the state court. In In re Epps, the Court denied Debtor's objection to a creditor's proof of claim because the objection called in review the reasonableness of attorney's fees decided at the state court level. In referring to the Rooker-Feldman doctrine, the Court held that "[t]o . . . dissect the State Court Judgment and attempt to extract the attorney fees from the liquidated claim for reconsideration would be to invade the province of the State Court and place this Court, in essence, in the role of an appellate court." Id.

Under the Rooker-Feldman doctrine, lower federal courts generally do not have jurisdiction to review state-court decisions; rather, jurisdiction to review such decisions lies exclusively with superior state courts and, ultimately, the United States Supreme Court. The Rooker-Feldman doctrine bars consideration not only of issues actually presented to and decided by a state court, but also of *constitutional claims that are "inextricably intertwined with" questions ruled upon by a state court, as when success on the federal claim depends upon a determination "that the state court wrongly decided the issues before it."*

Plyer v. Moore, 129 F.3d 728, 731-32 (4th Cir. 1997) (citations omitted).

This Court concludes that, even though Debtor has raised a significant question regarding whether the service of the Summons and Complaint in the foreclosure action was effective, the state court is in a better position to make that determination. The Judgment of Foreclosure and Sale was entered in the state court, and this Court's consideration of the issue of proper service is so "inextricably intertwined" with the foreclosure judgment that such consideration would place this Court improperly in the role of undertaking an appellate review of the state court's decision.

infirmary. GE Capital responded to those allegations by asserting that service of process on Debtor was completed by publication and by serving Debtor's mother, who resides with Debtor.



The Court finds it appropriate to grant GE Capital's Motion. However, because of the possible equity in the subject property and the viability of Debtor's Chapter 13 case, this Court is inclined to provide Debtor an opportunity to address with the state court the issue of the effectiveness of the service in the foreclosure proceeding. Furthermore, upon any determination in the state court that service was not effective, and upon an application of the Debtor, this Court would consider reinstating the automatic stay or otherwise granting relief from this Order.

In its Motion, GE Capital requested that the Court sanction Debtor for filing the petition in bad faith and solely for the purposes of delaying GE Capital's exercise of its rights adjudicated under state law. No evidence was introduced in the Motion or at the hearing in support of this assertion. It is therefore,

ORDERED that the Motion is granted to be effective on December 10, 1999.

IT IS FURTHER ORDERED that GE Capital's request to sanction Debtor for filing the Chapter 13 case in bad faith is denied.

IT IS SO ORDERED.

Columbia, South Carolina,
November 19, 1999.


UNITED STATES BANKRUPTCY JUDGE



CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

NOV 23 1999

✓ **DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE** *RGL*

LISA BAUGHMAN

Deputy clerk

Whitt

H to chambers