UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 20-04434-HB
Raymond Morgan,	Chapter 13
Debtor(s).	**ORDER GRANTING MOTION FOR RELIEF FROM STAY**

THIS MATTER is before the Court for consideration of the Motion for Relief from Stay filed by Federal Home Loan Mortgage Corporation ("Freddie Mac"), seeking relief under 11 U.S.C. § 362(d) to evict Debtor Raymond Morgan from and take possession of real property located at Route 1 Box 25-B, Troy, SC 29848 a/k/a 339 Robert Leroy Road, Troy, SC 29848 (the "property").[1] Morgan filed an Objection[2] and a hearing was held on April 8, 2021. Morgan testified and his counsel, Herman Richardson, and John Hearn, counsel for Freddie Mac, were present. The parties stipulated to various documents related to the foreclosure proceeding.

FACTS

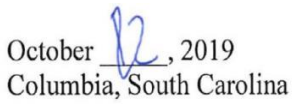
Morgan has occupied the property for approximately 50 years. In 2002, he executed a promissory note in the original principal amount of $51,600.00, and mortgage in favor of The Peoples National Bank. The mortgage was assigned to ABN AMRO Mortgage Group, Inc., which later merged into CitiMortgage, Inc. CitiMortgage filed a foreclosure action in the McCormick County Court of Common Pleas, C/A No. 2016-CP-35-00014. On October 12, 2016, the state court entered an Order of Judgment of Foreclosure and Sale Decree. The state court concluded the Order constituted a final judgment pursuant to Rule 53 of the South Carolina Rules of Civil

[1] ECF No. 15, filed Feb. 1, 2021.
[2] ECF No. 17, filed Feb. 16, 2021.

Procedure and retained jurisdiction "to do all necessary acts incident to this foreclosure." Morgan did not appear in the foreclosure action and did not appeal this judgment.

Prior to any foreclosure sale, Morgan and his wife filed a petition for Chapter 13 relief on June 2, 2017, C/A No. 17-02770-HB. That case was dismissed on May 14, 2018, for failure to make timely plan payments. The state court proceedings resumed and on October 4, 2018, a Supplemental Special Referee's Judgment of Foreclosure and Sale ("Supplemental Order") was entered. The Supplemental Order stated that after the Morgans' Chapter 13 case was dismissed and with the stay no longer in effect, a hearing was held on September 19, 2018 for the limited purpose of accepting evidence to supplement the October 2016 Order to reflect the current mortgage indebtedness. The Supplemental Order established the debt amount, instructed the property be sold at public auction, and was served on Morgan.

The record includes an Amended Notice of Sale entered by the state court on October 9, 2019, setting a sale date of November 5, 2019. A Certificate of Mailing was filed in the state court by CitiMortgage on November 8, 2019, indicating it served the Morgans with the Supplemental Order and Amended Notice of Sale. As is clear from the image below, the date of service on that document cannot be determined.



The evidence indicates the foreclosure sale was completed on November 5, 2019, three days before the Certificate of Mailing was filed. CitiMortgage—which later assigned its bid to Freddie Mac—was the highest bidder at the foreclosure sale. Freddie Mac became record owner of the property

via a foreclosure deed executed by the special referee on November 19, 2019, recorded on December 2, 2019.[3]

A Notice to Vacate was mailed to the Morgans on February 14, 2020, allowing them 10 days to vacate the property before the eviction process would begin. Between February 14, 2020, and January 14, 2021, Freddie Mac made five separate "Cash for Keys" offers whereby Freddie Mac would pay the Morgans to vacate the property. Mrs. Morgan died on June 3, 2020. Morgan did not accept any offers to vacate and continues to occupy the property.

At the hearing, Morgan testified that he is unable to read. He relied on his wife to handle the family's finances while she was alive. He could not remember whether he was served with papers relating to the foreclosure in 2016, but his wife made him aware of that action. Morgan thought the mortgage payments were paid directly from his paycheck during the prior Chapter 13 case. He had difficulty in making the mortgage payments after dismissal of that case due to medical expenses for his ailing wife. Eventually, Morgan found correspondence regarding the foreclosure, which a friend read to him, and obtained counsel.

Morgan filed a petition for Chapter 13 relief on December 7, 2020. His bankruptcy Schedule A/B states the "property sold at [a] foreclosure sale to [Freddie Mac]. Debtor was not properly served and did not know that property was in foreclosure." His Schedule D list a debt in the amount of $46,000.00 owed to Freddie Mac secured by the property. Morgan's Chapter 13 plan proposes to pay Freddie Mac any mortgage debt in full in the estimated amount of $46,000.00 at a 5.75% interest rate through monthly distributions from the trustee.

Morgan has stable employment and testified that he wishes to continue to use the property as his residence and pay the debt in full. Freddie Mac requests relief from stay to continue the

[3] Book 322, P. 16 at the Public Registry, McCormick Cnty., SC.

eviction, providing documentation from the public records indicating it is the owner of the property, Morgan is occupying the property, and it is entitled to possession according to a pre-petition state court eviction order.[4] As noted by counsel for Freddie Mac at the hearing, even if relief is granted, a moratorium on evictions for certain covered persons is currently in place through June 30, 2021.[5]

DISCUSSION AND CONCLUSIONS

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and this Court may enter a final order.

Section 362(a) of the Bankruptcy Code provides, in relevant part, that the filing of a voluntary petition:

> operates as a stay, applicable to all entities, of—
> …
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

However, § 362(d)(1) states the Court shall grant relief from stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." Pursuant to § 362(d)(2), relief shall be granted if it is demonstrated that "the debtor does not have an equity in such property; and such property is not necessary to an effective reorganization." The party requesting relief has the initial burden of proving cause exists for relief from the automatic stay, including lack of adequate protection, and lack of equity in the property. *See* 11 U.S.C. § 362(g); *In re Toomer*,

[4] Freddie Mac also filed a Motion for Relief of Co-Debtor Stay regarding Ms. Morgan that was withdrawn at the hearing without objection. (ECF No. 16).
[5] Ctr. for Disease Control & Prevention & Dep't Health & Hum. Servs., *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 86 FR 167310 (Apr. 1, 2021), *available at* https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-03292021.pdf.

C/A No. 10-07273-JW, 2011 WL 8899488, at *2 (Bankr. D.S.C. Oct. 5, 2011) (citing *In re Davis*, C/A No. 10-2249-JW, 2010 WL 5173187, at *2 (Bankr. D.S.C. Oct. 12, 2010)). "Once the creditor makes a *prima facie* case, the burden shifts to the debtor on all other issues." *In re Garcia*, 584 B.R. 483, 488-89 (Bankr. S.D.N.Y. 2018) (citations omitted).

Freddie Mac has made a *prima facie* case for cause for relief from stay under § 362(d)(1). There is a foreclosure deed recorded pre-petition on the public records, which indicates Freddie Mac owns the property. The burden thus shifts to Morgan to show relief from stay to evict him is not warranted. *See* 11 U.S.C. § 362(g).

Under South Carolina law, the foreclosure sale extinguished the debt owed by Morgan. *See* S.C. Code Ann. § 29-3-650. The sale divested him of his interest in the property and a deed was recorded. Morgan asserts that because Rule 5(d) of the South Carolina Rules of Civil Procedure was not followed, the Court can ignore these facts. That rule simply provides "[a]ll papers required to be served upon a party…shall be filed with the court within five (5) days after service thereof." It does not include a directive that failure to do so invalidates the process or the resulting foreclosure deed.

Section 1322(c)(1) of the Bankruptcy Code provides "a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law . . ." Morgan asserts the sale of the property was not conducted in the correct manner and, therefore, his plan terms allow him to retain the property.

This Court has rejected similar arguments where a foreclosure judgment was obtained and the property sold, but the debtor filed for bankruptcy relief before the deed was executed. *See In re Watts*, C/A No. 00-06791-W, slip op. at 4 (Bankr. D.S.C. Oct. 30, 2000). The Court relied on §

541(a)(1), which provides "all legal or equitable interests of the debtor in property as of the commencement of the case" constitute property of the estate. "[A] prepetition foreclosure sale terminates all legal and equitable interests of a debtor in real property regardless of whether the Special Referee's deed is yet recorded." *In re Davis*, C/A No. 02-12431-W, slip op. at 2 (Bankr. D.S.C. Nov. 27, 2002). A debtor's right to cure his default ends when the "gavel falls" on the last bid by the party conducting the foreclosure sale. *Watts*, C/A No. 00-06791-W, slip op. at 9.[6] Here not only did the gavel fall, but the foreclosure deed was executed and recorded long before this bankruptcy case was filed.

Regarding the window of § 1322(c)(1) that allows a cure "until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law," this Court finds that "the state court is in a better position to address…the conduct of the sale and whether Debtor has standing to now raise the issue." *In re Davis*, C/A No. 02-12431-W slip op. at 2 (Bankr. D.S.C. Nov. 27, 2002) (citing *Homeside Lending, Inc. v. Denny (In re Denny)*, 242 B.R. 593, 599 (Bankr. D. Md. 1999)). Further, the *Rooker-Feldman* doctrine precludes lower federal courts from sitting in direct review of state court decisions unless Congress has specifically authorized such review. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) ("Under the legislation of Congress, no court of the United States other than this court could entertain a proceeding to reverse or modify the judgment for errors of [a state court]…To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original."); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983) ("[A] United States District Court has no authority to review final judgments of a state court in judicial proceedings. Review of such judgments may

[6] In reaching this conclusion, the Court in *Watts* reviewed a split in decisions on the issue of whether the right to cure ends when the gavel falls on the last bid or whether the right to cure extends until all steps necessary to consummate the sale, such as entering an order confirming the sale or delivering the deed to the purchaser, are completed. This split in authority is immaterial in the present case because the deed was recorded pre-petition.

be had only in this Court."). The Supreme Court has clarified the doctrine "is confined to…cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). It "does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions." *Id*.

If Morgan's construction of § 1322(c)(1) is adopted on these facts, foreclosure deeds would remain perpetually open to attack in the bankruptcy court. Morgan is not merely attempting to exercise rights under the Bankruptcy Code by claiming relief under § 1322(c)(1), he is asking this Court to review or ignore the foreclosure process completed in the state court and the foreclosure deed. This attempt clearly falls within the prohibitions of the *Rooker-Feldman* doctrine and the Court will not consider his request. If Morgan seeks redress for his complaints about the foreclosure process, he must do so in the state court. If that court should conclude any property interests should be restored, only then may this Court determine if § 1322(c)(1) or any other Code sections offer corresponding relief. Nothing herein precludes Morgan from addressing any such matters promptly in state court.

IT IS, THEREFORE, ORDERED THAT:

(1) the automatic stay shall remain in place until May 15, 2021, to allow Morgan the opportunity to file any pleadings or requests in state court to address his concerns about the foreclosure or eviction process;

(2) unless the state court or some other court of competent jurisdiction orders otherwise, pursuant to 11 U.S.C. § 362(d), the stay is lifted effective May 16, 2021, without

further order, to allow Freddie Mac to proceed with its state court remedies, including but not limited to completing its eviction action or any other state court process to recover the property; and

(3) nothing in this Order or the automatic stay shall prevent Freddie Mac from appearing in any other court prior to May 16, 2021, to defend itself against or otherwise respond to any action taken by Morgan as contemplated in paragraph (1) above as necessary to protect its rights, to send any notices required by applicable law, or to communicate with Morgan and his counsel regarding any offers of settlement or assistance.

FILED BY THE COURT
04/14/2021

Chief US Bankruptcy Judge
District of South Carolina

Entered: 04/14/2021