

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Neat Davis,

Debtor.

C/A No. 02-12431-W

JUDGMENT

Chapter 13

FILED

at.....O'clock &.....min.....M

NOV 2 / 2002

BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (3)

ENTERED

NOV 27 2002

V. L. D.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order, the Motion to Modify Stay (the "Motion") filed by Branch Banking and Trust Company ("BB&T") is granted to allow either BB&T or Neat Davis ("Debtor") to raise the issue of whether the foreclosure sale was conducted in accordance with state law in the state court system. Upon determination that the foreclosure sale was conducted according to state law or that Debtor is precluded from now raising the issue, the state court may complete its foreclosure proceeding, including issuing and recording the Special Referee's deed. Upon determination that the sale was not conducted according to state law, the stay will be deemed to continue as to the subject property until further Order of this Court.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
November 27, 2002.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Neat Davis,

Debtor.

C/A No. 02-12431-W

ORDER

Chapter 13

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THIS MATTER comes before the Court pursuant to a Motion to Modify Stay¹ (the "Motion") filed by Branch Banking and Trust Company ("BB&T") on October 31, 2002. In part, BB&T seeks relief from the stay to complete the foreclosure proceedings remaining after a foreclosure sale occurred, including the recording of the Special Referee's deed. Neat Davis ("Debtor") objected to the Motion on November 12, 2002.

BB&T argues that, prior to the filing of this bankruptcy case, it completed its foreclosure on the real property that is the subject of the Motion and that is apparently Debtor's residence. The evidence indicates the foreclosure sale took place on October 14, 2002 and Debtor did not file his bankruptcy petition until October 17, 2002.

Initially, the Court rejects Debtor's argument that he attempted to file bankruptcy before the foreclosure sale on October 14, 2002, that he was unaware the Bankruptcy Court was closed on that day due to a federal holiday, and that, as a means of equitable relief, he should be allowed to cure the default regarding the property through his bankruptcy case.

Additionally, this Court has previously held that a prepetition foreclosure sale terminates

¹ The Motion included a Motion to Modify §1301 Stay which was not addressed by counsel at the hearing and therefore the hearing concerning that Motion is continued until the date of the confirmation hearing, December 23, 2002 at 9:00 a.m.

all legal and equitable interests of a debtor in real property regardless of whether the Special Referee's deed is yet recorded. In that instance, the subject property is no longer property of the estate under 11 U.S.C. §541(a)(1).² See, e.g. In re Holmes, C/A No. 99-08796-W slip op. (Bankr. D. S.C. Nov. 23, 1999); see also In re Watts, C/A No. 00-06791-W (Bankr. D. S.C. Oct. 30, 2000).

Consideration of this matter is also effected by §1322(c)(1) which provides that "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." In this case, Debtor argues that the foreclosure sale was not conducted according to state law because it occurred on a federal holiday.

Considering the circumstances in this case, this Court believes that the state court is in a better position to address this specific issue regarding the conduct of the sale and whether Debtor has standing to now raise the issue. See, e.g. Homeside Lending, Inc. v. Denny (In re Denny), 242 B.R. 593, 599 (Bankr. D. Md. 1999). Therefore, the Motion is granted as indicated herein.

Either party may raise this issue regarding the conduct of the sale before the state court. Upon determination that the foreclosure sale was conducted according to state law or that Debtor is precluded from now raising the issue, the state court may complete its foreclosure proceeding, including issuing and recording the Special Referee's deed. Upon determination that the sale *was not conducted according to state law, the stay will be deemed to continue as to the subject property until further Order of this Court.*

² Further references to the Bankruptcy Code shall be by section number only.

AND IT IS SO ORDERED.

Columbia, South Carolina,
November 27, 2002.


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 27 2002

Brown for CR

ord B + jgmt

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE, *jgmt index served by mail*

VANNA L. DANIEL

Deputy Clerk