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APR 15 2004

BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (2)

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Paul Anderson  
Lydia Anderson

Debtors.

) Bankruptcy Case No. 04-01278-jw  
)  
)  
) Chapter 11  
)  
) **ORDER**  
)  
)  
)

**ENTERED**

APR 15 2004

**D.G.**

THIS MATTER comes before the Court pursuant to a Motion to Modify Stay (the "Motion") filed by National Loan Investors, L.P. ("NLI") on March 5, 2004. NLI seeks relief from the stay to complete proceedings which follow a foreclosure sale. The remaining proceedings include recording a Master's Deed and evicting the occupants, Paul and Lydia Anderson ("Debtors"), from the subject property. Debtors objected to NLI's Motion in a timely manner. After considering the pleadings, evidence, and arguments made by counsel at the hearing on the Motion, this Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P. 52, made applicable to this case by Fed. R. Bankr. P. 7052.

**FINDINGS OF FACT**

1. Debtors are the principals of a corporation called Small Thoughts and Big Dreams, Inc. ("STBD, Inc.").
2. STBD, Inc. was administratively dissolved as a corporation prior to the filing of this case.
3. STBD, Inc. remains the titled owner of real property located at 1201 Oak Street, Myrtle Beach, South Carolina (the "Oak Street Property"). STBD, Inc. also entered a promissory note with NLI and secured the note with a mortgage on the Oak Street Property.

4. Prior to the filing of this case, STBD, Inc. used the Oak Street Property to operate a school known as Cross Oak Montessori School. Currently, Debtors continue to occupy the Oak Street Property and use it for a school.
5. Although Debtors continue to possess the Oak Street Property, there is no evidence indicating that the Oak Street Property was leased to Debtors or that Debtors were conveyed an interest by some other document or contract that provided Debtors with a personal right to possess or use the Oak Street Property.
6. When STBD, Inc. defaulted on payments required by the note and mortgage on the Oak Street Property, NLI initiated a foreclosure action.
7. NLI named Debtors as defendants in the foreclosure action because they personally guaranteed payment on STBD, Inc.'s note.
8. On May 9, 2003, Debtors filed a Chapter 13 case that was assigned case number 03-05768.
9. At the time Debtors filed for Chapter 13 relief, Debtors did not list NLI as a creditor in their Schedules or Statement of Affairs and did not notify NLI or its counsel of the bankruptcy; consequently, NLI and its counsel were not aware of Debtors' bankruptcy filing.
10. NLI continued its foreclosure proceedings and received a Foreclosure Judgment from the Master in Equity of Horry County ("State Court") on June 17, 2003.
11. On October 3, 2003, Debtor's amended their bankruptcy schedules to include the Oak Street Property as an asset of their bankruptcy estate.
12. In the Amended Schedule A that Debtors submitted on October 3, 2003, Debtors provide that the Oak Street Property is "IN THE NAME OF DEBTORS [sic] BUSINESS SMALL

THOUGHTS AND BIG DREAMS, INC [sic], OPERATING AS CROSS OAK MONTESSORI SCHOOL . . .”

13. On October 3, 2003, Debtors also submitted an amended creditor matrix listing NLI as a creditor. Therefore, the record of Debtors’ Chapter 13 case indicates that NLI was served with notice of Debtors’ Chapter 13 bankruptcy filing on October 3, 2003.

14. At that time, however, a substantial portion of the foreclosure was complete.

15. When NLI became aware of the bankruptcy, it elected to dismiss Debtors from its foreclosure action and did not pursue payments from them as guarantors of STBD, Inc.’s note.

16. On September 2, 2003, the State Court, upon foreclosure, sold the subject property.

17. By bidding a price of \$598,229.79, NLI was the successful bidder. However, because a deficiency judgment was demanded, the bidding remained open for an additional thirty (30) days and closed on October 2, 2003. Since no further bids were returned, NLI was declared the high bidder and purchaser of the Oak Street Property.

18. On November 6, 2003, the Court dismissed Debtors’ Chapter 13 bankruptcy for failure to file documents necessary for confirmation of a Chapter 13 plan.

19. On December 4, 2003, the State Court issued a Master’s Deed to NLI.

20. Debtors refused to personally vacate the Oak Street Property; and therefore, the State Court scheduled an eviction hearing for February 3, 2004 at 1:00 p.m.

21. However, on February 3, 2004 at 12:14 p.m., Debtors filed the present case as a Chapter 7 bankruptcy and stayed the eviction hearing.

22. On February 10, 2004, NLI filed a motion to lift the automatic stay in the Chapter 7 case.

23. On March 3, 2004, Debtors converted their case to a case under Chapter 11.

24. On March 5, 2004, NLI filed its Amended Motion to Modify Stay.

### **CONCLUSIONS OF LAW**

NLI argues that prior to the filing of Debtors' Chapter 7 case, it completed its foreclosure on the Oak Street Property. The evidence indicates that the foreclosure sale became final on October 2, 2003, and Debtors did not file their present bankruptcy petition until February 3, 2004. Debtors did, however, file a Chapter 13 case on May 9, 2003 that was dismissed by this Court on November 6, 2003.

Debtors argue that their personal presence in the Oak Street Property, before and during the Chapter 13 case filed on May 9, 2003, was a sufficient ownership interest that made the Oak Street Property a part of their Chapter 13 bankruptcy estate pursuant to Section 541 of the Bankruptcy Code. Therefore, Debtors contend that NLI's foreclosure activities during their Chapter 13 case were *void ab initio* pursuant to the automatic stay provided by 11 U.S.C. § 362; because at the time of Debtors' Chapter 13 filing, NLI failed to halt its foreclosure proceedings and obtain an order providing relief from stay before continuing with its foreclosure. Debtors also argue that they were necessary parties to NLI's foreclosure action because they were guarantors of STBD, Inc.'s note and also because STBD, Inc. had been administratively dissolved prior to commencement of NLI's foreclosure action. Therefore, Debtors also assert that NLI's foreclosure action was defective because NLI improperly dismissed Debtors from the action.

Based upon the record and the limited evidence provided by Debtors and NLI, the Court is not in a position to fully determine the issues raised by the parties. In this case, two issues pertaining to state law must be determined to provide proper consideration of the parties'

arguments. First, Debtors' interest in the Oak Street Property must be determined. Second, the validity of NLI's foreclosure action with respect to adherence to state foreclosure law must be addressed.

Although Debtors cite to this Court's decision in McGuffin v. Barman (In re BHB, LLC), C/A No. 97-01975, Adv. No. 97-80201 (Bankr. D.S.C. Aug. 27, 1997) for the broad proposition that mere possession of the Oak Street Property is sufficient to trigger application of the automatic stay, such a broad application of that holding fails to recognize that Debtors should, at the very least, demonstrate some good-faith, colorable claim to or basis for possession of the Oak Street Property. See St. Clair v. Beneficial Mortgage Co. (In re St. Clair), 251 B.R. 660, 666-67 (Bankr. D.N.J. July 25, 2000), aff'd, 281 F.3d 224 (3rd Cir. 2001). Without such a limiting principle, trespassing debtors would be able to prejudice the established ownership rights of others. Id. For instance, a property owner who finds a debtor trespassing and living in his home upon returning from an extended vacation should not have to seek relief from stay to reclaim possession of the home when the debtor has no good faith claim to possession of the home and the owner's right to possession of the home is not in dispute. See id. at 667 n.4.

In this case, Debtors have not yet presented any evidence, such as a lease, assignment, agreement, or other written contract, indicating that Debtors hold a good faith, colorable claim to or basis for possession to the Oak Street Property. Furthermore, neither NLI nor Debtors have provided any authority or evidence addressing the validity of the State Court's foreclosure procedures. The Court notes that a determination of property rights and interests is generally the province of a state court. See Homeside Lending v. Denny (In re Denny), 242 B.R. 593, 598

(Bankr. D. Md. 1999). The same is true for determining adherence to state foreclosure law. See id.

Therefore, in light of these concerns, the Court will provide limited relief from the automatic stay so that the parties can seek a State Court determination of the following two issues:

- (1) Whether state law recognizes that Debtors had a good-faith, colorable claim to or basis for possession of the Oak Street Property from the date they filed for Chapter 13 relief on May 9, 2003 to the date of the foreclosure sale that occurred during their Chapter 13 case; and
- (2) Whether NLI properly followed state foreclosure law in order to render its foreclosure action valid.

Upon a determination of the two aforementioned issues by the State Court, the parties shall report the State Court's findings to this Court and request that a further hearing be scheduled so that the Court can render a further decision regarding the automatic stay in this matter.

**AND IT IS ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
April 15, 2004