

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>89-11421</u>
JOE EMERY COLLINS	)	
	)	
Debtor	)	
	)	
TRUST COMPANY BANK OF AUGUSTA, N.A.	)	
	)	
Movant	)	FILED
	)	at 3 O'Clock & 31 min. P.M.
vs.	)	Date: 2-13-90
	)	
JOE EMERY COLLINS AND	)	
SYLVIA FORD DRAYTON, TRUSTEE	)	
	)	
Respondents	)	

**ORDER**

Trust Company Bank of Augusta, N.A. (hereinafter "Trust Co."), a party in interest in this proceeding seeks relief from stay in order to proceed with a pending confirmation of foreclosure hearing in the Superior Court of Lincoln County, Georgia. The debtor opposed the relief requested. The facts are not in issue. On the first Tuesday in September, 1989, Trust Co. concluded a nonjudicial foreclosure on property of the debtor pursuant to the power of sale contained in a deed to secure debt held by it. The property did not bring the amount of the debt claimed due by Trust

Co. and, pursuant to applicable State law, Trust Co. reported the sale to the Judge of the Superior Court of Lincoln County, Georgia and prayed that the sale be confirmed and approved by that court. Hearing on the confirmation of sale proceeding was scheduled for October 11, 1989, but was continued based upon the debtor's filing

his petition for relief under Chapter 13 on September 20, 1989

The Georgia anti-deficiency statute provides:

(a) When real estate is sold on foreclosure, without legal process, and under powers contained in security deeds, mortgages, or other lien contracts and at the sale the real estate does not bring the amount of the debt secured by the deed, mortgage, or contract, no action may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceedings shall, within 30 days after the sale, report the sale to the Judge of the Superior Court of the county in which the land is located for confirmation and approval and shall obtain an order of confirmation and approval thereon.

(b) The court shall require evidence to show the true market value of the property sold under the powers and shall not confirm the sale unless it is satisfied that the property so sold brought its true market value on such foreclosure sale.

(c) The court shall direct that a notice of the hearing shall be given to the debtor at least 5 days prior thereto; and at the hearing the court shall also pass upon the legality of the notice, and advertisement, and regularity of the sale. The court may order a resale of the property for good cause shown.

Official Code of Georgia Annotated (O.C.G.A.) §44-14-161.

In this case, Trust Co. had instituted a foreclosure confirmation

proceeding which was stayed upon the filing of this Chapter 13 case. The stay of 11 U.S.C. §362 "provides for a broad stay of litigation, lien enforcement and actions, judicial or otherwise which would affect or interfere with property of the estate, property of the debtor or property in the custody of the estate." 2 Collier on Bankruptcy ¶362.01 (L. King 15th ed. 1989). Under the Bankruptcy Code a creditor . . . may file a proof of claim, 11 U.S.C. §501, and a "claim" means a right to payment. 11 U.S.C. §101(4)(A). Under the applicable Georgia Code provision, O.C.G.A. §44-14-161, a creditor has no right to payment on a deficiency following a nonjudicial foreclosure unless the foreclosure is judicially confirmed.

The Bankruptcy Court is the appropriate forum for determination of confirmation of a non-judicial foreclosure

involving the debtor. Although O.C.G.A. §44-14-161 refers to the report of the sale to the Judge of the Superior Court of the county in which the land is located for confirmation and approval of sale, the confirmation proceeding may be brought in any United States District Court which would otherwise present an available forum. Federal Deposit Insurance Corp. v. Windland Co., 245 Ga. 194, 264 S.E.2d 11 (1980). See also Weems v. McCloud, 619 F.2d 1081 (5th Cir. 1980). See, also Federal Deposit Insurance Corp. v. M.C. Honea, Jr., Inc., 440 F. Supp. 1064 (N.D. Ga. 1977); United States v. Smith, 479 F. Supp. 804 (N.D. Ga. 1979).

The United States Bankruptcy Court for the Southern District of Georgia presents an otherwise available forum as described in Windland Co. v. Federal Deposit Insurance Corp., supra. The allowance or disallowance of claims against the estate is a core proceeding under 28 U.S.C. §157(b)(2)(B). This court as a unit of the District Court by reference under 28 U.S.C. §157(a) has original, but not exclusive, jurisdiction in all civil proceedings arising under title 11, or arising in or related to cases under title 11. See, 28 U.S.C. §1334(b). Although the confirmation of a non-judicial foreclosure is a state law cause of action, it is a prerequisite for movant's establishment of an allowed unsecured claim for a deficiency in this bankruptcy proceeding. Allowance of claims are core proceedings arising under title 11. See, 28 U.S.C. §157(b)(2)(B), 11 U.S.C. §502(b). A determination that movant has complied with the requirements of O.C.G.A. §44-14-161 is necessary to establish whether movant's unsecured claim is to be allowed. 11 U.S.C. §502(b)(1). The United States Bankruptcy Court for the Southern District of Georgia is the appropriate forum for this determination. By reporting this foreclosure to the Judge of the Superior Court of Lincoln County, Georgia and scheduling a hearing on its application for confirmation of non-judicial foreclosure, Trust Co. complied with the requirements of O.C.G.A. §44-14-161 prior to it receiving notification of the filing of debtor's Chapter 13 proceeding. The

action is now pending in the Superior Court and

is subject to the removal provisions of 28 U.S.C. §1452(a) and to referral by the District Court to this court for final adjudication.

The United States Bankruptcy Court for the Southern District of Georgia provides the appropriate forum for allowance or disallowance of the unsecured deficiency claim of Trust Co. which necessitates consideration by this court -of the non-judicial foreclosure confirmation proceedings now pending in the Superior Court of Lincoln County, Georgia. As this court provides the appropriate forum for considering this matter, the interests of Trust Co. are adequately protected. Therefore, relief from stay is not appropriate under either 11 U.S.C. §362(d) (1) or (2). Whether Trust Co. seeks removal of the Superior Court action to the District Court and referral to this court for final determination as to the allowability of its deficiency claim rests solely with Trust Co.

It is therefore ORDERED that Trust Co.'s motion for relief from stay is denied.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 13th day of February, 1990.