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-final appeal - no equity/redemption

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

In the matter of:)	
)	
JERRY HYERS)	Chapter 13 Case
KATHY HYERS)	Number <u>89-20587</u>
)	
Debtors)	
)	
UNITED STATES OF AMERICA)	
)	
Movant)	
)	
v.)	
)	
JERRY HYERS)	
KATHY HYERS)	
)	
Respondents)	

MEMORANDUM AND ORDER ON MOTION FOR RELIEF FROM STAY

On January 11, 1990, a hearing was held upon a Motion for Relief from Stay filed by the United States of America. Both Debtors and their attorney were present but there was no appearance by the United States Attorney. The Court took this matter under advisement to review the briefs submitted by the parties and to

determine whether there was a need for an evidentiary hearing. After reviewing the briefs and documentary evidence submitted by the parties I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtors, Jerry and Kathy Hyers, filed a petition under Chapter 13 of the Bankruptcy Code with this Court on October 24, 1989. In September of 1980, Debtors had executed a deed to secure debt in favor of the Farmers Home Administration, United States Department of Agriculture, to secure a loan in the amount of \$25,820.00. The United States of America, acting by and through the Farmers Home Administration ("FmHA"), is the holder of the note and deed to secure debt. Debtors failed to make timely payments and FmHA declared the loan in default and filed a complaint seeking foreclosure in the United States District Court for the Southern District of Georgia, Case No. CV-289-101, on July 7, 1989. Debtors failed to answer said complaint, did not appear at the scheduled hearing and subsequently a default judgment was entered on August 28, 1989, by the Clerk of the United States District Court. On October 10, 1989, a decree of foreclosure and sale was entered by

the Honorable Anthony A. Alaimo, Chief Judge, United States District Court for the Southern District of Georgia, finding that the United States of America was entitled to have its deed to secure debt foreclosed, the subject property sold, and the proceeds applied to the debt. Paragraph two, page three of the District Court decree provided:

Plaintiff shall have and is granted a judgment in rem of foreclosure of its deed to secure debt against said defendants, Jerry R. Hyers, a/k/a Jerry K. Hyers, a/k/a Jerry Hyers, and Kathy M. Hyers, a/k/a Kathy J. Hyers, and the defendants and all persons claiming by, through, or under them are hereby forever barred from all right, title and interest and equity of redemption in and to the herein described premises, or to any part thereof.

It was further ordered that the Marshal should sell the property in question and report the sale to the United States District Court for confirmation. On October 24, 1989, the Debtors filed their petition for bankruptcy relief with this Court and thus triggered the automatic stay provisions of 11 U.S.C. Section 362(a). At the time of the Debtors' filing, the United States of America, by and through the Farmers Home Administration, had not yet instituted advertisement for the foreclosure sale.

CONCLUSIONS OF LAW

This case is before the Court on a Motion for Relief from Stay by the United States of America acting by and through the Farmers Home Administration. Debtors oppose said Motion, arguing that the District Court's Order exceeded the authority under the laws of the State of Georgia in that the Debtors' right to possession and right to redeem the property remains in the Debtors until the gavel falls at the appropriate sale and that the Court has no authority to extinguish those rights in the Debtors.

The District Court order was entered on October 10, 1989. Fed.R.App.P. 4(a)(1) provides for appeal as of right within thirty (30) days from the entry of judgment or order. The Debtors filed their voluntary joint petition in bankruptcy on October 24, 1989, thus instituting the automatic stay provisions of 11 U.S.C. Section 362(a). The automatic stay will stay all proceedings originally brought against the debtor, regardless of whether the debtor is the appellant or appellee. Assoc. of St. Croix Condo. Owners v. St. Croix Hotel, 682 F.2d 446 (3rd Cir. 1982). The foreclosure proceeding at issue was originally brought against the Debtor and therefore the automatic stay applied. However, the

debtor does not ipso facto receive an unlimited extension of time for taking action in response to the District Court order.

11 U.S.C. Section 108 governs extensions of time for taking certain actions in non-bankruptcy proceedings. Section 108(b) provides:

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title . . . may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 60 days after the order for relief.

The thirty day period for Debtors' appeal as of right expired on November 9, 1989. 11 U.S.C. Section 301 states:

A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor

under such chapter. The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter. (emphasis provided)

Debtors filed their voluntary petition on October 24, 1989. The sixty day period following the entry of the order for relief expired on December 24, 1989. Therefore under 11 U.S.C. Section 108(b) the deadline for appealing the District Court order was extended from November 9, 1989, to December 24, 1989. No such appeal was timely taken and the District Court order thus became final on that date.

Although I agree with Debtors' observation that ordinarily under Georgia law the Debtors' right to redeem terminates at the time of the foreclosure sale, Matter of Sanders, 108 B.R. 847, 849 (Bankr. S.D. Ga. 1989), this Court is without jurisdiction to review a final order of the District Court. That final order, unappealed from found that Debtors were barred from any equity of redemption in their real estate. If under law, there are any grounds for relief from that District Court Order of October 10, 1985, Debtors should have addressed those grounds to the District Court rather than the Bankruptcy Court. After a diligent search of the applicable statutes, local court rules, and relevant authorities, I find nothing which empowers this Court to alter or

amend the finality of a decision of the District Court. Debtors therefore stand before this Court with no cognizable property interest to be protected in this proceeding and FmHA's Motion for Relief from Stay will be granted.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Motion for Relief from Stay provided in 11 U.S.C. Section 362 is granted.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 17th day of March, 1990.