

**In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division**

In the matter of:	)	
	)	Chapter 7 Case
TRACY LEE CHEADLE	)	
TERRI JEAN CHEADLE	)	Number <u>97-21241</u>
	)	
<i>Debtors</i>	)	
	)	
	)	
NATIONSBANC MORTGAGE	)	
CORPORATION	)	
	)	
<i>Movant</i>	)	
	)	
v.	)	
	)	
TRACY LEE CHEADLE	)	
TERRI JEAN CHEADLE	)	
and	)	
R. MICHAEL SOUTHER, TRUSTEE	)	
	)	
<i>Respondents</i>	)	

**ORDER ON MOTION FOR RELIEF FROM STAY**

This case was filed on September 29, 1997. On December 1 McCalla, Raymer, Padrick, Cobb, Nichols & Clark, of Atlanta, filed a Motion for Relief from Stay on behalf of Nationsbanc Mortgage Corporation seeking to foreclose on Debtor's

residence in St. Marys, Georgia. On December 8, 1997, the Clerk set the Motion for a hearing on January 8, 1998, and the Motion was duly served by McCalla, Raymer, on December 12, on Debtors, Debtors' counsel, "R. Michael Souther, Trustee," and the United States Trustee. Mr. Souther indeed was initially listed as case Trustee, but by Order dated October 17, 1997, Mary Jane Cardwell was substituted as Trustee and conducted the creditors' meeting on November 3. Accordingly, there was no valid service of the Motion on the case Trustee.

On January 8 McCalla, Raymer, without seeking a leave of absence in accordance with this District's General Order 1995-5 or a continuance of the hearing, failed to appear at the hearing. An appearance was entered by Flay Cabiness, an associate of Robert M. Cunningham of Brunswick, who had been requested by letter dated December 14, 1997, to "stand in" for McCalla, Raymer. McCalla, Raymer apparently expected no opposition to the Motion, but no consent order was filed, no evidence in affidavit form or otherwise with which to prosecute the case was provided to Mr. Cunningham's office, and service on Mr. Souther did not constitute service on the substitute Trustee, Ms. Cardwell. Therefore, Mr. Cabiness, despite his best efforts, was unable to present a *prima facie* case in support of Nationsbanc's Motion as the direct result of failure of McCalla, Raymer to provide basic file information, or evidence, or

a witness to its "stand-in" counsel or to properly perfect service on the Trustee. This cast local counsel, undeservedly, in an embarrassing and unflattering position, and prevented the Court from conducting a hearing despite the fact that notice of the hearing had been issued by the Clerk and that time had been reserved on the Court's calendar for that purpose in accordance with this Court's duty to expeditiously hear and dispose of motions for relief from stay. *See* 11 U.S.C. § 362(e).

**ORDER**

For the foregoing reasons, the Motion for Relief from Stay is dismissed for lack of prosecution. McCalla, Raymer, Padrick, Cobb, Nichols & Clark is barred from refileing this Motion on behalf of Movant.

LS/  
Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 13 day of January, 1998.