

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**IN RE:**

**WILL A. McDONALD, SR. and  
LINDA S. McDONALD,**

**Debtors.**

§  
§  
§  
§  
§

**CASE NO. 01-44712-BJH-13**

**MEMORANDUM OPINION**

Before the Court is a motion for relief from the automatic stay imposed by 11 U.S.C. § 362(a) (the “Motion”). In the Motion, Federal National Mortgage Association (“Fannie Mae”) seeks permission to proceed with service of a Writ of Possession, on the ground that pursuant to a trustee’s sale conducted on November 6, 2001, it became the owner of real property located at 2313 South Hughes, Fort Worth, Texas (the “Property”) and, as such, the Property is not part of this bankruptcy estate. The motion is opposed by Will A. McDonald, Sr. and Linda S. McDonald (the “Debtors”). The Court has jurisdiction over the Motion and the parties to this core proceeding. *See* 28 U.S.C. §§ 1334, 157(b)(2)(G).

**I. Factual and Procedural Background**

The Debtors filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on July 2, 2001, thereby commencing this bankruptcy case (the “Case”). On September 19, 2001, the Court entered an order dismissing the Case (the “Dismissal Order”) on motion of the Chapter 13 Trustee. On September 28, 2001, the Debtors moved to vacate the Dismissal Order and reinstate the Case (the “Motion to Reinstate”). Fannie Mae had notice of the filing of the Motion to Reinstate, and did not object to the requested reinstatement of the Case. The Motion to Reinstate was ultimately granted, and an Order vacating the dismissal and reinstating the Case

was entered on November 21, 2001 (the “Reinstatement Order”).

The legal issue in dispute in connection with the Motion arises because between the date of the Dismissal Order and the date of the Reinstatement Order, Fannie Mae foreclosed on the Property and became its record owner. At oral argument on the Motion, the parties framed the issue to be decided as whether the Reinstatement Order had retroactive effect, notwithstanding the absence of any specific language to that effect in the Reinstatement Order.

## **II. Legal Analysis and Authority**

Under Rule 1017(f)(1), a motion by the Chapter 13 trustee to dismiss a case is a contested matter governed by Rule 9014.<sup>1</sup> Further, Rule 9021 provides, among other things, that a judgment in a contested matter is effective when entered as provided in Rule 5003.<sup>2</sup> Thus, an order of dismissal pursuant to 11 U.S.C. § 1307(c) is effective when entered.<sup>3</sup> *See In re Petty*, 848 F.2d 654 (5<sup>th</sup> Cir. 1988)(order of dismissal effective when entered; bankruptcy court was without jurisdiction, after dismissal of case, to enter order signed prior to dismissal).

Accordingly, a creditor is free to pursue its state court remedies upon the entry of an order of dismissal of a bankruptcy case. *See In re Frank*, 254 B.R. 368 (Bankr. S.D. Tex. 2000); *In re Weston*, 101 B.R. 202 (Bankr. E.D. Cal. 1989), *aff'd* 123 B.R. 466 (E.D. Cal. 1991), *aff'd* 967 F.2d 596 (9<sup>th</sup> Cir. 1992).

Here, after the Dismissal Order was entered, the Debtors filed the Motion to Reinstate in

---

<sup>1</sup> All references in this Memorandum Opinion to a “Rule” are to the Federal Rules of Bankruptcy Procedure.

<sup>2</sup> Rule 9001(7) provides that the term “judgment” means any appealable order, and Rule 5003(a) provides that the clerk shall keep a docket in each case and shall enter each judgment, order, and activity in that case on the docket.

<sup>3</sup> Since the exact date of the dismissal is not at issue here, the Court does not need to address whether a dismissal order is effective when orally pronounced, when signed, or when entered on the docket. *See, e.g., In re Saunders*, 240 B.R. 636 (S.D. Fla. 1999) (noting disagreement among various courts and holding that order appointing trustee is effective when signed, not only when entered on the docket).

which they sought, in effect, to vacate the Dismissal Order. The Motion to Reinstate was proper under Rule 9024.<sup>4</sup> See *In re Johnson*, 1999 WL 528653 (Bankr. W.D. Tenn. 1999); *In re Diviney*, 211 B.R. 951, 962 (Bankr.N. D.Okla.1997), *aff'd* 225 B.R. 762 (B.A.P. 10<sup>th</sup> Cir.1998). Moreover, as a court of equity, bankruptcy courts have the inherent power to reconsider, modify or vacate previously-entered orders, unless intervening rights have vested in the interim in reliance on those orders. See *In re Blutrigh Herman & Miller*, 227 B.R. 53 (Bankr. S.D.N.Y. 1998) (vacating, *sua sponte*, an order for relief in an involuntary case where service of the petition was improper).

While the Motion to Reinstate was pending, Fannie Mae proceeded to foreclose on the Property on November 6, 2001 in accordance with Texas state law. The Debtors did not seek an expedited hearing on the Motion to Reinstate or to restrain Fannie Mae's foreclosure pending the hearing on the Motion to Reinstate.

The Motion to Reinstate was first considered at a pre-hearing conference held at the Chapter 13 Trustee's office on November 6, 2001. No party, including Fannie Mae, objected to the Motion to Reinstate. Thus, in accordance with the practice in this district in Chapter 13 cases, the Chapter 13 Trustee submitted the Reinstatement Order to this Court for consideration after the pre-hearing conference. Given the absence of objection to the Motion to Reinstate, the Court signed the Reinstatement Order. However, as the above dates indicate, the Reinstatement Order was signed and entered *after* the foreclosure sale had taken place.

The Court concludes that the Reinstatement Order was without retroactive effect for at least two reasons. First, the Reinstatement Order speaks in the present tense; it states that the

---

<sup>4</sup> Rule 9024 makes Federal Rule of Civil Procedure 60(b) applicable in bankruptcy cases.

“case is reinstated as an active bankruptcy proceeding.” The Reinstatement Order does not provide for retroactive effect, and the Motion to Reinstatement did not seek retroactive relief. Second, the act of filing the Motion to Reinstatement, without more, carried no substantive legal effect.

Although Fannie Mae had notice of the pre-hearing conference on the Motion to Reinstatement, Fannie Mae was not obligated to stop its pursuit of its state law remedies simply because the Motion to Reinstatement was on file and set for hearing. Stated most simply, if the Debtors wanted to restrain Fannie Mae from proceeding with its pending foreclosure, the Debtors were required to do more than simply file the Motion to Reinstatement. *See In re Johnson*, 1999 WL 528653 (Bankr. W.D. Tenn. 1999) (mere filing of motion to reinstate does not affect creditor actions).

In short, the entry of an order reinstating a bankruptcy case does not reinstate the automatic stay retroactively; and creditors such as Fannie Mae are permitted to pursue their state law remedies between the date of dismissal and the date of reinstatement without violating the automatic stay. *See In re Frank*, 254 B.R. 368 (Bankr. S.D. Tex. 2000); *see also In re Anderson*, 195 B.R. 87 (B.A.P. 9<sup>th</sup> Cir. 1996) (bankruptcy court erred in setting aside foreclosure sale that occurred after the debtor's case was dismissed and before it was reinstated when the sale was conducted during the interim period); *In re Nagel*, 245 B.R. 657 (D. Ariz. 1999) (error for bankruptcy court to retroactively reinstate the stay upon reinstatement of a previously dismissed Chapter 13 case; property had been properly sold at foreclosure between dismissal and reinstatement). Because the Case had not been reinstated and the automatic stay had not been reimposed as of the date of Fannie Mae's foreclosure sale, that foreclosure sale extinguished the Debtors' interest in the Property.

### **III. Conclusion**

Because Fannie Mae's foreclosure sale extinguished the Debtors' interest in the Property,

the Motion must be granted. A separate Order granting the Motion will be entered and, pursuant to Rule 4001(a)(3), that Order is stayed until the expiration of 10 days after its entry.

Signed: March 7, 2002.

Handwritten signature of Barbara J. Houser in cursive script.

---

BARBARA J. HOUSER  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE:

WILL A. McDONALD, SR. and  
LINDA S. McDONALD,

Debtors.

§  
§  
§  
§  
§

CASE NO. 01-44712-BJH-13

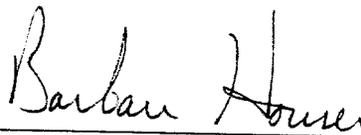
**ORDER GRANTING RELIEF FROM STAY**

Before the Court is the motion by Federal National Mortgage Association for relief from the automatic stay. For the reasons set forth in the Memorandum Opinion entered concurrently with this Order, the Court concludes that the motion should be granted. Therefore, it is

**ORDERED** that the motion is **GRANTED**; and it is further

**ORDERED** that pursuant to Fed. R. Bankr. P. 4001(a)(3), this Order is stayed until the expiration of ten (10) days after its entry.

Signed: March 7, 2002.



\_\_\_\_\_  
BARBARA J. HOUSER  
United States Bankruptcy Judge