

The United States Bankruptcy Court for the District of Maryland retroactively annulled the automatic stay pursuant to 11 U.S.C. § 362(d) to validate a tax sale foreclosure.

***In re McCrimmon*, 2015 Bankr. LEXIS 2836 (Bankr. D. Md. August 26, 2015).**

Summary by Marissa K. Lilja, Tydings & Rosenberg LLP

In *In re McCrimmon*, the Honorable David E. Rice of the U.S. Bankruptcy Court for the District of Maryland granted a Motion for Relief from Automatic Stay to Validate Tax Sale Foreclosure filed by creditor Dane Equities, LLC (“Dane”) pursuant to 11 USC § 362(d), granting retroactive relief to validate a tax sale that would have otherwise been in violation of the automatic stay. Because the Court retroactively annulled the automatic stay, a Motion to Void Tax Sale filed by another creditor was denied as moot.

At a public tax auction on May 20, 2013, Dane purchased real property owned by an individual, Marquis McCrimmon (the “Debtor”). *In re McCrimmon* at *4. As required by Maryland law, Dane notified the Debtor prior to filing an action to foreclose on his right of redemption. *Id.* at *5. The Debtor then filed a voluntary Chapter 7 bankruptcy petition on December 19, 2013. *Id.* at *7. The Debtor listed GMAC Mortgage LLC (“GMAC”), the successor in interest to the original lender, as the holder of the deed of trust on the property, but did not mention the tax sale or list Dane as a creditor. *Id.* GMAC subsequently transferred its interest to Vonderharr Wagner Associates LLC Defined Benefit Pension Plan (“Vonderharr”)¹.

The trustee ultimately entered a Report of No Distribution and the Debtor’s bankruptcy case was closed on July 28, 2014. *Id.* at *8. At the same time, and without knowledge of the bankruptcy, Dane filed an action to foreclose the Debtor’s equity of redemption with respect to the property. Dane served the Debtor and GMAC with the foreclosure papers and no opposition was filed. *Id.* at *9. Dane was granted title and the Deed to the property, which it recorded, and subsequently invested money in the property, and paid various taxes and bills.

Dane learned of the bankruptcy case on December 11, 2014 when it was contacted by FCI Lender Services, Inc. (“FCI”), the servicer for Vonderharr, demanding the judgment in the foreclosure proceedings be vacated. *Id.* at *11-*12. After reopening the bankruptcy case to litigate this issue, the Court granted Dane’s Motion for Relief from Stay and validated the tax sale by retroactively annulling the stay pursuant to the authority in § 362 of the Bankruptcy Code. *Id.* at *15. In considering whether to annul the stay, Courts look to the factors considered when generally lifting an automatic stay, and then further consider (1) prejudice to creditors or third parties; (2) creditor’s knowledge of the stay; (3) whether parties can be restored to their positions prior to the violation; (4) costs of annulment; (5) how quickly the party moved to void the violation; (6) injury to the debtor; and (7) judicial economy. *Id.* at *16-*17. The Court found, among other reasons, that Dane acted in good faith and without knowledge of the stay. Further, Dane invested money in the property and changed its position to its detriment, where FCI and/or its predecessors in interest were the parties in a position to notify Dane of the bankruptcy, and failed to do so. *Id.* at *18. The Court found these facts to provide the “sort of unusual and compelling circumstances” that warrant retroactive relief to validate an action otherwise taken in violation of the automatic stay.

¹ The Court found nothing in the record to evidence the alleged transfer of interest to Vonderharr. *Id.* at *12-*14.