

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|-------------------|---|--------------|
| JOAN HELEN WALKER | : | CIVIL ACTION |
| Appellant, | : | |
| | : | |
| v. | : | |
| | : | |
| PNC BANK, N.A. | : | |
| Appellee. | : | NO. 01-3235 |

M E M O R A N D U M

Newcomer, S.J. November , 2001

I. BACKGROUND

Appellant and debtor, Joan Helen Walker ("Walker" or "appellant") filed a voluntary petition for bankruptcy under Chapter 13 of the bankruptcy code on February 14, 2001. She now appeals a May 23, 2001 bankruptcy court order granting appellee PNC Bank N.A.'s ("PNC Bank") Motion for Relief. In its Motion for Relief, PNC Bank sought relief from the automatic stay mandated by 11 U.S.C. § 362(a) so it could obtain possession of Walker's home at 3081 Agate Street, Philadelphia, PA 19134. Specifically, it argued that it "has cause to have the Automatic Stay terminated to permit [PNC Bank] to direct sheriff to record the deed evidencing its ownership of the property and to complete eviction of the Debtor from said premises." Upon granting PNC Bank's Motion, the bankruptcy court ordered that PNC Bank may "take any legal action to which it is entitled under applicable non-bankruptcy law with respect to the said premises."

On December 5, 2000, a sheriff's sale of Walker's property occurred where PNC Bank was the successful bidder. When Walker filed for bankruptcy, her property was subject to a mortgage in favor of PNC Bank. Originally, PNC Bank Mortgage Corporation of America ("PNC Mortgage") was named on Walker's mortgage, but PNC Mortgage subsequently assigned the mortgage to PNC Bank. During a bankruptcy court hearing concerning the April 19, 2001 Motion for Relief, the Court took notice "as being beyond dispute that a sheriff's sale occurred with respect to a mortgage held by PNC Bank N.A., serviced by PNC Mortgage Corporation, that the foreclosing creditor on the writ was the successful bidder, [and] that the sale occurred before the commencement of this bankruptcy petition."

The law firm of Federman and Phelan LLP filed the Motion for Relief on PNC Bank's behalf on April 19, 2001 ("Federman and Phelan").¹ During the hearing concerning the April 19, 2001 Motion for Relief, the Court considered whether Federman and Phelan had authority to act on PNC Bank's behalf. Walker's counsel argued that Federman and Phelan did not have such authority as it represented PNC Mortgage, but not PNC Bank. In response, Federman and Phelan, by David M. Hobson, represented

¹Earlier, on February 21, 2001, Federman and Phelan filed a similar Motion for Relief on behalf of PNC Mortgage. However, the bankruptcy court denied the February 21, 2001 Motion on April 11, 2001 because PNC Mortgage had no interest in the property as PNC Mortgage had assigned the mortgage to PNC Bank.

that although PNC Bank did not retain Federman and Phelan, Federman and Phelan represented PNC Bank. Mr. Hobson further explained that PNC Bank authorized PNC Mortgage to pursue matters on its behalf, such as the April 19, 2001 Motion, in a power of attorney executed February 1, 2001.

The power of attorney provides in relevant part:

[PNC Bank], a national bank, . . . does now irrevocably make constitute and appoint. . . PNC Mortgage, an Ohio corporation. . . as [PNC Bank's] true and lawful attorney. . . for the limited powers listed below beginning on February 1, 2001. . .

- A. to prepare, execute and record whatever documents are required to institute and complete assignments, foreclosures or deeds in lieu of foreclosure proceedings, including, but not limited to, the execution of notice or defaults, notices of sale, affidavits, powers of attorney, substitutions of trustees, assignments of mortgage, releases of lien, satisfactions, special warranty deeds, deeds of conveyances, deeds of reconveyance, assignments of sheriff's certificates of sale, assignments of bids, assignments of deficiency judgments, ramifications of sale, real estate listing agreements, real estate sales contracts and addenda, closing statements and closing documents, and any other documents required under any applicable laws or regulations, as may be necessary for the servicing of Deeds of Trust and Mortgages pursuant to which the Investor is the beneficiary or mortgagee. . .

GIVING AND GRANTING to PNC Mortgage full authority to do and perform all and every act and thing necessary or incident to the performance and execution of the limited powers herein expressly granted as [PNC Bank] might or could do if personally present, with this ratifying all that [PNC Bank] shall lawfully do or cause to be done by virtue of the power expressly granted herein [hereinafter the "final paragraph"].

With these facts as background, the Court now turns to

the arguments appellant raises in this appeal.

II. DISCUSSION

A bankruptcy court's legal conclusions are subject to plenary and de novo review by a district court on appeal. In re Sharon Steel Corp., 871 F.2d 1217, 1222 (3d Cir. 1989).

Appellant first argues that Federman and Phelan lacked authority to file the Motion for Relief on PNC Bank's behalf because Federman and Phelan represented PNC Mortgage and not PNC Bank. The bankruptcy court found that the final paragraph of the power of attorney grants PNC Mortgage the authority to file such a motion.

Upon a review of the power of attorney, the Court concludes that PNC Bank authorized PNC Mortgage to file the Motion for Relief on its behalf through Federman and Phelan. Indeed, subparagraph A of the power of attorney states that PNC Mortgage is permitted to "prepare, execute and record whatever documents are required to institute and complete assignments, foreclosures or deeds in lieu of foreclosure proceedings, including, but not limited to, the execution of notice or defaults, notices of sale, affidavits, powers of attorney. . . ." Here, PNC Mortgage filed a document, a Motion for Relief, to complete the foreclosure on appellant's property. Given the broad, noninclusive language of subparagraph A, the Court concludes that PNC Mortgage was authorized to file the Motion for

Relief.

Furthermore, the Court concludes, as did the bankruptcy court, that the final paragraph of the power of attorney authorized PNC Mortgage to file the Motion for Relief on PNC Bank's behalf through Federman and Phelan. PNC Mortgage's retention of Federman and Phelan to file and argue the Motion was certainly an "act and thing necessary or incident to the performance and execution of the limited powers herein expressly granted." Thus, not only did the power of attorney authorize PNC Mortgage to file the Motion for Relief, it further authorized PNC Mortgage to file it through Federman and Phelan.

Next, the appellant argues that the bankruptcy court improperly granted PNC Bank relief from the automatic stay. Specifically, appellant contends that while PNC Bank may have successfully bid on appellant's property at the December 5, 2001 sheriff's sale, PNC Bank never received the deed to the property. Thus, appellant argues that PNC Bank does not have sufficient interest in appellant's property to take legal action against the property and its Motion for Relief should have been denied.

The filing of a bankruptcy petition in accordance with § 301 of the Bankruptcy Code operates as a stay, applicable to all entities, of certain types of acts specified in 11 U.S.C. § 362(a). Included among the acts so stayed are the commencement or continuation of a judicial, administrative, or other action of

proceeding against the debtor that was or could have been commenced before the filing of the bankruptcy petition or to recover a claim that arose prior thereto. 11 U.S.C. § 362(a)(1). Here, there is no dispute that the sheriff's sale occurred before the commencement of the bankruptcy.

However, pursuant to 11 U.S.C. §362(d)(1), a court may grant a party in interest relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such party in interest."

Under Pennsylvania law, a purchaser of real property at a sheriff's sale acquires, at the fall of the hammer, a vested interest in the property. Pennsylvania Company etc. v. Broad St. Hospital, 47 A.2d 281, 284-85 (1946). The purchaser acquires an equitable interest which becomes a complete title on complying with the terms of the sale. Id.; In Re Rouse, 48 B.R. 236, 240 (Bkrtcy. E.D.Pa. 1985). Accordingly, courts hold that when a purchaser acquires an equitable interest in real property at a sheriff's sale, but legal title remains with a debtor when the debtor files a bankruptcy petition, cause exists pursuant to § 362(d) of the Bankruptcy Code to lift the automatic stay to permit the purchaser to obtain legal title. See In re Pulcini, 261 B.R. 836, 842 (Bankr. W.D.Pa. 2001); Bundy v. Donovan (In re Donovan), 183 B.R. 700, 702 (Bankr. W.D.Pa. 1995); In re Golden, 190 B.R. 52, 58 (Bankr. W.D.Pa. 1995); see also Matter of

Spencer, 115 B.R. 471, 485 (D.Del. 1990); In re Lally, 38 B.R. 622, 626 (Bankr. N.D.Iowa 1984), aff'd, 51 B.R. 204 (N.D.Iowa 1985); Federal National Mortgage Association v. Shirley (In re Shirley), 30 B.R. 195, 196 (Bankr. D.Md. 1983). Thus, this Court finds that cause exists to lift the stay because PNC Bank has at least equitable title in the property, the title of real value. The Court will affirm the decision of the bankruptcy Court.

An appropriate Order follows.

Clarence C. Newcomer, S.J.