

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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In re:

JOHN P. CANNELLA,

Chapter 13
Case No. 06-12978 (RTL)

Debtor.

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OPINION

APPEARANCES:

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Attorneys for the Debtor

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RAYMOND T. LYONS, U.S.B.J.

INTRODUCTION

The court must determine whether to grant the Debtor's motion to sell his former residence, or to deny this motion and grant a motion for relief from the automatic stay filed by the third-party purchaser who obtained the property in a post-petition sheriff's sale.

After the sheriff's sale took place, the Debtor's only interest in the property was a right to redeem. Since the time to exercise that right has expired, the Debtor's motion to sell is denied, and the Purchaser's motion for relief from the stay is granted.

JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1334(b), 28 U.S.C. § 157(a), and the Standing Order of Reference by the United States District Court for the District of New Jersey dated July 23, 1984, referring all proceedings arising under title 11 of the United States Code to the bankruptcy court. This is a core proceeding involving a motion to terminate, annul, or modify the automatic stay under 28 U.S.C. § 157(b)(2)(G), as well as under 28 U.S.C. § 157(b)(2)(M) as it concerns an order approving the use or lease of property.

FINDINGS OF FACT AND PROCEDURAL HISTORY

On April 10, 2006, the Debtor, John Cannella, filed a voluntary petition under chapter 13 of the *Bankruptcy Code*. The Debtor's Plan proposed to make payments of \$150 per month to the Chapter 13 Trustee for a period of thirty-six months. The Plan also called for the sale or refinance of the Debtor's residence during the thirty-six month period. Under the Plan, the Debtor proposed to maintain the mortgage payments on the residence owed to AmeriQuest Mortgage until the sale or refinance.¹ The Trustee objected to confirmation of the Plan, asserting that the time period for the sale or refinance should instead be twelve months.

On June 6, 2006, the Plan was confirmed, but the time period for the sale or refinance was changed to one year. The confirmation order was entered June 14, 2006, and explicitly provide the sale or refinance was required to take place no later than June 2007.

Subsequently, the Debtor defaulted on his monthly mortgage payments, and on November 13, 2006, the Mortgagee filed a motion for relief from the automatic stay. On

¹ At the time of filing, the Debtor owed \$34,000 in arrears, so \$150 per month would not be sufficient to cure the arrears.

December 27, 2007, this court entered an order resolving the motion to vacate the stay, which required the Debtor to cure the post-petition arrearage owed to the Mortgagee.

On January 11, 2007, the Mortgagee filed a certification of default against the Debtor, and an order vacating the automatic stay was entered by the court on January 23, 2007. A sheriff's sale took place on March 19, 2007, and the property was purchased by a third party purchaser, Mandrake Properties, FLP ("Purchaser").

The Debtor filed a motion to reinstate the stay on March 21, 2007. This motion was denied by the court on procedural grounds because the Debtor should have instituted an adversary proceeding instead of filing a motion. However, on March 30, 2007, a consent order was entered between the Debtor and the Mortgagee reinstating the stay. This order did not explicitly implicate the rights of the Purchaser.

The Purchaser wrote a letter to the court dated April 2, 2007, indicating that it objected to order. The Purchaser subsequently filed a motion for relief from the automatic stay on April 9, 2007, but withdrew this motion on April 11, 2007.

On July 9, 2007, the Purchaser again moved for relief from the automatic stay. The basis of this motion was that the Debtor defaulted under the Plan by not selling or refinancing his residence by June 2007.² A hearing on the issue was held September 4, 2007.

On this same day, the Debtor initiated a motion to sell the property. The motion to sell stemmed from a contract for the sale of the property between the Debtor and another party,

² On July 11, 2007, the Debtor submitted a Modified Plan proposing to change the sale or refinance date to June 2008. The Purchaser entered an objection the Modified Plan on July 23, 2007. The Purchaser opposed the modification on the basis that it was proposed "in bad-faith in an effort to frustrate the legally enforceable rights [of] Mandrake Properties, FLP". On September 4, 2007, before this objection was heard, the Debtor withdrew the Modified Plan.

entered into on August 1, 2007. The proposed sale price was \$230,000, and the Debtor asserted that there would be sufficient proceeds to pay off the cost of sale and outstanding mortgage, while allowing for substantial excess proceeds. The Purchaser filed opposition to this motion on September 10, 2007, and a hearing was held on October 2, 2007.

DISCUSSION

I. APPLICABILITY OF *IN RE CONNORS*

The parties in this case were asked to comment on the applicability of *In re Connors*. 497 F.3d 314 (3d Cir. 2007). The court was interested in determining the impact of *Connors* in a case such as this, where the Plan did not call for curing a default but instead for the sale of assets and payment in full. Upon review, it became clear *Connors* is inapplicable in this situation.

In *Connors* the Third Circuit addressed the long-standing debate in New Jersey over whether the deed or gavel rule is applicable when determining the termination date of a debtor's right to cure a default on a home mortgage. The court found that "under 11 U.S.C. § 1322(c)(1), a Chapter 13 debtor does not have the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at foreclosure sale and the time the deed is delivered." *Id.* at 323. The court went on to say that "[t]he gavel rule does not, of course, cut off the debtor's state-law post-sale remedies." *Id.* at 321.

The holding in *Connors* is narrow and has a limited application specific to *Section 1322(c)(1)*. *Section 1322(c)(1)* states:

Notwithstanding subsection (b)(2) and applicable nonbankruptcy law a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law.

11 U.S.C. § 1322(c)(1) (2007). Here, the order confirming Cannella's Chapter 13 Plan states:

In addition to the payments set forth above, Debtor shall remit to the Trustee the net nonexempt proceeds from a sale or refinance of real property, which sale or refinance shall take place not later than June, 2007, and from the proceeds creditors with allowable claims shall be paid on a pro rata basis.

Order Confirming Chpt. 13 Plan, June 14, 2006, Docket No. 06-12978-RTL, Doc. 20. This Plan is not proposing to cure a default but to provide payment in full. Thus, *Section 1322(c)(1)* is inapplicable and *Section 1322(b)(8)* governs,³ causing *Connors* to have no bearing on the present case.

Furthermore, this case deals with a different time frame than *Connors*. The sheriff's sale in *Connors* occurred prepetition. *Connors*, 497 F.3d at 317. Here, the sheriff's sale was post-petition, and after the mortgagee had received relief from the automatic stay. This difference provides further support for the conclusion that *Connors* is not applicable in this case.

II. DEBTOR'S INTEREST IN PROPERTY

In New Jersey, once a foreclosure sale takes place, a debtor's rights in the property are virtually extinguished. *See In re Ziyambe*, 200 B.R. 790, 795 (Bankr. D.N.J. 1996) (stating that "unless objection to the sale is filed in accordance with the New Jersey Court Rules, equitable title to the property is indefeasibly vested in the successful bidder and may not subsequently be overturned by the former mortgagor's attempts to redeem the property"). After this point in time,

³ *Section 1322(b)(8)* provides: "Subject to subsections (a) and (c) of this section, the plan may provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor." 11 U.S.C. § 1322(b)(8) (2007).

the sole remedy maintained by the debtor is the right to redeem.⁴ In this state, “the right of redemption arises by statute, N.J.S.A. 2A:5(a)(16) *et seq.*, by rule, Rule 4:65-5, 6 and by equity.”

Id. In discussing the right of redemption, the New Jersey Supreme Court has held that the right may be exercised by a mortgagor “within the ten-day period fixed by R. 4:65-5 for objection to the sale and until an order confirming the sale if objections are filed under the rule.” *Hardyston Nat’l Bank v. Tartamella*, 56 N.J. 508, 513 (1970).⁵

Here, the sheriff’s sale took place on March 19, 2007. At this time, the Debtor’s interest in the property became limited to his right to redeem. As discussed above, the right to redeem generally expires after ten days. Since more than ten days have passed, the right to redeem has expired. Therefore, the Debtor no longer maintains any interest in the property.

The Debtor’s motion to sell must be denied since the Debtor no longer has any interest in

⁴ This proposition is well-established in New Jersey. *See In re Maricic*, No. 02-37500, slip op. at 9 (Bankr. D.N.J. 2002) (“New Jersey law does permit the foreclosure sale to be undone or defeated in very limited circumstances. . . . [A] mortgagor may exercise a right to redeem.”); *In re Mangano*, 253 B.R. 339, 334 (Bankr. D.N.J. 2000) (“Under New Jersey law, the only way in which a debtor can cure a default after foreclosure sale is through redemption.”); *In re Hric*, 208 B.R. 21, 26 (Bankr. D.N.J. 1997) (“Applicable nonbankruptcy law in New Jersey . . . gives the debtor one last opportunity to pay the foreclosure judgment in full until the sheriff delivers the deed to the successful bidder at the auction.”); *In re Simmons*, 202 B.R. 198, 204 (Bankr. D.N.J. 1996) (“The equitable title acquired by a purchaser at a foreclosure sale is subject to defeasance only if an objection to sale made pursuant to New Jersey Court Rule 4:65-5 is sustained, or . . . the foreclosed mortgagor exercises the right of redemption within ten days after the sale.”); *In re Little*, 201 B.R. 98, 104 (Bankr. D.N.J. 1996) (“Once a foreclosure sale is conducted in accordance with New Jersey law, the debtor maintains only the right to redeem the property by paying the mortgage indebtedness, costs of foreclosure and costs of sale.”).

⁵ *Section 108* provides for the extension of time limitations in bankruptcy, such as statutes of limitations. *See* 11 U.S.C. § 108 (2007). Under this provision, the court has authority to extend the time period during which a mortgagor has the right to redeem. However, in order for *Section 108* to apply, it must be triggered prepetition. In this case, the right to redeem was triggered post-petition. Therefore, *Section 108* is not applicable.

the property. The Purchaser's motion for relief from the automatic stay is granted because the Debtor defaulted under the Plan by failing to sell or refinance the property by June 2007.

CONCLUSION

After a sheriff's sale takes place, a debtor's only remaining interest in a foreclosed piece of property is a right to redeem. If the right to redeem expires, the debtor retains no interest in the property. Here, the right to redeem expired. Therefore, the Debtor no longer has any rights in the property. Thus, the Debtor's motion to sell is denied, and the Purchaser's motion for relief from the automatic stay is granted.

Dated: November 9, 2007

/S/Raymond T. Lyons
United States Bankruptcy Judge