

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

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**In re:**

**CASE NO. 00-21422**

**MARIAN L. THOMAS,**

**Debtors.**

**DECISION & ORDER**

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**BACKGROUND**

On May 19, 2000, Charles A. Thomas (“Thomas”), as an attorney-in-fact for Marian L. Thomas (the “Debtor”), filed a petition initiating a Chapter 13 case.<sup>1</sup> The Schedules and Statements required to be filed by Section 521 and Rule 1007, indicated that: (1) the Debtor was the fee owner of two houses and a vacant lot at 61-63 Depot Street, Canisteo, New York (the “Depot Street Property”); (2) the Property had a current market value of \$37,500.00; (3) Bath National Bank (“Bath National”) held a mortgage on the Property with a current balance of \$1,628.00; (4) the Steuben County Treasurer had a \$10,760.00 lien on the Property for unpaid real estate taxes for the tax years 1997 through 2000; (5) the Debtor was eighty-seven (87) years of age with a monthly income from Social Security of \$767.00 and monthly living expenses of \$845.00; and (6) the Debtor had not been a party to any suits or administrative proceedings within the prior year, and there had been no repossessions or foreclosure sales of any of her property.

On June 2, 2000, a copy of a letter to the Chapter 13 Trustee (the “Trustee”) from a deputy county attorney for the County of Steuben (“Steuben County”) was filed with the Bankruptcy Court which stated, in part, that:

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<sup>1</sup> Thomas is the son of the Debtor.

Steuben County is in receipt of the above referenced bankruptcy claim. Please be advised that I believe Ms. Thomas is listing in her bankruptcy estate a piece of property which has been owned by Steuben County since February 2000 pursuant to an In Rem Tax Foreclosure.

The County sold the property in its tax sale on May 24, 2000. Ms. Thomas' attorney called us the morning of the sale to notify us of the bankruptcy filing. It is the County's position that after we took title in February, Ms. Thomas no longer had any rights to the property.

On June 12, 2000, after he had received the letter from Steuben County, and before the initial Section 341 Meeting of Creditors scheduled for June 20, 2000, the Trustee filed a Motion to Dismiss (the "Dismissal Motion") the Debtor's Chapter 13 case because of her failure to file a feasible plan.

On July 25, 2000, Opposition to the Dismissal Motion was filed on behalf of the Debtor, which indicated that Thomas: (1) had learned before he filed the bankruptcy petition on behalf of the Debtor that, prior to the date of the scheduled public auction, Steuben County would allow her to repurchase the Depot Street Property for the amount of unpaid back taxes, together with interest and related expenses; (2) had now received a commitment from a lending institution to refinance the Depot Street Property for an amount sufficient to pay all of the Debtor's creditors in full, including the amounts due to Steuben County for unpaid real estate taxes; (3) had filed the Chapter 13 petition on behalf of the Debtor "to allow your deponent time in which to secure the necessary bank financing in order to pay off all of the back taxes currently owing on said property and all other unsecured creditors for which my mother owes money"; and (4) believed it was unlawful for Steuben County to have sold the Depot Street Property at public auction on May 24, 2000, because it was after the filing of the Debtor's Chapter 13 petition.

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On July 28, 2000, the Debtor filed a motion (the “Stay Violation Motion”) to void the sale of the Depot Street Property by Steuben County because it violated the stay provided by Section 362. The Motion alleged that: (1) Steuben County had taken title to the Property in February 2000 as the result of an In Rem Tax Foreclosure Proceeding; (2) at the time Steuben County took title to the Depot Street Property, there was approximately \$10,760.00 in unpaid real estate taxes due; (3) the Debtor desired to refinance the Property in order to pay-off all of her creditors, including the real estate taxes due to Steuben County at the time it took title to the Property; (4) before the Property was sold at a public auction to a third party, the Debtor’s attorney had notified the attorney for Steuben County that she had filed a Chapter 13 petition; (5) Steuben County had asserted that, since it had properly taken title to the Depot Street Property in February 2000, the automatic stay provided by Section 362 did not prevent it from reselling the Property; (6) Steuben County had a well-known “policy” that “any landowner who had lost their land through the In Rem process had up to the day before the public auction to redeem said taxes and reacquire their property”; and (7) since Steuben County had allowed taxpayers to redeem their property up to the day before a public auction conducted to resell the property to a third party, the automatic stay provisions should be held to apply.

On August 1, 2000, Steuben County interposed the affidavit of its Treasurer in Opposition to the Stay Violation Motion, which alleged that: (1) on or about May 7, 1997, May 15, 1998, July 10, 1998 and May 10, 1999, the Debtor had received written notice from Steuben County that she was delinquent in the payment of her real estate taxes; (2) each of the notices sent to the Debtor had offered her the possibility of entering into an installment payment plan to bring the delinquent taxes

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current, but the Debtor never took advantage of any of these opportunities; (3) on or about July 9, 1999, the Steuben County Treasurer sent the Debtor a Notice of Petition and Foreclosure (the "Foreclosure Notice") which informed her that her failure to pay her delinquent real estate taxes by the final redemption date of October 15, 1999 would result in Steuben County taking title to the Depot Street Property; (4) Steuben County received no response to the Foreclosure Notice; (5) the Debtor did not pay any of her delinquent real estate taxes before the expiration of the redemption period on October 15, 1999; (6) in February 2000, the Honorable Peter C. Bradstreet awarded the Depot Street Property to the County of Steuben, and the County took title to the Property; (7) no former property owners were ever allowed to redeem their property after the properly noticed final redemption date; (8) property owners had been allowed to repurchase their tax foreclosed property prior to its public auction by paying Steuben County the unpaid real estate taxes and various additional fees; (9) Steuben County sold the Depot Street Property at a public auction which began at 10:00 a.m. on May 24, 2000; (10) at 10:41 a.m. on May 24, 2000, Steuben County received a fax from the Debtor's attorney indicating that she had filed bankruptcy; and (11) Steuben County believed that Thomas lived at the Depot Street Property, and that the Debtor's daughter had planned to move the Debtor into her own home so that she could care for her mother.

On the return date of the Stay Violation Motion, the Court: (1) indicated that it would confirm the Debtor's proposed plan to refinance the Depot Street Property and pay all of her creditors, including any and all amounts which Steuben County might claim was due, in the event that the Court granted the Stay Violation Motion; (2) adjourned the Dismissal Motion pending the Court's decision on the Stay Violation Motion; (3) indicated that if it denied the Stay Violation

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Motion, it would grant the Dismissal Motion, with the understanding that the dismissal would be effective only after the Debtor had a reasonable period of time within which to elect to convert to Chapter 7; and (4) indicated that it would reserve on the Stay Violation Motion.

At the return date of the Stay Violation Motion, the attorney for the Debtor argued that: (1) at the time of the filing of her Chapter 13 petition, the Debtor had an equitable interest in the Depot Street Property; (2) this equitable interest was property both of the bankruptcy estate and of the Debtor; and (3) Steuben County had violated the automatic stay when it held its public auction on May 24, 2000 and sold the Depot Street Property to a third party, thereby terminating the Debtor's equitable interest in the Property.

## **DISCUSSION**

### **I. Right of Redemption**

Steuben County has asserted that the Debtor's statutory right of redemption expired on October 15, 1999. Although the Court has not been provided with a copy of the applicable Steuben County Tax Law, nor has it been referred to any applicable provision of the New York Real Property Tax Law which might provide a landowner with an additional right of redemption in connection with the collection and foreclosure of delinquent real estate taxes, the Debtor has not specifically denied that any statutory right of redemption she may have had expired prior to the filing of her bankruptcy petition. Although the Debtor characterizes as a right of redemption what Steuben County describes as an opportunity for a prior landowner to repurchase their property, the Debtor has not asserted that this right or opportunity is a right of redemption provided for or recognized by any New York State or Steuben County statute or applicable case law. Therefore, I find that as of the date of the filing

of her petition, the Debtor did not have a legally recognizable or enforceable right of redemption with respect to the Depot Street Property.

**II. The Automatic Stay Provided By Section 362**

The provisions of Section 362 which may apply to the acts of Steuben County in selling the Depot Street Property at public auction on May 24, 2000 are the provisions of Section 362(a)(1)-(6), which provide as follows:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]

Prior to the date on which Steuben County took title to the Depot Street Property in February 2000: (1) Steuben County had a claim against the Debtor for delinquent real estate taxes; (2) the Debtor was the owner in fee simple of the Depot Street Property; and (3) Steuben County had commenced and was continuing a real estate tax collection and foreclosure proceeding against the Debtor and the Depot Street Property in accordance with the applicable Steuben County Tax Law. However, once Steuben County was awarded the Depot Street Property and took title to it in February 2000, its claim against the Debtor was extinguished, legal title to the Depot Street Property was transferred to Steuben County, and the tax collection and foreclosure proceeding commenced against the Debtor and the Depot Street Property was terminated.

Therefore, I find that the actions of Steuben County in reselling the Depot Street Property at public auction post-petition on May 24, 2000 did not violate any of the provisions of Section 362(a)(1)-(6). The acts were not to enforce or collect a pre-petition claim against the Debtor and the Depot Street Property was no longer property of the estate or the Debtor.

### **III. An Equitable Interest in Property**

The Debtor has asserted that she had an equitable interest in the Depot Street Property at the time of the filing of her petition. However, as discussed above, legal title to the property had passed to Steuben County prior to the filing of the petition, and any and all rights of redemption with respect to the Property had expired.

Both the Debtor and Steuben County agree that prior to the date of the scheduled public auction of the Depot Street Property and other properties by Steuben County, the Debtor could have repurchased the Property for cash in an amount equivalent to the back taxes that had been due on the Property at the time Steuben County took title to it, together with additional interest and related expenses. That opportunity did not constitute an equitable interest in the Depot Street Property. At best it might be viewed as an oral option to purchase the Property with a specific expiration, the sale of the Property on May 24, 2000 at the scheduled public auction.<sup>2</sup> Steuben County, by conducting the public auction on May 24, 2000, did not take an act to obtain possession of property of the estate or property from the estate. It simply completed the previously scheduled act which both parties knew, or were deemed to have understood, would extinguish the oral option. Nothing in the Bankruptcy Code or Rules, including Section 362, provides a debtor with an extension of such an opportunity or option when it otherwise expires by its terms.

### CONCLUSION

The Stay Violation Motion is in all respects denied. The Dismissal Motion is granted effective on October 18, 2000, unless prior to that date the Debtor has elected to convert her case to a Chapter 7 case.

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<sup>2</sup> Such an oral option to purchase real property may not otherwise be enforceable because of the Statute of Frauds. However, Steuben County has not denied that the Debtor could have repurchased the Depot Street Property before the May 24, 2000 public auction even if she had filed for bankruptcy. It is also important to note that there were never any actual discussions between the Debtor and a representative of Steuben County regarding this opportunity.



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**IT IS SO ORDERED.**

\_\_\_\_\_/s/\_\_\_\_\_  
**HON. JOHN C. NINFO, II**  
**CHIEF U.S. BANKRUPTCY JUDGE**

**Dated: October 4, 2000**