

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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DOCKETED

In re

JOE L. McLOID

Case No. 93-13177 K

Debtor

MEMORANDUM OF DECISION

This motion to lift stay was brought on shortened time by the City of Buffalo to lift stay to allow the City to sell the debtor's property at its in rem sale for failure to pay property and sewer taxes. The City claims that it has been frustrated in its attempt to foreclose on some properties because of some debtors' repeated filings on the eve (indeed in some instances, on the morning) of the sale. Once the petition is filed, the debtor usually gains a one year respite, as the City (for the most part) only conducts one sale per year.¹ After the date of the sale passes, some debtors withdraw their bankruptcy cases or permit their case to be dismissed on someone else's motion, and repeat the filing process the next year, just in time to once again thwart the City's effort to foreclose. Some debtors' schedules demonstrate that property taxes are the only obligations that debtors have not paid. The City seeks to lift the stay in order to stop what it considers to be the Chapter 13 equivalent of a constantly moving

¹In April of 1993, the City conducted an extraordinary "mid-year" in rem foreclosure sale.

target. This is one such case.

This Court holds that when (1) there are successive filings by the same debtor, and (2) each filing is in such close proximity to the date of the in rem sale as to give the City insufficient notice to seek lift of stay in the ordinary course, and (3) the same property taxes remain unpaid from one filing to another, then the burden shifts to the debtor to make a reasonable showing of changed circumstances from the date of the last filing if and when the city makes the motion to lift stay. In other words, if the debtor has invoked the protection of this Court as to the same taxes on one or more prior occasions and has not cured the tax arrears, then on motion by the City the Debtor must demonstrate good reason (for example, new found employment that gives the debtor the ability to fund a Chapter 13 plan) to allow the debtor another year to address the tax arrears.

In this case, there was a prior filing on October 25, 1990 that was dismissed after the last tax sale. The most recent petition was filed on the Friday before the sale to be held the following Monday. The only scheduled debts were property taxes that were also the subject of the prior petition. The City effected personal service on counsel and left the moving papers also at the debtor's residence. Counsel submitted written opposition, and specially appeared to protest the foreshortened procedure. There was no suggestion of any changed circumstances that would convince the Court that this debtor would go forward to

complete a Chapter 13 plan. As a result, the motion to lift stay by the City of Buffalo was granted and an Order has been granted.

The Court holds that under such circumstances, "cause" exists for lift of stay under 11 U.S.C. § 362(d)(1).

This memorializes the Court's decision from the Bench in this matter.

SO ORDERED.

Dated: Buffalo, New York
October 28, 1993



U.S.B.J.

To: Walter Brinson, Esq.
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Albert J. Mogavero, Esq.