

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

LEILANI TAYLOR
a/k/a Leilani Daniels,
Debtor.

Case # 02-10695
Chapter 13

Appearances: *Rebecca Rice, Esq.*
 Cohen & Rice
 Rutland, Vermont
 Counsel for the Debtor

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DECISION
SUSTAINING VERMONT HOUSING FINANCE AGENCY'S OBJECTION
TO DEBTOR'S CHAPTER 13 PLAN

The Court held a hearing today on the objection filed by secured creditor Vermont Housing Finance Agency (VHFA) to debtor Leilani Taylor's proposed chapter 13 plan (the "plan"). After having considered the parties' arguments and the papers submitted on this matter, the Court sustains VHFA's objection to the Plan.

BACKGROUND

The facts are not in dispute. The debtor and her then-husband, Frederick Daniels, executed a \$ 55,500 promissory note to Vermont National Bank on October 31, 1997. The note was secured by a mortgage deed. The mortgage deed was assigned to VHFA. On September 7, 2001, VHFA commenced a foreclosure action in Vermont state court against Frederick Daniels and the debtor. On November 21, 2001, the state court issued a Judgment Order and Decree of Foreclosure, setting May 21, 2002 as the final redemption date. The debtor had until 10:00AM on that date to redeem the property. According to the Order and Decree, if the debtor did not redeem by the specified date and time, she would be foreclosed and forever barred from all equity of redemption in and to the lands and premises which were the subject of the foreclosure action.

On May 17, 2002, two business days before the expiration of the redemption period, debtor filed for relief under chapter 13 of the Bankruptcy Code. In her proposed chapter 13 plan, the debtor seeks to reinstate the VHFA mortgage, by curing the arrears over the life of the plan (through payments to the chapter 13 trustee), while making the regular, post-petition mortgage payments, pursuant to the terms of the mortgage. VHFA objects to the Plan, arguing that it is inconsistent with the recent Second Circuit decision of Canney v. Merchants Bank, 284 F.3d 362 (2d Cir. 2002). Specifically, VHFA argues that the filing of a bankruptcy petition does not extend the redemption by any more than 60 days, that the debtor must pay the full redemption amount to VHFA in order to retain her interest in the property, and that the debtor must pay this sum by the end of that 60-day extension period. VHFA also insists that the debtor has no right to reinstate the mortgage, and that her only recourse for retaining the property is to redeem it, i.e., to pay the mortgage debt in full before the extended redemption period expires.

DISCUSSION

In Canney, the bank obtained a foreclosure judgment against the debtor which “forever barred [debtor] from equity redemption unless [the bank] was paid the full amount due on the mortgage” 284 F.3d at 367. Four days before the expiration of the redemption period, the debtor filed for chapter 13 bankruptcy protection. The bank moved for relief from the automatic stay, arguing that the equity of redemption period is not indefinitely tolled by 11 U.S.C. § 362, and that the specific timing provisions of § 108(b) take precedence over the more general stay provisions of § 362. Beginning its analysis with a recognition that property interests are created and defined by state law, the Second Circuit held in Canney that since the debtor “sought bankruptcy protection after the foreclosure judgment had been filed but during the redemption period specified in that judgment, his equity of redemption, a contingent equitable interest in the property subject to extinguishment absent redemption within the allotted time, became ‘property of the estate’ within the meaning of federal bankruptcy laws.” Id. at 370 (citation omitted). Adopting the analysis of Bank of Commonwealth

v. Bevan, 13 B.R. 989 (E.D. Mich. 1981), the Second Circuit held that § 108(b) , not § 362(a), governs the tolling of a period of equitable redemption. See id. at 372. “The automatic stay prevents only certain affirmative acts taken by a creditor, and running of time is not one of those acts.” Id.

Thus, the Second Circuit held that the period of equitable redemption was not stayed indefinitely by the debtor’s filing of a chapter 13 bankruptcy petition just days before the expiration of the redemption period, but, rather, that the bankruptcy filing merely extended the redemption period by the 60 day period set forth in § 108(b). See id. at 373. Since neither the debtor nor the trustee redeemed the property within the extended period, the court held that under Vermont strict foreclosure law, the equity of redemption was completely extinguished. See id. By operation of law, full title, both legal and equitable, vested automatically with the mortgagee-bank once the redemption period expired. See id.

The instant case is analogous: VHFA obtained a Judgment Order and Decree of Foreclosure from state court which set May 21, 2002 at 10:00AM as the final date of redemption. On May 17, 2002, just days before the expiration of the redemption period, the debtor filed the instant chapter 13 bankruptcy case, wherein she seeks to cure her mortgage arrears and reinstate the mortgage, through her chapter 13 plan.

As of the date of the entry of the Judgement of Foreclosure the creditor owned the property. The only interest to the property that the debtor retained at that point was the equitable right of redemption. “A foreclosure judgment vests full legal and equitable title to the property with the mortgagee, subject only to the mortgagor’s ‘equity of redemption,’ which is a contingent equitable interest in the property, and limited rights of possession, rents, and profits of the property during the period of redemption.” Canney, 284 F.3d at 369 (citations omitted). Thus, the debtor has no right to reinstate the mortgage in her chapter 13 plan; that right was extinguished when the foreclosure judgment was entered. However, the debtor did still retain the equitable right to redeem the property as of the date she filed her bankruptcy case.

Since the debtor sought chapter 13 bankruptcy protection *after* the entry of a state court foreclosure judgment, the redemption period was modified pursuant to 11 U.S.C. § 108(b). That statute provides:

Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 60 days after the order for relief.

Hence, by application of this provision, the debtor's redemption period expired on July 16, 2002. Neither the debtor nor the trustee redeemed the property prior to that date and therefore the equity of redemption has been extinguished completely. Full title, both legal and equitable, has automatically vested with VHFA upon the expiration of this extended period. See Canney, 284 F.3d at 373. The Court thus finds that the debtor has no legally cognizable right or interest in the property at this time.

CONCLUSION

For the reasons set forth above, Vermont Housing Finance Agency's Objection to debtor Leilani Taylor's proposed chapter 13 Plan is SUSTAINED, and confirmation of the chapter 13 plan currently before the Court in this case is DENIED.

Dated: July 25, 2002
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge