

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

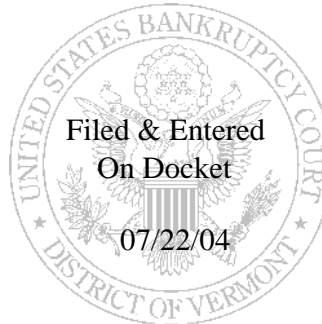
In re:

Hurley R. Cavacas, Jr., and
Terry D. Cavacas,
Debtors.

CUC Mortgage Corporation,
Plaintiff,

v.

Hurley R. Cavacas, Jr., Terry D. Cavacas,
and Jan M. Sensenich, Chapter 13 Trustee,
Defendants.



Chapter 13 Case
03-11636

Adversary Proceeding
03-1063

Appearances:

Jess T. Schwidde, Esq.
Glinka & Schwidde
Rutland, VT
Attorney for Debtor/Defendants

Robert S. DiPalma, Esq.
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Burlington, VT
Attorney for Plaintiff

Jan M. Sensenich, Esq.
Standing Chapter 13 Trustee
White River Junction
Pro se

ORDER

GRANTING CUC MORTGAGE CORPORATION'S MOTION FOR SUMMARY JUDGMENT

Creditor CUC Mortgage Corporation ("CUC") seeks summary judgment on its Amended Complaint for declaratory judgment. Specifically, CUC asks the Court to determine that the Debtors retained no interest in their residential real property as of the date they filed their bankruptcy petition because: (i) the time period for exercising their right of redemption in CUC's foreclosure action had expired; and (ii) the Debtors had not redeemed the property prior to their filing the instant bankruptcy case. The Debtors oppose CUC's Motion for Summary Judgment alleging title in the subject property has not vested in CUC and, therefore, pursuant to 11 U.S.C. § 1322, the Debtors may reinstate their mortgage with CUC and cure the arrears under the mortgage, as part of their chapter 13 plan. Based on the record before it, the Court finds there are no material facts in dispute, and after a review of Vermont's strict foreclosure statute and the federal cases addressing this area of the law, the Court holds that CUC is entitled to judgment as a matter of law.

This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(K) and 1334.

I. BACKGROUND

This dispute has wound its way to this Court (through CUC's adversary proceeding Complaint) via the Rutland Superior Court. The background facts are not in dispute. Prior to the Debtors' filing for bankruptcy protection under chapter 13 of the Bankruptcy Code, CUC had secured a foreclosure judgment against the Debtors in Vermont state court. Under that foreclosure judgment, the Debtors had until October 23, 2003 to exercise their right of redemption in the subject real property in Proctor, Vermont. If they did not redeem on or before October 23, 2003, they would be "foreclosed from and of all title, right, interest and demand in" said property and "be foreclosed and forever barred from all equity of redemption in" said property. See Judgment and Decree of Foreclosure at 4-5, attached as Ex. #1 to Pl.'s Mot. Summ. J. (doc. #21). The Debtors' judgment lienholder, Steven Benson, had until October 24, 2003 to redeem said property. See id. at 5.

The Debtors did not redeem the property by October 23, 2003 and on October 24, 2003, the Clerk of the Rutland Superior Court issued a Certificate of Non-Redemption. On October 30, 2003, the Debtors filed for bankruptcy protection under chapter 13. They listed an interest in the subject real property in their bankruptcy schedules. Counsel for the Debtors then informed counsel for CUC that it was the Debtors' position that the issued Certificate of Non-Redemption was void because it was issued before the expiration of lienholder Benson's redemption period. To avoid a dispute, CUC's counsel asked the Clerk of the Court to issue a new Certificate of Non-Redemption. Debtors' counsel wrote a letter to the Clerk of the Court, arguing that the bankruptcy stay was in effect and that the stay precluded the state court from issuing a new Certificate.

In light of the dispute over the issuance of a new Certificate of Non-Redemption, on November 7, 2003, the Rutland Superior Court issued an Opinion and Order holding that the Debtors' right in the subject property had expired prior to their bankruptcy filing and that the automatic stay was inapplicable. Thus, the court ordered a revised Certificate of Non-Redemption be issued. The Debtors promptly moved for reconsideration, which the state court granted. In its Entry Order granting the Debtors' Motion for Reconsideration, the state court declared:

The [Rutland Superior] Court will stay the Order of Nov. 7, 2003, and abstain from any further action, to allow the U.S. Bankruptcy Court of Vermont to review issues 1-A, B, C, and D, raised by Defendants [*sic*] Reply Memo filed Nov. 21, 2003.

CUC Mortgage Corp. v. Cavacas et al., No. 105-2-03, Entry Order (Vt., Rut. Sup. Ct. Dec. 2, 2003), attached as Ex. #9 to Pl.'s Mot. Summ. J. (emphasis in original). The issues the Debtors raised in their state court Reply Memo were:

- A. The scope of the stay provision under 11 U.S.C. § 108;
- B. The scope of the automatic stay provision under 11 U.S.C. § 362, including whether

- the issuance of [the state court's] post-petition order is null and void;
- C. The Chapter 13 Debtors' right to cure under 11 U.S.C. § 1325 and the application of *Taylor* under the circumstances of this case where the Certificate of Non-Redemption was not properly issued prior to the bankruptcy filing as to the Chapter 13 Debtors and as to the Judgment Lien Creditor;
 - D. The scope of the powers of the Chapter 13 Debtors and their Chapter 13 Trustee to exercise the strong arm provisions under 11 U.S.C. § 544 as hypothetical judicial lien creditor including the judgment lien creditor in this case where there was no certificate of non-redemption issued prior to the filing of the Chapter 13 Bankruptcy Case.

Debtors' Reply to CUC Mortgage Corporation's Opposition to Motion to Reconsider Opinion and Order at 1-2, attached as Ex. #10 to Pl.'s Mot. Summ. J.

In compliance with the instruction of the state court, CUC commenced an adversary proceeding in this Court seeking a declaratory judgment ruling on the question of whether the Debtors have any rights in the subject property.

II. DISCUSSION

A. The Summary Judgment Standard

Pursuant to FED. R. BANKR P. 7056, judgment should be entered in favor of the moving party if the motion for summary judgment and supporting documents establish that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. "A genuine issue exists only when the evidence is such that a reasonable [trier of fact] could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The substantive law will identify which facts are material. See Anderson, 477 U.S. at 248. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. See id. at 247. Factual disputes that are irrelevant or unnecessary are not material. See id. Furthermore, materiality is determined by assessing whether the fact in dispute, if proven, would satisfy a legal element under the theory alleged or otherwise affect the outcome of the case. See id. A court must view all the evidence in the light most favorable to the nonmoving party and draw all inferences in the nonmoving's favor. See Cruden v. Bank of New York, 957 F.2d 961, 975 (2d Cir. 2002). In making its determination, a court's sole function is to determine whether there is any material dispute of fact that requires a trial. See Anderson, 477 U.S. at 249; see also Delaware & Hudson Ry. Co. v. Conrail, 902 F.2d 174, 178 (2d Cir. 1990).

B. The Record in the Instant Case Demonstrates No Material Facts in Dispute

CUC filed a Statement of Undisputed Facts (doc. #21, attach. #1) with its Motion for Summary

Judgment. The Debtors responded by filing a Statement of Disputed Facts (doc. #25, attach. #1). The Debtors assert that the salient material fact in dispute is whether the redemption period for the Debtors and the junior lienholder expired prior to the bankruptcy filing without either party redeeming the subject property. In their Answer, though, the Debtors admit that neither they nor the junior lienholder redeemed the property within the time period provided in the foreclosure judgment. See Defs.' Answer at ¶4 (doc. #8). Thus, the Debtors cannot now dispute that fact in response to the Motion for Summary Judgment. Moreover, the Court finds the other alleged disputed facts the Debtors now raise are actually not factual issues, but rather, legal issues. The Debtors' Statement of Disputed Facts lists ten issues they perceive to be material and disputed facts, but essentially they boil down to four issues: when did all the redemption periods expire; when did title in the subject property vest in CUC; whether there is a valid Certificate of Non-Redemption; and whether the Debtors can assert an interest in the property through the junior lienholder's interest. In particular, the Debtors assert that whether title has vested in CUC, the implications of CUC's request for a new Certificate of Non-Redemption, and whether the original Certificate of Non-Redemption was valid as to Mr. Benson are all in dispute and that each of these assertions raises a material question of fact. The Court finds these to be legal issues. Likewise, the Debtors postulate that pursuant to 11 U.S.C. § 544, they have a right to assert the interest of the junior lienholder, Mr. Benson, and describe this as a material fact in dispute; the Court finds this also to be a legal determination. The Debtors' assertion that no Certificate of Non-Redemption was recorded in the land records is undisputed. Thus, the Court finds there are no material facts in dispute here. Hence, this matter may be properly resolved by summary judgment.

***C. The Vermont Foreclosure Statute and Federal Case Law
Entitle CUC to Judgment as a Matter of Law***

The interplay between the expiration of a mortgagor's right to right to redeem under Vermont foreclosure law and the extent of that mortgagor's interest in the subject property if he or she files for bankruptcy relief has been the subject of several federal court decisions since the enactment of the Bankruptcy Code in 1978. In making their determination of a mortgagor's interest, the courts have consistently relied upon the plain language of the State's foreclosure statute and the specific facts of each case. The result is that each time a new variation on the question is presented, the issue must be examined anew by comparing the facts presented against the State foreclosure statute and prior court decisions. The Vermont foreclosure statutes, see 12 V.S.A. Ch. 163, subch. 6, have not been amended to incorporate, or respond to, the federal court decisions interpreting a mortgagor's rights. Hence, the only variables that change are the circumstances of the foreclosure action as of the date of the bankruptcy filing and the universe of case law available for guidance.

It appears that all courts which have construed the rights of a mortgagor who is both a defendant in

a strict foreclosure action¹ and a debtor in a bankruptcy case, focus on the following factors as of the date of the bankruptcy filing: the status of the foreclosure action; the extent to which some or all of the redemption periods have expired; whether a certificate of non-redemption or writ of possession has been issued; whether the foreclosure decree has been recorded in the land records; whether all statutory requirements of foreclosure have been met; and what type of bankruptcy relief the mortgagor has sought. Courts apply the case law to these material facts to determine whether title has been unified, the extent and nature of the mortgagor's interest in the property as of the mortgagor's bankruptcy filing, and what remedies are available to the mortgagor in the bankruptcy case.

The salient facts and circumstances that are presented here, and that this Court must compare to prior case holdings in order to determine the outcome of the instant summary judgment motion, are:

1. the Debtors' redemption period had expired prior to the date they filed for bankruptcy relief;
2. each defendant's right to redeem had expired prior to the date of the Debtors' bankruptcy filing;
3. none of the defendants had exercised their right of redemption prior to the bankruptcy filing;
4. the Certificate of Non-Redemption had been issued after the Debtors' period to redeem had expired, but before the judgment lienholder's right to redeem had expired;
5. the writ of possession had not been issued prior to the date of the bankruptcy filing;
6. the foreclosure decree had not been recorded prior to the date of the bankruptcy filing; and
7. the Debtors are in a chapter 13 case and declare that the subject property is necessary to their bankruptcy reorganization.

The Court finds Canney v. Merchants Bank (In re Canney), 284 F.3d 362 (2d Cir. 2002) to be the controlling authority for resolution of the issues presented in this proceeding. That case determined the extent of a mortgagee's rights in real property that was the subject of a foreclosure judgment when the mortgagor interrupted the usual flow of a foreclosure action with a bankruptcy filing. In that case, the Second Circuit comprehensively explained the components of Vermont's strict foreclosure law and described the interplay between a mortgagor's rights in property which is the subject of a strict foreclosure action judgment and the unique remedies available once a mortgagor files for bankruptcy relief. The ultimate decision of the Canney case was that the tolling provisions of § 108,² rather than the automatic stay provisions of § 362, govern the

¹ It appears that only Vermont and Connecticut use a strict foreclosure process; most states have a foreclosure sale process. See, e.g., Canney v. Merchants Bank (In re Canney), 284 F.3d 362, 369 (2d Cir 2002) (citations omitted).

² Unless otherwise noted, all statutory references are to Title 11 of the United States Code ("the Bankruptcy Code").

extent to which the mortgagor's redemption period can be extended by the filing of a bankruptcy case. Moreover, the Canney court's very thorough explanation of "the intersection of federal bankruptcy law with Vermont strict foreclosure law," id. at 366, provides meaningful guidance on most of the issues presented herein. However, as comprehensive as the Canney rationale is, it *per force* does not anticipate every twist that might be presented and does not resolve all of the issues raised by the instant Motion. Therefore, the Court relies on two more recent cases, Pellegrino and Taylor, to supplement Canney and to fill in more of the puzzle we call the interplay between strict foreclosure and bankruptcy.

In Canney, the mortgagor's right of redemption expired on September 18, 1998; however, he filed for chapter 11 bankruptcy relief on September 16, 1998, *i.e.*, *prior* to the expiration of his redemption period. The Second Circuit held that the debtor had until 60 days after the bankruptcy filing to redeem the property and "because the redemption period lapsed without redemption, neither [the debtor] nor the Trustee has a legally cognizable right or interest in the property that justifies encumbrance by the federal bankruptcy laws." Id. Canney definitively settled that §108, rather than § 362, controls the amount of extension of time that a mortgagor obtains by filing for bankruptcy relief prior to the expiration of his or her redemption period in the context of a strict foreclosure action and laid out a roadmap for navigating the strict foreclosure statute.

The instant case raises a new variation on the same theme, but since it is a variation that includes many questions answered by the Canney court's thorough articulation of how Vermont's strict foreclosure statute operates when a bankruptcy case is superimposed upon it, we will start with Canney. Rather than discuss the many findings of Canney, it seems most useful here to identify the ten conspicuous guideposts the Canney court has erected to help courts navigate strict foreclosure terrain when the goal is to measure the extent of a mortgagor's interest in property when the mortgagor files for bankruptcy:

1. In Vermont, a mortgage conveys legal title to a mortgagee at the time the mortgage is granted. Id. at 369. Thus, all a mortgagor holds while the mortgage debt is outstanding is equitable title to the property.
2. If there is a default, then a mortgagee may pursue its rights through a strict foreclosure action. See id.
3. "Strict foreclosure does not involve a foreclosure sale. Upon the borrower's default, the court will normally set a time period in which the borrower may pay off or redeem the mortgage debt. If the borrower fails to do so in the allotted time, the lender is given an immediate right to possession of the property." Id. at 369 n.6 (quoting BAXTER DUNAWAY, THE LAW OF DISTRESSED REAL ESTATE: FORECLOSURE, WORKOUTS, PROCEDURE §12.16 (1999) (further citation omitted)).
4. "A foreclosure judgment vests full 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 to possession, rents, and profits of the property during the period of redemption.” Id. at 369 (citing Stowe Ctr., Inc. v. Burlington Sav. Bank, 141 Vt. 634 (1982)). “Curing the default within the time period specified in the foreclosure judgment vests equitable title with the mortgagor; failure to do so, however, extinguishes the contingent interest.” Id. at 370 (citations omitted).

5. A decree of foreclosure in Vermont makes clear that the equity of redemption is irreversibly “foreclosed and forever barred” if the mortgagor fails to redeem within the period set forth in the decree. See id.
6. The ““right of redemption created under state law generally passes into the estate of the debtor if the period of redemption has not expired at the time the petition is filed.”” Id. at 372 (quoting Bank of Commonwealth v. Bevan, 13 B.R. 989, 991 (E.D. Mich. 1981) (further citation omitted)).
7. The act of recording a certificate of non-redemption in no way affects the mortgagor, whose equity of redemption extinguishes automatically when the redemption period lapses. See id. at 373.
8. “[T]he mortgagee automatically perfects its interest vis-a-vis the mortgagor because strict foreclosure leaves the mortgagor without any right or interest in the property.” Id. at 374.
9. The mortgagee has the right to perfect its interest vis-à-vis subsequent purchasers, including a trustee exercising strong arm powers under § 544, through 12 V.S.A. §§4529, 4530, but such a creditor simply has no right to redeem unless and until a mortgagee fails to record the certificate of non-redemption in the time frame dictated by 12 V.S.A. §§ 4529, 4530. See id.
10. “[I]n a strict foreclosure proceeding, a debtor may not redeem after the period of redemption lapses, regardless of whether the clerk of court has issued the writ of possession; issuance of the writ has no effect whatsoever on the debtor’s right because, . . . once the redemption period has lapsed, the debtor’s equity of redemption extinguishes and the debtor has no legally cognizable right or interest in the property.” Id. at 375.

Applying this construction of the law to the case at bar, the Court finds that since the Debtors’ right to redeem, and each defendant’s right to redeem, expired prior to the date of the bankruptcy filing, the Debtors had no cognizable or legal interest in the property on the date of their bankruptcy filing. The Debtors urge this Court to rely upon the fact that the Certificate of Non-Redemption was issued prematurely, or was invalid, since it was issued prior to the expiration of the judgment lienholder’s period of redemption as the basis for a contrary finding. However, as Canney makes clear, the recording of a certificate of redemption has no impact on the nature or extent of the mortgagor’s interest in the property. See id. at 374. Rather, Canney instructs that the mortgagee has full legal title upon the expiration of the redemption period. As a result of this holding, the Court need not address the significance of the Certificate of Non-Redemption being issued prior to the expiration of the judgment lienholder’s redemption period. That Certificate has no bearing on the mortgagors’ lack of interest in the subject property on the date the bankruptcy case was filed.

Subsequent to Canney, two further federal court decisions have been issued which are relevant to the outcome of this proceeding. The first is In re Pellegrino, 284 B.R. 326 (Bankr. Conn. 2002). This Court adopts the rationale of Pellegrino and will follow its conclusion in cases filed in this District for four reasons. First, Connecticut is the only other state in the nation that uses a strict foreclosure regime and supplements the detailed analysis of strict foreclosure principles begun by Canney. Second, the subject property in the Pellegrino case was the debtor's residence, and again, supplements the analysis of Canney which dealt with a commercial parcel of property. Third, the Pellegrino case specifically addresses the unique issues raised in a chapter 13 case – whereas the Canney case involved a chapter 11 case that was later converted to chapter 7. Fourth, the Court finds the reasoning of the Pellegrino court to be absolutely sound and to address two issues which were not resolved by Canney: how to interpret the word “sale” in § 1322 in the framework of strict foreclosure and whether “the expiration of the redemption period” means the expiration of the mortgagor's redemption period or the expiration of all redemption periods.

The Pellegrino court emphasized that under the strict foreclosure scheme *redemption* unifies legal and equitable title to the mortgaged property in the redeeming party; whereas *foreclosure* unifies legal and equitable title in the mortgagee. This is especially important in the instant case. First, Pellegrino underscores the Canney point that full and absolute title is in the mortgagee upon the expiration of the redemption period, regardless of the existence of any other acts the mortgagee must complete to defend title against subsequent purchasers or trustees. See id. at 328 n.8. Second, the Pellegrino court presented a compelling argument for why the Canney ruling should be limited to its facts and the time period for mortgagors to cure defaults should be expanded when the mortgagor files chapter 13 and becomes eligible to invoke application of § 1322(b)(2). See id. at 327. This aspect of the Pellegrino rationale is critically relevant to the instant dispute because the Debtors are in a chapter 13 case seeking to cure their default under the CUC mortgage as a part of their chapter 13 reorganization and want to avail themselves of § 1322(b)(2).

Pellegrino addresses the § 1322(b) dimension of the issue head on. It looks to the “essential concept embodied by Section 1322(c)(1)'s ‘sale’ terminology, namely the *vesting of title*.” Id. at 331. It seeks to identify the point in the foreclosure process when title becomes vested in the mortgagee, and concludes that this point occurs when *all* redemption periods (called “law days” in Connecticut) expire. See id. at 332. Thus, the questions presented in the instant case about when the mortgagee has full title to the property, and how § 1322 can be reconciled with the mandates of strict foreclosure – which were not answered by Canney – are answered directly by Pellegrino. In Pellegrino, our sister bankruptcy court holds that if the redemption periods have not expired, the mortgagee does not yet have unified title, and the mortgagor may use § 1322 to reinstate and cure the mortgage. Importantly, the Pellegrino court makes clear that its holding is focused on defining when the mortgagee obtains full title and defining what rights the mortgagor has under chapter 13 if he or she

files for chapter 13 relief before the mortgagee obtains full title, i.e., before the expiration of all redemption periods.

In applying Pellegrino to the facts presented here, the Court finds that CUC had full title on October 25, 2003, the date all of the redemption periods expired. Thus, bound by the controlling law of Canney, the Court finds that, since full title was vested in CUC prior to the bankruptcy filing, the Debtors had no interest in the subject property as of their bankruptcy filing date, October 30, 2003. Hence, the Debtors have no right to reinstate the mortgage or cure the default in their chapter 13 case.

In December 2002, the United States District Court for the District of Vermont issued their Taylor decision, providing the most recent analysis on this interplay between the right of redemption and the right to cure a defaulted mortgage in chapter 13. See Taylor v. Vermont Hous. Fin. Agency (In re Taylor), 286 B.R. 275 (D. Vt. 2002). There, the district court specifically addressed the question of when the § 1322(c)(1) right to cure expires in a strict foreclosure regime. See id. at 280-82. The Court followed Pellegrino and held, first, that the right to cure under § 1322(c)(1) expires at that point in the foreclosure process when full title becomes vested in the mortgagee, see id. at 281 (“[T]he Section 1322(c)(1) right to cure is available until unencumbered title to the property passes to the mortgagee.”), and, second, that in a strict foreclosure context, where there is no sale, this vesting occurs when the Debtors’ right to redeem expires, see id. at 282 (“In Vermont, under its strict foreclosure law, the mortgagee’s ownership of the subject property following foreclosure judgment remains encumbered until the date of redemption specified in the foreclosure judgment has passed.”). Thus, the Taylor court concluded that since the debtor therein had filed chapter 13 prior to the expiration of her strict foreclosure redemption period, she was not limited by the 60-day period set forth in § 108, pursuant to Canney, but rather, had an indefinite period to cure her default and reinstate her mortgage under § 1322(c)(1). See id. As a Vermont decision on the issue of the interplay between strict foreclosure and chapter 13, this was an important development in our federal court jurisprudence as it responded to Canney through an adoption of Pellegrino and took us one step closer to having the puzzle completed.

Taylor elucidated the impact of Canney on chapter 13 practice in this District, making clear that the 60-day restriction that Canney imposed was irrelevant to a debtor’s right in a chapter 13 case to reinstate a mortgage and then cure the mortgage defaults pursuant to § 1322. Yet, Taylor did not change the criteria for the fundamental determination of whether the mortgagor has any interest to reinstate, as defined by Canney. Since Canney unequivocally held that the mortgagee has full, unified title, absolute upon the expiration of the redemption periods, without regard to the issuance of the certificate of non-redemption, the recording of a certified copy of the foreclosure judgment, or the issuance of the writ of possession, this Court finds that the holding of Taylor is that the § 1322(c)(1) right to cure is not available if all of the redemption periods expired prior to the filing of the bankruptcy case.

The Court would be remiss if it did not address the one other case in this line of cases construing redemption rights with bankruptcy remedies, namely, In re Donohue, 232 B.R. 610 (D. Vt. 1999). Although neither the Taylor nor Canney decisions discuss this case, the case stands out as being on point. This Court must conclude that Donohue was overruled by Canney. In reversing the bankruptcy court, the district court ruled in Donahue that the mortgagor retained equitable title in the subject property until a writ of possession was issued. See id. at 614. The district court held that the chapter 13 debtor had a continuing interest in the subject property as of the commencement of the case, sufficient to bring the property into his bankruptcy estate, even though his redemption period expired prior to the bankruptcy filing, because the junior lienholder's redemption period had not expired and the clerk of the court had not issued the writ of possession. See id. The portion of the holding that asserts that the mortgagor's interest in the property was not fully extinguished until the junior lienholder's redemption period expired is not inconsistent with Canney, Taylor and Pellegrino. However, the portion of the Donahue holding that defines the act in a strict foreclosure proceeding that conveys full title to the mortgagee – the one that would correspond to a 'sale' for purposes of § 1322 – to be the issuance of a writ of possession, is disputed in Pellegrino and flatly rejected by the holding of Canney. In Canney, the Second Circuit directed that the mortgagor lost all interest in the subject property upon the expiration of the redemption period, and that this vesting of title was effected automatically upon the expiration of the redemption period *without need for the issuance or recording of any document*.

Finally, the Court will address the Debtors' other predominant assertion in opposition to the Motion for Summary Judgment. The Debtors argue that the Trustee has an interest in this property pursuant to 12 V.S.A. § 4530.³ The Court finds this issue is not yet ripe. The filing of all documents in the foreclosure action were stayed by the state court until entry of an order by this Court. Under 12 V.S.A. § 4530, CUC has 30 days to record the foreclosure judgment in its favor. If and when it fails to comply with that requirement, the Court will entertain a motion by the Trustee alleging that he has an interest or right in the subject property under the strong arm provisions of § 544 of the Bankruptcy Code. Thus, it will not consider this argument at this time. Likewise, the Court finds no relevance in the state court clerk issuing a Certificate of Non-Redemption to CUC prior to the expiration of the junior lienholder's redemption period, nor in the Debtors' post-petition purchase of the junior lienholder's interest in the subject property. The Court dismisses all other arguments of the

³ Section 4530 of Title 12 of the Vermont Statutes Annotated reads:

§ 4530. —Redemption if copy not recorded

Such foreclosure shall not transfer the title to such lands as against subsequent purchasers, mortgagees or attaching creditors, unless such copy of record or such decree or copy thereof is thus left for record, or is afterwards and prior to the acquiring of any interest in or lien on the lands by a purchaser, mortgagee or attaching creditor, left for record in like manner. If not thus left for record, such lands shall be subject to redemption by subsequent purchasers, mortgagees or attaching creditors, as though the time of redemption had not expired.

Debtor as being without merit.

CONCLUSION

The Court finds that there are no material facts in dispute and that, under the Vermont foreclosure statute and controlling federal case law, the Plaintiff is entitled to judgment as a matter of law. Therefore, **THE COURT HEREBY FINDS:**

1. The stay imposed by the state court is hereby lifted;
2. Full legal and equitable title was vested in CUC at the expiration of the redemption periods set forth in the foreclosure judgment;
3. The Debtors have no interest in the subject property today, nor did they have any interest therein on the date of their bankruptcy filing;
4. The Trustee has no interest in the subject property today, nor did he have any interest therein on the date of the Debtors' bankruptcy filing; and
5. The subject property is not property of the Debtors' bankruptcy estate; thus, CUC does not need relief from stay in order to continue its foreclosure action in state court.

Accordingly, **IT IS HEREBY ORDERED** that the Plaintiff's Motion for Summary Judgment is GRANTED.

SO ORDERED.

July 22, 2004
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge