

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

IN RE:

SAM G. DICKSON,

Debtor.

Case No.: 14-29781-BKC-LMI

Chapter 11

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**DEBTOR'S EMERGENCY MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

**The Debtor requests an emergency hearing on this matter on or before September 12, 2014, as the deadline to object to the Certificate of Sale is September 12, 2014.**

SAM G. DICKSON (the "Debtor"), by and through his proposed undersigned counsel, files this *Emergency Motion for Relief from the Automatic Stay*, and in support thereof, states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1309. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. The statutory predicate for the relief requested herein is 11 U.S.C. § 1121(e).

**FACTUAL BACKGROUND**

3. On September 2, 2014 (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is managing his affairs as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

4. Prior to the Petition Date, the Debtor was the defendant in an action prosecuted by Guaranty Bank in the Circuit Court in and for Monroe County, Florida, case number 12-CA-

001287-KW. The foreclosure case related to a parcel of real property with the physical address of 522 Margaret Street, Key West, Florida 33040 (the “Real Property”). Title is held in the name of the Debtor (50%) and Jane F. Goodwin (50%) as joint tenants with right of survivorship.

5. A foreclosure sale occurred with respect to the Real Property, and a Certificate of Sale was issued only hours prior to the filing of the petition.

6. Under Florida law, the right of redemption terminates upon filing of a certificate of sale. *See In re Jaar*, 186 B.R. 148 (Bankr. M.D. Fla. 1995). The only way to avert this result is for the Debtor to file an objection to the sale within ten (10) days of the foreclosure sale, which is September 12, 2014, and which will then be set for hearing in the state court. Although this time is arguably extended for sixty (60) days by virtue of 11 U.S.C. § 108(b)(2), the Debtor would prefer to file the objection in accordance with the time constraints imposed by state law to avoid any doubt. This is especially true given that some courts have held that the issuance of a certificate of title is ministerial in nature, *see In re Pfleiderer*, 75 B.R. 363 (Bankr. S.D. Fla. 1987), and such acts are typically regarded as not in violation of the automatic stay, *In re Soares*, 107 F.3d 969 (1<sup>st</sup> Cir. 1997). In this same vein, the Debtor seeks relief from the automatic stay to file such objection.

### **LEGAL ARGUMENT**

7. Section 362(a) of the Bankruptcy Code protects the estate from actions taken *against* the debtor or the estate. There are some courts that take the position that the filing of a bankruptcy petition effectively halts any further action involving the debtor, whether it is the plaintiff or the defendant. *See In re Critical Fork Coal Corp.*, 18 B.R. 422 (Bankr. W.D. Va. 2002). Many courts have disagreed with *Critical Fork Coal*. *See In re White*, 186 B.R. 700, 704 (9<sup>th</sup> Cir. BAP 1995) (collecting cases). This uncertainty is also reflected in cases analyzing whether an appeal by the debtor in a case where the debtor is a defendant is subject to the

automatic stay. *See, e.g., Farley v. Henson*, 2 F.3d 273 (8<sup>th</sup> Cir. 1991) (collecting and discussing cases). Although it may be arguable whether the automatic stay is applicable, the Debtor believes the wiser course of action is to seek limited relief from the automatic stay to file and prosecute an objection to the Certificate of Sale.

8. Stay relief in this particular situation is warranted. In the event that the stay is not lifted, the Circuit Court for Monroe County would likely issue the certificate of title in accordance with state law. Here, the Debtor believes valid objections to the sale exists, and that there is substantial equity in the Real Property that would benefit the estate as a whole, rather than only Guaranty Bank. Given the forfeiture of this equity that would occur if the Debtor were not permitted relief to file the objection, the Debtor submits that “cause” exists to lift the stay in accordance with *In re Alosi*, 261 B.R. 504, 508 (Bankr. M.D. Fla. 2001); *In re Salisbury*, 123 B.R. 913, 915 (S.D. Ala. 1990).

**WHEREFORE**, the Debtor respectfully requests that this Court enter an order granting the Debtor relief from the automatic stay to file the objection to the Certificate of Sale, and for such other and further relief as is just and appropriate.

/s/ Michael D. Seese

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