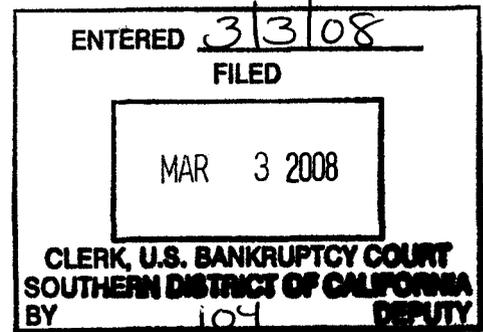


1 WRITTEN DECISION - NOT FOR PUBLICATION



8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 In re) Case No. 08-00125-B13
12) RS No. RFF001
13 MICHAEL EUGENE YOUNG,)
14) Debtor.) ORDER ON MOTION FOR
15) RELIEF FROM STAY
16)
17 THE WILLIAM G. JOINER TRUST)
18 DATED 1/6/02, WILLIAM G.)
19 JOINER AS TRUSTEE, and A & R)
20 PROFESSIONAL SERVICES, INC.)
21) Movant,)
22)
23 v.)
24)
25 MICHAEL EUGENE YOUNG,)
26 THOMAS BILLINGSLEA,)
TRUSTEE,)
Respondents.)

23 Movants seek an order annulling the automatic sale so as to
24 validate the foreclosure sale of the property to A & R
25 Professional Services, Inc. They also want the order to be
26 effective for 180 days against any future filing, and A & R wants

1 to be able to prosecute an unlawful detainer action against
2 debtor to gain possession of the property it purchased at the
3 foreclosure sale. Although debtor chose to file his bankruptcy
4 petition under Chapter 13, debtor has not filed any opposition to
5 the instant motion.

6 The basic facts have not been controverted, and appear to be
7 that the Joiner Trust granted debtor a loan of \$175,000, secured
8 by a second position trust deed on the property. The loan was
9 made in October, 2006. The pre-default loan payments were \$1,786
10 per month. After failing to timely make the July, 2007 payment,
11 the monthly payment shot up to \$3,098 per month. The Trust
12 offered to accept the non-default payment while the default
13 interest accrued, but debtor made no more payments to the Trust,
14 or to the holder of the first trust deed, Washington Mutual.

15 Nonjudicial foreclosure proceedings were commenced, and sale
16 to A & R occurred at the noticed sale on January 9, 2008. Early
17 on the morning of January 11, 2008 debtor called the trustee of
18 the Joiner Trust and told him he had filed bankruptcy. Although
19 the debtor did not say so in the message, upon checking the Trust
20 learned debtor had filed January 8, 2008, the day before the
21 foreclosure sale.

22 The Court has reviewed the case file and the pleadings
23 submitted in support of the motion. The Court is persuaded that
24 the instant case is appropriate for annulment of the stay,
25 especially in the absence of any opposition from debtor. In re
26 Aheong, 276 B.R. 233 (9th Cir. BAP 2002). Debtor has offered no

1 reason why the stay should remain in effect or how the Joiner
2 Trust is adequately protected if the stay were to continue in
3 effect. Accordingly, the Trust's motion to annul the stay shall
4 be, and hereby is granted.

5 The foreclosure sale which occurred on January 9, 2008, the
6 day after debtor's bankruptcy petition was filed therefore is
7 considered to have occurred without any interruption by the
8 automatic stay of 11 U.S.C. § 362(a). The same is true for the
9 recordation of the deed following the sale. The Court expresses
10 no opinion on whether the foreclosure sale was properly conducted
11 as a matter of state law.

12 The purchaser, A & R, has asked for relief to pursue a state
13 court unlawful detainer action. Again, debtor has offered no
14 opposition to the motion. The motion for leave to pursue such an
15 action is granted to the extent it seeks only clear title and
16 possession, but no damages or costs.

17 Finally, movants ask that the order be effective for 180
18 days as to any future bankruptcy filings, whether voluntary or
19 involuntary. So far as the Court can determine from the file and
20 the pleadings, there is no factual basis to support such a
21 request. Therefore, the request for 180 day bar to any filing
22 which includes the subject property, or any variation thereon, is
23 denied.

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