

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

CAROL DOMENECH

Case No. 6:11-bk-09422-ABB
Chapter 13

Debtor.

ORDER

Before the Court is the Motion to Compel Compliance by Wells Fargo Home Mortgage, Inc. with Mortgage Modification Mediation Order (Doc. No. 25) filed by the Debtor (“Debtor”). A hearing was held on January 4, 2012 at which counsel for the Debtor, counsel for U.S. Bank National Association as Trustee for Structured Asset Securities Corp. Trust 2005-WF3 (“U.S. Bank”), and the Chapter 13 Trustee appeared.

The Debtor contends she holds a right of redemption over her principal residence located at 3417 Gator Bay Creek Blvd., Saint Cloud, FL 34772 (the “Property”), which allows her to seek modification and payment of the first mortgage encumbering the Property through a Chapter 13 reorganization plan.

The issue is whether the Debtor’s right to redeem the Property terminated prior to the filing of the bankruptcy petition upon the filing of a certificate of sale in the State Court foreclosure proceeding.

The Motion to Compel is due to be denied. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing arguments, and being otherwise fully advised in the premises.

Background

U.S. Bank held a first mortgage lien over Debtor's Property. U.S. Bank instituted a foreclosure action against the Debtor and obtained a Judgment of Foreclosure on August 11, 2009 in the amount of \$344,017.62.¹ Paragraph 11 of the Judgment² states:

“On filing of certificate of sale defendants’ right of redemption as prescribed by Florida Statutes §45.0315 (2006), shall be terminated. On filing the Certificate of Title with respect to the property described in Paragraph 4 above, the Defendants named herein, and all persons claiming by, through, under or against them since the filing of Notice of Lis Pendens in this action, are foreclosed of all state, interest or claim in the property described in Paragraph 4, and the purchaser or purchasers at the sale shall be let into possession of the property.”

The Florida State Court's electronic case docket³ reflects the foreclosure sale was completed and a certificate of sale was entered on June 13, 2011. The Debtor filed bankruptcy on June 22, 2011 (the “Petition Date”).

The parties agree the foreclosure sale and the filing of the certificate of sale occurred before the filing of the bankruptcy petition. The Debtor did not object to the sale. The Florida Clerk of Court did not issue a certificate of title due to the filing of the bankruptcy petition.

The Judgment of Foreclosure explicitly states the Debtor's right to redeem the Property terminated with the filing of the certificate of sale. The Debtor had no interest in the Property on the Petition Date. The Property is not property of the estate pursuant to 11 U.S.C. Section 541. The Debtor cannot apply the provisions of 11 U.S.C. Section

¹ The Debtor moved for relief from the foreclosure judgment or in the alternative to postpone the foreclosure sale. The motion was denied on June 3, 2011. The Debtor filed a notice of appeal of this order on June 13, 2011.

² Debtor's Exhibit No. 1.

³ US Bank National Assoc. v. Martinez, Case No. 2008 CA 010727 MF (Fla. Osceola County Ct.).

1322(c)(1) to cure the defaulted mortgage debt on her residence through the Chapter 13 reorganization plan.

Analysis

A default on a debtor's principal residence may be cured through a Chapter 13 plan, until the residence is sold at a foreclosure sale conducted in accordance with applicable nonbankruptcy law. 11 U.S.C. § 1322(c)(1). Florida statutory and common law govern the issue of whether the Property was sold at a foreclosure sale prior to the filing of this bankruptcy petition, and whether the Property forms part of the bankruptcy estate pursuant to 11 U.S.C. Section 541.

Florida statutory law provides a property owner a right to redeem property and prevent a foreclosure sale "by paying the amount of moneys specified in the judgment, order, or decree of foreclosure." Fla. Stat. § 45.0315 (2011). The right of redemption terminates when the Florida Clerk of Court files the certificate of sale or at the time specified in the foreclosure judgment, whichever is later. *Id.*

A mortgagor's equity of redemption now expires with the filing of the certificate of sale. Objections may be made to the regularity of the sale, or the amount of the deficiency, but after the filing of the certificate of sale the mortgagor no longer has the ability to redeem the property. Any objection to the amount of the bid (which must be served within 10 days after filing of the certificate of sale, prior to the filing or recording of the certificate of title), does not affect or cloud the title of the purchaser in any manner. The certificate of sale must be set aside for the mortgagor to have any right to acquire the property. Accordingly, for the purpose of the mortgagor/debtor paying off the mortgage, through a chapter 13 plan or otherwise, the residence has been sold at the foreclosure sale at the time of the filing of the certificate of sale.

In re Jarr, 186 B.R. 148, 153 (Bankr. M.D. Fla. 1995).

The Debtor's right of redemption expired upon the issuance of the certificate of sale pursuant to the Foreclosure Judgment and Fla. Stat. § 45.0315 (2011).

The foreclosure sale was consummated and the certificate of sale to the Property was issued before the filing of the bankruptcy petition. The Debtor had no interest in the Property on the Petition Date. The Property is not property of the estate pursuant to 11 U.S.C. Section 541. The Debtor is not able to cure the mortgage through her Chapter 13 Plan pursuant to 11 U.S.C. Section 1322(c)(1).

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Debtor's Motion to Compel Compliance by Wells Fargo Home Mortgage, Inc. with Mortgage Modification Mediation Order (Doc. No. 25) is hereby **DENIED**.

Dated this 13th day of January, 2012.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge