

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
CHASE MANHATTAN MORTGAGE CORPORATION, :

Plaintiff, :

- against -

ANGEL L. NIEVES, :
UNITED STATES OF AMERICA, :
CITY OF NEW YORK BY PARKING VIOLATIONS :
BUREAU, :
CITY OF NEW YORK BY ENVIRONMENTAL :
CONTROL BOARD, :
CITY OF NEW YORK BY TRANSIT :
ADJUDICATION BUREAU, :
CRIMINAL COURT OF THE CITY OF :
NEW YORK, :
PEOPLE OF THE STATE OF NEW YORK BY :
STATE TAX COMMISSION CHILD SUPPORT :
ENFORCEMENT UNIT, :
PEOPLE OF THE STATE OF NEW YORK BY :
STATE TAX COMMISSION, :
DEBBIE NIEVES, :

Defendants. :

-----X

By: PRICE, J.

INDEX NO. 3453/01

Dated: October 5, 2004

APPEARANCES:

Attorneys for Plaintiff:

George Schmergel, Esq.,
GULLACE & WELD, LLP
500 First Federal PLaza
Rochester, New York 14614
585-546-1980

Attorney for Defendant
Debbie Nieves:

JOAN C. FORRESTER, ESQ.
145-11 Jamaica Avenue
Jamaica, New York 11435
212-682-4500

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ARNOLD N. PRICE IA Part 6
Justice

	x	Index Number <u>3453</u> 2001
CHASE MANHATTAN MORTGAGE CORPORATION		
- against -		Motion Date <u>July 14, 2004</u>
ANGEL L. NIEVES, et al.		Motion Cal. Number <u>1</u>
	x	

The following papers numbered 1 to 12 read on this motion by defendant Debbie Nieves to vacate the judgment of foreclosure and sale and the foreclosure sale.

	<u>Papers Numbered</u>
Order to Show Cause - Affidavits - Exhibits	1-3
Answering Affidavits - Exhibits	4-9
Reply Affidavits	10-11
Other - Sur-Reply Affirmation	12

Upon the foregoing papers it is ordered that the motion is determined as follows:

Plaintiff commenced this action seeking foreclosure of a mortgage given by defendant Angel L. Nieves, the titled owner of the subject property located at 104-70 109th Street, Richmond Hill, New York. Plaintiff obtained a judgment of foreclosure and sale, dated November 28, 2001, against defendant Debbie Nieves, the wife of Angel Nieves, upon her default in answering the complaint. The foreclosure sale was conducted on April 11, 2003 at which plaintiff was the successful bidder.

To the extent defendant Debbie Nieves seeks to vacate the judgment of foreclosure and sale, she has failed to establish a reasonable excuse for the default and a meritorious defense (see 5015[a]; Chase Manhattan Mortg. Corp. v Murphy, 2 AD3d 559 [2003]; Credit-Based Asset Servicing and Securitization, LLC. v Chaudry,

304 AD2d 708 [2003], lv to appeal dismissed 100 NY2d 615 [2003]; Security Pacific Nat. Trust Co. v Adams, 276 AD2d 688 [2000]).

To the extent defendant Debbie Nieves seeks to vacate the foreclosure sale, she asserts that it was conducted in violation of the automatic stay provision of the United States Bankruptcy Code (11 USC § 362).

Defendant Debbie Nieves had filed a voluntary petition under Chapter 13 in bankruptcy on April 9, 2003, thereby invoking the automatic stay. By order filed on August 11, 2003, the Bankruptcy Court granted the motion by the trustee in bankruptcy to dismiss the bankruptcy case of Debbie Nieves.¹

At some point following the foreclosure sale, plaintiff commenced a summary proceeding in Civil Court, Queens County, against defendants Debbie Nieves and Angel Nieves. The parties entered into a so-ordered stipulation dated November 11, 2003, settling the summary proceeding whereby plaintiff agreed to extend the stay of eviction of defendants Nieves up to, and including, December 1, 2003, based upon a showing of "a fully executed lease and receipts for 1st months rent and security with new landlord." The stipulation provided that in consideration of the extension, no further extensions were to be sought by defendants Nieves.

On January 5, 2004, defendant Debbie Nieves filed another petition in bankruptcy, this time under Chapter 7.

By amended notice of motion filed on January 13, 2004, plaintiff moved before the Bankruptcy Court for in rem relief from the automatic stay invoked by defendant Debbie Nieves. The Bankruptcy Court, by amended order dated May 11, 2004,² terminated the automatic stay with respect to plaintiff's enforcement of its

1

It appears from the copy of the PACER printout provided by plaintiff that plaintiff obtained a Bankruptcy Court order, filed on May 27, 2003, granting it relief from the stay. Plaintiff has failed to provide a copy of such order in opposition to the motion herein, and thus, it is unclear whether such order served in any way to modify the stay nunc pro tunc to the date of the foreclosure sale.

2

Contrary to the argument of plaintiff, the May 11, 2004 order of the Bankruptcy Court may not be said to have served to terminate or annul the prior automatic stay which had been in effect on the date of the foreclosure sale.

rights to proceed with eviction of the occupants of the subject property, and directed that any future filing of a voluntary or involuntary petition by Debbie Nieves or Angel Nieves regarding such premises would not operate to stay the eviction proceeding for a period of one year from the date of the entry of the order, except by separate order of that court. The Bankruptcy Court further directed that the provisions of the order not affect the bankruptcy trustee's rights to any surplus monies arising from the foreclosure sale.

The United States Bankruptcy Code provides for an automatic stay of certain prescribed actions against the debtor or the debtor's property (see 11 USC § 362[a]), and once triggered, suspends any non-bankruptcy court's authority to continue judicial proceedings then pending against the debtor (see Carr v McGriff, 8 AD3d 420 [2004]). Section 541 of the Bankruptcy Code (11 USC § 541) enumerates the types of property interests which are included in the bankrupt estate. The estate is defined broadly to include "all legal or equitable interests of the debtor in property as of the commencement of the action" (11 USC § 541[a][1]). In general, the issue of whether a debtor has an interest in real property is determined by applicable state law (see Butner v United States, 440 US 48, 55 [1979]; In re Crysen/Montenay Energy Co., 902 F2d 1098, 1101 [2d Cir 1990]; In re Rerisi, 172 BR 525 [1994]; In re Frederes, 141 BR 289 [WD NY 1992], appeal dismissed by Cooper v Frederes, 1993 WL 13091775).

In this instance, defendant Debbie Nieves has failed to establish that she had a vested legal or equitable property interest in the subject property at the time of the filing of her Chapter 13 petition. Furthermore, that the property may be "marital property," as that phrase is defined in section 236 of the Domestic Relations Law, and potentially subject to equitable distribution, does not mean it is property of the bankruptcy estate (see In re Frederes, supra; see also State Street Bank & Trust Co. v Colandro, 243 AD2d 705 [1997], appeal dismissed 91 NY2d 920 [1998]; Arbor Natl. Mtge. v Goldsmith, 154 Misc 2d 853 [1992]).

To the extent defendant Debbie Nieves was in occupancy of the property at the time of the commencement of the action, such occupancy was sufficient to require her to be joined as a necessary party to the action (see Empire Sav. Bank v Towers Co., 54 AD2d 574 [1976]; see also Nationwide Associates, Inc. v Brunne, 216 AD2d 547 [1995]; Gibbs v Kinsey, 170 AD2d 1049 [1991]; Scharaga v Schwartzberg, 149 AD2d 578, 579 [1989]; Polish Nat. Alliance of Brooklyn v White Eagle Hall Co., 98 AD2d 400 [1983]; Green Point Sav. Bank v Defour, 162 Misc 2d 476 [1994]). It is not enough, however, to be of value to the bankruptcy estate to invoke the

automatic stay provisions of the Bankruptcy Code (see generally Fitz & Pal, Inc. v International Pipe Fabrication, L.L.C., 188 Misc 2d 687 [2001]; see also Radol v Centeno, 165 Misc 2d 448 [1995])).

Thus, the filing of a Chapter 13 bankruptcy petition by defendant Debbie Nieves did not create an automatic stay with respect to the subject property. The foreclosure sale, therefore, was not conducted in violation of any bankruptcy stay.

The motion is denied.

Dated: October 5, 2004

J.S.C.