

Court Upholds Validity of Foreclosure Sale in Light of Debtor's Failure to Seek a Stay Pending Appeal

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A recent decision issued by the Bankruptcy Court for the Eastern District of Virginia underscores the importance for both debtors and creditors to be especially cognizant of procedural rules when dealing with a property subject to foreclosure. In *re: Bobbie Upasna Vardan* involved a property that had been affected by four bankruptcies filed by the debtor or members of her family since March 2016. In short, the following are the key events of the case:

The debtor filed her case on November 13, 2017, resulting in the cancellation of an attempted foreclosure sale.

Wells Fargo & Co., N.A., as servicing agent for Bank of America Corp., N.A., subsequently filed a motion for in rem relief from stay in order to enforce its rights to foreclose on the property.

On May 23, 2018, the Court granted in rem relief to Wells Fargo & Co., and dismissed the bankruptcy sua sponte. The corresponding orders were entered on May 26, 2018.

On June 14, 2018, the debtor filed a notice of appeal of the order to the District Court for the Eastern District of Virginia. The debtor, however, did not file a supersedeas bond nor did she obtain any stay of the relief order.

On September 10, 2018, following the entry of the first in rem order, but before the District Court entered the remand order, GREI, LLC purchased the subject property at a foreclosure sale. On September 21, 2018, Samuel I. White, P.C., the trustee who conducted the sale, executed a foreclosure deed conveying the property to GREI, LLC.

On November 2, 2018, the District Court vacated the first in rem order and remanded the matter back to the Bankruptcy Court for further action.

On November 18, 2018, GREI, LLC, the purchaser of the foreclosed property, filed a brief requesting a finding that the sale of the property pursuant to the first in rem order terminated any interest that the debtor may have had in the property at the time of the sale and that Wells Fargo & Co.'s pending motion for relief from stay was moot as the debtor had no remaining interest in the property.

On November 30, 2018, the Bankruptcy Court issued a second order that granted in rem relief from the automatic stay. In its accompanying memorandum opinion, the court explained that the debtor knew that the filing of these different cases would result in an undue delay to the mortgage creditor. However, the court did not address the validity of the foreclosure sale.

On December 14, 2018, the debtor filed a notice of appeal of the second in rem order to the District Court. On this date, GREI simultaneously filed a motion to amend the second in rem order in Bankruptcy Court and a notice of appeal of the Bankruptcy Court's second in rem order to the District Court. As a result, on December 28, 2018, GREI filed a suggestion of stay of effective date of the notices of appeal until its motion to amend could be resolved.

On January 15, 2019, GREI and Wells Fargo & Co. appeared before the Bankruptcy Court to

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address their motions to amend the order granting in rem relief, to include additional findings. The Court held that the foreclosure sale was valid, as the May 26, 2018 in rem order was final and enforceable. The foreclosure sale of the property terminated any interest the debtor may have had in the property because the first in rem order was a final order. The order was neither subject to a stay pending appeal nor had it been vacated before the property was sold to GREI. As a result, the Court entered an amended order granting in rem relief effective May 31, 2018, nunc pro tunc.

This alert is not intended to contain legal advice or to be an exhaustive review. If you have any questions about foreclosure of property in the state of Virginia, please contact [Laura D. Agostino](#) or [David Cox](#) at Jackson & Campbell, P.C.

TAGGED: Bankruptcy Court for the Eastern District of Virginia, Bankruptcy Court, Foreclosure Sale