

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE:

MARY A. ISOM,  
DEBTOR.

CHAPTER 13

CASE NO. 02-17575-NPO

GREENTREE SERVICING, LLC,  
SUCCESSOR IN INTEREST TO  
GREENPOINT CREDIT, LLC

PLAINTIFF

VS.

ADVERSARY NO. 04-01079-NPO

MARY A. ISOM, DEBTOR,  
ON POINT, LLC, AND  
PAULA SYKES, SUNFLOWER  
COUNTY CHANCERY CLERK

DEFENDANTS

MEMORANDUM OPINION DENYING  
COMPLAINT TO SET ASIDE AND VOID TAX SALE AND  
TO DETERMINE EXTENT, VALIDITY AND PRIORITY OF LIEN

This matter came before the Court on the Complaint to Set Aside and Void Tax Sale and to Determine Extent, Validity and Priority of Lien (the "Complaint")(Adv. Dk No. 1) filed by Greentree Servicing, LLC, successor in interest to Greenpoint Credit, LLC ("Greentree")<sup>1</sup> and the Answer to Complaint (the "Answer") (Adv. Dk. No. 6) filed thereto by On Point, LLC ("On Point") in the above-styled adversary proceeding (the "Adversary").<sup>2</sup> The Court, having considered the

---

<sup>1</sup> This adversary proceeding originally reflected Greenpoint Credit, LLC as the Plaintiff. Pursuant to an Order entered September 25, 2006, (Adv. Dk. No. 49), the Plaintiff was changed to Greentree Servicing, LLC, successor in interest to Greenpoint Credit, LLC.

<sup>2</sup> Mary A. Isom (the "Debtor") and Paula Sykes, Sunflower County Chancery Clerk ("Sykes") also filed Answers to the Complaint (Adv. Dk. Nos. 7 and 8). On May 17, 2006, the

pleadings, as well as the legal memoranda submitted by the parties, finds that the Complaint is not well taken and should be denied. Specifically, the Court finds as follows:<sup>3</sup>

### Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding.<sup>4</sup> This matter is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(K). Notice of the Complaint was proper under the circumstances.

### Facts

On April 29, 1997, the Debtor purchased a mobile home from Greentree. The Debtor executed a Retail Installment Contract and Security Agreement (the "Contract") with Greentree to

---

Court granted partial summary judgment in favor of On Point as against the Debtor (Adv. Dk. No. 34), effectively dismissing the Debtor as a defendant. Moreover, the parties agreed at the August 8, 2006, status conference on this matter to dismiss Sykes as a defendant. Nevertheless, the Court allowed the Debtor and Sykes to present briefs on the remaining issues so that the Court might fully appreciate each parties' position with regard to those issues.

<sup>3</sup> The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

<sup>4</sup> In its Order granting partial summary judgment (Adv. Dk. No. 34), the Court stated that the Debtor's right to redemption of the real property from the tax sale had expired and that "the debtor's real property is not considered an asset of this bankruptcy estate, and, consequently, the indebtedness which was secured by a lien on said property cannot be addressed in this bankruptcy case." (Order at 1.) Thus, at first blush, the Court appears to lack jurisdiction to consider the remaining issues between Greenpoint and On Point regarding the mobile home and real property. However, had the Court determined that the tax sale was void and should be set aside, the mobile home and real property would have reverted from On Point to the estate, if only for the period of time prior to which Greentree presumably would act to recover the mobile home. See 11 U.S.C. 541 (estate property comprised of all legal and equitable interests of the debtor in property, as of the commencement of the case); see also Brown v. Dellinger (In re Brown), 734 F.2d 119, 123 (2d Cir. 1984) (legal or equitable interests of a debtor have been held to encompass an interest that is strictly contingent); Denadi v. Preferred Capital Markets, Inc., 272 B.R. 21, 29 n. 5 (D. Mass. 2001) ("Courts have consistently concluded that contingent interests should be included within the bankruptcy estate."). Therefore, the estate could have regained an interest in the mobile home and real property and accordingly, this Court retains jurisdiction to consider the issues between Greenpoint and On Point.

finance the purchase. The Debtor placed the mobile home on real property which she owned in Sunflower County, Mississippi. In accordance with Mississippi law, the Debtor registered the mobile home in Sunflower County within seven (7) business days of the purchase. *See* Miss. Code Ann. § 27-53-5(1).

Moreover, because the Debtor owned the real property where the mobile home was located, she elected on May 8, 1997, to classify the mobile home as real property for ad valorem tax purposes. *See* Miss. Code Ann. § 27-53-15. The tax assessor entered the mobile home on the land rolls, issued and filed a certificate of the classification in the land records of Sunflower County, and forwarded the certificate to the Debtor. The mobile home and real property were thereafter taxed as real property.

The Debtor failed to pay her ad valorem taxes for the year 2000. Accordingly, as required by Mississippi law, Sykes searched the records in her office for an indication of any liens on the real property. *See* Miss. Code Ann. § 27-43-5. Finding no liens, Sykes conducted a tax sale on April 1, 2001, and sold the real property to On Point.

On December 4, 2002, the Debtor filed a voluntary petition for relief pursuant to chapter 13 of the Bankruptcy Code. Thereafter, Greentree filed its Complaint, contending that the tax sale is void and should be set aside because 1) the mobile home is personal property and should not have been included in any tax sale of real property and 2) Greentree did not receive notice of the delinquent taxes, the right to redeem, or the tax sale. Greentree further requests that the Court determine the extent, validity and priority of its lien. In response, On Point maintains that the mobile home was properly taxed as real property and that the tax sale is not void and should not be

set aside, Sykes having done all that was legally required of her prior to the sale of the real property for delinquent taxes.<sup>5</sup>

### Discussion

Mississippi Code Annotated § 27-53-5 (1) provides, in pertinent part:

It shall be the duty of the owner of a . . . mobile home, not later than seven (7) days, . . . after the date of purchase or entry into the county where the . . . mobile home is located, to register such . . . mobile home with the tax collector of the county where the . . . mobile home is located.

Miss. Code Ann. § 27-53-5 (1). If the owner of the mobile home does not own the land on which his mobile home is located, the owner "must declare his . . . mobile home to be personal property at the time of registration and the county tax collector shall enter it on the manufactured home rolls as personal property." Miss. Code Ann. § 27-53-13. However, if the owner of the mobile home does own the land on which his mobile home is located, the owner "shall have the option at the time of registration of declaring whether the . . . mobile home shall be classified as personal or real property." Miss. Code Ann. § 27-53-15.

As stated previously, the Debtor owned the land on which she placed her mobile home and elected to treat the mobile home as real property for ad valorem tax purposes. Thus, in accordance with Mississippi Code Annotated § 27-53-15, the county tax collector entered the mobile home on the land rolls and taxed it as real property, issuing a certificate to that effect. Also in accordance with that statute, the tax collector issued a certificate that the mobile home had been classified as real property, and filed the certificate in the land records of the Sunflower County, where the mobile

---

<sup>5</sup> As noted above, the Court previously granted partial summary judgment in favor of On Point, finding that the Debtor's right of redemption of the real property was not timely exercised.

home and real property are located. The chancery clerk subsequently forwarded the certificate to the Debtor.

In support of its contention that the mobile home should not have been included in the tax sale of real property, Greentree complains that it did not receive notice of the Debtor's election to treat the mobile home as real property, and that the Contract executed by the Debtor to finance the purchase of the mobile home prohibited her from treating it as real property. Under Mississippi Code Annotated § 27-53-15, the chancery clerk is required to forward the certificate to the Debtor only. Thus, Greentree was not entitled to notice of the classification. Moreover, despite the language in the Contract, Greentree knew or should have known that the Debtor could make an election to treat her mobile home as real property under Mississippi law. The certificate indicating the Debtor's election was filed as a public record just a few days after the purchase of the mobile home. Consequently, even though under the statute Greentree was not entitled to notice of the Debtor's classification, Greentree could have searched the public records shortly after the purchase to determine whether the Debtor had made such an election. Had it done so, Greentree could have, at the least, 1) discerned that the Debtor had breached the Contract and taken whatever steps it deemed necessary at that point, or 2) protected its interest in the mobile home and real property by obtaining a mortgage or deed of trust.<sup>6</sup> Accordingly, the Court is unpersuaded that the mobile home was treated improperly as real property for purposes of the tax sale.

---

<sup>6</sup> The 1994 version of Mississippi Code Annotated § 27-53-15 relevant to the case at bar stated.

If a mobile home is classified as real property, a security interest may be obtained therein through the use of a mortgage or deed of trust describing both the mobile home and the land on which the mobile home is located. If a mobile home is not classified as real property but is classified as personal property, the perfection of a security interest therein shall be governed by the provisions of Chapter 9 of Title 75 of the Mississippi Code of 1972.

Greentree next asserts that the tax sale is void and should be set aside because it did not receive notice of the delinquent taxes, the right to redeem, or the tax sale. Mississippi Code Annotated § 27-43-5, entitled "Notice to Lienors," provides in pertinent part as follows:

It shall be the duty of the clerk of the chancery court to examine the record of deeds, mortgages and deeds of trust in his office to ascertain the names and addresses of all mortgagees, beneficiaries and holders of vendors liens of all lands sold for taxes; and he shall, within the time fixed by law for notifying owners, send by certified mail with return receipt requested to all such lienors so shown of record the following notice, . . . .

Miss. Code Ann. § 27-43-5. It is undisputed that Sykes published notification of the tax sale, delivered notification to the Debtor by certified mail, and served notification upon the Debtor via the Sheriff of Sunflower County. Moreover, it is undisputed that Sykes searched the records of her office for lienholders and found none.<sup>7</sup> As Sykes lacked any knowledge of Greentree's purported security interest, she could not provide notice to Greentree of the delinquent taxes, the right to redeem, or the tax sale.<sup>8</sup>

In Rush v. Wallace Rentals, LLC, 837 So. 2d 191 (Miss. 2003), the Mississippi Supreme Court found that a tax sale is not void if the Clerk performed his statutory duties. Moreover, in Mennonite Board of Missionary v. Adams, 462 U.S. 791 (1983), the United States Supreme Court opined that notice is due to those individuals whose security interest has been properly recorded.

---

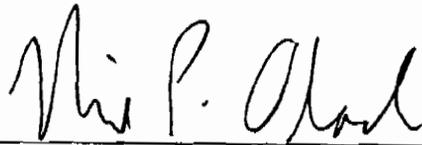
<sup>7</sup> Although Greentree had filed a UCC-1 Financing Statement covering the mobile home in Bolivar County, Mississippi, it failed to file any notice of its purported security interest, either as personal or real property, in Sunflower County, Mississippi.

<sup>8</sup> As set forth above, the Debtor's election to classify the mobile home as real property was effective to change the treatment of the mobile home from personal property to real property for tax purposes. Consequently, Greentree was not entitled to notice of the delinquent taxes under the personal property provisions of Mississippi Code Annotated § 27-41-101.

Applying these cases to the matter at bar, the Court finds that Greentree has failed to demonstrate that the tax sale was void and should be set aside.<sup>9</sup>

Based on the foregoing, the Court finds that the Complaint is not well taken and should be denied. A separate final judgment consistent with this Memorandum Opinion will be entered by this Court in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

DATED this the 12<sup>th</sup> day of January, 2007.



---

NEIL P. OLACK  
UNITED STATES BANKRUPTCY JUDGE

---

<sup>9</sup> Given the Court's determination that the tax sale should not be set aside, it need not consider Greentree's request to determine the extent, validity, and priority of its lien.