

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE: WILLIE H. WILLIAMS)
AND BOBBY M. WILLIAMS)
Debtors)**

**CASE NO. 00-52425
CHAPTER 13**

**WILLIE H. WILLIAMS)
AND BOBBY M. WILLIAMS)
Plaintiffs)**

v.)

ADV. PROC. NO. 05-05035

**CHASE MANHATTAN MORTGAGE)
CORPORATION)
Defendant)**

**CHASE MANHATTAN MORTGAGE)
CORPORATION)
Plaintiff)**

v.)

ADV. PROC. NO. 04-05027

**WILLIE H. WILLIAMS AND)
BOBBY M. WILLIAMS)
Defendants)**

OPINION

The matter before the court is the Motion for Summary Judgment filed by Chase Home Finance, LLC, successor by merger to Chase Manhattan Mortgage Corporation (“Chase”). Having considered the pleadings, supporting documentation and arguments of counsel, the court concludes that the Motion should be granted in part and denied in part.

I. FACTUAL BACKGROUND

1. William H. Williams and Bobby M. Williams filed a petition for relief under Chapter

13 of the United States Code in the United States Bankruptcy Court for the Southern District of Mississippi on June 12, 2000.

2. An order confirming the debtors' Chapter 13 plan was entered August 29, 2000. The confirmed plan provided that payments would be made directly to Chase on its mortgage loan outside the plan. A separate order was entered October 26, 2000, authorizing the trustee not to make disbursements to Chase because the plan proposed direct payment by the debtor.

3. An agreed order was entered June 19, 2002, on a motion for relief from stay filed by Chase that required the debtors to bring their account current or the stay would be lifted and foreclosure proceedings begun. The order further provided that upon further default for 30 days without cure the stay would automatically lift with a 10 day notice to the debtors.

4. A foreclosure sale was noticed and conducted in Noxubee County, Mississippi on October 3, 2003. Chase was the highest bidder at the foreclosure sale bidding \$21,250.00. The foreclosure sale was published for four consecutive weeks. Actual notice was given by certified mail that was received by Willie H. Williams.

5. On February 6, 2004, the debtors filed suit against Chase in the Chancery Court of Noxubee County, Mississippi. The debtors requested that the foreclosure be side aside and the note and deed of trust reinstated and requested injunctive relief against eviction. The debtors claimed they were current on their payments, were not allowed to make payments through their Chapter 13 plan, and were not given proper notice of foreclosure. The suit was referred to the United States Bankruptcy Court for the Southern District of Mississippi and is now Adversary Proceeding No. 05-05035, styled above.

6. Chase subsequently filed an adversary complaint against the debtors seeking

immediate possession of the property and judgment in the amount of \$35,630.08 plus costs and attorney's fees. That adversary is now Adversary Proceeding No. 04-05027.

7. Chase filed its Motion for Summary Judgment in the two adversary proceedings claiming entitlement to judgment as a matter of law dismissing the debtors' claims and granting its claim against the debtors.

II. CONCLUSIONS OF LAW

The matter before the court is a core proceeding pursuant to 28 U.S.C. § 157. The court has jurisdiction over the parties and the subject matter pursuant to 28 U.S.C. § 157 and § 1334.

Chase has requested summary judgment which is made applicable by Federal Rule of Bankruptcy Procedure 7056.

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden is on the moving party to show that "there is an absence of evidence to support the nonmoving party's case." *Freeman v. Tex. Dep't of Crim. Justice*, 369 F.3d 854, 860 (5th Cir.2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265 (1986)). Once the moving party meets its initial burden, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The nonmoving party, however, "cannot satisfy this burden with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Freeman*, 369 F.3d at 860 (citations omitted).

Warfield v. Byron, 436 F.3d 551, 557 (5th Cir. 2006). *See also, Condrey v. SunTrust Bank of Georgia*, 431 F.3d 191, (5th Cir. 2005).

As cited in the rebuttal brief filed by Chase, the debtors have failed to proffer any evidence of disputed material facts and their response fails to cite authority in support of their claims. Based on the authorities cited in the briefs and supporting documentation filed by Chase,

and their being no contrary authorities or factual evidence, the court concludes that the debtor Willie H. Williams was given certified notice of the foreclosure sale and that Bobby S. Williams was not entitled to notice under Miss. Code Ann. § 89-1-55; the foreclosure sale was properly conducted and the notification of the foreclosure was valid and sufficient; and the debtors' plan was confirmed providing that payments be made directly to the creditor. The court concludes that there are no genuine issues of material fact and that Chase is entitled to relief sought of immediate possession of the subject property. The motion for summary judgment filed by Chase should be granted to this extent. The court declines summary disposition at this time on issues relating to entitlement to a reasonable attorney's fee to Chase or for an award of a deficiency judgment due to the factual nature of these issues. The court further determines that the debtors' requests that the foreclosure be set aside, the note and deed of trust be reinstated and an injunction from eviction should be denied.

An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

DATED this the 29TH day of March, 2006.

/s/ Edward R. Gaines
EDWARD R. GAINES
UNITED STATES BANKRUPTCY JUDGE

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