UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

TODD PHILLIPS INVESTMENTS, INC.,	**CASE NO. 06-01862-NPO**
DEBTOR.	**CHAPTER 11**
BANCORPSOUTH BANK	**PLAINTIFF**
VS.	**ADV. PROC. NO. 06-00162-NPO**
CONCORDIA BANK & TRUST COMPANY	**DEFENDANT**

MEMORANDUM OPINION AND ORDER
GRANTING MOTION FOR SUMMARY JUDGMENT

There came on for consideration the Motion for Summary Judgment (the "Motion")(Adv. Dk. No. 53) filed by the Plaintiff, BancorpSouth Bank ("BancorpSouth"), and the Response of Concordia Bank & Trust Company to Motion for Summary Judgment of BancorpSouth Bank (the "Response")(Adv. Dk. No. 59) filed by the Defendant, Concordia Bank & Trust Company ("Concordia"), in the above-styled adversary proceeding (the "Adversary"). The Court, having considered the Motion and the Response, together with the parties' legal memoranda and the other pleadings in the Court files, finds that no genuine issue of material fact exists, and that BancorpSouth is entitled to judgment as a matter of law. Accordingly, the Motion should be granted for the reasons set forth below.[1]

[1] The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

Jurisdiction

This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). Notice of the Motion was proper under the circumstances.

Facts

The following facts are established by the Motion.[2]

1. On August 27, 2004, BancorpSouth loaned Statewide Realty Holdings, LLC ("Statewide")[3] $1,247,503.80 (the "BancorpSouth Statewide Loan"). The BancorpSouth Statewide Loan was guaranteed by Phillips, individually, and by TPI. The BancorpSouth Statewide Loan was secured by first mortgage liens against two parcels of real property owned by Statewide. One parcel

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[2] In its Response, Concordia either admits the material facts as identified in the Motion or states that it is without information sufficient to form a belief as to the truth of the allegation and therefore denies the allegation. The only fact which Concordia specifically denies is contained in paragraph 9 of the Motion wherein BancorpSouth states:

> The Cancellation was provided by Todd Phillips to Concordia. Phillips told Concordia that the BancorpSouth loan had been paid. Concordia accepted this statement and the Cancellation itself as valid without verifying their authenticity with BancorpSouth in any way.

None of the statements listed in paragraph 9 has any effect on the outcome of the Motion. Therefore, paragraph 9 does not contain any material facts. *See* St. Amant v. Benoit, 806 F.2d 1294, 1297 (5th Cir. 1987)(only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment).

[3] On September 8, 2006, Statewide filed a voluntary petition, styled Statewide Realty, LLC, pursuant to chapter 11 of the Bankruptcy Code (the "Statewide Case")(Case No. 06-01861-NPO Dk. No. 1), which subsequently was converted to a chapter 7 case on December 5, 2006 (Case No. 06-01861-NPO Dk. No. 52), and was dismissed on April 25, 2007 (Case No. 06-01861-NPO Dk. No. 74). Todd Phillips ("Phillips") was, at all relevant times, the chief officer and sole owner of both Statewide and Todd Phillips Investments, Inc. ("TPI").

was in McComb, Mississippi (the "McComb Parcel"),[4] on which one building was located. The second parcel was in Natchez, Mississippi (the "Natchez Parcel"), on which two buildings were located (the "Natchez WIC Building"[5] and the "Natchez USDA Building"[6]). The dispute between BancorpSouth and Concordia contained in this Adversary concerns only the Natchez Parcel (Pl.'s Br. at 4, n. 5).

2. Statewide granted BancorpSouth a deed of trust in the Natchez Parcel (the "BancorpSouth Statewide Deed of Trust") which was recorded in the land records of Adams County, Mississippi, on February 7, 2005. Moreover, "due to some uncertainty created by attorney Dewayne Deer,"[7] TPI also granted BancorpSouth a deed of trust on the Natchez Parcel (the "BancorpSouth TPI Deed of Trust") on August 27, 2004. The BancorpSouth TPI Deed of Trust also was recorded in the land records of Adams County, Mississippi, on September 1, 2004, and re-recorded on December 3, 2004.[8]

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[4] The McComb Parcel was abandoned from the bankruptcy estate of the Statewide Case (Case No. 06-01861-NPO Dk. No. 60), and BancorpSouth foreclosed on it. Concordia bought the McComb Parcel at foreclosure for $505,000, the net proceeds of which have been applied to the BancorpSouth Statewide Loan.

[5] The Natchez WIC Building was sold for $325,000, the net proceeds of which the chapter 11 trustee (the "Trustee") is holding pending the final resolution of this Adversary.

[6] The Natchez USDA Building was sold to Concordia for gross sale proceeds of $570,000, plus $1500 in attorneys' fees incurred by the Trustee. The Trustee also is holding those proceeds pending the final resolution of this Adversary.

[7] Pl.'s Br. at 2. Dewayne Deer also has filed in this Court a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code, which has been assigned case no. 06-02460-NPO.

[8] In its Complaint to Determine Validity, Priority and Extent of Liens and for Other Relief (the "Complaint") (Adv. Dk. No. 1), BancorpSouth explains that the BancorpSouth TPI Deed of Trust was taken as a "protective" deed of trust in support of the BancorpSouth Statewide Deed of Trust because BancorpSouth believed that consideration had been paid for Statewide to convey the Natchez Parcel to TPI. That conveyance to TPI was not recorded, however, until November 30, 2005.

3. On September 28, 2004, Concordia loaned $800,000 to TPI (the "Concordia Loan"). TPI granted Concordia a deed of trust (the "First Concordia Deed of Trust") against the Natchez Parcel as security for the loan, even though conveyance of the Natchez Parcel from Statewide to TPI was not recorded at the time. Concordia recorded the First Concordia Deed of Trust in the land records of Adams County, Mississippi, on October 26, 2005.[9]

4. On November 30, 2005, the conveyance of the Natchez Parcel from Statewide to TPI was recorded (Mot. Ex. P-11).

5. On November 30, 2005, Concordia recorded in the land records of Adams County, Mississippi, a document entitled "Cancellation" (the "Cancellation"), dated November 12, 2005, which purported to cancel and release the BancorpSouth Statewide Deed of Trust. The Cancellation also purported to cancel the BancorpSouth TPI Deed of Trust. That same day, Concordia took from TPI another deed of trust (the "Second Concordia Deed of Trust") securing the same Concordia Loan. The Second Concordia Deed of Trust was recorded in the land records of Adams County, Mississippi, on November 30, 2005.

6. The Cancellation purportedly bears the signature of Carol M. Daniel ("Daniel"), a BancorpSouth employee. The acknowledgment of the Cancellation was taken by Dawn Stinson ("Stinson"), a notary public and employee of Phillips.

7. On September 8, 2006, TPI filed a voluntary petition pursuant to chapter 11 of the Bankruptcy Code (Dk. No. 1).

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[9] BancorpSouth and Concordia do not explain why the BancorpSouth Statewide Deed of Trust or the First Concordia Deed of Trust were recorded many months after they were granted.

8. On October 4, 2006, BancorpSouth initiated the Adversary by filing its Complaint against Concordia, TPI, and Statewide. Concordia filed its Response to Complaint to Determine Validity, Priority and Extent of Liens and for Other Relief (Adv. Dk. No. 15) on December 29, 2006. On April 27, 2007, default judgments were entered against TPI and Statewide (Adv. Dk. No. 45).

9. On July 13, 2007, BancorpSouth filed its Motion contending that the Cancellation is a forgery and, therefore, is an "absolute nullity" (Mot. at 6) which has no effect upon the validity of BancorpSouth's liens. BancorpSouth thus asserts that it holds valid first liens on the proceeds of the sales of the Natchez WIC Building and the Natchez USDA Building.[10]

10. Concordia filed its Response on August 15, 2007. Concordia alleges that the Motion should be denied because Stinson, who acknowledged the Cancellation, invoked her Fifth Amendment privilege against self-incrimination during her deposition, thus precluding the Court from determining by summary judgment whether the Cancellation was a forgery.

11. Concordia does not dispute that the BancorpSouth Statewide Deed of Trust was recorded on February 7, 2005, prior to the Second Concordia Deed of Trust, which was recorded on November 30, 2005. Thus, despite the myriad of facts set forth above, the parties appear to agree that but for the Cancellation, BancorpSouth would have valid first liens, created by the BancorpSouth Statewide Deed of Trust, on the proceeds from the sales of the Natchez WIC Building and the Natchez USDA Building.[11]

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[10] As noted, the Natchez Parcel has been liquidated so that this Adversary concerns only the proceeds from the two sales. *See* n. 5, 6 herein.

[11] *See* Def.'s Br. at 2 ("The BancorpSouth Deeds of Trusts were also collateralized by the same property and in order [for Concordia] to obtain a first lien position, the title company required the cancellation of the BancorpSouth Deeds of Trusts."). Concordia thus implicitly concedes that its lien position is junior to BancorpSouth's, absent a valid Cancellation.

Motion for Summary Judgment Standard

Federal Rule of Civil Procedure 56, made applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056, states that summary judgment is properly granted only when, viewing the evidence in the light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Thus, the moving party bears the initial responsibility of informing the Court of the basis for its motion, and of identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552-53 (1986). If the moving party bears the burden of proof on the claim upon which it is moving for summary judgment, as does BancorpSouth in this case, it must come forward with evidence that establishes "beyond peradventure all of the essential elements of the claim." Fontenot v. Upjohn Co., 780 F.2d 1190, 1194 (5th Cir. 1986).

Once the moving party has met its burden, the burden shifts to the nonmovant to show summary judgment should not be granted. Fields v. City of South Houston, Tex., 922 F.2d 1183, 1187 (5th Cir. 1991). The nonmovant must go beyond the pleadings and by its own affidavits or by depositions, answers to interrogatories, and admissions on file designate specific facts showing a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. at 324. That is, the nonmovant must adduce affirmative evidence. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 257, 106 S.Ct. 2505, 2514-15 (1986). The Fifth Circuit "has described the amount of evidence the nonmoving party must bring forward as 'significant probative evidence.'" State Farm Life Ins. Co. v. Gutterman, 896 F.2d

116, 118 (5th Cir. 1990)(quoting In re Municipal Bond Reporting Antitrust Litg., 672 F.2d 436, 440 (5th Cir. 1982)). Moreover, if the nonmovant fails to file controverting affidavits, that failure leads to the "court's acceptance as true of facts set forth in the [movant's] affidavits . . . ." United States v. $252,671.48 in United States Currency, 734 F.Supp. 254, 256 (N.D. Tex. 1990).

Therefore, while all evidence must be viewed in the light most favorable to the nonmoving party, State Farm Life Ins. Co. v. Gutterman, 896 F.2d at 118, and all reasonable inferences will be drawn in the nonmoving party's favor, Ragas v. Tennessee Gas Pipeline Co., 136 F.3d 455, 458 (5th Cir. 1998), the nonmovant cannot rely upon the theoretical possibility that its claim is valid, Pennington v. Vistron Corp., 876 F.2d 414, 426 (5th Cir. 1989), and the mere existence of a scintilla of evidence will be insufficient to defeat a properly supported motion for summary judgment, State Farm Life Ins. Co. v. Gutterman, 896 F.2d at 118.

Discussion

BancorpSouth frames the issues before the Court as (1) whether the Cancellation is a forgery, and (2) if so, the effect of the forgery on the various deeds of trust as to the Natchez Parcel.

A. Is the Cancellation a Forgery?

1. BancorpSouth's Evidence

The Cancellation contains an acknowledgment that Daniel personally appeared before Stinson and that Daniel acknowledged that she executed the Cancellation. A properly acknowledged instrument is presumptively authentic. Thompson v. Shell Western E & P Inc., 607 So. 2d 37, 40 (Miss. 1992); Arnold v. Byrd, 222 So. 2d 410, 411 (Miss. 1969)("It is true that there is a presumption that a certificate of acknowledgment states the truth . . . ."); Woodson v. Jones, 203 Miss. 152, 33 So. 2d 316 (Miss. 1948). Yet, the presumption may be overcome by clear and

convincing evidence of forgery. Culbreath v. Johnson, 427 So. 2d 705, 707 (Miss. 1983); Arnold v. Byrd, 222 So. 2d at 411 (a proper acknowledgment "can only be overthrown by evidence so clear, strong and convincing as to exclude all reasonable controversy as to the falsity of the certificate."). BancorpSouth bears the burden of proof on its claim of forgery. Culbreath v. Johnson, 427 So. 2d at 707.

BancorpSouth asserts that no genuine issue of material fact exists as to the forgery of the Cancellation. In support of its position, BancorpSouth presents the deposition testimony and affidavit of Daniel (Mot. Exs. P-15, P-16). In her deposition, Daniel testified that she did not sign the Cancellation. In her affidavit, Daniel averred that she did not sign her name on the Cancellation, did not appear before Stinson nor acknowledge that she had signed her name to the Cancellation, and did not authorize anyone else to sign her name to the Cancellation. Moreover, she stated in her affidavit that the purported Cancellation was executed on a Saturday, and that she did not appear before Stinson on that day to conduct bank business of any sort.

BancorpSouth also provides the affidavit of Robert G. Foley ("Foley"), a Forensic Document Examiner (Mot. Ex. P-17). Foley, a handwriting expert, eliminated Daniel as the signer of the Cancellation.

In addition, BancorpSouth presents the affidavit of Ted Webb ("Webb"), Division President of the Hattiesburg Division of BancorpSouth, who was Daniel's immediate supervisor and was familiar with her signature (Mot. Ex. P-18). Webb averred that in his opinion, Daniel did not sign the Cancellation. Webb, the officer in charge of the Bancorp Statewide Loan, further stated that no officer at BancorpSouth had authorized or approved the Cancellation, and that inasmuch as an indebtedness remained as of the date of the purported Cancellation, no reason existed for BancorpSouth to have executed the Cancellation.

BancorpSouth also offers the affidavit of Debbie James ("James"), a Vice President of BancorpSouth (Mot. Ex. P-14). James stated that the purported Cancellation is not on a form ordinarily used by BancorpSouth. James also established that as of the date of the purported Cancellation, the debt owed was $1,229,569.98, was a little over one year old, and the principal had been reduced by little more than one percent. Therefore, BancorpSouth had no reason to execute the Cancellation. Moreover, James established that after the purported Cancellation was filed, regular monthly payments were made on the debt, by checks signed by Phillips, for nearly a year.

Finally, BancorpSouth submits the deposition testimony of Stinson (Mot. Ex. P-20). Stinson testified that she did not keep a notary log. Stinson further stated that she had not notarized anything for Daniel at night or on the weekend. In response to questions regarding whether Daniel actually had signed the Cancellation, Stinson asserted her Fifth Amendment privilege against self-incrimination.

In the Court's opinion, BancorpSouth has presented clear and convincing evidence that the Cancellation was forged, thereby overcoming the presumption of validity created by the acknowledgment. BancorpSouth has established by affidavit evidence and deposition testimony that Daniel did not sign the Cancellation, that BancorpSouth did not authorize the Cancellation, that BancorpSouth had no motivation to execute the Cancellation because the debt had not been paid in full, and that the obligors on the debt continued to make payments for nearly a year after the purported Cancellation was filed.

2. Concordia's Lack of Evidence

Consequently, the burden shifts to the nonmovant, Concordia, to show that the Motion should not be granted. Concordia must go beyond the pleadings and by its own affidavits or by

depositions, answers to interrogatories, and admissions on file designate specific facts showing a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. at 324. In fact, "[t]he party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim." Id. (citing Ragas v. Tennessee Gas Pipeline Co., 136 F.3d at 458). Concordia, however, does not present its own affidavits, depositions, answers to interrogatories or admissions to designate a specific fact remaining for trial. Instead, Concordia takes the position that Stinson's refusal to testify as to the circumstances surrounding the execution of the Cancellation creates an inference which must be drawn in Concordia's favor, i.e., that Stinson's testimony might possibly establish that Daniel signed the Cancellation.

The Court has located case law which addresses a party's invocation of the Fifth Amendment privilege and its effect on a motion for summary judgment.[12] Collectively, the cases stand for the proposition that a party seeking summary judgment cannot rely solely on the other party's exercise of Fifth Amendment rights. *See, e.g.,* State Farm Life Ins. Co. v. Gutterman, 896 F.2d 116, 119 n. 3 (5th Cir. 1990); 5-Star Premium Fin. Inc. v. Wood, No. 99-3705, 2000 WL 1532896, at *3 (E.D. La. Oct. 16, 2000). Thus, the movant must produce evidence in support of its allegations. 5-Star Premium Fin. Inc. v. Wood, No. 99-3705, 2000 WL 1532896, at *3. In the case before the Court, BancorpSouth has produced clear and convincing evidence in support of its claim of forgery and does not rely solely on Stinson's assertion of her Fifth Amendment privilege in support of its Motion.

[12] Although the parties asserting the Fifth Amendment privilege in those cases were named defendants, contrary to the case at bar where the party asserting the Fifth Amendment privilege is a fact witness (Stinson) for a named defendant (Concordia), the reasoning is applicable nonetheless.

Concordia, on the other hand, does rely solely on Stinson's refusal to testify and the inference drawn therefrom to support its opposition to the Motion. However, "[a] court is not entitled to infer facts that satisfy the nonmovant's burden in the absence of affidavit or other evidence supporting the fact." Sidney A. Fitzwater, Terry M. Henry, and Barbara B. Malin, Fifth Circuit Summary Judgment Jurisprudence in the District Court, Fifth Circuit Reporter, January 1992, Vol. 9, No. 3, at 382. *See, e.g.*, Lujan v. National Wildlife Fed'n, 497 U.S. 871, 888-89, 110 S.Ct. 3177, 3188-89 (1990)("[T]he purpose of Rule 56 is to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to demand at least one sworn averment of that fact before the lengthy process of litigation continues."); St. Amant v. Benoit, 806 F.2d at 1297 ("[T]o defeat a summary judgment motion, there must be evidence whose reasonable inferences support the nonmoving party's position."); Professional Managers, Inc. v. Fawer, Brian, Hardy & Zatzkis, 799 F.2d 218, 223 (5th Cir. 1986)("An issue is genuine if the evidence supporting its resolution in favor of the party opposing summary judgment, together with any inferences in such party's favor that the evidence allows, would be sufficient to support a verdict in favor of that party."). Thus, "[w]hile all factual inferences must be resolved in favor of the nonmovant, the 'nonmovant cannot manufacture a disputed material fact where none exists.'" Simon v. Birraporetti's Rest., Inc., 720 F.Supp. 85 (S.D. Tex. 1989)(quoting Albertson v. T.J. Stevenson & Co., Inc., 749 F.2d 223, 228 (5th Cir. 1984)). "Legal conclusions, unsworn statements, and the *possibility of evidence* are insufficient." Mize v. Harvey Shapiro Enter., Inc., 714 F.Supp. 220, 226 (N.D. Miss. 1989)(citing Fontenot v. Upjohn Co., 780 F.2d at 1195-96)(emphasis added).

Moreover, "an invocation of the Fifth Amendment 'is not a substitute for relevant evidence,' and a litigant claiming the privilege is not 'freed from adducing proof in support of a burden which

otherwise would have been his.'" In re Adelphia Commc'n Corp., 317 B.R. 612, 624 (Bankr. S.D.N.Y. 2004)(quoting United States v. Certain Real Property and Premises Known As: 4003-4005 5th Ave., Brooklyn, N.Y., 55 F.3d 78, 83 (2d Cir. 1995)). "In other words, 'a party who asserts the privilege against self-incrimination must bear the consequence of lack of evidence,' and the claim of privilege will not prevent an adverse finding or even summary judgment if the litigant does not present sufficient evidence to satisfy the usual evidentiary burdens in the litigation." Id.

In this case, Concordia has not presented sufficient evidence to satisfy the usual evidentiary burden of showing that a specific fact exists for trial. That is, Concordia has not presented evidence to show that a genuine issue of material fact exists for trial, and the Court cannot infer facts which satisfy Concordia's burden in the absence of such evidence. "Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence." Bradley v. Frito-Lay, No. 3:05cv742(W)(S), 2006 WL 2805317, at *3 (S.D. Miss. Sept. 25, 2006)(citing Forsyth v. Barr, 19 F.3d 1527, 1533 (5th Cir.), *cert. denied*, 513 U.S. 871, 115 S.Ct. 195, 130 L.Ed.2d 127 (1994)).[13]

The Court thus concludes that the inference flowing from Stinson's refusal to answer questions propounded to her during her deposition is insufficient to create an issue of material fact precluding summary judgment. Accordingly, BancorpSouth has met its burden of demonstrating that no genuine issue of material fact exists for trial regarding the forgery of the Cancellation.

[13] Yet, a defendant can "provide[] sufficient evidence - notwithstanding his invocation of his Fifth Amendment privilege - to withstand a summary judgment attack." General Motors Acceptance Corp. v. Bartlett, 154 B.R. 827, 829 (Bankr. D.N.H. 1993). For instance, if Concordia had presented the affidavit of a handwriting expert which opined that the signature on the Cancellation could be Daniel's, a genuine issue of material fact would have existed for trial despite Stinson's invocation of the Fifth Amendment.

B. What is the Effect of the Forged Cancellation?

The Court next must consider the effect of the forged Cancellation on the various deeds of trust as to the Natchez Parcel. In Mississippi, the law is clear that a forged instrument is utterly without effect. *See* Woodson v. Jones, 203 Miss. 152, 33 So. 2d 316 (Miss. 1948)(deed of trust proven to have been forged was declared a nullity); Continental Oil Co. v. Walker, 117 So. 2d 333 (foreclosure of forged deed of trust and all subsequent deeds flowing from the foreclosure were adjudicated as wholly ineffectual to convey title); Securities Inv. Co. of St. Louis v. Williams, 193 So. 2d 719, 722 (Miss. 1967)(where note and trust deed were established as forgeries, "even an innocent purchaser, for value and without notice that they were forgeries, could acquire no title.").

As noted, the BancorpSouth Statewide Deed of Trust, secured by mortgage liens on the Natchez WIC Building and the Natchez USDA Building, was recorded on February 7, 2005. Thereafter, on November 30, 2005, Statewide conveyed the Natchez WIC Building and the Natchez USDA Building to TPI; the forged Cancellation was recorded, purportedly cancelling the BancorpSouth Statewide Deed of Trust; and, Concordia took from TPI and recorded its Second Deed of Trust. In that the BancorpSouth Statewide Deed of Trust was recorded first, and the forged Cancellation is utterly without effect, BancorpSouth holds valid, first liens on the proceeds of the sales of the Natchez WIC Building and the Natchez USDA Building, superior to the liens of Concordia.

Conclusion

Based on the foregoing, the Motion is well taken and should be granted. BancorpSouth has demonstrated that no genuine issue of material fact regarding the forged Cancellation exists for trial. As a matter of law, BancorpSouth holds valid first liens on the proceeds of the sales of the Natchez

WIC Building and the Natchez USDA Building. BancorpSouth's liens are prior to and superior to the liens of Concordia. Accordingly, the Trustee is directed to pay to BancorpSouth, from the sales proceeds of the Natchez WIC Building and the Natchez USDA Building, the remaining principal amount owed to BancorpSouth, together with any valid interest allowed in accordance with 11 U.S.C. § 506(b). To the extent BancorpSouth seeks to recover reasonable attorneys' fees, costs or charges, BancorpSouth should file an application pursuant to 11 U.S.C. § 506(b).

A separate final judgment will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

IT IS, THEREFORE, ORDERED that the Motion is granted.

SO ORDERED, this the 30th day of October, 2007.

/ s / Neil P. Olack
NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE