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

IN RE: **CHAPTER 13**
EMMIT WOODS **CASE NO. 0302885EE**

FRANKLIN CREDIT MANAGEMENT CORP.

VS. **ADVERSARY NO. 100016EE**

EMMIT WOODS; JOHN DAVIS; PIKE COUNTY CHANCERY CLERK, DOUG TOUCHSTONE; JOE B. YOUNG, TAX ASSESSOR/COLLECTOR PIKE COUNTY

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Edward Ellington, Judge

MEMORANDUM
OPINION ON THE *MOTION TO DISMISS*
FOR LACK OF SUBJECT MATTER JURISDICTION
AND *AMENDED MOTION FOR SUMMARY JUDGMENT*

THIS MATTER came before the Court on the *Motion to Dismiss for Lack of Subject Matter*

Jurisdiction (#54); *Plaintiff Franklin Credit Management Corporation's Response to Defendant John Davis' Motion to Dismiss for Lack of Subject Matter Jurisdiction* (#69); *Plaintiff Franklin Credit Management Corporation's Motion for Summary Judgment, Statement of Material Facts and Theories of Recovery* (#57); *Plaintiff Franklin Credit Management Corporation's Amended Motion for Summary Judgment, Statement of Material Facts and Theories of Recovery* (#59); and *Defendant John Davis' Response to Motion for Summary Judgment* (#67). Having considered same and the respective briefs filed by the parties, the Court finds that the motion to dismiss should be denied and that summary judgment should be granted in favor of Franklin Credit Management Corporation.

FACTS

On or about July 28, 2000, Emmit Woods (Debtor) executed a promissory note and a deed of trust in favor of First Capital Financial d/b/a Full Compass Lending, Mortgage Banker. The promissory note is a balloon note in the amount of $64,000.00.[1] The deed of trust is secured by real property located at 301 Walnut Street, Summit, Mississippi (the Property). The deed of trust was recorded in the land records of Pike County, Mississippi. The deed of trust was subsequently assigned to Franklin Credit Management Corporation (Franklin) on December 10, 2004.

On May 12, 2003, the Debtor filed a petition under Chapter 13 of the United States Bankruptcy Code. While the bankruptcy was pending, the 2004 ad valorem taxes on the Property became due and payable. On August 29, 2005, Joe B. Young, in his capacity as Pike County Tax Collector, sold the Property for the 2004 ad valorem taxes (Tax Sale). John Davis (Davis) purchased

[1]The promissory note matures on or around August 2, 2015. *Motion to Dismiss for Lack of Subject Matter Jurisdiction*, Docket No #54 , Exhibit D (Deposition of Elliott Crowder), p. 8, March 15, 2011.

the Property at the Tax Sale with a bid in the amount of $530.60.

The Debtor completed his Chapter 13 plan and received his *Discharge of Debtor* on October 23, 2006. Also on October 23, 2006, the Debtor's case was closed.

On or about January 24, 2008, Doug Touchstone, in his capacity as Pike County Chancery Clerk, filed in the land records of Pike County a document titled *Chancery Clerk Conveyance of Land Sold for Taxes* (Clerk's Conveyance). The Clerk's Conveyance states that the Property had been sold for the delinquent 2004 ad valorem taxes to Davis for $530.60 and that "the same not having been redeemed, I, therefore, sell and convey said above described land to the said John Davis."[2]

On January 14, 2010, an *Agreed Order to Re-Open Case* was entered reopening the Debtor's bankruptcy case. The above-styled adversary proceeding was commenced by Franklin with the filing of the *Complaint Requesting Declaration that Tax Sale was Void Ab Initio in a Core Adversary Proceeding* on March 16, 2010. In addition to the Debtor and John Davis, the other named defendants are Doug Touchstone, Pike County Chancery Clerk, and Joe B. Young, Tax Assessor/Collector for Pike County (collectively, Pike County Defendants). On April 29, 2010, the *Answer of Defendants, Doug Touchstone, Pike County Chancery Clerk, and Joe B. Young, Tax Assessor/Collector of Pike County* was filed.

Franklin filed its *Amended Complaint Requesting Declaration that Tax Sale was Void Ab Initio in a Core Adversary Proceeding* (Amended Complaint) on August 30, 2010. On September 20, 2010, *Defendants, Doug Touchstone, Pike County Chancery Clerk, and Joe B. Young, Tax*

[2]*Plaintiff Franklin Credit Management Corporation's Amended Motion for Summary Judgment, Statement of Material Facts and Theories of Recovery*, Docket No 59 , Exhibit D, March 16, 2011.

Assessor/Collector of Pike County, Answer and Affirmative Defenses was filed. Davis filed his *Answer and Defenses* on September 20, 2010. Davis included as his first defense, a motion to dismiss the Amended Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6).[3] In his *Amended Answer and Defenses* filed on October 8, 2010, Davis added as his second defense a motion to dismiss the Amended Complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

Davis filed his *Motion to Dismiss for Lack of Subject Matter Jurisdiction* (MTD) and corresponding brief on March 15, 2011. In his MTD, Davis asserts that the adversary proceeding should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1) because the Court lacked subject matter jurisdiction over the issue of the validity of the Tax Sale.[4] Franklin filed its *Plaintiff Franklin Credit Management Corporation's Response to Defendant John Davis' Motion to Dismiss for Lack of Subject Matter Jurisdiction* and corresponding brief on April 5, 2011. The Pike County Defendants have not filed a response to the MTD.

On March 15, 2011, Franklin filed its *Plaintiff Franklin Credit Management Corporation's Motion for Summary Judgment, Statement of Material Facts and Theories of Recovery.* On March 16, 2011, *Plaintiff Franklin Credit Management Corporation's Amended Motion for Summary Judgment, Statement of Material Facts and Theories of Recovery*[5] (Summary Judgment Motion) and

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[3]Federal Rule of Civil Procedure 12 is made applicable to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7012.

[4]As noted above, in his amended answer, Davis asserted both Rule 12(b)(1) and 12(b)(6) as grounds for dismissal. However, his MTD only asserts Rule 12(b)(1) as a ground for dismissal of the Amended Complaint. Therefore, the Court will only consider the grounds asserted in the MTD.

[5]It appears that Franklin failed to attach the exhibits to the original motion for summary judgment, which is what prompted Franklin to file the amended motion with the exhibits attached.

the corresponding brief were filed. Davis filed his *Defendant John Davis' Response to Motion for Summary Judgment* and his corresponding brief on March 29, 2011. The Pike County Defendants have not filed a response or answer to the Summary Judgment Motion.

CONCLUSIONS OF LAW

I. Jurisdiction

For the reasons stated below, this Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(1) and (2)(K).

II. Davis' Request to Annul the Automatic Stay Retroactively

Before considering the substantive issues involved in this adversary, the Court must first address a procedural matter. In his *Defendant John Davis' Response to Motion for Summary Judgment* (Response) and in his *Memorandum Brief in Support of Davis' Response to Motion for Summary Judgment* (Memorandum), Davis included a request that the Court retroactively annul the automatic stay.

Federal Rule of Civil Procedure 7 is made applicable to bankruptcy cases by Rule 7007 of the Federal Rules of Bankruptcy Procedure. Rule 7 states that "[a] request for a court order must be made by motion."[6]

The request to annul the stay contained in Davis' Memorandum does not satisfy the rules regarding matters of form. "[A] . . . [m]emorandum is not a pleading from which the Court grants relief." *In re Gilmore, Jr.*, 198 B.R. 686, 692 n. 4 (Bankr. E.D. Tex. 1996), *amended in part on reh'g*, 1996 WL 1056889 (Bankr. E.D. Tex. 1996), *aff'd, United States v. Gilmore*, 226 B.R. 567

[6]Fed. R. Civ. P. 7(b)(1).

(E.D. Tex. 1998). "[B]ecause a memorandum or brief does not constitute a pleading, a request for relief contained therein cannot constitute a written motion." *In re Allegheny Health, Educ. & Research Foundation*, 233 B.R. 671, 683 (Bankr. W.D. Pa. 1999); *see also Vidalia Dock & Storage Co., Inc. v. Donald Engine Service, Inc.*, 2008 WL 115199, *2 (W.D. La. Jan. 9, 2008) (Motion in brief was "deemed deficient."). Consequently, the Court finds that the request to annul the stay contained in Davis' Memorandum is not properly before the Court and will not be considered.

Moreover, § 363(d) of Title 11 of the United States Code[7] controls the terminating, annulling, modifying, or conditioning of the automatic stay. The stay may only be annulled "after notice and a hearing."[8] In addition, as required by 28 U.S.C. § 1930, a motion to terminate, annul, modify or condition the automatic stay requires the payment of a $150 filing fee. Since neither a notice nor a hearing has been held on the request to annul the stay nor has a filing fee been paid, the request to annul the stay contained in Davis' Response is likewise not properly before the Court.

III. Standards

A. Summary Judgment Standards

Rule 56 of the Federal Rules of Civil Procedure,[9] as amended effective December 1, 2010,[10]

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[7]Hereinafter all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code unless otherwise noted.

[8]11 U.S.C. § 362(d).

[9]Federal Rule of Civil Procedure 56 is made applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056.

[10]The Notes of Advisory Committee to the 2010 amendments state that the standard for granting a motion for summary judgment has not changed, that is, there must be no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law. Further, "[t]he amendments will not affect continuing development of the decisional law construing and applying these phrases."

provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When considering a motion for summary judgment, "the court does not weigh the evidence to determine the truth of the matter asserted but simply determines whether a genuine issue for trial exists, and '[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.' *Anderson v. Liberty Lobby, Inc.*, 106 S.Ct. 2505, 2510 (1986)." *Newton v. Bank of America (In re Greene)*, 2011 WL 864971, *4 (Bankr. E.D. Tenn. March 11, 2011).

"The moving party bears the burden of showing the . . . court that there is an absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)." *Hart v. Hairston*, 343 F. 3d 762, 764 (5th Cir. 2003).

Once a motion for summary judgment is pled and properly supported, the burden shifts to the non-moving party to prove that there are genuine disputes as to material facts by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, . . . admissions, interrogatory answers, or other materials."[11] Or the non-moving party may "show[ ] that the materials cited do not establish the absence . . . of a genuine dispute."[12] When proving that there are genuine disputes as to material facts, the non-moving party cannot rely "solely on allegations or denials contained in the pleadings or 'mere scintilla of evidence in support of the nonmoving party will not be sufficient.' *Nye v. CSX Transp., Inc.*, 437 F. 3d 556, 563 (6th Cir. 2006); *see also Matsushita Elec. Indus. Co., Ltd. v. Zenith*

[11]Fed. R. Bankr. P. 7056(c)(1)(A).

[12]Fed. R. Bankr. P. 7056(c)(1)(B).

Radio Corp., 106 S.Ct. 1348, 1356 (1986)." *Newton*, 2011 WL 864971 at *4. "[T]he nonmovant must submit or identify evidence in the record to show the existence of a genuine issue of material fact as to each element of the cause of action." *Malacara v. Garber*, 353 F. 3d 393, 404 (5th Cir. 2003). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita*, 106 S.Ct at 1356 (citations omitted).

When considering a motion for summary judgment, the court must view the pleadings and evidentiary material, and the reasonable inferences to be drawn therefrom, in the light most favorable to the non-moving party, and the motion should be granted only where there is no genuine issue of material fact. *Thatcher v. Brennan*, 657 F. Supp. 6, 7 (S.D. Miss. 1986), *aff'd*, 816 F.2d 675 (5th Cir. 1987)(citing *Walker v. U-Haul Co. of Miss.*, 734 F.2d 1068, 1070-71 (5th Cir. 1984)); *see also Matshushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88, 106 S.Ct. 1348, 1356-57, 89 L.Ed.2d 538, 553 (1986). The court must decide whether "the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d. 202 (1986).

B. Motion to Dismiss Standards

Federal Rule of Civil Procedure 12(b)(1)[13] provides for dismissal of a complaint for lack of subject matter jurisdiction. "'[W]hen standing is challenged on the basis of the pleadings,' we must 'accept as true all material allegations of the complaint and . . . construe the complaint in favor of the complaining party.' *Pennell v. City of San Jose*, 485 U.S. 1, 7, 108 S. Ct. 849, 855, 99 L.Ed. 2d 1 (1988) (citations and internal quotation omitted)." *Association of American Physicians &*

[13]Federal Rule of Civil Procedure 12 is made applicable to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7012.

Surgeons, Inc. v. Texas Medical Board, 627 F. 3d 547, 550 (5th Cir. 2010); *see also Hirsch v. Arthur Anderson & Co.,* 72 F.3d 1085, 1088 (2nd Cir. 1995) ("[W]e accept as true all of the allegations of the Complaint and construe them in [the plaintiff's] favor.").

In a recent opinion by Judge Keith Starrett, a United States District Court for the Southern District of Mississippi, Judge Starrett held that:

> "In applying Rule 12(b)(1), the district court 'has the power to dismiss for lack of subject matter jurisdiction on any one of three separate basis: (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.'" *Spotts v. United States,* 613 F. 3d 559, 565-66 (5th Cir. 2010) (quoting *St. Tammany Parish v. FEMA,* 556 F. 3d 307, 315 (5th Cir. 2009)).
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> Defendants have not provided any evidentiary support for their jurisdictional arguments. Rather, their motion to dismiss is "based on the lack of jurisdiction on the face of the complaint." *Williamson v. Tucker,* 645 F. 2d 404, 412 (5th Cir. 1981). Therefore, Plaintiff's are "left with safe-guards similar to those retained when a Rule 12(b)(6) motion to dismiss for failure to state a claim is raised–the court must consider the allegations in the [Plaintiffs'] complaint as true." *Id.; see also Lewis v. Knutson,* 699 F. 2d 230, 237 (5th Cir. 1983); *Patterson v. Weinberger,* 644 F. 2d 521, 523 (5th Cir. 1981).

Bryant v. Holder, 2011 WL 710693, *2 (S.D. Miss. Feb. 3, 2011).

C. Summary

Like the defendants in *Bryant,* Davis asserts in his MTD that on the face of the complaint, this Court lacks jurisdiction to resolve the Tax Sale dispute. Therefore, the standards the Court must consider in a motion to dismiss for lack of subject matter jurisdiction are very similar to the standards for the granting of a motion for summary judgment. Consequently, the Court will apply the standards to the facts before it and discuss both of the motions in turn.

VI. Legal Analysis

Upon the filing of a petition under Title 11 of the United States Code, a bankruptcy estate is created pursuant to § 541(a). The property of the estate is compromised of "all legal or equitable

interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1).

In his Memorandum, Davis states that "Davis does not dispute the facts as stated in Franklin's Motion [for summary judgment]."[14] Therefore, there is no dispute to the following material facts: (1) The Debtor owned the Property at the time he filed bankruptcy, and therefore, the Property was property of the Debtor's bankruptcy estate; and (2) The automatic stay was in place when the Tax Sale for the 2004 ad valorem taxes occurred on August 29, 2005.

"For the bankruptcy court to have subject matter jurisdiction, therefore, some nexus must exist between the related civil proceeding and the Title 11 case." *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F. 3d 746, 752 (5th Cir. 1995) (citation and footnote omitted). "[R]esolving competing claims to property that belonged to the debtor when it filed a petition in bankruptcy is one of the central functions of bankruptcy law." *Elscint, Inc. v. First Wisconsin Financial Corp. (In re Xonics),* 813 F. 2d 127, 131-32 (7th Cir. 1987). "An action to determine the validity, extent, or priority of liens asserted against the property of a bankrupt estate is a core proceeding under 28 U.S.C. §§ 157(b)(1) and 157(b)(2)(K)." *Constellation Development Corp. v. Dowden (In re McAdams, Inc.)*, 66 F. 3d 931, 936 (8th Cir. 1995). Since there is no dispute that the Property was property of the Debtor's estate at the time the Tax Sale occurred, the MTD for lack of subject matter jurisdiction should be denied. The Court now turns to the Summary Judgment Motion.

The property of a debtor's estate, wherever located, is protected by an automatic stay which goes into effect pursuant to § 362(a). The automatic stay which arises "precludes creditors from taking almost any action to obtain property of a debtor's estate or to collect from a debtor upon a prepetition debt outside the bankruptcy process. The automatic stay is among the most fundamental

[14]*Memorandum Brief in Support of Davis' Response to Motion for Summary Judgment,* Docket No 68, p. 4, March 29, 2011.

debtor protections in bankruptcy law and its scope in protecting debtors and debtor property is broad." *Cousins v. CitiFinancial Mortgage Co. (In re Cousins),* 404 B.R. 281, 286 (Bankr. S.D. Ohio 2009) (citations omitted).

The stay, which is applicable to all entities, prohibits: "(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; (4) any act to create, perfect, or enforce any lien against property of the estate; [and] (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case . . . ." 11 U.S.C. § 362(a)(3),(4) & (5). "The stay prohibits 'all entities' from making collection efforts against the debtor or the property of the debtor's estate." *Campbell v. Countrywide Home Loans, Inc.*, 545 F. 3d 348, 353 (5th Cir. 2008) (citation omitted).

The legislative history to § 362 states that the stay is in place not only to give the debtor breathing room from his creditors, but also to provide protection to creditors:

> "The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of their claims in preference and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure in which all creditors are treated equally." H.R.Rep. No. 95-595 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6296-97; S.Rep. No. 95-989 (1978) *reprinted in* 1978 U.S.C.C.A.N. 5787, 5835-36.

In re Cousins, 404 B.R. at 286.

Any actions against property of the estate "are invalid, whether or not a creditor acts with knowledge of the stay. *See, e.g., In re Calder,* 907 F. 2d 953, 956 (10th Cir. 1990), *cited with approval in In re Jones,* 63 F. 3d 411, 412 n. 3 (5th Cir. 1995)." *Bustamante v. Cueva (In re Cueva),* 371 F. 3d 232, 236 (5th Cir. 2004); *see also, Morton v. Kievit (In re Vallecito Gas, LLC),* 440 B.R. 457, 479 (Bankr. N.D. Tex. 2010). The use of the term "invalid" in this context is significant.

In the Court of Appeals for the Fifth Circuit, "[i]t is well-settled that 'actions taken in violation of the automatic stay are not *void*, but rather they are merely *voidable*, because the bankruptcy court has the power to annul the automatic stay pursuant to section 362(d).'" *Jones v. Garcia (In re Jones)*, 63 F. 3d 411, 412 (5th Cir. 1995) (footnote omitted). *See also Picco v. Global Marine Drilling Co.*, 900 F. 2d 846, 850 (5th Cir. 1990); *Sikes v. Global Marine, Inc.*, 881 F. 2d 176 (5th Cir. 1989).

Otherwise, if every action taken in violation of the stay were deemed void, and of no effect, then the power to annul the stay retroactively would be rendered superfluous. The Court recognizes that finding stay violations merely voidable places the burden on the debtor or other party in interest to prosecute claims arising out of another's unlawful conduct, but that placement is consistent with the protections afforded by § 362(d).

Since there is no genuine issue of material fact that (1) the Tax Sale was an attempt to collect a debt owed by the Debtor and (2) the automatic stay was not lifted to allow the Tax Sale to occur, the Court finds that the Tax Sale is voidable as a violation of the stay. The Court's task, however, does not end here because Franklin asks this Court in his Amended Complaint to declare the Tax Sale void *ab initio.* As to that claim for relief, the Court further finds that in the absence of a proper motion to annul the stay retroactively in favor of Davis, and in the absence of any equitable circumstances supporting the validation of the Tax Sale, the Tax Sale is void *ab initio*. For this reason, the subsequent Clerk's Conveyance to Davis was also improper and should be set aside.

This result is consistent with two separate opinions rendered by United States Bankruptcy Court Judge for the Northern District of Mississippi, David W. Houston, III, in which he likewise found that tax sales for delinquent ad valorem taxes were "void if the automatic stay is not lifted before the sale occurs." *Key v. Cannon (In re Key),* 276 B.R. 452, 455 (Bankr. N.D. Miss. 2000);

Girard Saving Bank v. Clayton (In re Bell), Adv. Proc. No. 98-4099, Case No. 93-42773 (Bankr. N.D. Miss. June 26, 1998). *See also United States v. Eagle Investment Co. (In re Crosby),* 109 B.R. 195, 197 (Bankr. S.D. Miss. 1989) (Gaines, J.) ("The tax sale was a direct violation of the automatic stay . . . .").

V. Exceptions to the Automatic Stay

The Court will note that subsection (b) of § 362 contains a laundry list of exceptions to the automatic stay going into effect. Section 362(b)(18) allows for the "creation or perfection of a statutory lien for an ad valorem property tax . . . on real property . . . imposed by a governmental unit, if such tax . . . comes due after the date of the filing of the petition."[15] In other words, the automatic stay does not stop the lien for post-petition ad valorem taxes from attaching to a debtor's property. However, unless the governmental unit obtains relief from the automatic stay, § 362(a) prohibits a governmental unit from executing on that lien by conducting a tax sale. 3 *Collier on Bankruptcy* ¶ 362.05[17] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.)

CONCLUSION

As previously stated, the standards for deciding a Rule 12(b)(1) motion are similar to the standards used to decide a motion for summary judgment. Davis has not shown the existence of any "disputes over facts that might affect the outcome of the suit under the governing law [in order to] properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct 2502, 2510, 91 L. Ed. 2d 202 (1986). A dispute about a material fact is genuine if a reasonable jury could return a verdict for the non-moving party based on the applicable law in relation to the evidence presented. *Id.* at 249. Applying these standards as established by the Supreme Court, the Court finds that there is no dispute as to any material fact and that judgment

[15]11 U.S.C. § 362(b)(18).

should be granted in favor of Franklin as a matter of law. It is clear that at the time the Tax Sale occurred, the Property was property of the Debtor's estate. Therefore, the MTD should be denied as the Court has subject matter jurisdiction over the issues raised in this proceeding. Further, the Court finds that there is no dispute that the Tax Sale was conducted in violation of the automatic stay and is voidable. The Court further finds that in the absence of any equitable considerations, the Tax Sale should be declared void *ab initio.* Consequently, the Summary Judgment Motion should be granted in favor of Franklin, and the Tax Sale should be set aside.

A separate judgment consistent with this opinion will be entered in accordance with Rule 7054 of the Federal Rules of Bankruptcy Procedure.

This the 15th day of July, 2011.

/s/ EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE