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

IN RE: WILLIE AND MARY E. OUSLEY **CASE NO. 96-03110WEE**

Hon. Lynda Carol Robinson
P.O. Box 3016
Jackson, MS 39207

Attorney for the Debtors

Hon. David N. Usry
188 E. Capitol Street
Suite 500
Jackson, MS 39205

Assistant U.S. Attorney

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This case is before the Court on the motion of the United States of America, Department of Agriculture, Rural Development (Rural Development) for a determination that the automatic stay does not apply to the movant, and therefore, has no effect on a foreclosure conducted by Rural Development. After notice and a hearing wherein counsel for each party presented evidence and arguments in support of their respective positions, and otherwise being fully advised in the premises, the Court holds that the automatic stay was not in effect as to Rural Development at the time of the foreclosure of the Debtors' property. In so holding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

It is undisputed that the Debtors executed a first deed of trust in favor of the Farmers Home Administration (now Rural Development) in 1979 on a parcel of property to which they held title. The property is located in Sharkey County, Mississippi.

In August of 1986, Willie and Mary Ousley filed a petition for relief under Chapter 13 of the Bankruptcy Code and a plan was confirmed. After two motions to dismiss filed by the Chapter 13 Trustee and two modifications, the Farmers Home Administration (now Rural Development) filed a motion for relief from the automatic stay as to the property. On April 14, 1989, an agreed order was entered resolving the motion. The order mandates that the stay will automatically lift upon the filing by the Chapter 13 Trustee of another motion to dismiss the case for failure to fund the chapter 13 plan. Shortly thereafter, the Chapter 13 Trustee filed another motion to dismiss for failure to fund the plan. The Trustee's motion resulted in the dismissal of the case in October of 1989.

On November 6, 1989, the Debtors filed their second Chapter 13 petition for relief and a plan was confirmed. The Debtors then filed a motion to reinstate the automatic stay. An agreement was reached between the Debtors and the Farmer's Home Administration, pursuant to which an agreed order was entered dismissing the motion to reinstate the automatic stay and an agreed order was entered wherein the Farmers Home Administration agreed to accept the

Debtors' confirmed plan. In May of 1994, the case was dismissed for failure to fund the plan.

In June of 1995, the Debtors filed their third Chapter 13 petition for relief. The case was voluntarily dismissed in August of 1995.

On August 16, 1996, the Debtors commenced their fourth, and present, Chapter 13 case. On August 19, 1996, the Debtors' property was foreclosed by Rural Development. The property was purchased by a third party at the foreclosure sale. On August 20, 1996, Rural Development received notice via facsimile transmission of the Debtors' present bankruptcy case. On September 3, 1996, Rural Development filed the present motion for a determination that the automatic stay does not apply as a result of the order entered in the Debtors' 1986 bankruptcy case, and that the stay had no effect on the foreclosure sale conducted three days after the filing of the present case.

In response, the Debtors assert that Rural Development is not entitled to any relief, arguing that the agreed order entered in the Debtors' 1986 case was not a final judgment.

CONCLUSIONS OF LAW

The issue before the Court is whether a subsequent bankruptcy petition operates to reinstate the automatic stay under § 362 of the Bankruptcy Code where an order was entered in a prior bankruptcy case lifting the automatic stay upon the happening of some contingency, which contingency did come to pass. The terms of

the order entered in the Debtors' 1986 bankruptcy are not in dispute. Nor is the occurrence of the contingency, the Chapter 13 Trustee's filing of a motion to dismiss for failure to fund the plan, in dispute.

First, the Court will address the Debtors' position that the agreed order entered in the Debtors' 1986 bankruptcy case, which provides that the automatic stay will lift upon the filing by the Chapter 13 Trustee of another motion to dismiss for failure to fund the plan, is not a final judgment. In West Texas Marketing Corp. vs. Kellogg, 12 F.3d 497, 500 (5th Cir. 1994) the Fifth Circuit Court of Appeals held that a settlement agreement approved and incorporated into a judgment by the court is a final judgment. The Fifth Circuit stated that the fact that no order was issued by the Court specifically labeled "final judgment" was not determinative of the finality of the judgment. Id. at 501. This Court holds that the agreed order entered in the Debtors' 1986 case is a final judgment under Rule 9021 of the Federal Rules of Bankruptcy Procedure.

The Court next turns to the question of whether the filing of a subsequent bankruptcy case can operate to reinstate the automatic stay. This Court has ruled in a previous case that where the automatic stay has been lifted in a particular case, conversion from a Chapter 13 to a Chapter 7 does not operate to reinstate the automatic stay. Deposit Guaranty National Bank vs. Watkins (In re Watkins), Chapter 7 Case No. 8702224JC, Adv. No. 880099JC (Bankr. S.D. Miss. 1988). In so ruling, this Court relied on Jefferson vs.

Mississippi Gulf Coast YMCA, Inc., 73 B.R. 179 (S.D. Miss. 1986).

In Jefferson the district court upheld the bankruptcy court's ruling that a creditor's foreclosure of the debtor's property while the debtor was in bankruptcy was not a violation of the automatic stay under § 362 where the stay had been lifted as to that creditor and property in a bankruptcy case previously filed by the debtor. In so ruling, the court stated:

> The Court has studied the issue and concludes that the lower Court's decision that the April 19, 1984, foreclosure sale did not violate the automatic stay provision of 11 U.S.C. Section 362(a) -- whether based on the principles of res judicata, or collateral estoppel, did not constitute error as a matter of law and, in fact, was fully justified given the posture of this case. The lower court's decision to lift the automatic stay in No. 8407357SC was an act within the discretion of the bankruptcy judge, and to have allowed the debtors to effectively circumvent the effects of the Order Lifting the Automatic Stay by voluntarily dismissing their own bankruptcy and filing a new bankruptcy shortly thereafter would have amounted to a condonation of appellants' attempts to thwart the purposes of 11 U.S.C. Section 362(a).

Id. at 182 (citations omitted).

Jefferson continues to be valid precedent in the Southern District of Mississippi. Therefore, this Court holds that pursuant to the agreed order entered in the Debtors' 1986 bankruptcy case, the automatic stay was lifted to allow Rural Development to enforce its lien on the Debtors' property located in Sharkey County, Mississippi upon the Chapter 13 Trustee's filing of his motion to dismiss the Debtors' case for failure to fund their plan. Once the automatic stay lifted, it remains lifted unless reinstated by the Court. The Debtors' filing of the present case did not operate to reinstate the automatic stay as to Rural Development, and

therefore, did not affect the foreclosure conducted by Rural Development.

A separate judgment will be entered consistent with this opinion in accordance with Rules 9021 and 7054 of the Federal Rules of Bankruptcy Procedure.

This the 22nd day of November, 1996.

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
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IN RE: WILLIE AND MARY E. OUSLEY **CASE NO. 96-03110WEE**

FINAL JUDGMENT

Consistent with the Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the automatic stay provided upon the filing of the present case pursuant to 11 U.S.C. § 362 did not affect the rights of the United States of America, Department of Agriculture, Rural Development to enforce its lien on that certain parcel of real property owned by the Debtors and located in Sharkey County, Mississippi.

SO ORDERED this the 22nd day of November, 1996.

UNITED STATES BANKRUPTCY JUDGE