UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
ROSEMARIE T. WALKER	:	
Debtor	:	Bankruptcy No. 03-33446F

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MEMORANDUM

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Thomas A. McFadden and Albert Martin have filed a motion in the above-captioned case, seeking relief from the automatic stay nunc pro tunc as of September 12, 2003. Rosemarie Walker opposes this motion and has attached to her answer a copy of an adversary proceeding she recently commenced in this bankruptcy court against Mr. Martin and the Delaware County Tax Claim Bureau asserting, inter alia, that these parties violated the bankruptcy stay.[1]

As will be discussed below, the movants are the purchasers of real property owned by Ms. Walker at a tax "upset" sale that occurred on September 15, 2003. Ms. Walker had filed a chapter 13 bankruptcy petition three days earlier, on September 12, 2003, and docketed as captioned above. Although of no apparent significance to these parties, Ms. Walker's bankruptcy case was dismissed on December 2, 2003, almost 18 months ago, and she has no case pending in this court. Thus, there was no underlying bankruptcy case either at the time the movants filed the instant motion, or at the time Ms. Walker commenced her adversary proceeding.

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[1]After the hearing on the instant motion, Ms. Walker filed an amended complaint also naming Mr. McFadden as a defendant. That complaint will be dismissed by a separate order for the reasons stated herein.

Although I heard evidence in connection with this motion under 11 U.S.C. § 362(d)(1), I requested that the parties submit memoranda addressing my power to resolve the merits of this contested matter, the movants' standing to seek relief, and whether—even if I possess subject matter jurisdiction over this contested matter—it is nevertheless more appropriate for this dispute to be resolved in state court.[2]

I have now reviewed their memoranda and conclude, for reasons set out below, that reconsideration of the December 2003 dismissal order is not warranted. As a result, there is no pending bankruptcy case through which this court can exercise jurisdiction over this dispute. Furthermore, a non-bankruptcy forum—i.e., the Pennsylvania state court system—has the power to resolve what amounts to a contest over title to the real estate between the movants and Ms. Walker.

I reach these conclusions against the following factual backdrop.

I.

Ms. Walker owned the real property located at 600 West Springfield Road, Springfield, Pennsylvania as of September 12, 2003. On that date, she was delinquent in payment of real estate taxes dating back to 1995. Ms. Walker had received notice from the Delaware County Tax Claim Bureau that her property would be sold at a tax upset

[2]Federal courts, including bankruptcy courts, can only determine disputes over which they have subject matter jurisdiction. See, e.g., In re Guild and Gallery Plus, Inc., 72 F.3d 1171 (3d Cir. 1996); In re Hall's Motor Transit Co., 889 F.2d 520 (3d Cir. 1989). Indeed, federal courts are obligated to insure that they have subject matter jurisdiction over disputes and may raise the issue sua sponte. See, e.g., In re Yousif, 201 F.3d 774, 776 (6th Cir. 2000); Liberty Mutual Insurance Co. v. Ward Trucking Corp., 48 F.3d 742, 750 (3d Cir. 1995); In re Hall's Motor Transit Co., 889 F.2d at 522.

sale on September 15, 2003, due to her delinquent tax obligations. To prevent that sale, Ms. Walker filed a chapter 13 petition on September 12th.

Tax sales in Delaware County, Pennsylvania are governed by the Pennsylvania Real Estate Tax Sale Law. 72 P.S. §§ 5860.101 et seq. Under this statute, there are three types of realty tax sales. Initially, the governmental entity will schedule an upset sale—whereby the property is sold at open auction for an amount equal to or greater than the "upset price." The upset price is statutorily established as the sum total of the realty tax delinquency (with accrued statutory interest), plus any tax liens owed to the Commonwealth of Pennsylvania, plus any other tax claims or tax judgments due on the realty, plus all accrued taxes through the date of sale, plus all municipal claims against the property, plus the costs of sale. 72 P.S. § 5860.605. There can be no upset sale unless there is a bid at least equal to the established upset price. Id. Upset tax sales do not divest any prior liens against the realty, except those tax liens which are a component of the upset price. 72 P.S. § 5860.609.

If the property is not sold at an upset sale, then the county tax claim bureau may seek to sell the property at a judicial sale, which also occurs through an open auction. 72 P.S. § 5860.610. Judicial tax sales, unlike tax upset sales, transfer the property free and clear of almost all liens and encumbrances. Id.; see First Federal Sav. and Loan Ass'n of Lancaster v. Swift, 457 Pa. 206, 211 (1974). If the property is not sold at a judicial sale, the county may then seek to sell the realty at a private sale. 72 P.S. § 5860.613.

Each of the three methods of sale just outlined has its own requirements for notice, conduct of the sale, and state court approval.

Tax upset sales take place only once a year in Delaware County, during the month of September. The scheduled 2003 tax sale of Ms. Walker's property was the Tax Claim Bureau's fourth attempt at such an involuntary sale since 1999. Each of the prior three annual attempts at an upset sale had been stayed by separate chapter 13 bankruptcy petitions filed by Ms. Walker just prior to the date of sale. And each of those three prior bankruptcy cases had been dismissed without any successful reorganization by Ms. Walker.

Thus, the September 12, 2003 chapter 13 filing represented Ms. Walker's fourth attempt to prevent the tax sale of her home.[3] This last attempt at chapter 13 reorganization was also unsuccessful, and her case was dismissed on December 2, 2003 upon motion of the chapter 13 trustee, due to the debtor's failure to file the requisite bankruptcy schedules or chapter 13 plan. See generally 11 U.S.C. § 1307(c).

It appears agreed by both Ms. Walker and the purchaser/movants that notice of her last bankruptcy filing was faxed by Ms. Walker's bankruptcy attorney on September 12, 2003 to an employee of the Delaware County Sheriff's Office, which employee was in charge of scheduling mortgage foreclosure sales. The movants further assert, and a former employee of the Tax Claim Bureau so testified, that no notice of the bankruptcy filing was ever given to the Delaware Tax Claim Bureau. Therefore, this

[3]Ms. Walker testified that she has been embroiled in a dispute with the City of Philadelphia since 1995 over her claimed entitlement to widows' death benefits. She asserted that she had intended to use the expected proceeds of such benefits to reorganize in each of her four chapter 13 cases, and that she still believes she will ultimately prevail in this dispute.

governmental entity proceeded with the upset sale of this property, among many others, on September 15, 2003.[4]

An upset price set at $43,674 was established for Ms. Walker's realty, and a number of auction bidders actively attempted to purchase the property. The auction lasted about 15 minutes, involving more than 30 separate bids. Ex. M-6. Messrs. McFadden and Martin, the movants herein, acting jointly, were the successful bidders. Their prevailing bid was $113,000, and this amount was paid to the Tax Claim Bureau by the purchasers on the date of sale.[5]

Once the sale took place and the successful bidders paid the full amount of their winning bid, Ms. Walker lost the right to retain ownership of her home by the payment of her tax delinquency. See In re Upset Tax Sale, Tax Claim Bureau of Wayne County, 98 Pa. Cmwlth. 288 (1986) (taxpayers' tender of payment of delinquent taxes by mail before scheduled date of tax sale, which was not received by date of sale, was not sufficient to relieve taxpayers of effects of tax sale); 72 P.S. § 5971, repealed in pertinent part by 72 P.S. § 5860.801 (formerly allowing two year redemption period). Payment by the successful bidder to the taxing authority does not, however, result in the immediate receipt of a deed from the taxing authority to the bidder.

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[4]Mr. McFadden testified that he had never met Ms. Walker prior to the hearing on the instant motion, and first learned of her bankruptcy filing in April 2004. Ms. Walker testified that she met Mr. McFadden prior to September 12, 2003—when he was inspecting the outside of her property—and informed him of her future intention to file a bankruptcy petition. He denied such a meeting or discussion.

In light of my determination that the parties' dispute should be heard by state court, I do not resolve this conflicting testimony.

[5]Ms. Walker may have been entitled to the proceeds of the auction sale above the upset price. There was no evidence that these proceeds have been disbursed to date.

Within 60 days of the upset sale, the tax claim bureau must file a "return" with the local court (here, the Delaware County Court of Common Pleas). Within thirty days thereafter, the court must review the return and determine whether the "sale has been regularly conducted under the provisions of [the Real Estate Tax Sale Law] . . . and the sales so made shall be confirmed nisi." 72 P.S. § 5860.607(a).

Once the court enters the decree nisi, the owner of the realty receives notice that the property was sold and that she has thirty days from court approval of the return to file any objections or exceptions to the sale. 72 P.S. § 5860.607(a)(2). If no such objections or exceptions are timely filed, "a decree of absolute confirmation shall be entered as of course by the prothonotary." 72 P.S. § 5860.607(c). After this sale confirmation occurs, the tax sale purchaser receives a deed from the Tax Claim Bureau. 72 P.S. § 5860.608. State law provides that "[t]he deed shall, before delivery [to the purchaser], be recorded in the office for the recording of deeds at the cost of the purchaser." Id.

Apparently, a nisi decree was entered in this instance in December 2004, the tax sale was later confirmed by state court, and the Delaware County Tax Claim Bureau issued a deed in favor of the movants dated February 18, 2004. Ex. M-5. Mr. McFadden testified that he received the deed in March 2004. After the movants obtained the deed to the realty, they paid the real estate taxes due on that property for tax year 2004, and also obtained insurance on the realty.

On April 8, 2004, Mr. McFadden wrote to Ms. Walker informing her of his ownership interest in the realty.[6] She replied by telephone and gave oral notice of her prior bankruptcy filing. Thereafter, on April 10, 2004, her former bankruptcy attorney wrote to Mr. McFadden, attached a copy of her September 12, 2003 bankruptcy petition, and asserted that the tax sale violated the bankruptcy stay and thus was improper. Ex. D-1. Mr. McFadden then investigated the records in this court and learned in April 2004 of Ms. Walker's various bankruptcy filings and subsequent dismissals, including the September 2003 filing.

Discussions between the movants and Ms. Walker's former bankruptcy counsel ensued until August 2004, when counsel informed Mr. McFadden that he no longer represented Ms. Walker. Neither the movants nor Ms. Walker took any steps to resolve their dispute over the propriety of the tax upset sale in state court. Instead, the movants waited until March 22, 2005 to file the instant motion in this court, and Ms. Walker thereafter responded with her adversary proceeding on April 12, 2005.

II.

Messrs. McFadden and Martin argue that Ms. Walker's September 2003 bankruptcy filing was in bad faith, designed solely to stay for the fourth time the scheduled tax sale. They request an order annulling the bankruptcy stay pursuant to 11 U.S.C. § 362(d)(1). See generally Constitution Bank v. Tubbs, 68 F.3d 685, 692 n.6 (3d

[6]Despite the state law notice requirements, Ms. Walker asserts that she first learned of the tax sale in April 2004, when she received this letter from Mr. McFadden.

Cir. 1995); In re Siciliano, 13 F.3d 748, 750-51 (3d Cir. 1994). Ms. Walker responds that the sale occurred post-bankruptcy, in violation of the automatic stay under 11 U.S.C. § 362(a), and so was "void." See generally In re Ward, 837 F.2d 124 (3d Cir. 1988); but see Constitution Bank v. Tubbs, 68 F.3d at 692 n.6.

In filing their respective pleadings, neither party considered the applicability of 11 U.S.C. § 549(c) to this dispute. See generally In re Shah, 2001 WL 423024 (Bankr. E.D. Pa. 2001). Nor did either party view as relevant to their respective pleadings that Ms. Walker has had no pending bankruptcy case in this court since December 2003.[7]

In general, a bankruptcy court's subject matter jurisdiction over disputes is restricted by 28 U.S.C. § 1334 to those matters that could affect the administration of the bankruptcy estate. See, e.g., Halper v. Halper, 164 F.3d 830, 837 (3d Cir. 1999). Thus, once a case is closed, the administration of the estate is ended, and any proceeding or motion filed after the case is closed falls outside of bankruptcy court jurisdiction unless the case has been reopened.

Consequently, a judge of the District Court for the Eastern District of Pennsylvania expressly held that a bankruptcy court has no jurisdiction to consider an adversary proceeding filed while the bankruptcy case remains closed:

> The court finds that where a bankruptcy case is closed and the estate no longer exists, and where plaintiff does not seek to have the bankruptcy case opened for cause pursuant to 11 U.S.C. § 350(b) and Bankruptcy Rule 5010, the court is without jurisdiction to entertain any proceedings, irrespective

[7]As the Seventh Circuit Court of Appeals once noted: "Only a belief that bankruptcy is forever could produce a case such as this." Pettibone Corp. v. Easley, 935 F.2d 120, 121 (7th Cir. 1991). The parties herein appear to hold a similar belief.

> of whether those proceedings are defined as "core" or related "non-core" proceedings.

Walnut Associates v. Saidel, 164 B.R. 487, 491 (E.D. Pa. 1994).

This conclusion—that a bankruptcy court has no power to decide a bankruptcy dispute after the case is closed, unless the case is first reopened—has been accepted by a number of courts. E.g., Cook v. Chrysler Credit Corp., 174 B.R. 321, 327 (M.D. Ala. 1994) ("Absent reopening, there is no longer a bankruptcy estate being administered which could be affected by the present litigation. Therefore, the court does not find the present action to be one which arises under or relates to a Title 11 proceeding. The court interprets 28 U.S.C. § 1334 to contemplate pending bankruptcy proceedings."); In re Brantley, 1997 WL 74663, at *1 (Bankr. W.D. Ark. 1997) (holding that an adversary proceeding filed after a debtor was discharged and the bankruptcy case was closed is improper); In re Cassidy, 1995 WL 661244, at *3 (Bankr. N.D. Ga. 1995); see also Matter of Carter, 38 B.R. 636, 638 (Bankr. D. Conn. 1984) ("[A] state-court action may be removed to the bankruptcy court only if a title 11 case is pending.").

In this instance, however, Ms. Walker's case was never closed within the meaning of section 350(a); rather it was dismissed under section 1307(c). Although a dismissed case may be reported to the judiciary's Administrative Office as "closed" for statistical purposes, see In re Lewis & Coulter, Inc., 159 B.R. 188, 191 n.4 (Bankr. W.D. Pa. 1993), virtually all courts have recognized that a bankruptcy case that has been dismissed is not treated as if it were closed under section 350(a). As one commentator has noted:

> The Court of Appeals for the Ninth Circuit and other courts have held that a case cannot be reopened unless it was closed pursuant to section 350(a) after it has been administered.

> Therefore, a dismissed case could not be reopened under section 350(b). A dismissal could be undone only through an appeal or a motion under Federal Rule of Bankruptcy Procedure 9023 or 9024.

3 Collier on Bankruptcy ¶ 350.03, at 350-6 (15th ed. rev. 2004) (footnote omitted); see, e.g., In re Income Property Builders, Inc., 699 F.2d 963, 965 (9th Cir. 1982) (per curiam); In re Flores, 271 B.R. 213, 2001 WL 543677, at *3 (B.A.P. 10th Cir. 2001) (Table); In re Critical Care Support Services, 236 B.R. 137, 140-41 (E.D.N.Y. 1999); In re King, 214 B.R. 334, 336 (Bankr. W.D. Tenn. 1997); In re Woodhaven, Ltd., 139 B.R. 745, 747-48 (Bankr. N.D. Ala. 1992); Matter of Garcia, 115 B.R. 169, 170 (Bankr. N.D. Ind. 1990); see also Vergos v. Gregg's Enterprises, Inc., 159 F.3d 989, 991 n.1 (6th Cir. 1998) (explaining that "conversion," "dismissal" and "closure" are all distinct statutory "terms of art employed in the Bankruptcy Code").

Although Ms. Walker's former bankruptcy case was dismissed rather than closed, the principle that a bankruptcy judge has no jurisdiction over a dispute filed after the case has been closed applies with equal force to dismissed cases. Indeed, the Third Circuit Court of Appeals noted "[a]s a general rule, the dismissal of a bankruptcy case should result in the dismissal of 'related proceedings' because the court's jurisdiction of the latter depends, in the first instance, upon the nexus between the underlying bankruptcy case and the related proceedings." In re Smith, 866 F.2d 576, 580 (3d Cir. 1989).

If the dismissal of a case should typically result in the relinquishment of jurisdiction over a dispute filed prior to dismissal, then, a fortiori, a bankruptcy court has no jurisdiction over disputes commenced only after the case has been dismissed. See In re Income Property Builders, Inc., 699 F.2d at 964 ("Once the bankruptcy was dismissed,

a bankruptcy court no longer had power to order the stay or to award damages allegedly attributable to its vacation."); In re King, 214 B.R. at 337 ("[T]he debtors' motion to set aside the order lifting the stay as to Vanderbilt is not a proper one for this Court to consider given the Court's denial of [reconsideration of the earlier dismissal order]."); cf. Matter of Querner, 7 F.3d 1199 (5th Cir. 1993) (bankruptcy court abused its discretion to retain jurisdiction over a dispute after the case was closed).

In general, federal courts have the power to revisit prior orders, including orders of dismissal, by way of reconsideration. See Cavalliotis v. Salomon, 357 F.2d 157 (2d Cir. 1966). A motion seeking reconsideration of the dismissal order pursuant to Fed. R. Bankr. P. 9024 (incorporating Fed. R. Civ. P. 60), see generally Matter of Garcia, 115 B.R. at 170 (dismissal order may be reconsidered pursuant to Fed. R. Bankr. P. 9024), may, if granted, provide bankruptcy subject matter jurisdiction over a dispute. See In re King, 214 B.R. at 337.

Here, the movants have not expressly sought such reconsideration. I am aware, though, that courts have occasionally treated certain motions as implicitly seeking reconsideration of a dismissal order under Rule 9024. See In re Flores, 2001 WL 543677, at *3 ("Debtor's motion to reopen [a dismissed case] could be construed as one . . . under Rule 9024 and Rule 60(b)"); In re Critical Care, 236 B.R. at 140 ("[T]he Bankruptcy Court correctly held that, inasmuch as [the] motion to 'reopen' was in reality a motion to set aside the Bankruptcy Court's . . . Order, the motion was properly analyzed under Bankruptcy Rule 9024, which makes Rule 60(b) applicable to bankruptcy cases"), In re Lewis & Coulter, Inc., 159 B.R. at 191 (former debtor's motion to "reinstate and refile the within case" is treated as a motion for reconsideration of the dismissal order).

Whether a motion seeking to annul the automatic stay after a case has been dismissed should be treated as an implicit request to vacate the earlier dismissal order, determine whether the bankruptcy stay should be annulled, and then once again dismiss the case, is debatable.[8] If I accept arguendo that a motion to annul should be considered as an implicit request for reconsideration of dismissal, even an implicit motion has to be timely under Rule 60(b). See generally In re Income Property Builders, Inc., 699 F.2d at 965 (motion to reconsider dismissal was untimely). Here, Ms. Walker contends that the instant motion—filed fifteen months after the dismissal order and eleven months after the purchasers acknowledge learning of her bankruptcy case and its dismissal—precludes any relief under Rule 60(b). See Answer, ¶ 4.

In general, motions under Rule 60(b) must be made within a "reasonable time." See, e.g., Matter of Garcia, 115 B.R. at 170. Moreover, there is a one-year limitation period for motions under Rule 60(b)(1)-(3), measured from the date of the dismissal order. See Gambocz v. Ellmyer, 438 F.2d 915 (3d Cir.), cert. denied, 403 U.S. 919 (1971); In re Woodhaven, Ltd., 139 B.R. 745, 749 (Bankr. N.D. Ala. 1992). The instant motion was filed beyond the one year period.

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[8]The movants rely upon In re Lampkin, 116 B.R. 450 (Bankr. D. Md. 1990), for the proposition that any party in interest can file a motion with the bankruptcy court to annul the automatic stay after the bankruptcy case has been dismissed without seeking reconsideration of the dismissal order. That interpretation of Lampkin appears to be too broad.

In Lampkin, the creditor recognized the jurisdictional issue and so filed a motion to reopen the case for the purpose of subsequently filing a motion to terminate the stay nunc pro tunc. The bankruptcy court, which perceived a distinction between annulling the automatic stay and lifting the stay retroactively—a distinction that does not exist in this circuit, see Constitution Bank v. Tubbs, 68 F.3d at 692 n.6; In re Siciliano, 13 F.3d at 751—denied the request without prejudice, and directed that the creditor file a motion to annul the stay.

Thus, in essence, the Lampkin court treated the motion to reopen the case as one seeking reconsideration of its dismissal order, granted reconsideration, and authorized the filing of a motion to annul the stay.

Since the movants were never creditors of Ms. Walker during her bankruptcy case, they would not have received notice of the order dismissing her chapter 13 case. Thus, they may not be constrained by the one-year deadline and might rely upon the "catchall" provision of Rule 60(b)(6). See Molloy v. Wilson, 878 F.2d 313 (9th Cir. 1989). If so, then, to the extent their present motion to annul is treated as an implicit request for reconsideration, the issue becomes whether the movant/purchasers have sought relief from this court within a "reasonable time."

The movants offer no justification for delaying from April 2004 to March 2005 before seeking relief in this forum. Inferentially, however, they suggest that their annulment request must be viewed as timely by emphasizing the holding of the Third Circuit Court of Appeals that only a bankruptcy judge can grant a party in interest relief under section 362(d)(1), including annulment of the stay. See Constitution Bank v. Tubbs, 68 F.3d at 691 ("Relief from the stay can be granted only by the bankruptcy court having jurisdiction over a debtor's case."); Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1204 (3d Cir. 1991) ("Only the bankruptcy court with jurisdiction over a debtor's case has the authority to grant relief from the stay of judicial proceedings against the debtor.").

Trial courts have discretion under Rule 60(b), and their decisions are reviewed for abuse of discretion. See, e.g., Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984); In re Flores, 2001 WL 543677, at *4; Hartford Accident & Indemnity Co. v. Smeck, 78 F.R.D. 537, 540 (E.D. Pa. 1978). If Messrs. Martin and McFadden could only uphold their purchase of the debtor's property at a postpetition tax sale by obtaining from this bankruptcy court an annulment of the stay, and as such relief

would be predicated upon reconsideration of the dismissal order, I would include the factor of exclusive jurisdiction in analyzing whether the movants here have acted within a reasonable time in seeking reconsideration. Cf. Matter of Statistical Tabulating Corp., Inc., 60 F.3d 1286 (7th Cir. 1995) (Garza, C.J., concurring) (fairness to the parties, among other factors, should be considered in deciding whether to retain jurisdiction of a turnover matter after dismissal of a bankruptcy case).

Upon reflection, however, I conclude that the movants' assertion—that they can only obtain relief in this forum—is incorrect. Although the Pennsylvania state courts have no power to annul the bankruptcy stay, they are empowered to resolve the dispute between these parties over title to the real estate, holding concurrent jurisdiction to afford appropriate relief to either the purchasers or Ms. Walker, independent of the issue of annulment. See also 40235 Washington Street Corp. v. Lusardi, 329 F.3d 1076 (9th Cir. 2003) (after a bankruptcy case was dismissed, the validity of a tax sale that occurred while the bankruptcy stay was in effect was determined by the federal district court, not the bankruptcy court).

Indeed, Mr. McFadden testified that were he and Mr. Martin to obtain the relief now sought in this court, they would thereafter commence a "quiet title" action in state court to divest Ms. Walker of possession of the real estate.[9] In other words, the

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[9]Actually, I believe the more accurate description of the proposed litigation would be one in ejectment.

In general, under Pennsylvania law, ejectment proceedings are "the classic method of determining title to real estate." Teacher v. Kijurina, 365 Pa. 480, 484 (1950). The distinction between "quiet title" actions and "ejectment" was explained in Sutton v. Miller, 405 Pa. Super. 213 (1991). When a plaintiff has possession of realty and the defendant is out of possession, a quiet title action may be brought to resolve the issue of proper ownership between them. But when the plaintiff is out of possession (as are Messrs. McFadden and Martin), he

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movants accept that they need to obtain further state court relief to obtain possession of the real estate. In the context of that litigation, the state court can adjudicate the issue of title and render interpretations of relevant federal bankruptcy law provisions.

Therefore, I conclude that if the movants are implicitly seeking reconsideration of the December 2003 dismissal order, their request should not be granted, as it is untimely. Various decisions rendered by the Third Circuit Court of Appeals make clear that the Pennsylvania court system can determine whether or not the tax upset sale in September 2003 must be set aside as violating the automatic stay. Cf. Jones v. Anderson-Tully Co., 722 F.2d 211, 213 (5th Cir. 1984) (denial of a motion for

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[9](...continued)
must bring an ejectment action to determine his ownership rights. Id. at 223-24; accord, e.g., Siskos v. Britz, 567 Pa. 689, 699 (2002) ("Ejectment is an action filed by a plaintiff who does not possess the land but has the right to possess it, against a defendant who has actual possession"); Federal Realty Investment Trust v. Juniper Properties Group, 2000 WL 424287, at *6 (E.D. Pa. 2000); see also Roberts v. Estate of Pursley, 700 A.2d 475, 480 (Pa. Super. 1997):

> The only questions at issue in the prior Action to Quiet Title should have been: (1) whether appellees are in possession; (2) whether a dispute as to title exists; and (3) whether an order should be issued on appellants compelling them to file an action in ejectment. Schimp v. Allaman, supra at 235, 509 A.2d [422] at 424 [Pa. Super. 1986]. The issues applicable to an Action in Ejectment are significantly different. "Ejectment is a possessory action wherein a plaintiff must prove the right to exclusive possession vis-a-vis proof of paramount title." Sutton v. Miller, supra at 225, 592 A.2d [83] at 89 [Pa. Super. 1991] (citing Doman v. Brogan, 405 Pa. Super. 254, 263, 592 A.2d 104, 108 (1991)).

Thus, Messrs. McFadden and Martin need to commence an ejectment action in state court to determine their right of title to and possession of the realty in queston. See, e.g., Plauchak v. Boling, 439 Pa. Super. 156, 163 (1995) ("Permitting an out-of-possession plaintiff to maintain an action to quiet title is impermissible because it constitutes an enlargement of the plaintiff's substantive rights as defined by statute, and thus exceeds the court's jurisdiction to proceed"). In the context of that litigation, the state is empowered to address the issues posed by the parties in this dispute.

reconsideration did not preclude a determination of the merits of a dispute in an appropriate forum).

III.

The Third Circuit Court of Appeals has held that a non-bankruptcy forum may determine whether litigation pending before that forum is within the scope of the bankruptcy stay:

> We have no difficulty deciding that we may determine the applicability of the automatic stay. As the Second Circuit has said, "[w]hether the stay applies to litigation otherwise within the jurisdiction of a district court or court of appeals is an issue of law within the competence of both the court within which the litigation is pending . . . and the bankruptcy court supervising the reorganization." In re Baldwin-United Corporation Litigation, 765 F.2d 343, 347 (2d Cir.1985). The court in which the litigation claimed to be stayed is pending thus "has jurisdiction to determine not only its own jurisdiction but also the more precise question whether the proceeding pending before it is subject to the automatic stay." Id.; see also NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934, 936, 938-39 (6th Cir. 1986) (court of appeals has jurisdiction to determine whether the automatic stay applied to NLRB proceeding pending before it); Hunt v. Bankers Trust Co., 799 F.2d 1060, 1069 (5th Cir. 1986) (court has jurisdiction to determine automatic stay provision's applicability to case pending in Texas district court). Cf. EEOC v. Hall's Motor [Transit] Co., 789 F.2d 1011, 1013 (3d Cir. 1986) (filing of bankruptcy petition does not act as automatic stay of suit under Title VII). Finding that we have jurisdiction to determine the applicability of the automatic stay provision to the pending petition for enforcement, we turn to the question whether the automatic stay provision applies to the instant action.

Brock v. Morysville Body Works, Inc., 829 F.2d 383, 387 (3d Cir. 1987); see also Pettibone Corp. v. Easley, 935 F.2d 120 (7th Cir. 1991). Accordingly, Pennsylvania

courts have noted that they "possess[] concurrent jurisdiction to address the issues relating to [the bankruptcy] stay . . . ." Commonwealth, Dept. of Environmental Resources v. Ingram, 658 A.2d 435, 436 (Pa. Cmwlth. 1995); see Krystal Jeep Eagle, Inc. v. Bureau of Professional and Occupational Affairs, 725 A.2d 846, 850 (Pa. Cmwlth. 1999). (This question is distinct from the issue whether, if the litigation is so stayed, the bankruptcy stay should be terminated.)

This recognition of state court concurrent jurisdiction to interpret and enforce subsections 362(a) and (b) is consistent with the more general principle that federal statutes may be interpreted and enforced in state courts unless Congress has granted, either explicitly or implicitly, exclusive jurisdiction to a federal forum. See generally Tafflin v. Levitt, 493 U.S. 455 (1990). Indeed, there is a rebuttable presumption in favor of such concurrent jurisdiction. Id. at 459.

The Third Circuit Court of Appeals has also instructed that the provisions of 11 U.S.C. § 549(c)[10] constitute an exception to the principle established by section 362(a):

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[10]Subsection 549(c) provides:

> The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

that involuntary, postpetition transfers of real property of the debtor are enjoined. In re Siciliano, 13 F.3d 748, 751 n.2 (3d Cir. 1994):

> We find it significant that the Code expressly permits certain post-petition transactions that occur in violation of the automatic stay. Some transactions, for example, will be considered valid unless voided by the trustee. 11 U.S.C. § 549. In addition, post-petition property transfers are valid when the parties act in good faith without knowledge that the debtor filed a bankruptcy petition. 11 U.S.C. § 542(c). We agree with the Fifth Circuit's conclusion that "[i]f everything done post-petition were void in the strict sense of the word, these provisions would either be meaningless or inconsistent with the specific mandate of section 362(a)." Sikes [v. Global Marine, Inc.], 881 F.2d [176] at 179 [5th Cir. 1989].

Accord In re Ward, 837 F.2d 124, 126 (3d Cir. 1988).[11] This position probably represents a majority viewpoint among courts, see United States v. Miller, 2003 WL 23109906, at *13 (N.D. Tex. 2003), and has support among commentators as well. See 3 Norton Bankr. L. & Prac. 2d § 59:5 (2004) (opining that one court "correctly stated" that good faith purchasers are protected from section 362(a) by section 549(c)); Epstein, et al. 1 Bankruptcy, § 3-32 at 356 (1992):

> Section 362 does not expressly repeat or incorporate these exceptions [found in section 549]. Therefore, if literally applied, section 362 would void the excepted transfers and undermine the section 549 exceptions themselves. The courts handle this misfit between sections 362 and 549 by treating the section 549 exceptions as implied limits on the voiding effect of section 362.

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[11]One commentator offered this analysis of Ward:

> Clearly, the Third Circuit concluded that a mortgagee purchasing property at a foreclosure sale can be protected by the exception in section 549(c) under certain circumstances.

4 Collier on Bankruptcy, ¶ 549.03[3] at 549-13 n.7 (15th ed. 1995).

(footnote omitted, citing numerous decisions).[12]

I am well aware that some courts have construed section 549(c) as applicable only to voluntary, post-bankruptcy transfers by the debtor; if so, then good-faith purchasers at judicial and tax sales would not be protected by the provisions of section 549(c), if the sale violated the bankruptcy stay imposed by section 362(a). See In re Ford, 296 B.R. 537, 548 (Bankr. N.D. Ga. 2003). Such decisions rely upon the bankruptcy definition of the term "purchaser" found in 11 U.S.C. § 101(43), as well as the failure of Congress to place the provisions of section 549(c) within section 362(b). (The latter subsection lists actions not governed by the bankruptcy stay.) See, e.g., 40235 Washington Street Corp. v. Lusardi; United States v. Miller.

Although I acknowledge that the limited application of section 549(c) offered by decisions such as Lusardi is plausible, I am not free to deviate from the interpretation provided by the Third Circuit Court of Appeals on this point. As my colleague, Chief Bankruptcy Judge Sigmund observed a few years ago:

> While there is a certain logic to the view expressed by Glendenning and the cases upon which it relies [that section 549(c) applies only to voluntary transfers], it fails to take into account the view of the Third Circuit as previously articulated in Ward and Siciliano. Ward makes clear that § 549(c) is applicable to insulate a foreclosure sale to a good faith purchaser conducted in violation of the stay. Siciliano reiterates that certain post-petition transactions that occur in

[12]The present edition of Collier on Bankruptcy takes a conflicted approach to the application of section 549(c) to section 362(a). In one volume, it states that "[s]ection 549(c) contains an important limitation on the principle that actions taken in violation of the stay are void, or at least voidable," and so may protect a good-faith purchaser at a judicial sale undertaken in violation of the bankruptcy stay. 3 Collier on Bankruptcy, ¶ 362.11[1] at 362-120 (15th ed. rev. 2004). In another volume it states that "[t]he protection of section 549(c) is limited to purchasers at voluntary sales," not involuntary sales, such as foreclosure sales. 5 Collier on Bankruptcy, ¶ 549.06, at 549-13.

> violation of the stay will be valid unless voided by the trustee under § 549. Glendenning makes no mention of these cases. Bankruptcy courts in this district are bound to follow the holdings of our Court of Appeals. . . . While the Third Circuit in Ward ultimately found that the purchaser did not qualify for the § 549(c) exception, its application of that provision to the dispute at hand provides an interpretation of the law that cannot be ignored. Accordingly, the arguments accepted in Glendenning and advanced here by Mellon, while resonating in other districts, are unavailing here.

In re Shah, 2001 WL 423024, at *6 (Bankr. E.D. Pa. 2001) (citations omitted).[13]

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[13]Moreover, even if I were not bound by stare decisis to follow the instructions of the Third Circuit in holding section 549(c) may protect a good faith purchaser at a post-bankruptcy tax sale, the application of section 549(c) to section 362(a) addressed in Ward and Siciliano may more accurately reflect congressional intent than Lusardi.

The House and Senate Reports that accompanied the legislation that later became the Bankruptcy Reform Act of 1978 make clear that section 549(c)—which was originally drafted as part of proposed section 342 and then moved to section 549, see 124 Cong. Rec. H 11,092 (Sept. 28, 1978); S 17,408 (Oct. 6, 1978)—represented a composite of former sections 21g and 70d of the Bankruptcy Act of 1898. Section 21g of the Bankruptcy Act of 1898 (as amended in 1938) provided that:

> A certified copy of the [bankruptcy] petition . . . may be recorded . . . in the office where conveyances of real property are recorded, in every county where the bankrupt owns or has an interest in real property. . . . Unless a certified copy of the petition . . . has been recorded in such office, in any county wherein the bankrupt owns or has an interest in real property . . ., the commencement of a proceeding under this Act shall not be constructive notice to or affect the title of any subsequent bona-fide purchaser or lienor of real property in such county for a present fair equivalent value and without actual notice of the pendency of such proceeding: Provided, however, That where such purchaser or lienor has given less than such value, he shall nevertheless have a lien upon such property, but only to the extent of the consideration actually given by him. . . .

Section 21g was not limited in its application solely to voluntary transfers made by the debtor post-bankruptcy. It was also deemed applicable to purchasers at post-petition tax sales, see Mon Valley Equipment, Inc. v. Fayette County Tax Claim Bureau, 1988 WL 47338 (Bankr. W.D. Pa. 1988), as well as to purchasers at judicial sales. 2 Collier on Bankruptcy, ¶ 21.30, at 373 (14th ed. 1976):

(continued...)

[13](...continued)

> Judicial sales are protected by subdivision g, supra, if there has been no recordation, subject to the proviso that no recordation is needed in the county where the record of the original proceeding is kept.

Not only is there no legislative history to suggest that Congress intended to alter the scope of former section 21g when it enacted section 549(c), see generally Dewsnup v. Timm, 502 U.S. 410, 419 (1992) ("[T]his Court has been reluctant to accept arguments that would interpret the Code, however vague the particular language under consideration might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history."), but the use of the term "transfer," which is defined to include involuntary transfers, section 101(54), implies otherwise. Some courts, however, have emphasized that section 549(c) protects only a good-faith "purchaser." Since section 101(43) defines that term as meaning "the transferee of a voluntary transfer," they thus conclude that section 549(c) must be limited in scope to voluntary transfers.

Those courts that have concluded that Congress intended to utilize its section 101 definition of the term "purchaser" when it drafted section 549(c) have not considered that when Congress enacted section 549(c) in 1979, it read in part:

> The trustee may not avoid under subsection (a) of this section a transfer, to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value or to a purchaser at a judicial sale of real property located other than in the county in which the case is commenced . . . .

(emphasis added).

If Congress intended that a "purchaser" in section 549(c) refers solely to a transferee at a voluntary sale— as opposed to the standard dictionary definition of one who is simply a buyer at any type of sale, see The Random House Dictionary of the English Language, at 1166 (Unabridged 1973)—then the statutory phrase "purchaser at a judicial sale of real property" becomes meaningless. Judicial sales, such as foreclosure sales, are not voluntary sales. Therefore, there can be no judicial sale purchasers. (The Code definition of purchaser was enacted in 1979, along with 549(c), at section 101(32).).

In 1984, Congress amended section 549(c). That amendment, in part, deleted the express statutory reference to judicial sale purchaser. In so doing, the legislative history simply indicates that no substantive change was intended. See 5 Collier on Bankruptcy, ¶ 549.LH[5] at 549-12 (15th ed. rev. 2004):

> The 1984 amendments removed from subsection (c) the language that made it unnecessary to file in the county in which the case was commenced an which automatically exempted from avoidance purchasers at a judicial sale. . . .

(continued...)

It is accepted that state courts have concurrent jurisdiction to apply section 549(c), as the facts dictate. See Oles v. Curl, 65 S.W. 3d 129 (Ct. App. Tex. 2001); Tim Wargo & Sons, Inc. v. Equitable Life Assurance Society, 34 Ark. App. 216 (1991). Indeed, the Pennsylvania Commonwealth Court has previously construed this Bankruptcy Code provision and concluded that a tax sale purchaser who had not recorded his deed ran afoul of its protections. Haggerty v. Erie County Tax Claim Bureau, 107 Pa. Cmwlth. 265 (1987), appeal denied, 518 Pa. 644 (1988).

Presumably, if the state court should decide that the provisions of section 549(c) have been met, it will uphold the tax sale. See Tim Wargo & Sons, Inc. v. Equitable Life Assurance Society (upholding a judicial sale); cf. Bankers Trust Co. v. Tax Claim Bureau of Delaware County, 723 A.2d 1092 (Pa. Cmwlth. 1999) (resolving challenge to judicial tax sale by concluding that the challenger had no standing to assert alleged violation of the bankruptcy stay).[14] Conversely, if it concludes that the provisions

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[13](...continued)
The current language of section 549(c) first appeared in 1981 in section 50(c) of Senate bill 863. The accompanying report stated that the bill's general purpose was "to correct technical errors, clarify and make minor substantive changes" in the Code. With respect to section 50(c), the report said that the changes were merely stylistic.

(footnotes omitted).

Given the antecedent of section 549(c), given its initial use of the phrase "purchaser at a judicial sale," and given that the deletion of that phrase was solely for stylistic purposes, one cannot readily conclude that the language of the current statute reflects congressional intent to render its protections solely to good faith purchasers at voluntary sales.

[14]The movants argue that section 549(d)(2), which provides that an action under section 549 cannot be brought after a case has been closed or dismissed, renders section 549(c) inapplicable to the parties' dispute. I disagree.

Section 549(d) serves only as a statute of limitations upon the right of a

(continued...)

of section 549(c) are inapplicable, it can nullify the sale. See In re Tax Sale Held Sept. 10, 2003 by Tax Claim Bureau of County of Lackawanna, 859 A.2d 15, 19 n.3 (Pa. Cmwlth. 2004) ("In any case, we do not agree with Sposito's claim that the trial court lacked jurisdiction to enforce the automatic stay on behalf of a debtor that has filed for protection against creditors pursuant to the Bankruptcy Code. Indeed, it was the obligation of the trial court to give effect to the automatic stay."); Haggerty v. Erie County Tax Claim Bureau; see generally Workingmen's Sav. and Loan Ass'n of Dellwood Corp. v. Kestner, 438 Pa. Super. 186 (1994) (resolving a challenge to an ejectment action based upon a purported violation of the bankruptcy stay).[15]

Accordingly, given the absence of any pending bankruptcy case, given the parties' lengthy delay in seeking relief in this forum, given that the movants acknowledge their need for subsequent relief in state court, and given the ability of the state court to address the parties' respective legal and factual assertions involving the validity of the tax sale, the better exercise of discretion is not to reconsider the order dismissing this case. As there is no pending bankruptcy case before me, the instant motion for relief under section 362(d)(1) must be dismissed for lack of subject matter jurisdiction.

An appropriate order shall be entered.

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[14](...continued)
bankruptcy trustee to avoid a post-bankruptcy transfer under section 549(a) or (b). See, e.g., In re Home America T.V.-Appliance Audio, Inc., 232 F.3d 1046 (9th Cir. 2000), cert. denied sub nom., Shaltry v. United States, 534 U.S. 814 (2001); In re Pugh, 158 F.3d 530 (11th Cir. 1998). It does not prevent a good faith purchaser from seeking protection under section 549(c). See generally In re Elliott, 81 B.R. 460 (Bankr. N.D.Ill. 1987) (addressing separately the limitations issues under section 549(d) and the good faith purchaser issues under section 549(c)).

[15]As there is no pending bankruptcy case, there is no bankruptcy estate and no exclusive jurisdiction over property of the debtor. See generally 28 U.S.C. § 1334(e).

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re	:	Chapter 13
ROSEMARIE T. WALKER	:	
Debtor	:	Bankruptcy No. 03-33446F

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ORDER

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AND NOW, this 31st day of May 2005, for the reasons stated in the accompanying memorandum, it is hereby ordered that the motion to obtain relief from the automatic stay nunc pro tunc, pursuant to 11 U.S.C. § 362(d)(1), is dismissed for lack of jurisdiction.

_____
BRUCE FOX
United States Bankruptcy Judge

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