

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 13
)	
Demetrius Adger,)	Case No. 17 B 20163
)	
Debtor.)	Judge Jacqueline P. Cox

Order on Amended Motion to Modify the Automatic Stay (Dkt. No. 22)

I. Background

Before this court is an Amended Motion to Modify the Automatic Stay filed by creditor Gan B, LLC. The issue is whether Debtor Demetrius Adger’s filing of his bankruptcy petition on July 5, 2017 at 6:26 p.m., rather than before 5:00 p.m. when the Office of the Cook County Clerk closed, is timely for purposes of allowing him to treat a tax purchaser’s claim in a Chapter 13 plan. The court finds that the Debtor’s petition for bankruptcy relief was filed timely and for that reason the Amended Motion to Modify the Automatic Stay will be denied.

II. Caselaw

In *In re Bates* a bankruptcy court held that a property owner can protect its interest after the taxes on its property have been sold by filing for bankruptcy relief under Chapter 13 of the Bankruptcy Code before the expiration of the redemption period, paying the amount due to redeem the taxes over the life of a Chapter 13 plan. *In re Bates*, 270 B.R. 455 (Bankr. N.D. Ill. 2001). See *In re LaMont*, 740 F.3d 397 (7th Cir. 2014) (Non-recourse tax lien obtained through tax sale is a secured claim that can be treated under a Chapter 13 plan by providing for payment in installments over the course of a plan).

Creditor Gan B, LLC purchased the 2012 General Real Estate Taxes for real estate

located at 10507 S. Calumet Avenue, Chicago, Illinois for \$1,123.97. Taxes for subsequent years were also purchased, for a total of \$13,023.57. Should the taxes not be redeemed the tax purchaser would be entitled to obtain title to the property after expiration of a period of redemption.

The period of redemption during which the Debtor Adger could have redeemed the property taxes expired on July 5, 2017. This Chapter 13 case was filed on that date at 6:26 p.m. The plan proposes to pay 100% of Gan B, LLC's claim.

The information the Cook County Clerk's Office makes available to the public informs that the full amount due to redeem property taxes may be paid in person at its office Monday through Friday from 8:30 a.m. to 5 p.m. and that payments by mail must be post-marked the day before the last day to redeem.

Dkt. No. 22, Exhibit 5.

A bankruptcy court ruled recently in a case similar in posture that the debtor's ability to pay delinquent taxes ended on the last day for redemption at 5 p.m. *In re Harold L. Jerklin, Jr.*, Bankruptcy Court N.D. Ill., Case Number 17-007999, May 19, 2017 Transcript at Docket Number 51. (Appeal dismissed in the District Court on August 14, 2017. Case No. 1:17-cv-04234).

The Debtor did not try to redeem his taxes on July 5, 2017. He filed a petition for bankruptcy relief in this court's electronic filing system which allows filing of documents 24 hours a day. In *In re LaMont* a tax purchaser asserted that the full redemption amount had to be paid in a lump sum before the redemption deadline. The Seventh Circuit noted that the purchaser's assertion was mistaken. "His assertion that the full redemption amount must be paid

in a lump sum before the redemption deadline-i.e., that a proper redemption must be made-is mistaken. The plan is treating his secured claim, *not* formally redeeming the property.” *In re LaMont*, 740 F.3d at 409. Likewise, Debtor Adger is treating this obligation in a bankruptcy plan; he is not formally redeeming the property.

Illinois law provides that the amount necessary to redeem taxes after a tax sale is “deemed timely only if actually received in person at the county clerk’s office prior to the close of business as defined in Section 3-2007 of the Counties Code.” 35 ILCS 200/21-355. The Counties Code provides that the official closing time of the Cook County Clerk’s Office is 5 p.m. 55 ILCS 5/3-2007(a): “In Counties of 500,000 or more population from 9 a.m. to 5 p.m. of each working day except Saturday afternoons and legal holidays, but the clerk may open the office at 8 a.m. on each working day.” Again, this time limitation does not apply because Debtor Adger did not redeem the taxes. He pursued bankruptcy relief.

The Debtor’s Response to the Amended Motion to Modify the Automatic Stay includes the affidavit of Tatia Gibbons, who is employed by the Office of the Cook County Clerk as Director of Real Estate and Tax Services. She oversees the work of the Tax Services Department of that office and states therein that if a redemption payment is post-marked before the last day of the redemption period, but arrives after that date, it will be processed as timely. Response to Taxbuyer Gan B, LLC’s Amended Motion to Modify Automatic Stay, Dkt. No. 27 , Exhibit 4. Some matters get processed after the 5 p.m. deadline.

A. State Law Favors Redemption

Illinois law favors redemption. *In re County Treasurer & Ex-Officio Collector v. Orr*, 323 Ill. App. 3d 1044, 1048, 257 Dec. 168, 172, 753 N.E. 2d 363, 367 (1st Dist. 2001) (“Illinois

law favors redemptions, and the redemption statutes will be liberally construed unless injury to the tax purchaser results.”). Gan B, LLC will not be injured. It can take advantage of a Sale in Error program which was pointed out to Gan B, LLC in *Gan B, LLC v. Sims*, 2017 WL 2573214, *9 (N.D. Ill. June 13, 2017) (“ . . . it can petition the circuit court to declare its tax purchase a ‘sale in error’ and demand refund of ‘the amount paid’ ‘subsequent to the tax sale and prior to the issuance of the tax deed.’” (citations omitted)).

III. Court Rules

Federal Rule of Civil Procedure 6(a)(4)(A) defines “last day”:

Unless a different time is set by a statute, local rule, or court order, the last day ends:

- (A) for electronic filing, at midnight in the court’s time zone; and
- (B) for filing by other means, when the clerk’s office is scheduled to close.

Fed. R. Civ. P. 6(a)(4)(A).

Federal Rule of Bankruptcy Procedure 9006(a)(4)(A) defines the term “last day”:

Unless a different time is set by statute, local rule, or order in the case, the last day ends:

- (A) for electronic filing, at midnight in the court’s time zone; and
- (B) for filing by other means, when the clerk’s office is scheduled to close.

Fed. R. Bankr. P. 9006(a)(4)(A).

The Illinois Supreme Court’s Electronic Filing Standards and Principles (Amended 09/16/2014) state:

3. Any Document or record submitted to the clerk of the court for filing shall be deemed filed if not rejected by the clerk. The transmission date and time of transfer shall govern the electronic file mark. Documents received by the clerk

before midnight on a day the courthouse is open shall be deemed filed that day.

See <http://www.illinoiscourts.gov/default.asp>.

(At website see E-Business, Policies/Rules, Electronic Filing Standards and Principles (last visited September 20, 2017)).

The Administrative Procedures for the Case Management/Electronic Case Filing System of the Bankruptcy Court for the Northern District of Illinois, as amended December 2, 2015, provides at § II.A.2. Date and Time of Filing:

The Notice of Electronic Filing issued by the System shows the date and time of filing. Documents filed electronically outside of normal business hours are deemed filed on the date and at the time the System files them. Documents filed before midnight on the date that is a deadline are considered timely, unless the judge, these Administrative Procedures, or Local Bankruptcy Rule specifically requires an earlier time.

<http://www.ilnb.uscourts.gov/>

(At website see Rules and Procedures - Administrative Procedures for CM/ECF (last visited September 20, 2017)).

IV. Stay Modification Standards

Section 362(a) of the Bankruptcy Code provides for the imposition of an automatic stay when bankruptcy relief is sought. It stays “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor . . .” 11 U.S.C. § 362(a)(1).

Section 362(d) of the Bankruptcy Code provides for the modification of the automatic

stay:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization; . . .

11 U.S.C. § 362(d)(1)-(2).

Gan B, LLC has not shown cause to modify the automatic stay. The Debtor has a right to seek relief under Chapter 13 which has been initiated in a timely manner.

Gan B, LLC as the party requesting relief from the automatic stay has the burden of proof on the issue of the debtor's equity in the property. 11 U.S.C. § 362(g): "the party requesting such relief has the burden of proof on the issue of the debtor's equity in property." The court finds that due to the reported value of the property being \$148,450.00, Schedule A/B: Property, with no liens other than that of Gan B, LLC's reported on Schedule D: Creditors Who Have Claims Secured by Property, there is equity. *See* Petition for Relief, Dkt. No. 1, pp. 10 and 17. This property is necessary for an effective reorganization as it may be the Debtor's residence.

V. Conclusion

Debtors may provide for tax purchasers' claims in Chapter 13 plans as long as they file for bankruptcy relief before the redemption period expires as noted by the courts in *In re Bates* and *In re LaMont*.

This court agrees with the several court Rules and Standards that govern electronic filing which provide that the last day to file documents ends on midnight of the date they are due. The Debtor Demetrius Adger's July 5, 2017 6:26 p.m. bankruptcy filing was timely; it was filed before midnight on the last day for redemption. For that reason the Amended Motion to Modify the Automatic Stay is denied.

Date: September 20, 2017

ENTERED:

Jacqueline P. Cox

United States Bankruptcy Judge