

DOCKET NUMBER: 97-10708

ADV. NUMBER:

JUDGE: M. A. Mahoney

PARTIES: Daisy Ruth McCormick, Stewart G. Carrington, Jacqueline G. Carrington

CHAPTER: 13

ATTORNEYS: H. D. Padgett, S. M. McMillan

DATE: 11/12/97

KEY WORDS:

PUBLISHED: No

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

DAISY RUTH McCORMICK

Case No. 97-10708-MAM-13

Debtor.

**ORDER DECLARING AUTOMATIC STAY LIFTED  
AS TO MORTGAGE OF STEWART G. AND JACQUELINE G. CARRINGTON**

Herman D. Padgett, Mobile, AL, Attorney for Debtors  
Samuel M. McMillan, Mobile, AL, Attorney for Rainwaters

This case is before the Court on the Debtor's motion requesting the Court to determine that Debtor is in compliance with this Court's order dated June 26, 1997. Appearances were as noted in the record. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. The matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is denying the Debtor's motion and is declaring the stay lifted as to the vendor's lien of Stewart G. Carrington as of May 21, 1997.

The sole issue in this motion is whether the Debtor has complied with this Court's order of June 26, 1997. The Court heard testimony from Ms. McCormick and received documentary evidence of her payments on her vendor's lien debt to Stewart G. and Jacqueline G. Carrington. The Vendor's lien was granted to the Carringtons on September 3, 1991. It provides that monthly payments of \$709 were due on the third day of every month. There was a 15-day grace period. Therefore, at the latest, to be timely, payments had to be made by the 18th day of each month. Ms. McCormick and her husband paid Mr. and Mrs. Carrington \$985 per month. This

sum (greater than the \$709 amount) presumably included taxes and insurance or the payment on a second mortgage to First Alabama Bank.

On February 24, 1997, Ms. McCormick filed this Chapter 13 case. On April 11, 1997, Derek Lee and Michele F. Rainwaters sought annulment of the stay to validate their foreclosure and ejectment action against the McCormicks. On June 26, 1997, the Court denied that relief so long as the McCormicks had actually paid (or tendered if refused) timely mortgage payments to the Carringtons from February 24, 1997 to May 21, 1997 and thereafter. If the payments were not timely, then the stay lifted without further Court action.

The parties now disagree about whether the McCormicks have complied with the court order. The McCormicks have not complied. From June 1, 1997 through October 1997, the evidence showed they had tendered timely payments. All were refused. The Rainwaters argue that these payments were not proper because each payment did not include the amount refused in prior checks. Although Alabama law supports the proposition that this would not be proper "tender," this Court would not lift the stay in a case for failure to comply with that technicality. *Decker v. State Nat'l Bank*, 51 So. 2d 538 (Ala. 1951); *Jackson v. Cantrell*, 61 So. 2d 459 (Ala. 1952).

However, Ms. McCormick did not timely pay her March or May 1997 mortgage payments. Her March payment was dated March 24, 1997, six days after the expiration of the grace period. Her May 1997 payment was made May 21, 1997, three days after the expiration of the grace period. This conclusion gives Ms. McCormick credit for a timely April 1997 payment even though the check was never received by the Carringtons.

The June 26, 1997 order was clear. The testimony at the May 21, 1997 hearing was that the payments were timely made, but were refused. Therefore, the Court ordered the stay to

remain in effect if that was true. The evidence at the hearing on November 5, 1997 showed that the payments had not been timely made in March and May 1997.

Therefore, it is ORDERED that the motion of the Debtor requesting the Court to determine that Debtor is in compliance with this Court's order of June 26, 1997 is DENIED and the Court declares that the stay was lifted as of May 21, 1997.

Dated: November 12, 1997

---

MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE