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

IN RE:

ROBIN POE AND DENISE POE

Debtors. CASE NO. 01-14918-WSS-7

COMMONWEALTH LAND TITLE
INSURANCE COMPANY

Plaintiff,

v

ROBIN R. POE, DENISE R. POE,
AND UNION PLANTERS BANK,

Defendants. ADV. NO. 01 - 1199

ORDER

Charles C. Simpson, III and Russell March, III, attorneys for
Commonwealth Land Title Insurance Company
Stephen Klimjack, Richard Horne, and Clifford C. Brady, attorneys
for Robin and Denise Poe
Douglas A. Baymiller, attorney for Union Planters Bank
Theodore L. Hall, attorney for Trustee
Richard E. Davis, attorney

This matter came before the Court on the motion for summary judgment filed by Commonwealth Land Title Corporation and the motion for partial summary judgment filed by Robin and Denise Poe. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Having considered the evidence, pleadings, and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

Debtors filed their chapter 7 petition on September 28, 2001. On that same day, Commonwealth Land Title Insurance Company ("Commonwealth") filed the above adversary proceeding in which it seeks a determination that it is entitled to redeem from foreclosure certain property claimed by the Debtors. The defendants to the adversary proceeding are the Debtors Robin R. Poe and Denise R. Poe, Union Planters Bank (subsequent mortgagee of Debtors), and the Trustee. The Debtors filed a motion for partial summary judgment seeking declaratory relief opposing redemption.

The Trustee has heretofore objected to the Debtors' claim to exemptions, and the Court has Ordered that the Debtors' homestead equity exemption (asserted with respect to the property at issue) be limited to $1.00; accordingly the Trustee has served his own alternative counterclaims and cross-claims in this proceeding. First, the Trustee asserts that Commonwealth is not entitled to redeem, and that any equity in the property, after accounting for the Union Planters' debt and the $1. 00 interest of the Debtors, is available for administration. Alternatively, the Trustee asserts that if Commonwealth is entitled to redeem, all redemption proceeds remaining after satisfaction of the Union Planters's debt and the Debtors $ 1.00 exemption are assets available for administration for the benefit of creditors.

In May, 1995, Clell C. Hobson, Jr. and Krystine Hobson (the "Hobsons") acquired by warranty deed a fee simple interest in a one-acre lot situated in Baldwin County, Alabama (the "one-acre lot"):

> From the iron pipe corner marker at the Southeast corner of the North Half of the Northeast Quarter of the Southwest Quarter of Section 19, Township 6 South, Range 2 East, run West 255.3 feet; thence run North 206.5 feet to the Northeast corner of a 2-acre lot sold to Littleton by Nelson; thence run West along Littleton's North line, which is the South line of a 60-foot wide deeded public road, a distance of 140 feet;

> thence run North 60 feet to a point on the North side of said deeded road, for a POINT OF BEGINNING. From said Point of Beginning, run West 168 feet; thence run North 160.6 feet; thence run N 73° 17'E, 195.9 feet; thence run South 16° 43' E, 141.6 feet to a point situated North 63.2 feet and N 73° 17' E, 63.2 feet, from the Point of Beginning; from said point run Southwestwardly along a curve to the right having a radius of 63.2 feet, a distance of 117.7 feet to the Point of Beginning. Lot contains 1.0 acre, more or less, and lies in the N 1/2 of the NE 1/4 of the SW 1/4 of Section 19, Township 6 South, Range 2 East, Baldwin County, Alabama.

(Dorgan to Hobson deed, May, 18, 1995). This one-acre lot comprises the property that Commonwealth seeks to redeem by this adversary proceeding.

In November, 1999, the Hobsons obtained a survey to divide the one-acre lot into two parcels. According to the survey, Parcel 1, comprising the easternmost portion of the one-acre lot, contains 16,787 square feet and Parcel 2, the balance of the one-acre lot, contains 24,104 square feet. (Barret & Associates survey, Nov. 16, 1999).

In January, 2000, the Hobsons conveyed Parcel I to Dale Zuehlke by warranty deed. (Hobson to Zuehlke deed, Jan. 7, 2000). The Hobson one-acre lot was subject to a mortgage to Long Beach Mortgage Company, and as part of the Zuehlke purchase, a partial release document was executed, for the purpose of releasing Parcel I from the Long Beach mortgage lien. (Aurora Loan Services release, Dec. 16, 1999). The lender sent the release document to the Hobsons, who were then in Vermont, and the release was not immediately recorded in the Baldwin County real property records. (Baldwin County Circuit Court TRO hearing, p. 41).

The Hobson to Long Beach mortgage went into default, and on November 28, 2000, a foreclosure sale was held, resulting in a foreclosure deed which recites that the Hobsons, through foreclosure, conveyed the entire one-acre lot (including Parcel I that had been sold to Dale Zuehlke) to the mortgage holder. (Hobson to First Union foreclosure, deed, Nov. 28, 2000).

The Hobsons had not been released from the mortgage debt prior the foreclosure on

November 28, 2000; to the contrary, there were to be deficiency issues between the Hobsons and the lender. (Scaringe depo., p. 33).

The one-acre lot was marketed as foreclosed property, and on March 20, 2001, Robin R. Poe obtained a deed to the entire tract. (Ocwen Bank to Poe deed, March 20, 2001). Although there is no conveyance of record from First Union National Bank, the purchaser at foreclosure, to Ocwen Federal Bank, FSB, the parties agree that Ocwen is the servicing agent of First Union for disposition of foreclosed properties, hence the gap in the record title between First Union and Ocwen is a formal matter not material to this action. (See Narrative Summary of Debtors, ¶¶ 7- 9). The deed to Robin Poe is expressly subject to all rights of redemption from foreclosure per the following exception:

> All outstanding rights of redemption in favor of all persons entitled to redeem the property from that certain mortgage foreclosure sale evidenced by mortgage foreclosure deed dated November 28, 2000 recorded in Instrument Number 572677, in the Probate Office of Baldwin County, Alabama.

(Ocwen to Poe deed, Mar. 20, 2001). The Debtors subsequently mortgaged the one-acre lot to Union Planters Bank on April 9, 2001. (Complaint, ¶ 4; Answers ¶4).

The Hobsons had retained, and did not attempt to exercise, their statutory right of redemption from foreclosure prior to the time they assigned this right to Ron Wronski. (Affidavits of Clell Hobson and Krystine Hobson). The assignment document is dated June 18, 2001 and states as follows:

> In consideration of the payment to Clell and Krystine Hobson of the sum of $100.00, which sum is to be paid not later than 5 business days following the Hobsons' execution and delivery, by fax or otherwise, of this option, the Hobsons hereby assign to Ron Wronski their statutory right, jointly and severally, to redeem the Hobsons' former residence in Fairhope, Alabama, which was the subject of a foreclosure in November of 2001. If Mr. Wronski does not exercise this right on or prior to September 30,2001, this assignment shall be deemed null and void. If Mr. Wronski does exercise this right, then upon acquisition by him of the fee title to the subject property, Mr. Wronski shall pay to the Hobsons the sum of $11,000.00.

> The Hobsons warrant that they are the lawful owner of such statutory right of redemption. "Exercise" shall mean the effectuation (in any forum, including but not limited to legal or equity and/or compromise in satisfaction) of the redemption of the real property located at 6415 Nelson Road by Mr. Wronski, either jointly or severally, by his representative, agent or designee.

(Hobson to Wronski assignment, June 18, 2001). Concurrently with this, the firm of Davis & Fields, counsel for Wronski, delivered a check in the amount of $ 100.00 to the Hobsons. (Scaringe depo., p. 18).

The Hobsons have both executed affidavits in which they affirm that they assigned a right to redeem the entire one-acre lot by the written assignment set out above. (Affidavits of Clell Hobson and Krystine Hobson). The Court also takes judicial notice of the schedules of the Debtors in this case, in which they generally refer to the one-acre lot as "Homeplace: 6415 Nelson Rd., Fairhope, AL 36532." (Schedule A-Real Property, Schedule C-Exempt Property, Schedule D-Secured Creditors and the Debtors' Statement of Intention).

On June 22, 2001, Ron Wronski wrote to Robin Poe, stating that he had acquired the Hobson right of redemption and requested a statement of the debt and all lawful charges. (Exhibit A to Affidavit of Robin Poe). On July 2, 2001, Poe replied, stating that the amount of the debt and lawful charges equaled $143,520.49. (Exhibit B to Affidavit of Robin Poe). Richard Davis, counsel for Wronski, responded by letter to Richard Horne, Poe's counsel, that the statement of charges was insufficient, but nevertheless appointed Larry E. Chason as referee. (Exhibit C-1 to affidavit of Robin Poe).

On July 19, 2001, Cliff Brady, also counsel to Mr. Poe,wrote nominating Robert DeMouy as referee. (Exhibit C-2 to affidavit of Robin Poe). The referees did not act, and for a time there was no further communication concerning the proposed redemption. In the middle of the week of September 23, 2001, Richard Davis called Cliff Brady, inquiring as to whether Mr. Poe would

compromise the amount claimed for improvements in his redemption debt/charges statement. (Affidavit of Robin Poe ¶ 7).

Mr. Poe never replied to the inquiry from Richard Davis, and filed the bankruptcy petition in this case on September 28, 2001. After filing the bankruptcy petition for his clients, Debtors' counsel Stephen Klimjack wrote: "[D]o not take any further action against Mr. & Mrs. Poe or any of their property." (Plaintiff's Supplemental Exhibit 1 (Klimjack letter)). Contemporaneously (not later than September 28, 2001 per affidavit) Ron Wronski assigned the statutory right of redemption to Dale Zuehlke. (Affidavits of Clell Hobson, Krystine Hobson, Ron Wronski, and Dale Zuehlke). Dale Zuehlke immediately assigned the statutory right of redemption to Commonwealth. (Affidavit of Dale Zuehlke).

Richard Davis on September 28, 2001 sent the following e-mail to Hobson counsel Scaringe: "Mr. Poe filed Chapter 7, apparently this morning. So the right of redemption is being exercised by the way of the filing of an adversary proceeding/complaint for the redemption this afternoon." (Scaringe depo. pp. 19-20). Also on September 28, 2001, Charles Simpson, counsel for Commonwealth and also counsel for Zuehlke and Wronski, wrote to Scaringe that Commonwealth had acquired the Hobson right of redemption, was proceeding with redemption of the property, and enclosed a trust account check in the amount of $11,000.00. (Scaringe depo. p. 25; Plaintiff's Supplemental Exhibit 2 (Simpson letter)). The letter also requested that Mr. Scaringe hold the $11,000.00 in trust because of the unanticipated bankruptcy. Shortly thereafter, Scaringe called Simpson, requesting authority to disburse the funds held in trust; Simpson wrote to Scaringe on November 8, 2001, authorizing the disbursement to Mr. and Mrs. Hobson. (Scaringe depo. p. 27; Plaintiff's Supplemental Exhibit 3 (Simpson letter)). Mr. and Mrs. Hobson accepted and have retained the $11,000.00 payment. (Scaringe depo. p. 34).

Commonwealth initiated this adversary proceeding to redeem the property on September 28, 2001. Concurrently with this, Commonwealth deposited the sum of $147,315.00 into the Registry of this Court for the purpose of effecting the redemption of the property, stating that the redemption price, although undetermined, was not more than said amount. Commonwealth has further offered to pay any balance determined to be due, should it have deposited an insufficient amount. (Complaint ¶ 8). The Court has ordered that the funds tendered be held in the Registry of the Court, pending further order. None of the parties have asserted that, if Commonwealth is entitled to redeem, the amount now held by the Court is insufficient.

CONCLUSIONS OF LAW

This matter is before the Court on Plaintiff's motion for summary judgment and the Poe's motion for partial summary judgment. Summary judgment should be granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Proc. *56(c); Irby v. Bittick, 44* F.3d *949* (11th Cir. *1995).* Facts are material to the outcome of litigation if, and only if, application of relevant substantive law requires their determination. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).*

In this proceeding, Commonwealth seeks to exercise a statutory right of redemption under Alabama law. This Court has previously recognized that Alabama foreclosure law controls the rights of mortgagors and mortgagees in proceedings before it *vis a vis* a foreclosed mortgage. In *re McKinney, 174* BR 330,333 (Bankr. S.D. Ala. 1994). The Alabama redemption statutes are codified at Section *6-5-247 et seq.* of the Alabama Code of *1975.*

Commonwealth asserts that it has complied with the redemption statutes so that it is entitled to redeem. The Debtors oppose this, asserting: (1) the Hobsons had no right to redeem Parcel I and thus had nothing to assign; (2) the assignment document was ineffective, or Commonwealth has

failed to comply with its terms; and (3) Commonwealth was required to make a presuit tender; the payment of the redemption price into Court is not enough.

The Hobson right to redeem

The Debtors have argued that the Hobsons had no assignable right to redeem Parcel I because the Hobsons had conveyed their interest in this parcel to Dale Zuehlke, citing *Dominex v. Key,* 456 So. 2d 1047 (Ala. 1984), which states

> Consequently, because only those with an interest in the property can redeem, a mortgagor who has conveyed his equity of redemption cannot seek to redeem the property. [citations omitted]. A valid foreclosure subject to a mortgage extinguishes the equity of redemption; however by virtue Code of 1975, §6-5-230 ...

465 So. 2d at 1052. It follows that if the Hobsons had no right to redeem Parcel 1, they could assign nothing as to this parcel.

The foregoing argument fails because Section 6-5-230 of the Alabama Code of 1975, the statute under which *Dominix* was decided, has been superseded by the current redemption statute which permits "[a]ny debtor" to redeem. Ala. Code § 6-5-248(a)(1) and (e)(1975). As explained by the comments to this code section: "Subsection (e) clarifies that one could be a debtor without having any interest in the equity of redemption. As a general rule, the prior Alabama statute had been interpreted by the courts to provide for a right of redemption only in those 'with an interest in the property' .... *Dominex, Inc. v. Key,* 456 So. 2d 1047 (Ala. 1984)."

It follows that the inquiry is not whether Parcel I had been sold by Mr. and Mrs. Hobson, but whether the Hobsons remained liable on the debt referred to in the foreclosure deed in the Poe chain of title. It is undisputed that the Hobsons had not been released from the debt, and they therefore retained a right to redeem Parcel 1. Ala. Code § 6-5-248(e) (1975).

The Debtors have also argued as to Parcel 1 that, because that parcel may not really have been sold at foreclosure, there was no assignable right to redeem it. Put another way, Debtors argue that if Parcel I was actually released by the mortgage holder prior to foreclosure, it cannot now be redeemed from a foreclosure sale that purported to convey it.

This argument also fails because the Debtors's chain of title is derived from the foreclosure sale; if Parcel I was not foreclosed, the Debtors cannot claim to own it. That is, the Debtors have argued that they should prevail because they are *bona fide* purchasers under the Alabama recordation statute notwithstanding the execution of a release as to Parcel 1. In such event, the recordation statute provides as follows: "All conveyances of real property, deeds, mortgages, deeds of trust or instruments in the nature of mortgages to secure any debts are inoperative and void as to purchasers for a valuable consideration ... unless the same have been recorded before the accrual of the right of such purchasers..." Ala Code § 35-4-90(a) (1975). Moreover:

> A release of a mortgage has been held to be a "conveyance," within the meaning of statutes requiring conveyances to be recorded in order to be effectual against subsequent purchasers or encumbrancers without notice.

59 C.J.S., *Mortgages* §258 (1998).

If a release is "inoperative and void" for the purpose of confirming the Poe title, it is also void as a bar to redemption. *Smith v. State,* 996 F. Supp. 1203 n. 1 (M.D. Ala. 1998). The Debtors cannot have it both ways: they either have no title to Parcel 1, or a title that is subject to redemption.

Moreover, the Poe title (of whatever extent) is entirely derived from the Hobsons via foreclosure. Commonwealth's right to redeem is also derived from the Hobsons, hence the Debtors and Commonwealth are privies. Estoppels are binding "upon parties, privies in estate, and by blood." *Bromberg v. First Nat. Bank of Mobile,* 178 So. 48, 50(1937). "One purchasing land [or in this case

a redemptive right] from another who was entitled to invoke an estoppel ... may himself rely on the estoppel." 31 C.J.S., *Estoppel and Waiver* §158 at p. 634 n.36 (1996). And, those "claiming under a person who is estopped, are also bound by the estoppel." *Boone v. Byrd,* 78 So. 958, 959 (1918). As a consequence, the right of redemption set out in the Poe deed must be honored. As explained by 3 R. Devlin, The Law of Real Property and Deeds (3d ed. 1911):

> The grantee is, as a general proposition not estopped from denying his grantor's title, and he can be estopped only where there is an obligation on his part to give back possession in some event or on the happening of some contingency.

Id. at § 1279a.

> Persons whose claims are based upon an independent title are not estopped by deed. But an estoppel operates as strongly against privies as it does against the original parties.

Id. at § 1238.

The rationale that precludes the Debtors from taking an inconsistent position here is explained by the Alabama Supreme Court in *Thompson v. Page,* 255 Ala. 29, 34, 49 So. 2d 910, 914 (1951):

Appellant cannot acquiesce in, and enjoy the benefits of the foregoing transactions and at the same time reject the accompanying burdens. For example a person cannot claim under an instrument without confirming it. He must found his claim on the whole transaction and cannot adopt that feature of the operation which makes in his favor and at the same time repudiate or counteract any feature which is contrary or adverse to it.

For the foregoing reasons, the Court finds that the Hobsons did have a right to redeem the entire one-acre parcel.

The assignment

The Debtors have contended that the assignment document is insufficient to transfer redemptive rights to Commonwealth, that Commonwealth did not exercise the rights under the

agreement before they expired, and also that the document was ineffective as to Parcel 1, because it refers to a "former residence."

It is well-settled under Alabama law that the statutory right of redemption may be transferred or assigned by a holder of such right. *Garvich v. Associates Fin. Ser.* Co., 435 So. 2d 30 (Ala. 1983)(statutory right of redemption is clearly assignable). The statute further states that "a transfer of any kind . . . will accomplish a transfer of the interests of that party." Ala. Code §6-5-248(a)(5) (1975). The Comments to this code section emphasize that no particular form of transfer is required.

Whether a contract is ambiguous is a matter of law for the trial court; interpretation of an unambiguous agreement is also a matter of law. *Yu v. Stephens,* 591 So. 2d 858 (Ala. 1991). "The agreement must be construed in its entirety, and a single provision or sentence is not to be disassociated from others having reference to the same subject." 591 So. 2d at 859. Moreover, the "construction placed on a contract by the parties and practiced by them will ordinarily be accepted by the court." *Conway v. Andrews,* 286 Ala. 28, 35, 236 So. 2d 687, 694 (1970).

Even if a contract has facial ambiguity, it is then a judicial function of the trial court to apply standard rules of contract construction, and if these are sufficient to define the meaning of the contract there is no issue of fact to be decided. *Alfa Life Ins. Corp. v. Johnson,* 822 So. 2d 400 (Ala. 2001). One rule of construction is that the applicable law is read into and becomes a part of every contract. *Barber Pure Milk Co. v. Alabama State Milk Control* Bd., 275 Ala. 489, 156 So. 2d 351 (1963). Moreover, a court will presume that parties intend to make contracts that are reasonable. *BellSouth Mobility, Inc. v. Cellulink, Inc., 814 So.* 2d 203 (Ala. 2001).

As to whether the written assignment includes the entire one-acre lot, this Court has previously recognized that Alabama law does not provide for piecemeal redemption from a foreclosure - redemption is an all or nothing proposition. *In re McKinney,* 174 B.R. at 334. Hence

the assignment document is to be construed accordingly.

As to the "option" argument advanced by Debtors, the operative language of the letter agreement sets out a present transfer of a right to redeem, although it does not obligate the transferee to proceed with the redemption. As events took their course, all sums required to be remitted under the agreement were both paid and accepted. None of those who are parties to the letter agreement dispute that a valid assignment or transfer took place.

On the timeliness issue, the Alabama Supreme Court has permitted redemption when suit was commenced on the last day of the statutory period. *Spencer v. West Alabama Properties, Inc.,* 564 So. 2d 425 (Ala. 1990). Moreover, under Alabama law, "if the statutory requirements are met, the date of redemption is deemed to be the date the complaint to redeem was filed." *Pankey v. Daugette,* 671 So. 2d 684, 689 (Ala. Civ. App.), *cert. denied,* (Ala. 1995).

Based on the foregoing, the Court concludes, as a matter of law, that there was a present assignment of a right to redeem the entire one-acre tract. Moreover, as Commonwealth brought this proceeding prior to September 30, 2001, it exercised its right in a timely manner, if (as will be discussed below) it has otherwise complied with the Alabama redemption statute.

Compliance with the Alabama redemption statutes

The Debtors argue that summary judgment is precluded because Commonwealth did not (itself) demand a statement in writing of the debt and all lawful charges, and because a pre-suit tender was not made. However, the Court has not been apprised of any Alabama case where redemption was denied following a substantial payment into court along with an offer to pay any balance due.

In *Spencer v. West Alabama Properties, Inc.,* 564 So. 2d 425 (Ala. 1990), the redemptioner filed suit on the day before the redemption period expired and paid into court the amount alleged

to be necessary to redeem the property. The redemption was allowed, in the face of objections similar to those raised here. There was no presuit tender; among other things the defendant in *Spencer* claimed that presenting the court with a personal check, which was not honored until two days after the redemptive period expired, was insufficient:

> The issue presented is whether West Alabama's corporate check, tendered with the complaint for redemption, constituted "payment" under Ala. Code 1975, §§6-5-235, 238. The appellant argues that the check was not cash or its equivalent and was therefore insufficient to qualify as the statutorily required payment of the purchase money. And, insisting that a corporate check is not sufficient "payment," Spencer further argues that, because West Alabama failed to demand, pursuant to §6-5-234, a written statement of the debt and all lawful charges claimed by her, there exists no excuse for its failure to pay into court the "monies" owed. Therefore, Spencer says, West Alabama failed to comply with the redemption statutes, §6-5-230 et seq., and the court erred in allowing redemption. We disagree with this black and white reading [of the statute]... and conclude that West Alabama did make proper payment into court.

564 So. 2d at 426-427.

> We agree with West Alabama's contention that these Code sections are remedial in nature. We must, therefore, give them a liberal interpretation so as to effectuate their objectives. [citations omitted]. The purpose of the redemption statute is to allow a defaulting purchaser, with certain restrictions, the opportunity to redeem property that has been lost by foreclosure. Indeed, statutory rights of redemption are intended to "rescue" from "sacrifice" the property of a debtor. [citations omitted].
>
> Looking, then to the purpose of the statute, we recognize that such a strict interpretation of "payment" as that suggested by Spencer would only serve to defeat the legislative intent behind the statute.
>
> To hold that West Alabama has not met the mandates of §6-5-238 would be,under the totality of the circumstances, contrary to the "will of the law giver."

564 So.2d at 427-8.

> Spencer emphasizes the fact that West Alabama failed to demand a statement of the debt and lawful charges, and argues that it made a "conscious decision to merely file an eleventh hour lawsuit in an attempt to redeem." The provisions of §6-5-234 are clearly permissive:

> "Anyone desiring and entitled to redeem *may* make written demand of the purchaser of his vendee for a statement of the debt and all lawful charges claimed by him . . . ."
>
> As it is, however, West Alabama performed the required statutory steps to effectuate a redemption. Title to the property should rightfully vest in West Alabama.

564 So. 2d at 428.

It follows from *Spencer* that the deficiencies complained of by Debtors here are, in light of the remedial nature of the statute, permissive items and not requirements.

Other Alabama cases support this analysis. *Davis v. Anderson*, 678 So. 2d 140 (Ala. Civ. App. 1995) on which Debtors rely, does not stand for the proposition advanced by Debtors, *i.e.,* that a presuit tender is mandatory. In *Davis*, the trial court had denied redemption because "Davis had no valid excuse for failing to tender the $43,200 when he filed his complaint." 678 So. 2d at 142. Davis did not deposit any funds when the complaint was filed, but the Court of Civil Appeals nevertheless allowed the redemption because, under the circumstances of the case, payment or tender was excused. In the instant case, Commonwealth was faced with a dilemma of determining to whom a demand should be made, i.e., the debtor who still retained an exemption interest or the trustee in bankruptcy, or both.

Ross v. Edwards, 541 So. 2d 507 (Ala. 1989) is another decision allowing redemption where suit was commenced without funds being deposited into court. The issue was identified as follows:

> Ross contends that the trial court erred in denying his motion because, he says, the Edwardses did not comply with Ala.Code 1975, § 6-5-244, and did not allege a sufficient excuse for failing to tender to him pursuant to Ala.Code 1975 § 6-5-235, the amount that he had requested, or for failing to pay into court the amount necessary to redeem the property. We disagree.

541 So. 2d at 508.

Likewise, in *Pankey v. Daugette,* 671 So. 2d 684 (Ala. Civ. App.), *cert. denied,* (Ala. 1995), the Court of Civil Appeals observed, in a case allowing redemption:

> Our Supreme Court has stated that "in order to redeem the redemptioner must pay to the purchaser, or into court, the amount required to redeem or provide an adequate excuse to the court for failure to do so."

671 So. 2d at 689 *(quoting Wallace v. Beasley,* 439 So. 2d 133 (Ala. 1983)).

These decisions clarify the context of *Spencer v. West Alabama Properties,* Inc., cited above, as equating payment into court with the "payment" required by the Alabama redemption statute. As stated in *Spencer:*

> On May 11, 1987, West Alabama filed a complaint initiating the present redemption action against Campbell and Spencer, and tendered with the complaint a personal check in the amount of $35,361.08, alleged by West Alabama to be the amount necessary to redeem the property. The funds tendered by West Alabama were put in an interest-bearing account by order of the circuit court.
>
> The issue presented is whether West Alabama's corporate check, tendered with the complaint for redemption, constituted "payment" under Ala. Code 1975, § § 6-5 -235, 238. The appellant argues that the check was not cash or its equivalent.... We disagree with this "black and white" reading of §§ 6-5-235 and 6-5-238 and conclude that West Alabama did make proper payment into court.
>
> [W]est Alabama performed the required statutory steps to effectuate a redemption. Title to the property should rightfully vest in West Alabama.

564 So. 2d at 426-27; 428.

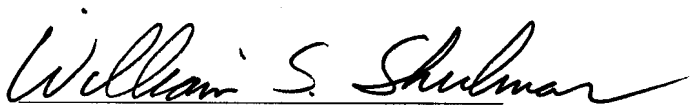
Hence, under current Alabama redemption authorities, the payment by Commonwealth into the Court Registry is sufficient, and Debtors' "tender" argument fails. Commonwealth has, as a matter of law, complied with the statutory requirements for redemption.

ORDER

It is ORDERED that the motion for summary judgment by Commonwealth be, and hereby is, GRANTED. The Court hereby declares and determines that Commonwealth is entitled to redeem the one-acre lot from foreclosure. The Union Planters Bank mortgage is to be satisfied from the funds now on deposit, the Debtors are to receive the amount of their claimed exemptions, and the Trustee is to administer the balance of the redemption price. Commonwealth shall be paid any excess over the redemption price. Commonwealth, Union Planters Bank, and the Trustee are to advise the Court within 14 days as to whether a specific redemption price has been agreed upon, along with the allocation, between the parties according to their respective interests, of the funds now held in the Registry. Absent an agreement, this remaining issue will be set for hearing. The Court will enter a final judgment in accordance with the foregoing, at the appropriate time.

The Court FURTHER ORDERS that the Poe's motion for partial summary judgment be, and hereby is, DENIED.

Dated: July 10, 2003



WILLIAM S. SHULMAN
CHIEF U.S. BANKRUPTCY JUDGE