UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 03-41388	)	
	)	
RANDY L. COBLE	)	
BRENDA S. COBLE	)	
	)	
Debtors	)	
	)	
	)	
RANDY L. COBLE	)	
BRENDA S. COBLE	)	
	)	
Plaintiffs	)	
	)	
vs.	)	PROC. NO. 07-4001
	)	
AUDITOR OF CARROLL COUNTY, et al	)	
	)	
Defendant	)	

DECISION AND ORDER DENYING MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on July 31, 2007.

By this adversary proceeding, the debtor/plaintiffs seek to recover damages for what they contend was a willful violation of the automatic stay as a result of the sale of their property, by the Carroll County Auditor, for delinquent taxes. The property was purchased by the defendants, Vinod Gupta and Banco Popular, and was subsequently redeemed from the sale by the debtors' mortgage holder, Lafayette Bank & Trust Company. The matter is before the court on the plaintiffs' motion for summary judgment and the defendants' responses thereto.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Bankr. P. Rule 7056(c); Fed. R.

Civ. P. Rule 56(c). Rule 56 requires the moving party to inform the court of the basis of the motion and to identify "those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). The non-moving party may oppose the motion with any of the evidentiary materials listed in Rule 56(c), but reliance on the pleadings alone is not sufficient to withstand summary judgment. Posey v. Skyline Corp., 702 F.2d 102, 105 (7th Cir. 1983). In ruling on a summary judgment motion, the court accepts as true the non-moving party's evidence, draws all inferences in favor of the non-moving party, and does not weigh the evidence and credibility of the witnesses. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986).

Based upon the information submitted in support of and in opposition to the plaintiffs' motion, the court finds that there are genuine issues of material fact as to whether the various events surrounding the tax sale constitute a willful violation of the automatic stay. Furthermore, given the subsequent redemption of the debtors' property by their mortgage holder, it is not entirely clear how, if at all, the debtors have been damaged by any such violation. The motion for summary judgment is, therefore, DENIED.

The parties shall jointly file a proposed pretrial order, containing the information required by local bankruptcy rule B-7016-1(c), within 30 days of this date. Upon approval of the pretrial order the issues raised in this adversary proceeding will be set for trial by separate order.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court