

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT HAMMOND

IN RE: CASE NO. 02-61091 )  
GLADYS RIVERA )  
Debtor )  
\*\*\*\*\* )  
GLADYS RIVERA )  
Plaintiff ) ADVERSARY PROCEEDING  
 ) NO. 04-6236  
v )  
LAKE COUNTY TREASURER )  
SHERRY JOHNSON )  
Defendants )

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, DECISION AND  
JUDGMENT

I

Statement of Proceedings

This Adversary Proceeding is before the Court on an Adversary Complaint to Avoid Tax Sale filed on December 14, 2004 by the Plaintiff, Gladys Rivera, the Chapter 13 Debtor in Main Case No. 02-61091 (“Plaintiff”).

The Plaintiff’s Adversary Complaint alleges that the Plaintiff filed her first Chapter 13 Petition in Main Case No. 02-61091 on March 14, 2002; that the Defendant Lake County Treasurer (“Lake County”), was duly listed as a creditor of the Plaintiff’s estate, as evidenced by its secured Claim filed as to the Plaintiff’s Chapter 13 Estate dated April 19, 2002 in the sum of \$2,602.40 (Exhibit “A”); and, that the Defendant Lake County sold the Plaintiff’s real estate located at 8350 Lakewood Avenue, Gary, Indiana (“the Real Estate”) at a tax sale on September 19, 2002 to the Defendant Sherry Johnson (“Defendant Johnson”), as set out in Exhibit “B” to the Plaintiff’s Complaint, in violation of the

Automatic Stay.<sup>1</sup>

The Plaintiff's Complaint further alleges that on September 9, 2003, the Plaintiff's Main Chapter 13 case No. 02-61091 was dismissed for a default in Plan payments; and, that "subsequent" to September 19, 2003, the Defendant obtained a tax deed as shown in Exhibit "D" to the Plaintiff's Complaint,<sup>2</sup>

The Plaintiff's Complaint further alleges that the Plaintiff subsequently filed her second Chapter 13 Petition under Case No. 03-64985 on October 9, 2003, which was there after dismissed on November 18, 2004.

No Answer to the Plaintiff's Adversary Complaint was filed by the Defendant Johnson.

A status conference was held on March 29, 2005. The Plaintiff and the Defendant Johnson reported that this Adversary Proceeding would be submitted to the Court as an Agreed Case; that the parties would file a stipulation of facts on or before April 30, 2005; and, that upon doing so the Court would issue a briefing schedule. (Docket Entry Order No. 22). The Stipulation was not filed as Ordered. The Court issued a Show Cause Order on August 25, 2005 and the Plaintiff and the Defendant Johnson ultimately filed a Stipulation of Facts and Supporting Documentation on October 26, 2005 ("Stipulation") at a Status Conference held that same date. The Plaintiff and the Defendant Johnson further stipulated that if the Plaintiff did not file a Notice that she did not intend to be bound by said Stipulation on or before November 2, 2005, the Plaintiff would be bound by said Stipulation.

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Exhibit "B" to the Plaintiff's Complaint is a Notice of Tax Sale and Redemption Period Expiration given by the Defendant Johnson to the Plaintiff dated May 27, 2003 pursuant to I.C. 6-1.1-25-4.5, which notified the Plaintiff that the Defendant Johnson had purchased a Tax Sale Certificate as to the Real Estate at a tax sale held on September 19, 2002, and that the Defendant Johnson would file a petition for the issuance of a Tax Deed in the Lake Circuit Court on or after September 19, 2003. Accordingly, the Tax Sale held on September 19, 2002 was held after the Plaintiff filed her first Chapter 13 Petition on March 14, 2002, and while the §362 Automatic Stay was in effect in that this Chapter 13 case was not dismissed until September 9, 2003.

<sup>2</sup> Exhibit "D" to the Plaintiff's Complaint is merely a duplicate of Exhibit "B" to the Plaintiff's Complaint.

(Docket Entry No. 29).

The Plaintiff did not object to said Stipulation, and by Docket Entry Order No. 32 entered on November 18, 2005, the Court issued a briefing schedule, which was amended by Docket Entry Order dated August 4, 2006, when neither party complied with the original Briefing Schedule.

The Plaintiff ultimately filed her Brief on September 6, 2006. No Brief was filed by the Defendant Johnson. A Status Conference was scheduled for November 20, 2007. The Defendant Johnson filed a Motion to Continue the same. The Status Conference was reset for February 28, 2006. The Defendant Johnson again filed a Motion to Continue the Status Conference. The Court decides that an additional Status Conference is not required, in that this Adversary Proceeding is being submitted as an Agreed Case, the Plaintiff has filed her Brief, and the Defendant Johnson did not file her Brief as Ordered. Accordingly, the Court shall proceed to render its decision.

## II

### Jurisdiction and Core Proceeding

\_\_\_\_\_ No objection was made by counsel to the subject matter jurisdiction of this Court as to this matter. The Court finds subject matter jurisdiction to be present, pursuant to 28 U.S.C. §1334(b), and that his contested matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). Price v. Rochford, 947 F.2d 829, 832 + n. 1 (7<sup>th</sup> Cir. 1991) (claim based on §362(h) is a core proceeding) (citing, Barnett v. Stern, 909 F.2d 973, 981 (7<sup>th</sup> Cir. 1990)); In re Walters, 868 F.2d 665, 669 (4<sup>th</sup> Cir. 1989); Budget Service Company v. Better Homes of Virginia, Inc., 804 F.2d 289k 292 (4<sup>th</sup> Cir. 1986).

## III

### The Stipulation Filed by the Plaintiff and the Defendant Johnson

The Stipulation filed by the Plaintiff and the Defendant on October 26, 2005 reveals that the ultimate or operative facts as alleged by the Plaintiff in her Complaint, as set out above, are true and

correct.

The only additional relevant facts that are set out in the Stipulation, are that on October 8, 2003, or after the Plaintiff's first Chapter 13 case No. 02-61091 was dismissed on September 9, 2003, the Defendant Johnson gave the Plaintiff a Notice of Filing Petition for Tax Deed. That Notice stated that pursuant to I.C. 6-1.1-25-4.6, on or after September 20, 2003, the Defendant Johnson would Petition the Lake Circuit Court for an Order directing that the Lake County Auditor issue a Tax Deed as to said Real Estate and that the hearing on the Defendant Johnson's Petition would be held on December 22, 2003. (Stipulation No. 11); that on December 1, 2003, or after the Plaintiff's first Chapter 13 case No. 02-61091 was dismissed on September 9, 2003, but while the Plaintiff's second Chapter 13 case No. 03-4985 filed on October 14, 2003 was still pending, the Defendant Johnson filed her Petition in the Lake Circuit Court for the Issuance of a Tax Deed by the Lake County Auditor as to the Real Estate. (Stipulation No. 13); and, that on January 30, 2004, or while the Plaintiff's second Chapter 13 Case No. 03-64985 was still pending, the Lake County Circuit Court entered an Order for the issuance of a Tax Deed to the Defendant Johnson by the Lake County Auditor. (Stipulation No. 14).

#### IV

#### Findings of Factd Based on Judicial Notice

\_\_\_\_\_The Court takes judicial notice of the following as set out in the Plaintiff's Main Chapter 13 Case No. 02-61091, and Plaintiff's Chapter 13 Main Case No. 03-64985:<sup>3</sup>

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Federal rule of Bankruptcy Procedure 9017 provides that the Federal Rules of Evidence apply in cases under the Code. See also, Fed. R. Evid. 1101(a) and (b). Federal Rule of Evidence 201 provides that the Court, whether or not requested, may take judicial notice of adjudicative facts at any stage of the proceedings, Federal Rule of Evidence 201 is the only evidentiary rule on the subject of judicial notice.

This Court has held in In re Snider Farms, Inc. 83 B.R. 977, 986 (Bankr. N.D. Ind. 1988), citing, In re Woodmar Realty, 294 F.2d 785, 788 (7<sup>th</sup> Cir. 1961). Cert. Den. 369 U.S. 803, 82 S. Ct. 643, 7 L.Ed.2d 5550 (1962), that a bankruptcy court is duty bound to take judicial notice of its records and files. See, Friedrich v. Mottaz, 294 F.3d 864, 870 (7<sup>th</sup> Cir. 2002) (bankruptcy judge did not err by taking judicial notice of schedules filed by debtor in main case in §548(a)(1) adversary proceeding); State of Florida Board of Trustees of Internal Improvement Trust Fund v. Charley Toppino & Sons, Inc., 514 F.2d 700, 704 (5<sup>th</sup>

1. The Plaintiff filed her Chapter 13 Petition under Main Case No. 02-61091 on March 14, 2002, and said case was dismissed on September 9, 2003. This case was thereafter reopened by Order dated December 15, 2004 on the Motion of the Plaintiff for the purpose of filing this Adversary Proceeding. No Motion for Stay Relief was filed by either the Defendant Johnson or the Defendant Lake County.

2. The Plaintiff subsequently filed another Chapter 13 Petition under Main Case No. 03-64985, on October 14, 2003. This case was dismissed on November 18, 2004. No Motion for Stay Relief was filed by either the Defendant Johnson or the Defendant Lake County.

V

The Effect of the §362(a) Automatic Stay

Section 362(a) of Title 11 provides, in relevant part, as follows:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was, or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title....

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Cir. 1975) (not error for a bankruptcy court to take judicial notice of related proceeding and records in cases before a court); In re E. R. Fegert, Inc., 887 F.2d 955, 957-58 (9<sup>th</sup> Cir. 1989) (the Court may take judicial notice of the file and record in the underlying case). See also, Green v. Warden, U. S. Penitentiary, 699 F.2d 364, 369 (7<sup>th</sup> Cir. 1983 (a Court may take judicial notice of its own court documents and records).

The automatic stay is self-executing, effective upon the filing of the bankruptcy petition. In re Gruntz, 202 F.3d 1074, 1081 (9<sup>th</sup> Cir. 2000). As stated by the Court in Matter of Holtkamp, 669 F.2d 505, 508 (7<sup>th</sup> Cir. 1982), the purpose of the automatic stay is to preserve what remains of the Debtor's insolvent estate and to provide a systematic equitable liquidation procedure for all creditors, secured, as well as unsecured, thereby preventing a chaotic and uncontrolled scramble for the Debtor's assets in a variety of uncoordinated proceedings in different courts. "[T]he stay insures that the debtor's affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditor's interests with one another." A.H. Robins Co. v. Piccinin, 788 F.2d 944, 998 (4<sup>th</sup> Cir. 1986) (quoting, Fidelity Mortgage Investors v. Camelia Builders, Inc., 550 F.2d 47, 55 (2<sup>nd</sup> Cir. 1976), cert. den. 429 U.S. 1093, 97 S. Ct. 1107, 51 L. Ed. 2d 540.) The stay is imposed automatically in order to give the bankruptcy court an opportunity to assess the debtor's situation and to embark on an orderly course in resolving the estate. United States v. Michalek, 54 F.3d 325, 333 (7<sup>th</sup> Cir. 1995).

As soon as a petition in bankruptcy is filed the automatic stay provisions of 11 U.S.C. §362 takes effect, and prevents all pre-petition creditors from taking any action to collect their debts. Matter of Vitreous Steel Products Co., 911 F.2d 1223, 1231 (7<sup>th</sup> Cir. 1990); In re Price, 42 F.3d 1068, 1071 (7<sup>th</sup> Cir. 1994). The automatic stay is effective upon the date of filing, and formal service thereof is not required. Richard v. City of Chicago, 80 B.R. 451, 453 (N.D. Ill. 1987); In re Miller, 22 B.R. 479, 481 (D. Md. 1982); Morgan Guar. Trust Co. of New York v. Hellenic Lines, Ltd., 38 B.R. 987, 998 (S.D.N.Y. 1984). Thus, the automatic stay does not require actual notice to be effective. In re Lile, 103 B.R. 830, 836 (Bankr. S.D. Tex. 1989); Matter of Carter, 16 B.R. 481, 482-83 (W.D. Mo. 1981), aff'd. 691 F.2d 390; In re O'Connor, 42 B.R. 390, 392 (Bankr. E.D. Ark. 1984); In re Stucka, 77 B.R. 777, 781 (Bankr. C.D. Cal. 1987); In re Victoria Grain Co. of Minneapolis, 45 B.R. 2, 6 (Bankr. D. Minn. 1984).

Actions taken in violation of the stay are void ab initio, and without effect. Middle Tenn. News Co. v. Charnel, 250 F.3d 1077, 1082 (7<sup>th</sup> Cir. 2001); Matthew v. Rosene, 739 F.2d 249, 251 (7<sup>th</sup> Cir. 1984); In re Gruntz, 202 F.3d 1074, 1082 (9<sup>th</sup> Cir. 2000); In re Soares, 107 F.3d 969, 976 (1<sup>st</sup> Cir. 1997); Constitution Bank v. Tubbs, 68 F.3d 685, 692 (3<sup>d</sup> Cir. 1995); Parker v. Bain, 68 F.3d 1131, 1138 (9<sup>th</sup> Cir. 1995); Franklin Sav. Ass'n. v. Office of Thrift Supervision, 31 F.3d 1020, 1022 (10<sup>th</sup> Cir. 1994); Rexnord Holdings, Inc., v. Bidermann, 21 F.3d 522, 527 (2<sup>nd</sup> Cir. 1994); Maritime Elec. Co., Inc., v. United Jersey Bank, 959 F.2d 1194, 1206-07 (3<sup>rd</sup> Cir. 1991). In re Schwartz, 954 F.2d 569, 571 (9<sup>th</sup> Cir. 1992); Raymiak Industries, Inc., Lai, 973 F.2d 1125, 1132 (3<sup>rd</sup> Cir. 1992); In re Calder, 907 F.2d 953, 956 (10<sup>th</sup> Cir. 1990); F.D.I.C. v. Shearson-American Express, 996 F.2d 493, 498 (1<sup>st</sup> Cir. 1993)/ In re Smith, 876 F.3d 524, 526 (6<sup>th</sup> Cir. 1989).

Actions taken in violation of the stay are void, ab initio, even if the creditor has no notice of the stay. In re Calder, 907 F.2d 953, 956 (3<sup>rd</sup> Cir. 1990); In re Smith, 876 F.2d 524, 526 (6<sup>th</sup> Cir. 1989); Richard v. City of Chicago, 80 B.R. at 453, supra, (citing, In re Ellis, 66 B.R. 821, 823 (N.D. Ill. 1986), and Rhyme v. Cunningham, 59 B.R. 276, 278 (Bankr. E.D. Pa. 1986)); In re Clark, 60 B.R. 13, 14 (Bankr. N.D. Ohio 1986); In re Scott, 24 B.R. 738 (Bankr. Ala. 1982); In re Eisenberg, 7 B.R. 683, 686 (Bankr. N.Y. 1980).

## VI

### Discussion

The sale of real estate in Indiana for the failure to pay delinquent real estate taxes is a two-step process. At step one of the tax sale, the successful purchaser initially receives only a Certificate of Sale from the County Auditor. See I.C. 6-1.1-24-9(a). The purchaser acquires a “lien” against the real property for the entire amount paid. I.C. 26-1.1-24-9(b). The purchaser generally must hold the Certificate of Sale for a one year period of redemption after the date of sale. I.C. 6-1.1-25-4(a)(1). If

there is no redemption before the expiration of the redemption period at step two, the purchaser of the Tax Certificate of Sale may file a verified petition with the Court asking the Court to direct the County Auditor to issue a Tax Deed pursuant to I.C. 6-1.1-25-4.6(a), also complying with all the other statutory requirements as to noticing. See Tax Certificate Investments v. Smethers, 714 N.E.2d 131, 133 (Ind. 1999); In re the 2002 Floyd County Tax Sale, 813 N.E.2d 805, 808-09 (Ind. App. 2004). The County Auditor on receipt of the Certificate of Sale shall deliver a tax deed to the purchaser. I.C. 6-1.1-25-4. The tax deed vests in the grantee an estate in fee simple absolute, free and clear of all tax liens and encumbrances created or suffered before or after the tax sale, except for those liens granted priority under federal law and the lien of the state for taxes and special assessments that accrue subsequent to the sale. I.C. 6-1.1-25-4(f).

The §362(a) Automatic Stay went into effect as to the Defendant Lake County on March 14, 2002, when the Plaintiff filed her initial Chapter 13 Petition in Case No. 02-61091. This case was subsequently dismissed on September 9, 2003 for a default in Plan payments. Step one of the Tax Sale by the Defendant Lake County as to the Plaintiff's Real Estate pursuant to Indiana Law was held on September 19, 2002, when the Defendant purchased a Tax Sale Certificate from the Defendant Lake County. Thus, the step one Tax Sale held on September 19, 2002, was held postpetition in violation of the stay and void ab initio, as the stay in Main Case No. 02-61091 was not dissolved pursuant to §362(c)(2)(B) until that case was subsequently dismissed on September 9, 2003.

The fact that the Plaintiff's first Chapter 13 Case No. 02-61091 filed on March 14, 2002 was subsequently dismissed on September 9, 2003, after the step one Tax Sale was held postpetition on September 19, 2002, does not change the result and validate the sale of the Tax Certificate by the Defendant Lake County to the Defendant Johnson postpetition and prior to dismissal. It was expressly held by the Seventh Circuit in the case of Price v. Rockford, 947 F.2d 829, 831-32 (7<sup>th</sup> Cir. 1991), that

a cause of action for the violation of the automatic stay can be enforced after bankruptcy. accord In re Burgner, 218 BR. 413, 415 (Bank. E.D. Tenn. 1998) (action for violation of the automatic stay survives dismissal of the bankruptcy case) (collecting cases and citing Price v. Rockford with approval). See also, Dempsey v. Auditor of Marion County, 871 N.E.2d 1031, 1037 (Ind app. 2007) (dismissal of bankruptcy case by itself in no way remedies or validates any actions taken in violation of the stay while the case is pending, nor does dismissal retroactively lift the stay).

In reaching its decision that the step one Tax Sale held on September 19, 2002 is void ab initio as to the Tax Sale Certificate purchased by the Defendant Johnson from the Defendant Lake County, it must be carefully observed that there is a significant legal distinction between the fact situation in the case sub judice, and a fact situation whereby a step one Tax Sale by the Defendant Lake County is held prior to the bankruptcy petition, whereby a Tax Sale Certificate is issued to the purchaser prepetition, and a step two Tax Sale is held postpetition, whereby a Tax Sale Deed is issued to the purchaser of the step one Tax Certificate, after the Chapter 13 petition is filed. In the later scenario, it has been held by numerous Courts, as discussed below, that the automatic stay does not stay or void the step two, postpetition Tax Sale. The Court in rendering its judgment need not decide if these cases are correct.

It is undisputed that in this Adversary Proceeding the step one Tax Certificate was purchased by the Defendant Johnson from the Defendant Lake County at a postpetition, step one, Tax Sale, and as noted by the Court in In re Milne, 185 B.R. 277 (Bankr. N.D. Ill. 1995) Aff'd. 185 B.R. 280, 284-84 (N. D. Ill 1995), a number of Courts have found that tax sales conducted after the filing of the bankruptcy petition are void in violation of the stay. Id., 185 B.R. at 279 (collecting cases); In re Shambling, 890 F.2d 126- 127 (9<sup>th</sup> Cir. 1989) (state tax sale after debtor filed for bankruptcy was void from outset. Under Illinois law tax sale does not transfer property, but it only gives the purchaser a lien on the property and, thus the tax sale did not transfer property of the estate,) (citing, Richard v. City of

Chicago, 80 B.R. 451, 453 (N.D. Ill. 1987)); AFTH Real Property, L.L.C. v. Stewart, 879 N.E.2d 1184, 1186 (Ind. App. 2008) (tax sale to recover delinquent taxes conducted after property owner filed petition for bankruptcy was void).

In this Adversary Proceeding, assuming, arguendo, that the step one Tax Sale of the Tax Certificate to the Defendant Johnson on September 19, 2002 was not void because the step one Tax Sale was held prior to the filing of the Chapter 13 Petition and the operation of the Automatic Stay, the Defendant Johnson would have only obtained a Certificate of Sale and not a Tax Deed. Thus, she would not have obtained fee simple title to the Real Estate upon issuance of the Tax Certificate, but only a “lien” thereon. I.C. 6-1.1-24-9(b). See Smith v. Breeding, 586 N.E.2d 932, 937 (Ind. App. 1992) (the tax sale certificate does not convey to the purchaser title to the land, but merely creates a lien in the purchaser for the amount of the taxes paid); Galler v. Meek, 496 N.E.2d 103, 106-07 (Ind. App. 1986) (holders of tax sale certificates did not obtain either legal or equitable title to real estate but acquired a lien thereon); Fields v. Evans, 480 N.E. 2d 575, 579 (Ind. App. 1986) (the tax sale is preparatory to the transference of title and merely creates a lien in favor of the tax sale purchaser) on rehearing, 484 N.E.2d 36, 38 (Ind. App. 1986) (the tax sale and the tax deed are separate events; the tax sale creates a lien that may ripen into full ownership at some later time by the issuance of a tax deed).

The Court would observe that if the step one Tax Sale and the purchase of Certificate of Sale by the Defendant Johnson had both been accomplished prior to the filing of the Plaintiff’s Chapter 13 Petition, the Defendant Johnson, may have been able to make an argument that she was not thereafter prohibited by the automatic stay from obtaining a step two postpetition tax deed after the statutory period of redemption had expired. See In the Matter of Tynan, 773 F.2d 177, 179-80 (7<sup>th</sup> Cir. 1985) (when a bankruptcy petition is filed before the expiration of the applicable state redemption period, §108(b) extends the redemption period for 60 days from the commencement of the bankruptcy case.

When the petition is filed the statutory right of redemption is an asset of the Debtor's estate, but the §362 automatic stay does not toll the running of the redemption period); See In re Milne, 185 B.R. at 284-85 (Bankruptcy Court did not abuse discretion in finding cause existed for Relief from Automatic Stay to permit tax sale purchaser to acquire deed to debtor's residence; if debtor allows Illinois tax sale redemption period, as extended by §108(b) for 60 days, to expire, the debtor has no further rights in property). Accord Jackson v. Midwest Partnership, 176 B.R. 156, 159-60 (N.D. Ill. 1994); In re Murray, 276 B.R. 869, 874-75 (Bankr. N. D. Ill. 2002) (once period specified by law for Chapter 13 debtor to exercise statutory right to redeem, as extended by §108(b), the debtor's ownership rights are extinguished).

However, while the scope of the automatic stay is a question of Federal Bankruptcy Law, and only the Bankruptcy Court can vacate or modify the stay, Matter of Pope, 209 B.R. 1015, 1020 + n.6 (Bankr. N. D. Ga. 1997), unless some federal interest requires a different result, the determination of what property rights the debtor has on the petition date is created and defined by State Law. Fisher v. Apostolou, 155 F.3d 876, 880 (7<sup>th</sup> Cir. 1996) (citing, Butner v. United States, 99 S. Ct. 914, 918 (1979)).

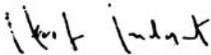
It is noted that the Indiana Court of Appeals in the recent case of Dempsey v. Auditor of Marion County, 871 N.E.2d 1031 (Ind. App. 2007), distinguished the Bankruptcy Court cases that rely on In re Tynan, 773 F.2d 177, as discussed above, and adopted the conclusions reached by the Courts in In re McKinney, 341 B.R. 892, 901-02 (Bankr. C.D. Ill 2000), and In re Davenport, 268 B.R. 159, 165-66 (Bankr. N. D. Ill 2001), which held that the automatic stay also precludes the postpetition issuance of a Tax Deed where the Certificate of Tax Sale was issued prepetition. Id. 871 N.E. 2d at 1035-1037. The Dempsey Court concluded in applying Indiana law, that not only is the postpetition statutory right to redeem after the issuance of a prepetition Tax Sale Certificate a property right protected by the automatic stay, but that the affirmative postpetition act of petitioning for a Tax Deed

pursuant to I.C. 6-1.1-24-4.6 is also protected by the automatic stay, and was void ab initio as a violation of the stay, even though the Tax Certificate had been sold prepetition. Dempsey is not applicable in this Adversary Proceeding as the step one Tax Sale Certificate was issued to the Defendant Johnson postpetition in violation of the stay. However, the holding in Dempsey indicates that even if the Tax Certificate had been issued prior to the date the Debtor filed her Petition commencing her initial Chapter 13 Case No. 02-61091 on March 14, 2002, the filing of a Petition for the issuance of a Tax Deed while the stay was still in effect in that case would have also rendered any such Petition void ab initio. It is therefore,

**ORDERED, ADJUDGED, AND DECREED**, that the Plaintiff should be and is hereby awarded the relief sought by her in her Complaint, and that the Tax Sale held by the Defendant Lake County on September 19, 2002, and the issuance of the Tax Sale Certificate by the Defendant Lake County to the Defendant Johnson is hereby declared to be void ab initio.

The Clerk shall enter this Judgment on a separate document pursuant to Fed. R. Bk. P. 9021

Dated: June 16, 2008

  
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**JUDGE, U. S. BANKRUPTCY COURT**

Distribution:

Attorney Casas  
Attorney Hall  
Trustee