

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THIRD DIVISION
December 2, 2015

No. 1-15-0693

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

URBAN PARTNERSHIP BANK, a successor in)	
interest to ShoreBank,)	Appeal from the Circuit Court
)	of Cook County, Illinois,
Plaintiff-Appellee,)	County Department, Chancery
)	Division.
v.)	
)	
CHICAGO TITLE LAND TRUST COMPANY, a)	No. 2011 CH 38617
Successor Trustee to LaSalle Bank National Trust)	
Association, Successor Trustee to American National)	
Bank and Trust Company of Chicago, as Trustee u/t/a)	The Honorable
dated May 10, 1977, and known as Trust No. 40514;)	Anthony C. Kyriakopoulos,
CHARLES BERRY; Unknown Owners and Non)	Judge Presiding.
Record Claimants,)	
)	
Defendants-Appellants.)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly entered the foreclosure judgment against the property. Even though the trial court initially may have lacked jurisdiction to enter the foreclosure judgment, the bankruptcy court's order retroactively annulling the stay on further proceedings outside of the bankruptcy court so as to permit the bank to complete the foreclosure proceedings, revitalized and validated the foreclosure judgment.
- ¶ 2 This appeal arises from a foreclosure action filed by the plaintiff-appellee, Urban Partnership

Bank, as successor in interest to ShoreBank (hereinafter the bank) against the property located at 9200 S. Cottage Grove, Chicago, Illinois (hereinafter the property), which named the appellant, Charles Berry (hereinafter Berry) as a defendant. Berry appeals the circuit court's grant of summary judgment in favor of the bank. He argues that the circuit court lacked jurisdiction to enter that order because he filed a Chapter 7 bankruptcy petition in federal district court on the evening before summary judgment was entered, thereby vesting exclusive jurisdiction over the property with the federal district court (28 U.S.C. § 1334(e) (1) (2012)), and triggering an automatic stay of any other proceedings (11 U.S. C. § 362 (a) (1) (2012)). For the reasons that follow, we affirm the judgment of the circuit court

¶ 3

I. BACKGROUND

¶ 4

The record reveals the following undisputed facts and procedural history. On November 7, 2011, the bank filed its complaint for foreclosure in the circuit court of Cook County (hereinafter the circuit court). Berry answered the complaint on May 18, 2012, and subsequently amended his answer on November 29, 2012. On May 2, 2013, the bank filed a motion for summary judgment against, *inter alia*, Berry. On November 4, 2013, Berry filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court of the Northern District of Illinois (hereinafter the bankruptcy court). On December 18, 2013, the bankruptcy court dismissed Berry's petition. The bank then proceeded with its foreclosure action in the circuit court.

¶ 5

On April 15, 2014, Berry filed a Chapter 7 petition in bankruptcy court. The following day, on April 16, 2014, the circuit court entered an order granting the bank's motion for summary judgment and a judgment of foreclosure and sale. Shortly thereafter, on May 7, 2014, the Bank filed a motion to annul and/or modify the automatic stay with the bankruptcy court. In that motion, the Bank acknowledged that an automatic stay was triggered once Berry filed his

Chapter 7 bankruptcy petition, but requested that the bankruptcy court annul that stay and confirm the validity of the foreclosure judgment order thereby permitting it to continue with the foreclosure proceedings. In its motion, the bank asserted that at the time the summary judgment order was entered against Berry, it was not aware, and had no knowledge that Berry had filed its second bankruptcy petition, the day before. Berry did not file any response to the bank's motion to annul the stay.

¶ 6 On May 20, 2014, the bankruptcy court granted the bank's motion to annul the stay, and further waived the 14-day stay provided under Federal Bankruptcy Rule of Procedure 4001(a)(3). In doing so, the bankruptcy court explicitly stated:

"The automatic stay is annulled as to the property and Urban Partnership Bank may complete the foreclosure proceedings."

¶ 7 Subsequently, the bank went ahead with the foreclosure proceedings in the circuit court, and on June 30, 2014, the property was sold at a judicial sale. On September 8, 2014, the bank filed a motion for entry of an order approving the report of sale and distribution. Berry filed a response to this motion on December 17, 2014. On February 4, 2015, the circuit court granted the bank's motion for order approving the sale. Berry now appeals.

¶ 8 II. ANALYSIS

¶ 9 On appeal, Berry makes only one contention. He argues that once he filed a petition for Chapter 7 bankruptcy in the bankruptcy court, the circuit court was divested of any jurisdiction, so that the foreclosure judgment order was necessarily void. The bank agrees with Berry that the foreclosure judgment order was void, but argues that the bankruptcy court had the authority to revive that void order by granting the bank's motion to annul the automatic stay and permitting

the bank to continue with the foreclosure proceedings. For the reasons that follow, we agree with the bank.

¶ 10 It is axiomatic that the supremacy clause, contained in article VI of the United States Constitution, provides that the laws of the United States "shall be the supreme Law of the Land *** any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2. Consequently, while under normal circumstances "a circuit court has subject matter jurisdiction over any claims falling within the general class of claims over which the court's authority extends," the circuit court may nevertheless lack subject matter jurisdiction over such claims where a federal statute deprives or divests it of jurisdiction." *Williams Awning Co. v. Illinois Workers' Compensation Commission*, 2011 IL App (1st) 102810 WC, ¶ 11 (citing *Cohen v. Salata*, 303 Ill. App. 3d 1060, 1063-64 (1999)). One such federal statute, section 362 of the Bankruptcy Code (11 U.S.C. § 362 (2014)), provides that a bankruptcy petition "operates as a stay, applicable to all entities, of *** the commencement or continuation *** of a judicial *** action or proceeding against the debtor that was or could have been commenced" before the debtor filed for bankruptcy protection. This automatic stay " 'takes effect the moment a bankruptcy petition is filed and without regard to whether a party or a state court has notice of the filing.' " *Williams Awning Co.*, 2011 IL App (1st) 102810 WC, ¶ 11 (quoting *Cohen*, 303 Ill. App. 3d at 1064). " '[A]ctions taken in violation of the automatic stay provisions of section 362 are void.' " *Williams Awning Co.*, 2011 IL App (1st) 102810 WC, ¶ 11 (quoting *Cohen*, 303 Ill. App. 3d at 1065).

¶ 11 Nevertheless, although actions taken in violation of a bankruptcy stay are void, our courts have previously held that a bankruptcy court has both discretion and authority to grant retroactive relief from a stay, and, in so doing, "validate any orders or actions taken before the

stay was annulled." *Williams Awning Co.*, 2011 IL App (1st) 102810 WC, ¶ 11 (quoting *Cohen*, 303 Ill. App. 3d at 1065); see also *Schwartz v. United States*, 954 F.2d 569, 572-73 (9th Cir. 1992); see also *In re Myers*, 491 F.3d 120, 127 (3d Cir. 2007) ("this Court and others have held that actions in violation of the stay, although void (as opposed to voidable), may be revitalized *** by retroactive annulment of the stay."); see also *Britwood Creek, LLC*, 450 B.R. 769, 775 (Bankr. N.D. Ill. 2011) ("Courts in this District and throughout the country have held that §362(d) permits bankruptcy courts to grant retroactive relief from the automatic stay.").

¶ 12 In the present case, it is un rebutted that the bankruptcy court granted the bank's motion to retroactively annul the stay on any proceedings that occurred outside of the bankruptcy court after Berry filed his Chapter 7 bankruptcy petition. Furthermore, in doing so, the bankruptcy court explicitly indicated that the stay was annulled to permit the bank to complete the foreclosure proceedings. Berry does not dispute these facts nor does he challenge the bankruptcy court's ability to retroactively annul its stay. In fact, Berry provides no argument whatsoever to counter the bank's claim that the bankruptcy court acted within the scope of its authority and discretion in retroactively annulling the stay on the circuit court's proceedings. Accordingly, under this record, we are compelled to conclude that while the circuit court's initial order may have been void as entered in derogation of the bankruptcy stay, it was nonetheless properly revitalized by the bankruptcy court's retroactive annulment of the stay. See *Williams Awning Co.*, 2011 IL App (1st) 102810 WC, ¶¶ 11-12 (holding that although the Workers' Compensation Commission's initial order might have been void as entered in derogation of the bankruptcy stay, the Commission's order was revitalized by the Bankruptcy Court's retroactive annulment of the stay).

¶ 13

III. CONCLUSION

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.