

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

BANCORPSOUTH BANK, Successor)
in Interest to The City)
National Bank,)
)
Plaintiff,)
)
v.)
)
EDMUND EUGENE BLACKWELL, III;)
and TINA R. BLACKWELL,)
)
Defendants.)

Case No. CIV-09-102-KEW

OPINION AND ORDER

This matter comes before the Court on Plaintiff's Motion for Deficiency Judgment filed September 16, 2011 (Docket Entry #47). At the sale confirmation hearing conducted on October 4, 2011, Plaintiff's counsel informed this Court that the United States Bankruptcy Court for this District where Defendants' Chapter 7 bankruptcy case is pending was considering Plaintiffs' motion to modify the automatic stay to enable this Court to consider the subject Motion. On November 1, 2011, Plaintiff's counsel telephonically informed this Court that the Bankruptcy Court had denied its motion. In reviewing the Bankruptcy Court's Order of October 13, 2011 (which this Court attaches to this Order for reference), it is apparent that the Bankruptcy Court will take up Plaintiff's deficiency as a part of the bankruptcy claims process. As a result, the subject Motion cannot be considered at this time.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Deficiency Judgment filed September 16, 2011 (Docket Entry #47) is **DENIED** at this time since the claim for deficiency will be considered by the Bankruptcy Court.

IT IS SO ORDERED this 2nd day of November, 2011.


KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE

Dated: October 13, 2011



The following is ORDERED:

A handwritten signature in cursive script, reading "Tom R. Cornish".

TOM R. CORNISH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE:

EDMUND EUGENE BLACKWELL
TINA RENEE BLACKWELL,
Debtors.

Case No. 10-81773-TRC
Chapter 7

**ORDER DENYING AMENDED MOTION TO MODIFY STAY
TO ESTABLISH DEFICIENCY**

On October 5, 2011, there came on for hearing before this Court the Amended Motion to Modify Stay to Establish Deficiency filed by BancorpSouth Bank, Alma, Arkansas (Docket Entry 60), and Debtors' Amended Objection (Docket Entry 70). Appearances were entered by Luke Gaither for BancorpSouth Bank, Pat Pate, Jr. for Debtors, and Gerald R. Miller, Trustee.

BancorpSouth Bank ("Bank") seeks to lift the stay to allow a federal court to determine the amount of deficiency owed by Debtors to Bank. This Court previously lifted the stay to allow in rem foreclosure in that federal court action (Docket Entry 48). Debtors object to Bank's second attempt to lift the stay on the grounds that they consented to the previous motion to lift stay with the understanding that Bank would not pursue a deficiency judgment against them. Bank filed a proof

of claim and amended that claim on December 7, 2010. The claim values Bank's secured portion at \$120,000 and unsecured portion at \$111,653.35. Trustee recommends to this Court that Bank's Amended Motion be denied. Trustee does not wish to incur the expense on behalf of the estate of appearing in the federal court lawsuit to protest Bank's claim. Instead, Bank could amend its claim in this bankruptcy case and Debtors and Trustee can then file objections, if necessary.

Matters concerning the administration of the bankruptcy estate, including the allowance or disallowance of claims against the estate are core proceedings over which this Court has authority to hear and determine. 28 U.S.C. § 157(b)(2). Section 502(b) of the Bankruptcy Code provides that this Court shall determine the amount of a proof of claim. Therefore, this Court finds that Bank's Amended Motion should be denied. Determination of the amount of the deficiency can be made by this Court. If Bank files another amended proof of claim, and an objection is filed, this Court can then determine the amount of the deficiency claim.

IT IS THEREFORE ORDERED that the Amended Motion to Modify Stay to Establish Deficiency filed by BancorpSouth Bank, Alma, Arkansas (Docket Entry 60) is hereby **denied**.

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TOTAL: 5

Recipients – SUBMITTED – to the BNC (Bankruptcy Noticing Center) for mailing:

db	Edmund Eugene Blackwell, III	51888 Long Branch Rd	Heavener, OK 74937
jdb	Tina Renee Blackwell	51888 Long Branch Rd	Heavener, OK 74937
cr	BancorpSouth Bank	P. O. Box 2199	Alma, AR 72921
cr	Recovery Management Systems Corporation	25 S.E. 2nd Avenue, Suite 1120	Miami, FL 33131

TOTAL: 4