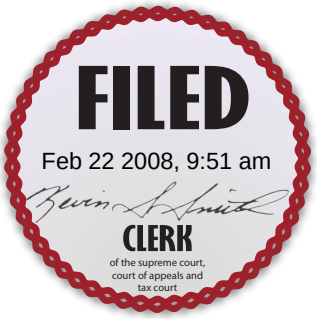


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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| IN THE MATTER OF THE 2002 B TAX SALE-PETITION TO SET ASIDE TAX SALE- KEY NO. 26-46-0023-002, | ) | |
| LAKE COUNTY TREASURER, LAKE COUNTY AUDITOR, and CONVERSE HOLDINGS, LLC., | ) | |
| Appellants-Respondents, | ) | |
| vs. | ) | No. 45A05-0709-CV-503 |
| YVONNE B. MORGAN f/k/a YVONNE B. DEROSA, | ) | |
| Appellee-Petitioner. | ) | |

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
Cause No. 45C01-0208-MI-12

**February 22, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## Case Summary

Converse Holdings, LLC ("Converse") appeals the trial court's order setting aside the issuance of a tax deed for property in which Yvonne Morgan[1] had an equitable interest. We affirm.

## Issue

The sole issue is whether the trial court erred in setting aside a tax deed that resulted from a tax sale of property that occurred after Morgan had filed for bankruptcy.

## Facts

Morgan is the sole beneficiary of a trust that holds legal title to property located at 600-610 South Lake Street in Gary ("the Lake Street property"). The trustee was the Lake County Land Trust ("Land Trust"). The trust was established in 1994. However, public real estate records in Lake County did not reflect Morgan's beneficial interest in the property.

[1] At the time of much of the litigation below, Morgan's last name was DeRosa. We will refer to her by her current name.

In March 2002, Morgan filed a Chapter 13 bankruptcy petition. On March 19, 2003, the Lake County Treasurer sold the Lake Street property to satisfy delinquent property taxes. All notices regarding the sale and its aftermath were sent to Land Trust, not Morgan. The Lake County Auditor issued a tax sale certificate to American Food Source, LLC, which later assigned the certificate to Converse. On December 29, 2003, Converse obtained and recorded a tax deed for the Lake Street property.

On March 21, 2005, Morgan filed a petition to set aside and vacate the tax sale of the Lake Street property. On August 19, 2005, the trial court denied the petition. Morgan thereafter initiated an adversary proceeding in the bankruptcy court against Converse, the Lake County Treasurer, and the Lake County Auditor, also challenging the validity of the tax sale. On January 18, 2007, while the adversary proceeding was pending, Morgan filed a second petition to set aside and vacate the tax sale. The Treasurer and Auditor did not object to setting aside the tax sale, and in fact entered into a settlement agreement with Morgan to that effect.[2] Converse, however, continued to object to setting aside the sale. On April 17, 2007, the trial court set aside the tax deed issued to Converse. Morgan subsequently dismissed the bankruptcy court adversary proceeding. Converse now appeals.

**Analysis**

When the owner of real property fails to pay property taxes, the property may be sold to satisfy the delinquent taxes. Schaefer v. Kumar, 804 N.E.2d 184, 191 (Ind. Ct.

[2] Counsel for the Lake County Treasurer, although nominally an appellant in this case, actually drafted the brief filed on Morgan's behalf.

App. 2004), trans. denied. The process by which property is sold is governed by statute, and a valid sale requires material compliance with those statutes. Id. A tax deed creates a presumption that a tax sale and all of the steps leading to the issuance of the tax deed were properly executed. Nieto v. Kezy, 846 N.E.2d 327, 337 (Ind. Ct. App. 2006). This presumption may be rebutted, however, by affirmative evidence to the contrary. Id.

There is no dispute here that the tax sale procedures outlined in the Indiana Code were followed. However, Morgan asserts that her filing of a bankruptcy petition before the tax sale occurred required that sale to be invalidated. Federal law governing bankruptcy preempts state law. Hammes v. Brumley, 659 N.E.2d 1021, 1027 (Ind. 1995). Indiana courts have recognized the supremacy of the federal courts in matters related to bankruptcy proceedings. Id.

The automatic stay provision of the Bankruptcy Code states in part:

> (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 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;
>
> (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
>
> (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

11 U.S.C. § 362.[3] Ordinarily, any action taken in violation of the stay is void and without effect. In re Calder, 907 F.2d 953, 956 (10th Cir. 1990).

Pursuant to the Bankruptcy Code, a debtor's estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (emphasis added). Under this language, every right of a debtor under a trust is included in the bankruptcy estate, unless the trust is a spendthrift trust. See In re Potter,

[3] Converse does not argue that any of the statutory exceptions to the automatic stay found in subsection 362(b) apply in this case.

228 B.R. 422, 424 (B.A.P. 8th Cir. 1999). There is no assertion that the trust at issue here was a spendthrift trust; thus, Morgan's beneficial interest in the Lake Street property under the 1994 trust clearly was a part of her bankruptcy estate.

Additionally, knowledge of a bankruptcy filing is irrelevant when considering whether an act has violated the automatic stay. See Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1204 (3rd Cir. 1991). "Actions taken in violation of the automatic stay are void and of no force or effect, even when there is no actual notice of the existence of the stay." In re Gagliardi, 290 B.R. 808, 814 (Bankr. D. Colo. 2003). Therefore, in determining the force and effect of the automatic stay, it is irrelevant whether any parties to the tax sale knew of Morgan's beneficial interest in the Lake Street property. See In re Taft, 262 B.R. 55, 58 (Bankr. M.D. Pa. 2001) (holding that unrecorded transfer of property to debtor was sufficient to include property in the bankruptcy estate under Section 541 and proceeding with tax sale of property violated the automatic stay).

Converse fails to present any cogent argument that the tax sale of the Lake Street property did not violate the bankruptcy automatic stay. It also cites no authority for the proposition that Morgan's attempts to set aside the tax deed were untimely. Instead, Converse argues generally that the trial court exceeded its equitable powers in setting aside the tax deed. It appears to us that the trial court had no choice but to do so. As noted, federal law trumps state law when it comes to bankruptcy matters. See Hammes, 659 N.E.2d at 1027. If there is to be any validation of an act that has violated the automatic stay, it must come from a bankruptcy court, not a state court. See Maritime,

959 F.2d at 1204. The trial court properly recognized this and set aside the tax deed, which was void because it was obtained in violation of the automatic stay in place after Morgan filed for bankruptcy.

## Conclusion

The trial court did not err in setting aside the tax deed issued to Converse. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.