

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE TENTH CIRCUIT**

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IN RE LARRY JORDAN JEFFERSON,  
Debtor.

BAP No.    WO-12-081

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LARRY JORDAN JEFFERSON,  
Appellant,

Bankr. No. 12-12179  
Chapter 13

v.

ORDER DISMISSING APPEAL AS  
MOOT

JOHN T. HARDEMAN, LAWTON  
ECONOMIC DEVELOPMENT  
AUTHORITY, ARVEST BANK, and  
CITY NATIONAL BANK,

October 22, 2012

Appellees.

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Before THURMAN, Chief Judge, NUGENT, and BROWN, Bankruptcy Judges.

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The matter before the Court is the Appellant Larry Jordan Jefferson's 1) Motion for Leave to Appeal ("Motion for Leave"), filed September 27, 2012; and 2) Motion for Stay Pending Appeal, filed October 18, 2012 ("Motion for Stay"). The Appellees Arvest Bank ("Arvest") and Lawton Economic Development Authority ("LEDA") filed Objections to the Motion for Leave (the "Objections") on October 10 and 11, 2012, respectively. On October 18, 2012, Appellant filed a Reply to Arvest's Objection.

Appellant filed his Notice of Appeal on October 1, 2012, appealing both the bankruptcy court's Order Granting Arvest Bank's Motion to Enforce Settlement Agreement, and its Order Granting Relief From Automatic Stay & Abandonment of Property, each entered on September 18, 2012 (collectively, the "Appealed Orders"). Appellant did not initially seek a stay of the Appealed Orders pending

appeal to this Court pursuant to Federal Rule of Bankruptcy Procedure 8005 prior to the filing of his instant Motion for Stay, which we note was required to be presented to the bankruptcy court in the first instance. With no stay in place, on October 8, 2012, the property at issue was sold.<sup>1</sup> Upon careful review of the parties' submissions and relevant legal authorities, the Court agrees with Appellees' contention that this appeal is now moot. As such, this appeal should be dismissed, with the Motion for Stay likewise denied as moot.

Federal law dictates that an appeal is moot when there is no case or controversy because some event has occurred post-appeal that makes it impossible for a court to grant any effectual relief whatever.<sup>2</sup> As this Court has previously indicated in *In re Egbert*,<sup>3</sup>

[a] case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome. A controversy is no longer “live” if the reviewing court is incapable of rendering effective relief or restoring the parties to their original position. . . . [I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant “any effectual relief whatever” to a prevailing party, the appeal must be dismissed.

It is well established that an appeal will be dismissed as moot if a debtor fails to obtain a stay pending appeal of a bankruptcy court order granting relief from the automatic stay and the moving creditor subsequently conducts a foreclosure sale, as the appellate court cannot grant any effective relief.<sup>4</sup>

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<sup>1</sup> See LEDA's Objection at 3, ¶ 4 (“On October 8, 2012, the District Court of Comanche County, Oklahoma, entered an Order Approving Sheriff's Sale in the Foreclosure Case. The Court ordered and adjudged that the sale be approved and confirmed and directed the Sheriff of Comanche County, Oklahoma, to make and execute a good and sufficient deed of the Foreclosure Property to LEDA. On October 10, 2012, the Sheriff's Deed dated October 8, 2012, conveying the Foreclosure Property to LEDA was recorded in the Office of the Comanche County, Oklahoma, Clerk at Book 6790, Pages 102-103.”).

<sup>2</sup> *In re Milk Palace Dairy, LLC*, 327 B.R. 462, 466-67 (10th Cir. BAP 2005).

<sup>3</sup> *In re Egbert Dev., LLC*, 219 B.R. 903 (10th Cir. BAP 1998).

<sup>4</sup> *Id.* at 905 (internal quotation marks and citations omitted). See also *In re Coones*, 56 F.3d 77, 1995 WL 316153, \*3 (10th Cir. 1995) (quoting *In re Baker & Drake, Inc.*, 35 F.3d 1348, 1351 (9th Cir. 1994) (“The classic example of

(continued...)

Further, we stated “[t]his Court is powerless to rescind the foreclosure sale on appeal and reinstatement of the stay would be meaningless. Since this Court would be unable to grant any effective relief even if we were to reverse the bankruptcy court’s Relief Order, we conclude that the appeal is moot.”<sup>5</sup> The circumstances presented here are the same as those presented in *Egbert*.

Appellant has not shown that the real property had any discernible exempt character and, because he did not obtain a stay pending this appeal, the property was sold at auction and is no longer property of the estate. If grounds exist to set aside the foreclosure sale under Oklahoma law, Appellant may seek to secure that remedy from the Oklahoma state court. There appears to be no applicable bankruptcy court remedy.

Based upon the undisputed facts, reversal of the Appealed Orders could neither restore the parties to their original positions nor grant any effective relief to Appellant, rendering this appeal moot. Accordingly, it is **HEREBY ORDERED THAT:**

- (1) This appeal is **DISMISSED AS MOOT**.
- (2) The Motion for Leave is **DENIED AS MOOT**.
- (3) The Motion to Stay is **DENIED as MOOT**.

For the Panel:



Blaine F. Bates  
Clerk of Court

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<sup>4</sup> (...continued)  
mootness in the bankruptcy context is a case in which the debtor has failed to seek a stay of foreclosure and the debtor’s property has been sold.”)).

<sup>5</sup> *Egbert*, 219 B.R. at 906.