

**UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa**

<b>In re: MARGARET A. FROEHLE,</b>	:	<b>Case No. 01-0328-CH</b>
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<b>Debtor.</b>	:	<b>Chapter 13</b>
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**ORDER – OBJECTION TO MOTION TO AMEND PLAN; MOTION FOR  
RELIEF FROM STAY AND OBJECTION THERETO**

Objection to Debtor’s Motion to Amend Plan and Creditor’s Motion for Relief from Stay and Objection Thereto were consolidated for an evidentiary hearing. The matters came before the court on September 11, 2001. Attorney Michael L. Jenkins appeared for Margaret A. Froehle; attorney Michael P. Mallaney appeared for Tax 58. At the conclusion of the hearing, the court took the matter under advisement. The court now considers the matters fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157(b)(1), 1334, and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (G), & (L). Upon review of the pleadings, evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052 .

**FINDINGS OF FACT**

1. On January 29, 2001, Margaret A. Froehle (hereinafter Debtor) filed a petition for relief under chapter 13 of the Bankruptcy Code.

2. On Schedule A, Real Property, Debtor scheduled an interest in real estate described in part as Lot 65 Park Forest Plat No. 1. The property is located at 2000 King Street, Des Moines, Polk County, Iowa (hereinafter the Real Estate). The Real Estate is Debtor's residence. She valued the Real Estate at \$58,000.00, and indicated that it was encumbered by a \$43,113.00 secured claim.

3. Debtor claimed the Real Estate exempt as her homestead under Iowa Code §§ 499A.18, 561.16, 561.19, and 561.20. She valued the exemption at \$50,000.00.

4. On Schedule D, Creditors Holding Secured Claims, Debtor scheduled Advanta Mortgage as having mortgage valued at \$43,113.00. Debtor also scheduled Tax 58 as having a statutory lien valued at \$2,787.00.

5. Debtor did not schedule any debts owed to the Polk County Treasurer for back property taxes.

6. On February 20, 2001, Tax 58 filed a proof of claim based on a tax certificate issued by the Polk County Treasure for real estate taxes.

7. On February 16, 2001, Debtor filed a chapter 13 plan proposing to pay 100% to her unsecured creditors over thirty-six months. The plan provided that the trustee make payments to Advanta Mortgage to cure an arrearage in mortgage payments of \$9,054.00. Debtor would make post-petition payments directly to Advanta Mortgage. The plan provided for regular payments to be made to Tax 58 in excess of any decrease in value of the security.

8. On March 5, 2001, the chapter 13 trustee filed an objection to Debtor's plan based in part of the failure of the plan to provide interest at the statutory rate of 2%

per month on Tax 58's claim. Neither Tax 58 nor Advanta Mortgage filed an objection to the plan.

9. At a hearing on April 9, 2001, the court sustained Trustee's objection and granted Debtor fourteen days to submit an amended plan.

10. Debtor filed a motion and amendment to the plan on April 23, 2001. The amendment provided that Tax 58 would receive 2% per month on the unpaid balance of its claim. Trustee was directed to accumulate sufficient funds to pay the claim in one lump sum prior to distributions of other claims except for Trustee's administrative expense. The amendment further provided that debtor would adjust her thirty-sixth payment to provide payment for any additional interest to Tax 58 and as well as to provide 100% payment to all allowed claims.

11. On May 5, 2001, Tax 58 filed an objection to the amended plan. Tax 58 claimed that it held a tax certificate issued by the Polk county Treasurer for 1996 taxes and that Debtor had no interest in the property because the redemption period had expired. It also filed a motion for relief from stay based on the same argument. Tax 58 submitted a Notice of Redemption dated January 11, 2001, indicating that the tax sale took place on June 15, 1998, and the right of redemption would expire ninety days from the completion of service. The notice indicated that it was served on Debtor and various other entities. Included on the service list was Bankers Trust Co. of CA. Advanta Mortgage did not appear on the service list.

12. On September 10, 2001, Bankers Trust Co. paid \$3,057.00 to the Polk County Treasurer's Office to redeem Debtor's homstead from the tax sale on June 15, 1998.

13. After continuances requested by both parties and a telephonic hearing on the motion for relief from stay, the matters were consolidated for hearing on September 11, 2001.

### **DISCUSSION**

The crux of Tax 58's position in both its motion for relief from stay and its objection to Debtor's plan is that the only interest in the Real Estate that came into the bankruptcy estate was the right of redemption. Tax 58 argues that once the ninety-day redemption period provided by Iowa Code § 447.9 expires, Debtor's rights in the property were extinguished. Tax 58 argues that the Eighth Circuit's decision in Johnson v. First Nat. Bank of Montevideo, 719 F.2d 270 (8th Cir. 1983) is analogous and should control the current matter.

Johnson involved the interpretation of 11 U.S.C. §§ 108 & 362 in relation to Minnesota foreclosure law. In that case, the husband and wife debtors were principal shareholders of two corporations involved in agricultural business pursuits. The corporations executed mortgages to the First National Bank of Montevideo containing clauses allowing the bank to sell the mortgaged property at public auction in the event of default. The debtors subsequently defaulted. First National commenced foreclosure proceedings and purchased the mortgaged property at a sheriff's auction.

Minn. Stat. § 580.23(2) provided the debtors with twelve months following the auction in which they could redeem the property by paying the sale price plus interest from the date of the sale to the purchaser. Approximately three weeks before the redemption period expired, the debtors filed a chapter 11 petition. Id. at 272.

After addressing issues of jurisdiction and the bankruptcy court's equitable authority under 11 U.S.C. § 105, the Eighth Circuit turned its attention to the automatic stay provisions of 11 U.S.C. § 362(a). In determining that the automatic stay did not prevent the bank from acquiring full title to the property, the circuit court first noted the well-established rule that "[p]roperty rights are created and defined by state law." Id. at 274 quoting Butner v. United States, 440 U.S. 48, 99 S. Ct. 914 (1979). "Unless some federal interest requires a different result, there is no reason why such interest should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." Id.

The circuit court found the long-settled rule in Minnesota is that a foreclosure extinguishes the mortgage and that the purchaser at a sheriff's sale acquires a "vested right to become the absolute owner of the property on the expiration of the redemption period, or in lieu thereof, to receive the payment of the purchase price plus interest." Id. The mortgagor retains a right of redemption plus rights to possession, rents, and profits during the redemption period. Id. Therefore, only the right of redemption passes to the bankruptcy estate.

The Eighth Circuit panel noted that 11 U.S.C. § 362(a) stays the enforcement of a judgment or any other act to obtain possession of the property of the bankruptcy estate. It

opined that a broad reading of the stay, under the circumstances of the case, would be consistent with the policies underlying the Bankruptcy Code. Id. However, it declined to interpret the section to stay the running of the redemption period because no additional affirmative act was needed to vest ownership of the property in the bank, and therefore, under the language of the section, there was not an act to stay. Id.

The United States District Court for the Northern District of Iowa has determined that Iowa foreclosure statute is almost identical to that of Minnesota. In re Lally, 51 B.R. 204 (N.D. Iowa 1985) (affirming the bankruptcy court). The Eight Circuit has also extended Johnson to Iowa foreclosure actions holding that a debtor's estate self-destructs when the default is not cured before the redemption period expires. Oulman v. Rolling Green, Inc., 851 F.2d 1032, 1033 (8th Cir. 1988).

Although the Iowa foreclosure statutes and tax sale statutes are similar, see Johnson v. Davis (In re Johnson), No. 98-4849 CH, Adv. No. 98-98223 slip op. at 6-8 (Bankr. S.D. Iowa August 25, 1999) (Judge Hill Dec. 319), there are significant differences. Of particular importance in this matter are the time restraints imposed on the tax certificate holder.

After one year and nine months from the date of the sale (or nine months in specific instances addressed by the Iowa Code), the purchaser may serve a notice of redemption on parties that claim an interest in the parcel described in the tax sale certificate. Iowa Code 447.9. The notice informs the parties that the right of redemption will expire in ninety days. Id. Notice of the expiration of redemption must be given to the titleholder, a mortgagee, and parties in actual possession of the real estate. Id. The

purchaser must file an affidavit with the county treasurer establishing that service was completed. Iowa Code § 447.12. After the redemption period expires the certificate holder must return the certificate and pay the appropriate deed and recording fees. Iowa code § 448.1. If the certificate is not returned within ninety days of the expiration of the redemption period, the treasurer shall cancel the certificate. Id. After the holder returns the certificate and pays the fees the treasurer shall record the tax deed. These actions must be completed within three years of the tax sale, or the sale is cancelled. Iowa Code § 446.37.

This court has recently examined Iowa tax sale law. In re Donovan, 266 B.R. 862 (Bankr. S.D. Iowa 2001). It is well settled in Iowa, that a purchaser of land at a tax sale does not acquire right to title, possession, or an interest in land until a tax deed is issued. City of Muscatine v. Northbrook Partnership Co., 619 N.W.2d 362, 366 (Iowa 2000); Witmer v. Gibbs, 13 N.W.2d 802, 804 (Iowa 1944). A tax sale certificate does not constitute an interest in land. Patterson v. May, 29 N.W.2d 547, 552 (Iowa 1947). It is a chattel, an inchoate right, a lien. Id.; Moffit v. Future Assurance Assoc., Inc., 140 N.W.2d 108, 113 (Iowa 1966). It entitles him to a tax deed after the requisites are met, and the time for redemption has expired. Id. The tax certificate holder acquires no interest in the property until a tax deed is acquired. Currington v. Blackhawk County, 184 N.W.2d 675, 676 (Iowa 1971). Therefore, it cannot be said that Debtor's estate self-destructs at the expiration of the redemption period.

Section 541(a) of the Bankruptcy Code provides that the commencement of a bankruptcy case creates an estate of all legal or equitable property interest of the debtor.

Congress intended the scope of § 541(a) to be broad. United States v. Whiting Pools, Inc., 462 U.S. 198, 204 (1983); N.S. Garrott & Sons v. Union Planters Nat. Bank of Memphis, (In re N.S. Garrott & Sons), 772 F.2d 462, 466 (8th Cir. 1985).

Accordingly, a debtor's interest in real property that has been exposed by a county treasurer to a tax sale passes to the bankruptcy estate. In Iowa, because the tax certificate holder acquires no interest in property until the tax deed is acquired, that interest is one of full ownership subject to a lien for taxes. See Currington, 184 N.W.2d at 675; Moffit, 140 N.W.2d at 113.

When a debtor commences a bankruptcy case an automatic stay arises. It is "a self-executing provision of the Code and begins to operate nationwide, without notice, once a debtor files a petition for relief." In re Schraff, 143 B.R. at 542. The stay prevents in pertinent part:

- (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;...

While the court is cognizant that the acts of filing an affidavit of completion of notice, return of a tax certificate, and payment of fees are not particularly onerous, they are nonetheless acts required under Iowa to obtain the ownership of property subject to a statutory tax lien. Therefore, the court finds that they are acts to obtain possession and control of property of the estate; they are acts to enforce a lien against property of the



estate; and they are acts to enforce against property of the debtor a lien securing a claim that arose before the commencement of the case.

The court notes that the Eighth Circuit in Johnson alludes that a different result is appropriate where an affirmative action is required to be taken by a creditor or a third party in order to transfer full title of the property upon the expiration of the redemption period. In that instance, the automatic stay would prevent such action from occurring. Johnson, 719 F.2d at 277; see also 2 Lawrence P. King, Collier on Bankruptcy, ¶ 108.03[3] (15th ed. 2002). Accordingly, the court finds its analysis in In re Donovan and the present case to be consistent with the law of the Eighth Circuit.

In this case, Tax 58 personally served notice to redeem on Debtor and person in possession on January 21, 2001. Debtor filed a chapter 13 petition on January 29, 2001, and the automatic stay arose at that time. The stay prevented Tax 58 from proceeding further to obtain a tax deed and the accompanying ownership of the property.

Tax 58 objected to its treatment under the amended plan on the basis that Debtor's right to redeem had expired, and Debtor no longer had an interest in the real estate. No other objections to the plan have been filed.

The record now reflects that Bankers Trust Co. paid \$3,057.00 to the Polk County Treasurer's Office on September 10, 2001, to redeem Debtor's homestead from the tax sale. The record is unclear as to whether Tax 58 has received those funds.

The amended plan states that Tax 58's claim represents the sum necessary to redeem Debtor's Homestead. The amended plan provides for the full payment of the claim plus statutory interest of two percent per month until the claim is satisfied. Trustee

is directed to accumulate sufficient funds to satisfy the tax lien along with the accrued interest and pay the claim in one lump sum. The plan does not expressly identify to whom the payment is to be made, but based on the record and the use of the word redeem, it appears that Debtor intended the funds to be paid to the Polk County Treasurer to redeem the property.

Based on the court's determination of Debtor's ownership in the property, Tax 58's objection to plan must be denied. However, since the plan provides for payment to the Polk County Treasurer, and it appears from the record that the Polk County Treasurer has received payment to redeem the property, the plan must be amended to identify specifically who is to receive payment.

Tax 58 also based its motion for relief from stay upon the expiration of the redemption period and lack of ownership argument. It did not suggest that Debtor lacked equity in the property or that it was not adequately protected. Since the court has rejected Tax 58's argument, the motion for relief from stay will be denied.

Tax 58 will not suffer from the court's decision. As the Iowa Supreme Court stated in an earlier tax certificate case, it "will receive the amount of money [it] invested in [its certificate]. [It] will receive the penalty that the law provides. [It] will receive interest at the high rate specified in the statute. In other words, the investment will be a good one for [it]." Bates v. Pabst, 273 N.W. 151, 155 (Iowa 1937).

Finally, the court notes that the notice to redeem states that tax sale was conducted on June 15, 1998. Therefore, pursuant to Iowa Code § 448.1, Tax 58 needed to finish all the steps necessary to acquire a tax deed by June 15, 2001. The record

reflects that Debtor and “person in possession of 2000 King Ave., Des Moines” were personally served with a notice to redeem from tax sale on January 21, 2001. The record does not reveal when and if Bankers Trust of CA was served. Absent intervention by the automatic stay, the redemption period would expire on April 21, 2001. Tax 58’s time to acquire and record a tax deed would expire on July 20, 2001, some two months before the evidentiary hearing occurred.

Neither Debtor nor Tax 58 raised the issue of the time period expiring for the acquisition of the tax deed. Both parties agreed to the evidentiary hearing. Each requested continuances that culminated in the scheduled hearing date on September 11, 2001.

**ORDER**

IT IS ACCORDINGLY ORDERED as follows:

1. Tax 58’s Motion for Relief from Stay is DENIED.
2. Tax 58’s objection to the amended plan is OVERRULED and DENIED.
3. The Amended Chapter 13 Plan filed on April 23, 2001, is not confirmed.
4. Debtor shall file an amended plan on or before June 14, 2002.
5. Failure on the part of the debtor to file an amended plan on or before June 14, 2002, shall be cause for this case to be dismissed without further notice and hearing.

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RUSSELL J. HILL, JUDGE  
U.S. BANKRUPTCY COURT