

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN RE:**

**CLARENCE JIMERSON,**

**Debtor.**

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**DEED CO, LLC,**

**Appellant,**

**v.**

**CLARENCE JIMERSON,**

**Appellee.**

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**1:17-cv-513-WSD**

**OPINION AND ORDER**

This matter is before the Court on Deed Co, LLC’s (“Deed Co” or “Appellant”) Appeal [Bankr. 52] from the January 26, 2017, Memorandum Opinion and Order Confirming Plan [Bankr. 49] (“Confirmation Order”) of the United States Bankruptcy Court for the Northern District of Georgia in In re Clarence Jimerson, Case No. 16-60838-PMB, following a November 10, 2016, hearing for confirmation of a Chapter 13 plan of reorganization proposed by the

Debtor, Clarence Jimerson [Bankr. 46].<sup>1</sup> The Confirmation Order overrules Deed Co's Objection and confirms Debtor's reorganization plan. In particular, the Order permits Debtor to redeem property, purchased by Deed at a tax sale, through the Chapter 13 plan proposed by the Debtor.

## I. BACKGROUND

The pertinent facts of this case are undisputed. Debtor purchased real property at 1256 Simpson Street, NW, Atlanta, Georgia 30314 (the "Property")<sup>2</sup> in March 1995 and conveyed the Property via quitclaim deed to his sister, Annie M. Jimerson. Because *ad valorem* taxes on the Property were not paid, the Fulton County Tax Commissioner levied and sold the Property at a tax sale on February 3, 2015. Deed Co purchased the Property at the tax sale for \$16,958.27.<sup>3</sup>

Deed Co served a "Barment Notice" in accordance with O.C.G.A. § 48-4-45, informing Annie Jimerson, and the other parties required to receive notice, that the recipients had until June 27, 2016, to redeem the Property pursuant to O.C.G.A. § 48-4-40. A week before that deadline, Annie Jimerson conveyed the Property back to the Debtor via quitclaim deed. Two days later, Debtor filed this

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<sup>1</sup> Citations to documents filed in In re Clarence Jimerson, Case No. 16-60838-PMB (Bankr. N.D. Ga.) (the "Proceeding"), are indicated as "[Bankr. ]."

<sup>2</sup> Simpson Street is now Joseph E. Boone Boulevard.

<sup>3</sup> The Debtor scheduled the Property as having a fair market value of \$169,200.

Chapter 13 bankruptcy case. Debtor's proposed reorganization plan invoked the right to redeem the Property and proposed to pay the redemption amount of \$22,045.75 in full over the term of the plan. Deed Co objected to the plan, arguing that Debtor's right to redeem the Property expired sixty days after he filed his bankruptcy petition. ([Bankr. 13], [Bankr. 45]).

After conducting a hearing [Bankr. 17], the bankruptcy court issued an Order [Bankr. 49] confirming Debtor's proposed plan as it relates to the Property. The Confirmation Order addresses two key issues: "(1) whether the Debtor, having been transferred an interest in the Property after the tax sale and after the delivery of the Barment Notice, has a right of redemption under Georgia law and, if so, (2) whether the Debtor can pay the redemption amount over the term of his plan." ([Bankr. 49] at 4). The bankruptcy court concluded that the Debtor has a right of redemption under Georgia law and can pay the redemption amount over the term of his plan. ([Bankr. 49] at 5-7). Deed Co appeals. ([Bankr. 52]).

## **II. DISCUSSION**

### **A. Jurisdiction**

This Court has jurisdiction to hear appeals from final decisions. Bullard v. Blue Hills Bank, 135 S. Cr. 1686, 1691 (2015). The Confirmation Order

confirming the Debtor's Chapter 13 bankruptcy plan is a final appealable order.

Id.

B. Legal Standard

“On an appeal the district court . . . may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings.” Fed. R. Bankr. P. 8013. The focus of this appeal is the bankruptcy court's interpretation and application of the Bankruptcy Code and Georgia state law governing tax sales and the right of redemption. The Court reviews, *de novo*, the bankruptcy court's conclusions of law. In re Rider, 31 F.3d 1102, 1104 (11th Cir. 1994).

C. Legal Background for Tax Sales in Georgia

Under Georgia law, real property becomes encumbered by a tax lien each year. O.C.G.A. § 48-2-56(a). If the property owner fails to pay taxes on the property, the tax commissioner may authorize a tax sale in accordance with O.C.G.A. § 48-4-1, et. seq. The tax sale purchaser obtains a deed to the property. O.C.G.A. § 48-4-6; Land USA, LLC v. Georgia Power Co., 297 Ga. 237, 239–40, 773 S.E.2d 236, 239 (2015). “This deed, however, does not provide the tax sale purchaser with absolute title to the property, but rather gives the purchaser a defeasible fee interest therein with the title remaining subject to encumbrance for

at least one year after purchase due to other interested parties' statutory rights of redemption." Land USA, 773 S.E.2d at 239. O.C.G.A. § 48-4-40 defines the right of redemption:

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes or for special assessments, the defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of the amount required for redemption, as fixed and provided in Code Section 48-4-42:

- (1) At any time within 12 months from the date of the sale; and
- (2) At any time after the sale until the right to redeem is foreclosed by the giving of the [barment] notice provided for in Code Section 48-4-45.

"If the property is redeemed, the tax sale is essentially rescinded and a quitclaim deed is executed by the tax sale purchaser back to the owner of the property at the time of levy and sale." Land USA, 773 S.E.2d at 239 (quoting National Tax Funding, L.P. v. Harpagon Company, LLC, 586 S.E.2d 235 (2003)).

D. Analysis

Appellant does not dispute the bankruptcy court's finding that the Debtor possessed a right to redeem pursuant to O.C.G.A. § 48-4-40 by virtue of acquiring the Property from Annie Jimerson before the redemption deadline. (Br. at 4). This appeal turns on whether the Debtor can exercise the right of redemption by paying the redemption amount over time pursuant to a Chapter 13 reorganization plan. As

recognized by the bankruptcy court, “[c]ourts in this District are split as to whether a debtor who files a Chapter 13 bankruptcy case between the delivery of a barment notice under O.C.G.A. § 48-4-45 and the deadline for redemption arising from that barment notice can pay the redemption amount over time pursuant to a Chapter 13 plan, or whether instead the debtor must pay the redemption amount in full by a date that is no later than sixty (60) days after the filing date of the bankruptcy case.” ([Bankr. 49] at 6).

1. Cases Allowing Payment of Redemption Amount Over Time

Following one line of cases, the bankruptcy court held that the Property is part of the bankruptcy estate, noting that “[t]he tax sale purchaser only holds an inchoate title to such property” and the debtor “retains all the remaining rights in the ‘bundle of right,’ including, *inter alia*, the right to possession, use, and proceeds.” ([Bankr. 49] at 8, citing Francis v. Scorpion Group, LLC (In re Francis), 489 B.R. 262 (Bankr. N.D. Ga. 2013) (Hagenau, J.)). The bankruptcy court likened the rights of the debtor to a borrower under a deed to secure debt who can modify his repayment obligations in a Chapter 13 plan. ([Bankr. 49] at 8 (“These are the same rights that a borrower would hold against a lender under a deed to secure debt in Georgia, and property subject to a security deed would, without a doubt, be considered property of the estate.”)). Having found that the

Property is property of the Debtor's Chapter 13 estate, the bankruptcy court concluded that Deed Co should be treated as the holder of a secured claim because "the interest that a tax deed holder possesses is the same as the interest held by the non-recourse mortgagee in Johnson [v. Home State Bank], 501 U.S. 78 (1991)]" that held a secure claim subject to a Chapter 13 plan. (Id. at 9, citing In re Francis, 489 B.R. at 267). The bankruptcy court reasoned that "[a]lthough the applicable state law might require a lump-sum payment, Chapter 13 of the Bankruptcy Code allows a debtor to pay debts over time, and the Bankruptcy Code supersedes state law." ([Bankr. 49] at 15); In re Pittman, 549 B.R. 614, 629-30 (Bankr. E.D. Pa. 2016); In re Francis, 489 B.R. at 269-70; In re McKinney, 341 B.R. 892, 899 (Bankr. C.D. Ill. 2006), aff'd Salta Group, Inc. v. McKinney, 380 B.R. 515 (C.D. Ill. 2008); In re Bates, 270 B.R. 455 (Bankr. N.D. Ill. 2001).

2. Cases Requiring Payment of Redemption in Full

Appellant asserts the Court should follow a different line of cases holding that the tax sale property does not become part of the bankruptcy estate but the personal property right to redeem does become part of the estate. ([9] at 10, citing In re: Baker, No. 08-83693-JEM, Doc. #33 (Bankr. N.D. Ga., Feb 24, 2009); In re: Drummer, 457 B.R. 912 (2011); In re Edwards, No. 14-51366-CRM, Doc. #35 (Bankr. N.D.Ga. Nov. 13, 2014) and In re Callaway, No. 14-64446-CRM, Doc.

#36 (Bankr. N.D.Ga. Feb. 15, 2015), aff'd Case No. 1:15-cv-00570-0DE (N.D. Ga., Oct. 30, 2015)). Those cases reason that “the right of redemption is not an interest in the Property, but rather only a right to acquire the Property by redeeming it.” In re: Baker, at \*4. As explained in Edwards, “[b]ecause the record owner no longer has title to the tax sale property, it does not become part of the bankruptcy estate if the owner files bankruptcy.” Edwards, at \*5. Because the personal property right of redemption is part of the bankruptcy estate, the statutory redemption period is subject to a 60-day extension under 11 U.S.C. § 108(b) if less than 60 days remain in the redemption period when the debtor files for bankruptcy. Id. at 7. But “section 108(b) is the sole section of the Bankruptcy Code governing the debtor’s rights in the property” and it “leaves no room for the debtor to extend further the redemption period through a plan.” Edwards, at \*11. “Allowing a debtor to pay the redemption price over time through a chapter 13 plan would thus modify the state law requirement to pay the redemption price in full within the timeframe and would enlarge the debtor’s property rights beyond those specifically set forth by state law and by Congress under section 108(b).” Id. at 14; Callaway, at \*11-12; In re Froehle, 286 B.R. 94, 103 (8th Cir. B.A.P. 2002); In re Mangano, 253 B.R. 339, 344-45 (Bankr. D.N.J. 2000).



3. Mr. Jimerson's Bankruptcy Estate

After reviewing the line of cases relied on by the bankruptcy court and the line of cases Appellant cites to the contrary, the Court overrules the bankruptcy court's Confirmation Order and holds that Mr. Jimerson's right of redemption is not subject to modification in a Chapter 13 plan. The bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." Butner v. United States, 440 U.S. 48, 55 (1979).

The Court agrees with the reasoning of those cases holding that, while the Bankruptcy Code defines "claim" broadly, a tax sale purchaser's interest is not a secured claim subject to modification under Chapter 13. Georgia law strips the owner of legal title upon a tax sale and makes "clear that any tender after the time allowed by law for redemption after a tax sale is without effect." Edwards, at \*14; Nat' 1 Tax Funding, 277 Ga. at42; see Commercial Federal Mortgage Corp. v. Smith, 85 F.3d 1555 (11th Cir.1996) (rejecting argument that "11 U.S.C. § 1322(b) permits a debtor to exercise his state statutory right of redemption in a Chapter 13

plan by ‘curing’ a default and ‘reinstating’ a mortgage after a valid foreclosure sale of his property”). As was the case in Smith under Alabama law, the only way to exercise a statutory right of redemption under Georgia law is for the debtor to make a lump sum payment of the redemption amount (i.e. the entire purchase price paid at the tax sale plus taxes, any special assessments, and a premium). O.C.G.A § 48-4-42; Edwards, at \*14. Redemption is as a practical matter a process by which a debtor can require the transfer of title back to him if he meets the hard redemption deadline set out in O.C.G.A § 48-4-40.

At the time Appellant filed for bankruptcy, the right to redeem had not expired and the right to redeem became part of the bankruptcy estate. In re Callaway, No. 1:15-cv-00570-0DE, \*11 (N. D. Ga., Oct. 30, 2015), citing In re Smith, 85 F.3d at 1558); Edwards, at \*14-15. That right of redemption is subject to a sixty day extension under 11 U.S.C. § 108(b). Section 108(b) states that “if applicable nonbankruptcy law . . . fixes a period within which the debtor . . . may . . . cure a default . . . and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--(1) the end of such period, . . .; or (2) 60 days after the order for relief.” While filing a petition for bankruptcy extends the right of redemption sixty days under Section 108(b), the tax sale purchaser does not hold a secured claim

subject to modification under Chapter 13. Id.; see In re Froehle, 286 B.R. at 103 (“once the Notice of the Right of Redemption is served upon the appropriate parties, the rights of the parties are fixed and the Bankruptcy Code does not toll the running of the redemption period, subject only to the additional 60 days granted pursuant to § 108(b)”). It simply extends the hard deadlines to redeem set out under Georgia law. It does not change that the Debtor gets an interest in the property only if the Debtor redeems by the extended date for redemption.

The bankruptcy court found that “[f]rom the Debtor’s perspective, the Debtor holds the Property subject to an *obligation* to pay the Redemption Amount or forfeit all of its remaining rights to the Property, and therefore, as the court in Scorpion [(In re Francis)] found, Deed Co has a claim secured by a lien.”

([Bankr. 49] at 11 (emphasis added)). But the Georgia code makes clear that the redemption is an option, not an obligation. O.C.G.A. § 48-4-40 (“the defendant . . . may redeem the property from the sale by the payment of the amount required for redemption”). As explained by Judge Evans in affirming Callaway and rejecting the reasoning in Francis, upon which the bankruptcy court relied in this case:

Appellant’s and the Francis court’s rationale are that the debtor has an obligation to pay the redemption price, which is enforceable by the tax-sale purchaser’s right to foreclose on the Property. Under Georgia law however, it is the tax-sale purchaser who has an enforceable

obligation: to quitclaim the deed back to the debtor if the debtor pays the redemption price. See O.C.G.A. § 48-4-44 (“In all cases where property is redeemed, the purchaser at the tax sale shall make a quitclaim deed to the defendant . . .”).

In re Callaway, Case No. 1:15-cv-00570-0DE, \*12 (N. D. Ga., Oct. 30, 2015). The bankruptcy court’s comparison of a tax sale purchaser to a mortgagee is inconsistent with the nature of redemption and converts it to something that it is not.

Contrary to the bankruptcy court’s conclusion, that the debtor in Georgia retains the right of possession after a tax sale, unlike the mortgagee in Smith, and that the tax sale purchaser is in a similar position as the non-recourse mortgagee in Johnson, does not alter the conclusion. That Alabama law required the mortgagor to vacate the property after the foreclosure sale to preserve the right of redemption did not factor into the Eleventh Circuit’s analysis. Instead the Smith Court focused on (1) the foreclosure sale purchaser holding legal title, (2) the statutory nature of the right of redemption, (2) Alabama law’s requirement for a lump sum cash payment, and (4) the negative policy implications of allowing modification of the right of redemption under a Chapter 13 plan that is filed after a foreclosure sale as expressed in In re Glenn. Smith at 1559-60, discussing In re Glenn, 760 F.2d 1428, 1435 (6th Cir. 1985).

The Eleventh Circuit also distinguished In re Saylor, a case similar to

Johnson. In re Saylors held that a Chapter 13 plan could cure a home mortgage arrearage when the underlying mortgage debt had been discharged through a Chapter 7 proceeding, as was the case in Johnson. The Eleventh Circuit explained, the “In re Saylors debtor still retained his equitable right of redemption, because, although there had been a Chapter 7 discharge of the debt, there had been no foreclosure sale.” In re Smith at 1560. The Eleventh Circuit distinguished between a debt transformed into a nonrecourse obligation via Chapter 7, which is modifiable under Chapter 13, and a right of redemption after foreclosure sale, which is not modifiable. Id. The Court stated, “we did not hold [in In re Saylors] that the bankruptcy court could modify the terms of a statutory right of redemption.” Id. Here, the bankruptcy court cannot change the nature and legal operation of a redemption. Johnson does not alter the analysis.

The policy concerns cited in Smith for holding that a Chapter 13 plan cannot modify the right of redemption under Alabama law apply equally here. The state has a strong interest in preserving the statutorily defined property interest granted tax deed purchasers.<sup>4</sup> Subjecting tax deed purchasers to potential alteration of their statutorily defined property rights by Chapter 13 reorganization would necessarily

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<sup>4</sup> In contrast, the federal government has little interest in encouraging debtors to acquire investment properties on the eve of a bankruptcy filing only to alter the terms of the tax sale through a Chapter 13 plan shortly thereafter as Mr. Jimerson did here.

curb investments in tax deeds and undermine the localities ability to collect delinquent tax revenue. Failure to have a fixed date for exercising redemption rights “brings with it the very serious danger that bidding at the sale itself, which should be arranged so as to yield the most attractive price, will be chilled; potential bidders may be discouraged if they cannot ascertain when, if ever, their interest will become finalized. In re Glenn, 760 F.2d at 1436. Where a good faith purchaser buys real property at a tax sale may do so “with the knowledge that the [debtor] retains a one-year statutory right of redemption, he does not purchase with the knowledge that if the [debtor] files for bankruptcy, the redemption period under a Chapter 13 plan will be extended, thus further clouding the purchaser’s title to the property.” In re Smith at 1560 n.5 (citing In re Thompson, 894 F.2d 1227, 1230 (10th Cir. 1990) (“We hesitate to further cloud the interests and expectations of a third-party purchaser through an expansive right of bankruptcy cure.”)).

Title here vested fully in Deed Co upon expiration of the sixty-day extension provided by Section 108(b). Deed Co does not have a “claim” to the Property that is subject to a Chapter 13 plan.

#### 4. Deed Co’s Filing of a Claim

Jimerson argues that Deed Co “waived their right to file the above styled appeal because they have filed a Proof of Claim in Appellee’s Chapter 13 case”

and “has received and accepted from the Chapter 13 Trustee the sum of \$2,281.38 and . . . will receive a payment each month until their Claim is paid in full.” ([10] at 10.<sup>5</sup> Deed Co asserts that “Jimerson has waived the argument of waiver” by “fail[ing] to raise the issue of whether Deed Co’s filing a claim on February 3, 2017, precluded it from appealing the Confirmation Order on February 9, 2017, before the bankruptcy court or to designate it as an issue to be considered on appeal by this Court.” ([11] at 5-6). Deed Co further argues that “[n]o evidence exists in the appellate record that the Trustee has made any disbursements under the Plan to any party, much less that Deed Co has negotiated any checks that may have been disbursed, which it has not done.” (Id.)

The Court declines to engage in initial fact finding on appeal. In re JLJ Inc., 988 F.2d 1112, 1116 (11th Cir. 1993) (“If the bankruptcy court is silent or ambiguous as to an outcome determinative factual question, the case must be remanded to the bankruptcy court for the necessary factual findings.”). On remand, the bankruptcy court is directed to determine to what extent Deed Co has received payment for any claim and consider what impact, if any, that has on Deed Co’s ability to challenge the bankruptcy court’s Confirmation Order.

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<sup>5</sup> Appellee subsequently moved to supplement his brief to include the Bankruptcy court’s recent decision in In re Nechanta Denis Alexander, Case No. 17-63938-MGD. Deed Co did not object to the motion to supplement and the Court grants the motion.

### III. CONCLUSION


Having reviewed *de novo* the bankruptcy court's legal conclusions, the Court finds that the bankruptcy court erred in holding that, as a tax sale purchaser, Deed Co held a secure claim subject to modification under Chapter 13 of the U.S. Bankruptcy Code.

Accordingly, for the foregoing reasons,

**IT IS HEREBY ORDERED** that Appellee's Motion to Supplement Appellee's Brief [12] is **GRANTED**.

**IT IS FURTHER ORDERED** that Deed Co's Appeal is **GRANTED**. The January 26, 2017, Memorandum Opinion and Order Confirming Plan [Bankr. 49] of the United States Bankruptcy Court for the Northern District of Georgia in In re Clarence Jimerson, Case No. 16-60838-PMB, is **REVERSED**. The Clerk of the Court is **DIRECTED** to **REMAND** this action for proceedings consistent with this opinion.

**SO ORDERED** this 22nd day of January, 2018.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE