

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division**

**IN RE:**

**SHAG'S PROPERTIES, LLC,**

**Case No. 08-50355-11**

**Debtor**

**MEMORANDUM DECISION AND ORDER**

At Harrisonburg in said District this 14th day of July, 2008:

This matter is before the court on a Motion to Reopen Case filed by a creditor, United Bank (herein "Creditor"), of the above-captioned Debtor, Shag's Properties, LLC (herein "Debtor"). After consideration of the facts of this case as well as the arguments as presented by counsel for the Creditor at the hearing on the matter, the Motion to Reopen Case is DENIED for the reasons stated herein.

**Facts**

On April 11, 2008, the Debtor filed a petition for relief pursuant to Chapter 11 of the United State Bankruptcy Code. The court entered an order of deficiency on April 14, 2008 requiring that certain schedules, a statement of financial affairs, a summary of schedules, and a summary of liabilities be filed with the court by April 28, 2008. That same day, the court entered another order of deficiency stating that the petition filed with the court was missing the Debtor's signature, which was corrected by an amended petition entered April 24, 2008. An order dismissing the case was entered on May 8, 2008, for failure to timely correct the deficiencies noticed in the court's order of deficiency dated April 14, 2008.

Prior to the Debtor filing for bankruptcy protection, United Bank scheduled an auction of certain parcels of real estate owned by the Debtor on which United Bank held deeds of trust. Although the Debtor filed for bankruptcy protection on April 11, 2008, counsel for the Creditor was not informed of the filing prior to the auction on April 12, 2008. Currently, the Creditor has secured purchase agreements on the properties auctioned on April 12, 2008, but is unable to consummate the sale of those properties without validation of the bankruptcy court that the foreclosure sales of the properties in question are valid despite the bankruptcy filing. A validation by the bankruptcy court would enable the purchasers to obtain title insurance on the properties.

Although counsel filed a notice of appearance on behalf of the Creditor in this case prior to dismissal and filed a motion to dismiss that was docketed just after the order dismissing the case was entered, he did not file a motion seeking annulment of the automatic stay. A review of the docket indicates that he has now filed since the hearing upon the present Motion to Reopen Case a motion seeking annulment of the automatic stay.

### **Discussion**

This court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this court by order from the district court on July 24, 1984.

In this case, the Creditor has requested that the court reopen the above-captioned case that was dismissed for failure to timely file certain schedules and other required documents. Pursuant to Bankruptcy Code section 350(b), “A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” 11

U.S.C. § 350(b) (2006). But, a case cannot be reopened pursuant to section 350(b) unless it was closed pursuant to section 350(a), which requires full administration of the case. See In re Archer, 264 B.R. 165, 168 (Bankr. E.D. Va. 2001). Section 350(b) does not apply to a dismissed case. Id.; 3 Collier on Bankruptcy ¶ 350.03 (Alan N. Resnick & Henry J. Sommer eds., 15<sup>th</sup> ed. rev.). Because the Debtor's case was dismissed, the case cannot be reopened pursuant to section 350(b). A dismissal, therefore, can only be undone through an appeal or a motion under Bankruptcy Rule 9023 or 9024.

In seeking validation of the purchase agreements entered into at the April 12, 2008 auction, the Creditor cites Bankruptcy Code section 549(c) for the proposition that a bankruptcy trustee may not avoid a postpetition transfer of an interest in real property to a good faith purchaser without actual or deemed notice of the bankruptcy case. In this instance, parties that entered into the purchase agreements at the foreclosure auction are not protected by section 549(c) because there has been no "transfer of an interest in real property" within the meaning and intent of such section. Collier on Bankruptcy ¶ 549.06 (15<sup>th</sup> ed. rev.) notes that the purpose of this section is to protect purchasers of real estate who purchase real estate from bankruptcy debtors after filing without knowledge of such filing and that it should be narrowly construed. While it might have some application if the foreclosure sales had been fully consummated before knowledge of the bankruptcy filing was acquired, that is not what occurred here. Indeed, it is the bidders at such foreclosure sales, or their prospective title insurers, having become aware of the bankruptcy filing before closing on their purchasers, want a court order confirming their good titles before they are willing to pay. They have simply made successful bids to purchase the properties, not actually paid for them before learning of the bankruptcy filing. The proper

procedure in such a situation is a motion to the court seeking annulment of the automatic stay retroactive to the time of filing. Under the circumstances of this case any such motion filed ought to be served upon all known creditors and other parties in interest in the case.

**Conclusion**

Bankruptcy Code section 350(b) does not apply to cases that have been dismissed. The proper remedy for one seeking some additional action by the Court in a case which has been dismissed is a timely and correctly grounded motion to vacate the dismissal order. Accordingly, it is

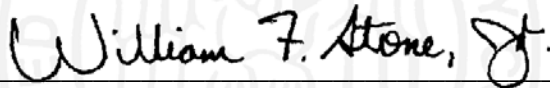
**ORDERED:**

That the Creditor's Motion to Reopen the above-captioned bankruptcy case is DENIED. It is:

**FURTHER ORDERED:**

That for cause shown, the Movant pursuant to Bankruptcy Rule 8002 ( c ) shall have thirty (30) days to note an appeal to this decision and order.

Copies of this decision and order are directed to be sent to Counsel for the Movant, Mark B. Callahan, Esquire; to Counsel for the Debtor, William L. Stables, Jr., Esquire, and to the Trustee, Herbert L. Beskin, Esquire.



William F. Stone, Jr.

William F. Stone, Jr.  
U. S. Bankruptcy Judge