

So Ordered.

Dated: February 6th, 2019



Frederick P. Corbit
Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

RAUL LOPEZ,

Debtor.

Case No. 18-03279-FPC13

**MEMORANDUM DECISION
REGARDING STAY MOTION**

Wells Fargo Bank, N.A. (“Wells Fargo”) requested relief from the Bankruptcy Code’s automatic stay or an order confirming the stay does not apply so it may evict Raul Lopez from his home [ECF No. 9]. Wells Fargo, seeking to record a trustee’s deed to complete a pre-petition trustee’s sale, argues Mr. Lopez no longer had a legal or equitable interest in the property at the time he filed his chapter 13 bankruptcy petition. Mr. Lopez objected to Wells Fargo’s motion, asserting he still owns his home because the steps required to complete the sale under Washington’s Deeds of Trust Act were not performed before he filed his petition.

1 At the hearing on the motion, Wells Fargo, perceiving a conflict in the case
2 law regarding the impact of a post-sale bankruptcy filing, asked to bifurcate its
3 request to confirm the stay does not apply from its request to lift the stay for cause.¹
4 The court grants the request to bifurcate, and therefore this opinion addresses only
5 whether the transfer of property was complete—and thus whether the automatic stay
6 was in effect as to Wells Fargo—before Mr. Lopez filed his petition.

7 **FACTS**

8 Mr. Lopez signed a deed of trust to his home to secure a loan made by Wells
9 Fargo. Mr. Lopez defaulted on the loan, and Wells Fargo instructed the trustee for
10 the deed of trust to commence a non-judicial foreclosure under Washington's Deeds
11 of Trust Act.² On November 30, 2018, at 10:20 a.m., the trustee held a trustee's sale
12 of the home. Wells Fargo was the highest bidder. Later that same day, at 2:21 p.m.,
13 Mr. Lopez filed a chapter 13 bankruptcy petition before the trustee could deliver a
14 trustee's deed.³

15 On December 10, 2018, prior to delivering or recording the trustee's deed,
16

17 ¹ A final hearing on the motion for relief from stay has been scheduled. However, Wells Fargo
18 indicated it may not continue to seek relief from stay for cause if this court concludes the transfer
of the property was not completed and if, prior to the final hearing, Mr. Lopez can confirm a
chapter 13 plan that provides for full payment to Wells Fargo.

19 ² Wash. Rev. Code ("RCW") § 61.24.

20 ³ At a status conference, counsel for Wells Fargo acknowledged the trustee's deed was not
delivered prior to Mr. Lopez filing his bankruptcy petition [ECF No. 46].

1 Wells Fargo moved for relief from stay or for an order confirming no stay was in
2 effect. Wells Fargo's arguments on its motion and at the January 24, 2019 hearing
3 were based on the allegation that Mr. Lopez had no right to continued occupancy of
4 his home following completion of the trustee's sale.

5 ISSUE

6 Does a debtor retain an interest in real property if the debtor files a bankruptcy
7 petition after a trustee conducts a foreclosure sale but prior to the trustee delivering a
8 deed to the purchaser?

9 DISCUSSION

10 Resolving this issue requires analyzing the interplay between two Washington
11 statutes. RCW 64.04.010 directs that "[e]very conveyance of real estate, or any
12 interest therein . . . shall be by deed." RCW 61.24.050(1) provides:

13 Upon physical delivery of the trustee's deed to the purchaser, . . . the
14 trustee's deed shall convey all of the right, title, and interest in the real
15 and personal property sold at the trustee's sale which the grantor had or
16 had the power to convey at the time of the execution of the deed of
17 trust. . . . [I]f the trustee accepts a bid, then the trustee's sale is final as
of the date and time of such acceptance if the trustee's deed is recorded
within fifteen days thereafter. After a trustee's sale, no person shall
have any right, by statute or otherwise, to redeem the property sold at
the trustee's sale.

18 In arguing that a debtor such as Mr. Lopez cannot file for bankruptcy
19 post-sale and expect the property to be a part of the bankruptcy estate, Wells
20 Fargo ignores the first sentence of RCW 61.24.050(1), instead relying on the

1 final two sentences in isolation. Wells Fargo's argument overlooks the proviso
2 in the first sentence of RCW 61.24.050(1): a conveyance occurs "[u]pon
3 physical delivery of the trustee's deed to the purchaser." Moreover, RCW
4 64.04.010 also requires a deed to convey real property. Thus, under
5 Washington law, the general rule is a transfer of an interest in real property
6 cannot occur absent delivery of a deed.

7 The last two sentences of RCW 61.24.050(1) merely provide a trustee's
8 sale is final as of the date and time of acceptance of a bid only if the trustee's
9 deed is recorded within fifteen days. The relation back to date of sale clause is
10 premised upon delivery of the deed. In other words, if the trustee's deed is not
11 physically delivered, there was no conveyance of the real property under
12 Washington law.

13 Here, there was no delivery of the trustee's deed prior to the filing of
14 the bankruptcy petition, meaning there was no pre-petition conveyance of the
15 property. As such, Mr. Lopez still had an interest in his home at the time he
16 filed his bankruptcy petition. The Bankruptcy Code, in 11 U.S.C. § 362(a),
17 provides the automatic stay is in effect if the debtor still has an interest in the
18 property.⁴ This interpretation of the Deeds of Trust Act is supported by this

19 ⁴ If a sale has been completed by both delivery and recording of the trustee's deed before a debtor
20 files a bankruptcy petition, then a debtor has no interest in the property and no automatic stay
would apply to that property.

1 court's decision in *In re Betchan*, 524 B.R. 830 (Bankr. E.D. Wash. 2015)
2 (debtor retained interest in her home because the deed was not properly
3 conveyed as required by RCW 64.04.010 and RCW 61.24.050(1)), and the
4 Washington Supreme Court's directive in *Klem v. Washington Mutual Bank*,
5 176 Wn.2d 771, 789 (2013), to construe the Deeds of Trust Act in favor of the
6 borrower.

7 Relying on *Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903 (2013),
8 and *In re Nelson*, 2017 WL 745595 (Bankr. W.D. Wash. 2017), Wells Fargo
9 asserts this interpretation of the Deeds of Trust Act conflicts with Washington
10 case law. But *Udall* and *Nelson* are factually different and address different
11 issues than the case at bar. Moreover, both cases actually support this court's
12 reading of RCW 61.24.050(1).

13 The litigation in *Udall*, a non-bankruptcy case, commenced in 2004 as a
14 result of the trustee's refusal to issue a deed after learning the accepted bid
15 was less than authorized by U.S. Bancorp, the beneficiary of the deed of trust.
16 The Washington Supreme Court delineated the trustee's duties regarding
17 delivery of a deed after a trustee's sale; the court did not address when a
18 trustee's sale is final. The court held the trustee must deliver the trustee's deed
19 to the purchaser following the sale absent a procedural irregularity, such as
20

1 bankruptcy, that voids the sale.⁵ *Udall*, 159 Wn.2d at 911. In discussing the
2 trustee’s duties, the *Udall* court stated “the trustee sells the property at
3 auction, the purchaser pays the price bid, and the trustee executes the deed to
4 the purchaser *at which time* ‘all of the right, title, and interest’ in the property
5 is conveyed.” *Id.* (quoting RCW 61.24.050(1)) (emphasis in original). This
6 statement supports the interpretation that there must be execution, including
7 delivery as required by RCW 61.24.050, of the trustee’s deed before the
8 property is conveyed.

9 In *Nelson*, the ultimate issue before the bankruptcy court was whether
10 to grant relief from stay for cause, not whether the stay was in effect when the
11 debtor filed for bankruptcy post-sale. There, while it was unclear whether the
12 automatic stay was in place at the time of delivery of the trustee’s deed,
13 acknowledgement of the trustee’s deed took place while the stay was in place
14 and the recording of the trustee’s deed took place after the case was dismissed.
15 But, unlike here, the trustee’s deed was delivered. Notably, the *Nelson* court
16 stated delivery, if done while the bankruptcy case was pending, would violate
17 the automatic stay and therefore such delivery would be void. Again, this

18 ⁵ After the *Udall* decision, the legislature amended Washington’s Deeds of Trust Act so that the
19 problem that spawned the *Udall* litigation would not recur. *See* Laws of 2012, ch. 185, § 14.
20 Specifically, the legislature added a provision that provides trustees and beneficiaries with eleven
days after the sale to declare the sale void in the event of an erroneous opening bid. RCW
61.24.050(2)(a)(i).

1 supports the holding that the trustee's sale is not complete until delivery of the
2 trustee's deed.

3 CONCLUSION

4 Since the foreclosure trustee did not deliver a trustee's deed prior to Mr.
5 Lopez filing his bankruptcy petition, Mr. Lopez retains an interest in his home, and
6 Wells Fargo's motion for an order confirming the stay is not in effect is **DENIED**
7 [ECF No. 9]. However, even though the stay is in effect, Wells Fargo and other
8 similarly situated creditors retain the right to promptly seek relief from stay for
9 cause.

10 /// END OF MEMORANDUM DECISION///