

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

IN RE:

VIRGINIA ANN THORPE

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) **CASE NO. 01-13003C-13G**
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ORDER DISMISSING CHAPTER 13 CASE WITH 180 DAY BAR

THIS MATTER came on for hearing, after due and proper notice, before the undersigned Bankruptcy Judge, on December 11, 2001 in Greensboro, North Carolina, upon the Motion by FNB Southeast, to Dismiss Case, or in the alternative, for Relief from Stay in order to foreclose its security interest in certain real property known as 1514 Vance Street, Reidsville, North Carolina and for Relief from Co-Debtor Stay as it applies to W. Ray Carter. Appearing before the court were Kenneth L. Jones, counsel for FNB Southeast, Aleta B. Kiser, counsel for the Debtor and Anita Jo Kinlaw Troxler, Standing Trustee.

The Court, after hearing the arguments presented, and upon review of the exhibits and the entire official file, finds for the reasons stated below that this Chapter 13 case should be dismissed with a 180 day bar from refiling.

1. The Debtor is the owner of certain real estate located in Rockingham

County, North Carolina, more particularly described in a certain Deed of Trust recorded in Book 396 at page 1301, in the Rockingham County Registry. The Debtor obtained title to the property from her former husband, W. Ray Carter.

2. On or about April 23, 1996, Carter executed a Home Equity Line Note ("the Note") in favor of FNB Southeast.

3. To secure Carter's obligation to FNB Southeast under the Note, Carter and the Debtor executed a Deed of Trust which is duly recorded in the Office of the Register of Deeds of Rockingham County.

4. As a result of Carter's default under the terms of the Note and Deed of Trust, FNB Southeast commenced a foreclosure proceeding against the real property.

5. A hearing was held before the Clerk of Superior Court of Rockingham County on or about February 9, 1999 pursuant to which the clerk concluded that FNB Southeast was entitled to foreclose under the aforesaid Deed of Trust. A foreclosure sale was scheduled for March 2, 1999.

6. On the morning of March 2, 1999, the Debtor filed a Chapter 13 bankruptcy proceeding, Case No 99-10503. The filing stayed the foreclosure sale.

7. This bankruptcy proceeding was dismissed by this Court on April 11, 2000, as a result of the Debtor's failure to make Plan payments to the Chapter 13 Trustee.

8. Two weeks later, on April 25, 2000, the Debtor filed a second Chapter 13

petition. On or about April 12, 2001, this Court entered an Order dismissing the second bankruptcy case as a result of the Debtor's failure to make Plan payments. The Order of Dismissal prohibited the Debtor from filing another bankruptcy petition for a period of 180 days. The Debtor's motion to reconsider the dismissal Order was denied by this Court on May 10, 2001.

9. After the dismissal of the second bankruptcy case, FNB Southeast proceeded with the foreclosure action and held a foreclosure sale on June 5, 2001. James and Priscilla Festerman were the high bidders at the sale, with a bid of \$42,764.18. Following the sale, and during the statutory time allowed for upset bids, ten different upset bids were made on the property with five upset bids being made by Barbara Jean Farrar and four upset bids being made by Kevin Stiers. The last upset bid was made by Barbara Jean Farrar at the price of \$69,658.32.

10. On or about September 19, 2001 a hearing was held before the Clerk of Superior Court of Rockingham County at which FNB Southeast contended that neither Stiers nor Farrar had the financial ability to purchase the property at foreclosure sale and that they were working in concert with the Debtor to prolong the Foreclosure Action until October 12, 2001, at which time the Debtor could file yet another Chapter 13 proceeding to stay the Foreclosure Action.

11. The Clerk found that the successive rotation of upset bidding by Stiers and Farras has not been for the purpose of acquiring the property, but rather to keep the

foreclosure process open to allow time for the Debtor to file yet another Chapter 13 case. The Clerk also found that the last upset bid placed on the property exceeded the value of the property by more than 51% and, therefore, the Clerk ordered that in accordance with N.C.G.S. § 45-21-27(b), any future upset bidders be required to post a cash bond in the amount of the upset bid.

12. On October 22, 2001, just shortly following the expiration of the 180 day filing bar, the Debtor filed a third Chapter 13 case.

13. The Court finds that the Debtor clearly and unequivocally abused and manipulated the Bankruptcy Code and the foreclosure statutes of the State of North Carolina.

BASED ON THE FOREGOING, IT IS ORDERED, ADJUDGED AND DECREED, that this Chapter 13 case is dismissed for cause under 11 U.S.C. § 1307 and it is FURTHER ORDERED that the Debtor is prohibited from refiling a Chapter 13 proceeding for a period of 180 days to commence upon the entry of this order of dismissal.

This is the 4 day of January, 2002.

CATHARINE E. CARLITERS
United States Bankruptcy Judge