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NO. 13125  
Department 1

BY Recode

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NEVADA

IDA B. BLACK and LEROY G.  
BLACK,  
vs Plaintiffs,

ORDER

LEROY H. PERRY and  
DOROTHY M. PERRY and  
DOES I through V,  
inclusive,  
Defendants.

The Court having considered the Application of plaintiff for a Writ of Restitution, and being fully advised, finds and concludes as follows:

On January 25, 1982, the defendants' filed bankruptcy and listed the property the subject of this action as an asset in those proceedings. Thereafter, and on January 29, 1982, plaintiffs who were holders of a Note and Deed of Trust on the property filed a Notice of Default and Election to Sell Real Property under the Deed of Trust. On June 22, 1982, the Bankruptcy Court entered an Order lifting the automatic stay. On July 29, 1982, the Trustee under the Deed of Trust sold the real property. This action was commenced because defendants have refused to vacate the property. The parties have stipulated to the foregoing facts and the only issue for determination is whether the plaintiffs were legally entitled to commence foreclosure proceedings after the automatic stay in bankruptcy.

Rule 601 (a) of the Federal Bankruptcy Act provides that the filing of the Petition in Bankruptcy comprises a stay of any act to enforce a lien against property in the custody of the

1 Bankruptcy Court. Here, the real property, the subject of the  
2 foreclosure suit, was in the custody of the Bankruptcy Court  
3 between January 25, 1982, and June 22, 1982. Therefore, the  
4 Court concludes that the plaintiff had no legal right to proceed  
5 with the foreclosure during the period of time the real property  
6 was in the constructive possession of the Bankruptcy Court.  
7 Since the Notice of Default was given during that period of  
8 time and since plaintiff must rely on that period for computing  
9 the statutory time period for the foreclosure, the Court con-  
10 cludes that plaintiffs' foreclosure sale was not validly con-  
11 ducted. Accordingly, this Court has no authority for granting  
12 the equitable relief sought by plaintiffs. This Order shall  
13 not prohibit the plaintiffs from refileing the Default and pro-  
14 ceeding with foreclosure in accordance with the terms of their  
15 Deed of Trust.

16 Accordingly, plaintiffs' Application for a Temporary Writ  
17 of Restitution is DENIED without prejudice.

18 DATED this 4<sup>th</sup> day of October, 1982.

21 *Howard D. McKibben*  
22 DISTRICT JUDGE

23 CERTIFIED COPY

24 The document to which this certificate is attached is a  
25 full, true and correct copy of the original on file and of  
record in my office.

26 DATE: NOV. 23, 1982

27 *Bernard* Clerk of the 9th Judicial District Court  
of the State of Nevada, in and for the County of Douglas

28 By *Barbara Lucade* Deputy

30 Copies served by mail this 6<sup>th</sup> day of October, 1982, to: Jeffrey K. Rahbeck,  
31 Esq., P.O. Box 5566, Stateline, Nv 89449; Peter A. Tomaino, Esq., P.O. Box  
6102; Stateline, Nv 89449. *B. Newell*

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SUZANNE BEAUDREAU  
RECORDER

**73480**

*Betty Henderson*  
*Slp*

**LIBER 1182 PAGE 1177**

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12 the equitable relief sought by plaintiffs. This Order shall  
13 not prohibit the plaintiffs from refileing the Default and pro-  
14 ceeding with foreclosure in accordance with the terms of their  
15 Deed of Trust.

16 Accordingly, plaintiffs' Application for a Temporary Writ  
17 of Restitution is DENIED without prejudice.

18 DATED this 4<sup>th</sup> day of October, 1982.

*Howard D. McKibben*  
DISTRICT JUDGE

CERTIFIED COPY

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24 The document to which this certificate is attached is a  
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28 By *Barbara Lucade* Deputy

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LIBER **1182** PAGE **1177**