SIGNED this 2 day of July, 2019.

Austin E. Carter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In re:	)	
	)	Case No. 18-50181-AEC
Billie Ann Hall,	)	
	)	Chapter 13
Debtor.	)	
	)	
	)	
Billie Ann Hall,	)	
	)	
Plaintiff/Debtor,	)	
	)	
v.	)	Adv. Proc. No. 18-5019-AEC
	)	
CitiMortgage, Inc.,	)	
	)	
Defendant.	)	

OPINION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Before the Court are motions for summary judgment filed by Billie Ann Hall ("Plaintiff" or the "Debtor") (Doc. 23) and CitiMortgage, Inc. ("Defendant") (Doc. 24) on the complaint seeking a judgment under Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7001(2) and (9) that title to certain real property has reverted to the Debtor under O.C.G.A. § 44-14-80(a). The Motions are brought under

Federal Rule of Civil Procedure ("Rule") 56, incorporated into this adversary proceeding by Bankruptcy Rule 7056.

Having carefully considered the respective Motions, associated filings, and the remainder of the record, the Court has determined the matter before it is a question of law and there exists no dispute of material fact. Pursuant to Rule 56(a), the Court states on the record its reasons for granting the Debtor's motion and for denying Defendant's motion.

I. Factual Background

The parties in this case entered a joint stipulation of material facts (Doc. 22). In December 1995, the Debtor and then husband Charlie Royal Hall ("Mr. Hall") entered into an agreement with Associates Financial Services Company of Delaware, Inc.[1] for a $86,461.62 loan, secured by a first priority security interest in real property consisting of 1.86 acres located at 135 State Route 1280, Oglethorpe, Macon County, Georgia, also known as 137 State Route 128 Bypass, Oglethorpe, Georgia (the "Property"). The deed to secure debt for this loan ("Security Deed") was executed and recorded in Macon County, Georgia on January 16, 1996. The Security Deed provides for a January 1, 2011 loan maturity date. At or near the time of the execution of these loan documents, Mr. Hall transferred his interest in the Property to the Debtor.

In 2008 and again in 2009, the Debtor and the Defendant executed agreements relating to the loan. The 2008 agreement served the dual purpose of reducing the interest rate and extending the loan maturity date to June 6, 2048. The 2009 agreement provided for deferment of unpaid interest. Neither of these agreements was recorded.

[1] Associates Financial Services Company of Delaware, Inc. is the Defendant's predecessor-in-interest as to the loan, including the Security Deed.

Before filing this case, the Debtor filed a Chapter 13 petition in this Court in February 2017 (Case No. 15-50390). In that case, the Debtor included the Defendant as a creditor in her confirmed chapter 13 plan. Following the dismissal of that case, on December 1, 2017 the Defendant initiated proceedings to foreclose on the Property and advertising for a January 2, 2018 foreclosure sale. In effort to prevent the foreclosure, the Debtor contacted Defendant and requested a loan modification, but submitted an incomplete loan modification application package. Subsequently, on December 15, 2017, the Defendant sent a thirty-day notice to the Debtor, allowing until January 15, 2018 to complete and return the documents required for the loan modification. On December 18, 2017, the Debtor requested that the Defendant postpone the foreclosure sale; the Defendant obliged and postponed sale of the Property until after January 25, 2018, so as to allow the Debtor more time to complete the loan modification application.

The Debtor filed the current bankruptcy case on February 1, 2018, without having submitted to the Defendant a complete loan modification application package.

II. Analysis

A. *Summary Judgment Standard*

To prevail on a motion for summary judgment, the moving party must show entitlement to judgment as a matter of law because there exists "no genuine issue as to any material fact." Fed. R. Civ. P. 56(c); *Celotex Corp. v Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552 (1986) ("[S]ummary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law"). Where a case involves cross-motions for summary judgment, "[t]he court must rule on each party's motion on an individual and separate basis, determining, for each side,

whether a judgment may be entered in accordance with the Rule 56 standards." *RES-GA Diamond Meadows, LLC v. Robertson (In re Robertson)*, 576 B.R. 684, 699 (Bankr. N.D. Ga. 2017) (citations omitted).

Because the parties have stipulated to all material facts and contest neither the execution of the relevant documents nor their authenticity, the sole issue before the Court is whether, under O.C.G.A. § 44-14-80(a), title to the Property granted to the Defendant under the Security Deed reverted to the Debtor at the expiration of seven years from the maturity date shown in the Security Deed.

B. *Georgia's Reversion Statute*

In her motion for summary judgment, the Debtor asserts that, under O.C.G.A. § 44-14-80, title to the Property automatically reverted to her when the statutory reversion period elapsed on January 1, 2018, seven years after the January 1, 2011 maturity date which appears in the Security Deed. Although the Debtor and Defendant stipulate to executing the 2008 and 2009 agreements that, among other things, extended the maturity date to 2048, because neither agreement was recorded, the Debtor asserts that the maturity date appearing on the original Security Deed persists, and thus title to the Property reverted to her on January 1, 2018 based on the application of O.C.G.A. § 44-14-80.

The Defendant opposes the Debtor's motion and claims it is entitled to summary judgment on three grounds: (1) the Debtor is estopped from asserting the reversion of the security interest due to the benefits she received under the 2008 and 2009 loan modification agreements; (2) O.C.G.A. § 44-14-80(a)'s "hanging clause" prevents reversion because foreclosure proceedings were initiated prior to reversion and would have been completed but for delay chargeable to the Debtor; and (3) the Debtor waived the benefit of all statutes of limitations in the loan documents.

O.C.G.A. § 44-14-80(a) provides generally for the automatic reversion of title to land described in a security deed after seven years from the maturity of the debt secured thereby. *See Matson v. Bayview Loan Servicing, LLC*, 339 Ga. App. 890, 891, 795 S.E.2d 195, 196 (2016) (citing 3 Daniel F. Hinkel, Pindar's Ga. Real Estate Law & Proc. § 21.67 (7th Ed. 2015)). In pertinent part, that code section provides:

> Title to real property conveyed to secure a debt or debts *shall revert to the grantor* or his or her heirs, personal representatives, successors, and assigns *at the expiration of seven years from the maturity of the debt* or debts or the maturity of the last installment thereof as stated or fixed in the record of the conveyance or, if not recorded, in the conveyance; provided, however, that where the parties by affirmative statement contained in the record of conveyance intend to establish a perpetual or indefinite security interest in the real property conveyed to secure a debt or debts, the title shall revert at the expiration of the later of (A) seven years from the maturity of the debt or debts or the maturity of the last installment thereof as stated or fixed in the record of conveyance or, if not recorded, in the conveyance; or (B) 20 years from the date of the conveyance as stated in the record or, if not recorded, in the conveyance

O.C.G.A. § 44-14-80(a) (emphasis added).

Here, the maturity date for the original loan as shown in the recorded Security Deed is January 1, 2011. The seven-year period from this maturity date lapsed on January 1, 2018. Therefore, unless an exception or defense exists prohibiting the automatic reversion of title, title vested in the Debtor as of January 1, 2018. *See Lyons v. Taylor (In re Lyons)*, No. 17-51834, 2018 WL 672418 (Bankr. M.D. Ga. Jan. 31, 2018) (applying seven-year reversion period under statute).

1. <u>The Debtor is Not Estopped by the Execution and Performance Under the Two Loan Modification Agreements</u>.

The Defendant argues that the Debtor is estopped from claiming reversion under the statute because the Debtor and Defendant entered into loan modification agreements, in 2008 and 2009, in which the Debtor acknowledged the debt and from

which the Debtor benefited. The Defendant asserts it is therefore inequitable for the Debtor now to use the reversion statute to defeat the Defendant's security interest in the Property. In support of its argument, the Defendant cites *Stearns Bank, N.A. v. Mullins*, 333 Ga. App. 369, 776 S.E.2d 485 (2015).

This argument is unpersuasive. *Stearns Bank* is distinguishable from this case in several respects. In that case, the court, construing the recorded security deed at issue, found that the twenty-year reversion period of O.C.G.A. § 44-14-80(a) applied rather than the seven-year period because the parties had affirmatively expressed an intent to establish an indefinite or perpetual security interest within the terms of the deed. *Id.* at 373. ("[W]e conclude that the security deed in this case contained a sufficient statement that the parties intended to establish a perpetual or indefinite security interest in the real property such that the applicable reversion period is twenty years from the date of the conveyance."). The court reasoned that the security deed was for a revolving line of credit, which "[b]y definition . . . is an indefinite arrangement," and emphasized that the terms of the security deed provided for it to remain in effect "until released." *Id.* at 372. Here, the Security Deed does not secure a revolving credit line and does not provide that it remains in effect until released.

Although it was secondary to the basis for its decision, the court in *Stearns Bank* did, as the Defendant notes, reference the benefit received by the borrower's execution of security deed modification agreements. This reference, however, does not support the Defendant's estoppel argument. Unlike here, the modifications in *Stearns* were recorded, a key fact under the reversion statute. Moreover, in *Stearns* the modifications were executed after the reversion date for which the borrower argued, so the borrower in executing the modifications had "received the benefit of the continuing effectiveness of the security deed . . . ." *Id.* at 374. Here, on the

other hand, the 2008 and 2009 loan agreement modifications were executed well before the 2018 reversion date advanced by the Debtor.

2. Reversion Not Prevented Due to Foreclosure Delay

One of the exceptions to reversion found in the statute occurs when a foreclosure sale is started prior to reversion and completed without delay attributable to the grantee. The Defendant refers to this exception as the "hanging clause" of O.C.G.A. § 44-14-80(a), and argues that it applies here to prevent the reversion. In relevant part, O.C.G.A. § 44-14-80(a) states: "however, that foreclosure by an action or by the exercise of power of sale, if started prior to reversion of title, shall prevent the reversion if the foreclosure is completed without delay chargeable to the grantee or the grantee's heirs, personal representatives, successors, or assigns."

The Defendant began foreclosure proceedings on December 1, 2017, and they were in fact delayed.[2] But, unfortunately for the Defendant, the foreclosure was never completed as required under the statute to trigger the exception. *See* O.C.G.A. § 44-14-80(a) (the starting of a foreclosure before reversion "shall prevent the reversion if the foreclosure *if completed* without delay . . . .") (emphasis added).[3] The statutory exception, therefore, does not apply.

3. The Statute of Limitations Waiver Does Not Prevent Reversion.

The Defendant asserts that because the Debtor in the loan documents expressly waived her rights under applicable statutes of limitation, she cannot enjoy title to the Property by reversion under O.C.G.A. § 44-14-80(a). The waiver to

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[2] The Defendant argues that the delay of the foreclosure is attributable to the Debtor, which seemingly would not prevent the reversion, as the statutory exception looks for delay chargeable to the grantee. However, because the foreclosure sale was not completed, delay chargeable to either party is of no consequence.

[3] O.C.G.A. § 44-14-80(a)'s hanging clause serves as a relation-back clause for foreclosure proceedings begun prior to the reversion date and completed thereafter. So long as there was no delay attributable to the foreclosing grantee, the foreclosure relates back even though it was not completed until after the statutory reversion date.

which the Defendant refers is found in the 2008 loan modification agreement: "The Borrower hereby expressly waives the benefit of any and all statutes of limitation which might otherwise inure to Borrower's benefit, or be in any way applicable to Borrower's obligations under the terms of any and all instruments described herein." (Doc. 28; Doc. 26, Exh. D).

This position is untenable. O.C.G.A. § 44-14-80 is not a statute of limitations. Black's Law Dictionary defines "statute of limitations" as: "A law that bars claims after a specified period; specif., a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered)." *Statute of Limitations*, Black's Law Dictionary (11th ed. 2019).

O.C.G.A. § 44-14-80 governs ownership interests in real property; it does not establish a deadline by which a civil claim must be asserted. In other words, the statute does not operate to time-bar the Defendant from seeking to enforce its claim against the Debtor (after all, the underlying debt remains); rather, it determines the extent to which the Defendant has a property interest securing the debt owed to it by the Debtor. *See Newman v. Newman*, 234 Ga. 297, 299, 216 S.E.2d 79, 81 (1975) (distinguishing Georgia's automatic reversion statute from statute of limitations in holding that Soldiers' and Sailors' Civil Relief Act does not toll reversion statute). Because O.C.G.A. § 44-14-80 is not a statute of limitations, the Debtor's waiver of statutes of limitation has no effect on the duration of the Defendant's security interest in the Property.

III. Conclusion

For the foregoing reasons, the Court holds that, by operation of O.C.G.A. § 44-14-80, on January 1, 2018 title to the Property granted to the Defendant under the Security Deed reverted to the Debtor. Therefore, the Court finds that the Debtor's Motion for Summary Judgment should be granted and that the

Defendant's Motion for Summary Judgment should be denied. A separate order will be entered in accordance with this Opinion.

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