

**In re Joyce D. SHORT, f/k/a  
Joyce D. Sanders**

**Bankruptcy Action No. 84-00002S  
District Court NMI  
Bankruptcy Division**

**Decided February 19, 1986**

**1. Bankruptcy - Dismissal**

Where debtor has failed to timely file both a list of creditors and a plan for reorganization, the bankruptcy court will dismiss the petition upon motion of the creditor notwithstanding violation by the creditor of the automatic stay provided by statute. 11 U.S.C. §362.

FILED  
Clerk  
District Court

FEB 19 1986

1 UNITED STATES DISTRICT COURT For The Northern Mariana Islands  
2 FOR THE  
3 NORTHERN MARIANA ISLANDS By [Signature]

4 BANKRUPTCY DIVISION

5 In re Joyce D. Short, f/k/a ) BK No. 84-00002S  
6 Joyce D. Sanders, )  
7 Debtor. ) DECISION AND ORDER

8  
9 Home Federal Savings and Loan Association (Home  
10 Federal), a creditor of debtor Joyce D. Short (Short), moves this  
11 Court to dismiss Short's bankruptcy petition or in the  
12 alternative to vacate the automatic stay with regards to certain  
13 real property located in Eureka, California (hereinafter  
14 mortgaged property). For the following reasons Home Federal's  
15 motion will be sustained and this petition will be dismissed.

16 Pursuant to a loan agreement between Home Federal and  
17 co-owners Joyce D. Short and Melvin K. Tibbet, Home Federal  
18 received a first mortgage on the subject mortgaged property on  
19 January 21, 1975. On April 4, 1984, Home Federal recorded a  
20 Notice of Default and Election to Sell under Deed of Trust. On  
21 April 11, 1984, Short filed her petition for relief under Chapter  
22 11 of the Bankruptcy Code (Code).

23 Home Federal purchased the mortgaged property at a sale  
24 on December 12, 1984, and recorded a Trustee's Deed on December  
25 28, 1984. Subsequently, on December 16, 1985, they filed this  
26 motion to dismiss or in the alternative to vacate the stay.

1 [1] Upon commencement of a bankruptcy proceeding an estate  
2 is created which is comprised of all legal and equitable  
3 interests of the debtor. 11 U.S.C. § 541. Section 362, the  
4 automatic stay provision, precludes parties from initiating or  
5 continuing legal action against a debtor or its estate following  
6 the filing of a petition for relief. Specifically, § 362(a)  
7 prohibits "any act to create, perfect, or enforce any lien  
8 against part of the estate." When Short filed for bankruptcy on  
9 April 11, 1984, the mortgaged property became property of the  
10 estate. The subsequent sale of the mortgaged property on  
11 December 12, 1984, was in direct violation of § 362.

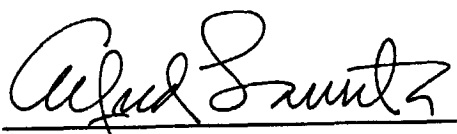
12 Since filing this petition on April 11, 1984, Short has  
13 never filed a list of creditors or a schedule of assets and  
14 liabilities, and to date she has failed to even propose a plan  
15 for reorganization. Section 1112 of the code authorizes the  
16 court to dismiss a petition for several reasons, two of which  
17 are inability to effectuate a plan and unreasonable delay by the  
18 debtor that is prejudicial to creditors. Both exist here.

19 The bankruptcy court is a court of equity. In re  
20 Professional Sales, 48 B.R. 651 (N.D.Ill. 1985). Pursuant to  
21 this, the court has the authority to shape relief appropriate to  
22 the case at hand. Id. Though Home Federal violated the stay,  
23 Short's inaction in this proceeding has resulted in prejudice to  
24 the creditors and it is in their best interests that this  
25 petition shall be dismissed.

26 IT IS SO ORDERED.

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DATED this 19<sup>th</sup> day of February, 1986.

  
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JUDGE ALFRED LAURETA