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In Re Simone

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No: 02-3274

IN RE: RICHARD A. SIMONE

RICHARD A. SIMONE,
Appellant

v.

APEX MORTGAGE

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 02-cv-01263)
District Judge: Honorable Mary Little Cooper

Argued on June 3, 2003

Before: ALITO, ROTH and STAPLETON, CIRCUIT JUDGES

(Opinion filed: September 29, 2003)

David A. Luthman, Esquire (Argued)
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Attorney for Appellee

Edward F. Christopher, Esquire (Argued)
Edward F. Christopher, P.A.
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Attorney for Appellant

OPINION

ROTH, Circuit Court;

Debtor Richard Simone has appealed the August 9, 2002, judgment by the United States District Court for the District of New Jersey, affirming the Bankruptcy Court's vacation of the automatic stay.

Because the facts of this dispute are well known to the parties, we will not repeat them except for a few key ones. On March 31, 1999, Simone and his wife, Patricia, borrowed \$276,000 from Apex Mortgage Corporation. The Note was secured by a first mortgage on Simone's apartment building in North Hanover, New Jersey. In November 1999, Simone defaulted on repayment of the loan. Ultimately, Simone filed a Chapter 11 bankruptcy petition, triggering the automatic stay. The automatic stay was conditionally lifted but, when Simone failed to meet those conditions, his property was sold at auction. Simone appealed the Bankruptcy Court's order to vacate the automatic stay to the United States District Court for the District of New Jersey. The District Court affirmed the Bankruptcy Court. Simone then appealed to this Court.

Because the property has already been sold, the question whether the automatic stay was properly granted is moot and no relief is available to Simone. This case must therefore be dismissed for lack of jurisdiction. *See, e.g., Lusardi v. Xerox Corp.*, 975 F.2d 964, 974 (3d Cir. 1992).

TO THE CLERK:

Please file the foregoing Opinion.

By the Court,

/s/ Jane R. Roth
Circuit Judge