

In re Greg Allen Fothergill and Cindy Rae Fothergill
CASE NO.: 02-36939-BKC-SHF

Creditor filed a motion for relief from automatic stay. Debtors opposed the motion and included in their plan a provision to cure the default and reinstate their mortgage. However, prior to the petition date, Creditor received a summary final judgment of foreclosure and was the high bidder on the subject property at a foreclosure sale. Also, prior to the petition date, the Clerk of the State Court had issued to Creditor both a Certificate of Sale and a Certificate of Title reflecting Creditor's ownership of the subject property. Judge Friedman held that under these circumstances, the debtors had no interest in the property on the petition date and thus could not cure the default and reinstate the mortgage through the plan. Accordingly, the Court granted stay relief and denied confirmation of the debtors' First Amended Chapter 13 Plan.