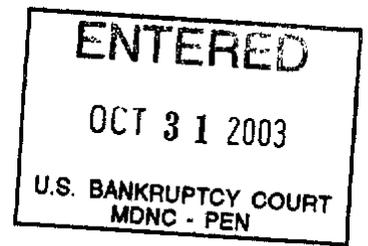


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:)
)
Matthew R. Chriscoe,) Case No. 03-12584C-7G
)
Debtor.)
)

ORDER

This case came before the court on October 7, 2003, for hearing upon a motion for relief from the automatic stay filed on behalf of FNB Corp. Benjamin A. Kahn appeared on behalf of FNB Corp. ("FNB"), Everett B. Saslow, Jr. appeared as Chapter 7 Trustee and James L. Tennant appeared on behalf of the Debtor. Having considered the evidence offered at the hearing, the matters of record in this case and the arguments of counsel for the parties, the court finds and concludes as follows:

1. On September 16, 2003, the Debtor filed an amended Schedule A in this case in which the Debtor listed a 50% interest in a residence and six-acre tract of realty located at 3052 Little Brook Road, seagrove, North Carolina ("the Seagrove Property") which the Debtor valued at \$11,000.00. The Seagrove Property was not listed in the original Schedule A which the Debtor filed when this case was filed on July 30, 2003.

2. The Seagrove Property was conveyed to the Debtor by his parents, Kelly R. Chriscoe and Penny C. Chriscoe on June 16, 2000.

3. On March 14, 2002, FNB instituted an action in the Superior Court of Randolph County entitled "FNB Corp. d/b/a First

National Bank & Trust Company v. Kelly Ray Chriscoe, Penny C. Chriscoe and Matthew Ryan Chriscoe" requesting that the court declare that the transfer of the Seagrove Property to the Debtor was fraudulent under North Carolina law.

4. On February 28, 2003, a summary judgment was entered in the above-referenced suit adjudging that the transfer of the Seagrove Property to the Debtor constituted a fraudulent transfer and that the Seagrove Property was held by the Debtor subject to a constructive trust in favor of FNB. The summary judgment further adjudged that FNB was entitled to levy execution on the Seagrove Property and have the property sold at a sheriff's sale in order to satisfy a default judgment in the amount of \$33,423.78 plus interest and attorneys' fees that was entered against Kelly Ray Chriscoe and Penny C. Chriscoe on July 30, 2001. There was no appeal from the summary judgment.

5. On September 3, 2003, FNB filed the motion for relief from stay which is now before the court. In the motion, FNB seeks an order lifting the automatic stay so that FNB may enforce its rights against the Seagrove Property pursuant to the terms of the summary judgment and permitting the sheriff's sale to be concluded and the sheriff to issue and record a sheriff's deed. FNB contends that it is entitled to such relief as a result of the summary judgment that was entered on February 28, 2003.

6. The Chapter 7 Trustee has objected to the motion for relief, arguing that his strong-arm powers under §§ 544(a) (1) and 544(a) (3) take priority over the interests of FNB under the summary judgment. For the reasons that follow the Trustee's objection will be overruled and the motion for relief will be granted to the extent provided in this order.

7. Pursuant to the summary judgment, the Seagrove Property was subject to a constructive trust in favor of FNB when this case was filed and thus came into the bankruptcy estate subject to such constructive trust. As a result of the constructive trust, the Debtor held only legal title when this case was filed and had no equitable interest in the property. See Besier v. IRS, 496 U.S. 53, 59, 110 S.Ct. 2258, 2262, 110 L.Ed.2d 46 (1990) ('a debtor does not own an equitable interest in property he holds in trust for another'). Under § 541(d) of the Bankruptcy Code, "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest becomes property of the estate . . . only to the extent of the debtor's legal title to such property but not to the extent of any equitable interest in such property that the debtor does not hold." See American Service Co. v. Henderson, 120 F.2d 525, 529 (4th Cir. 1941) ("[W]here the debtor had been in the possession of trust property, the bankruptcy or reorganization trustee holds such property subject to the outstanding interest of the beneficiaries. . ."). Thus, when a

bankruptcy case is filed by a debtor who holds title to property subject to a trust, "the 'sole permissible administrative act' of the trustee or debtor in possession is to pay over or endorse over the property to the beneficiary or beneficiaries of the trust." In re Mid Atlantic Supply Co., 790 F.2d 1121, 1126 (4th Cir. 1983) (citing Georgia Pacific Corp. v. Sigma, 712 F.2d 962, 968 (5th Cir. 1983)). See also 5 COLLIER ON BANKRUPTCY ¶¶ 541.11 [3], [5] (15th ed. rev. 2003) ("when the debtor is in possession of property impressed with an express, constructive, resulting or statutory trust . . . the estate will generally hold such property subject to the outstanding interest of the beneficiaries" and "where the existence of a trust has been established, the bankruptcy trustee will be ordered to turn over the property"). The existence of a constructive trust having been established in this case as to the Seagrove Property, it follows that the powers and standing of the Trustee are subordinate to the interest of FNB as the beneficiary of the trust and that the Trustee's objection should be overruled.

8. Pursuant to the summary judgment, FNB is entitled to have the property sold by means of an execution sale conducted by the Sheriff of Randolph County pursuant to Article 29B of the North Carolina General Statutes (G.S. § 1-339.41, et. seq.). Although underway when this case was filed, the sale process had not been completed at the **time** of the filing. The court will grant the motion for relief from the automatic stay to the extent of modifying the automatic stay in order to permit the property to be sold by the

Sheriff of Randolph County in accordance with Article 29B, but in doing so the property **must** be re-advertised and another public auction held in accordance with Article 29B. To the extent that the **motion** requests that the sheriff be authorized to issue and record a deed without conducting another auction sale in accordance with Article 29B, the motion is denied. In the event the proceeds realized from such sale exceed the amounts which FNB is entitled to receive under the summary judgment and the expenses of conducting the sale, all such surplus proceeds shall be paid to the Chapter 7 Trustee in this case.

IT IS SO ORDERED.

This 28 day of October, 2003.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge