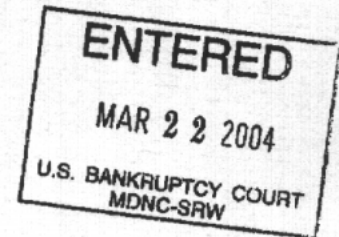


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



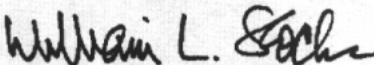
IN RE:)
)
Augustin M. Nieves,) Case No. 03-82868C-7D
Darisa Nieves,)
)

MEMORANDUM OPINION

This case came before the court on March 11, 2004, for hearing upon the Trustee's motion to abandon a timeshare interest in property located in Kissimmee, Florida. The motion was filed pursuant to § 554 of the Bankruptcy Code which provides that after notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. In the present case, the Trustee seeks an order for abandonment of the timeshare on the ground that it has little, if any, market value and therefore is of inconsequential value and benefit to the estate. The problem with the Trustee's motion is that the Trustee seeks to include in the abandonment order a provision that provides that if the property interest is sold after the abandonment and produces net proceeds, such proceeds must be paid over to the Trustee. Such a provision is contrary to the concept of abandonment under § 554 and may not be included in the order of abandonment. Abandonment, once accomplished in accordance with § 554, removes the property in question from the bankruptcy estate and results in the trustee losing all interest, rights and control with respect to the

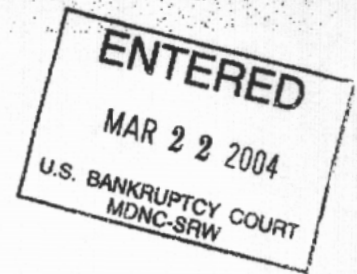
abandoned property. See In re Webb, 54 F.2d 1065, 1067 (4th Cir. 1932); In re Grossinger's Assoc., 184 B.R. 429, 432 (Bankr. S.D.N.Y. 1995); In re Hunter, 76 B.R. 117, 118-19 (Bankr. S.D. Ohio 1987); In re Sutton, 10 B.R. 737, 739 (Bankr. E.D. Va. 1981). See generally 5 COLLIER ON BANKRUPTCY ¶ 554.02 [2] and [3] (15th ed. rev. 2003) (when dealing with abandonment of estate property, the trustee has to "fish or cut bait"). It follows that the trustee is not entitled to an order that provides for the abandonment of a property interest and, at the same time, requires that any proceeds subsequently realized from such property interest be paid to the trustee. In the present case, the Trustee has renewed his request for abandonment of the timeshare notwithstanding that there will be no requirement that any proceeds realized in the future be paid over to the Trustee. An order so providing will be entered contemporaneously herewith.

This 16 day of March, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



IN RE:
AUGUSTIN & DARISA NIEVES,

Case No. 03-82868

Debtors.

ORDER TO ABANDON PROPERTY

UPON Application of John A. Northen, Trustee in the above-named case, to abandon property described herein below, and

A Notice of Application to Abandon Property was issued on January 8, 2004 by the Clerk of this Court, in which parties in interest were notified of the application and given until January 25, 2004 to file a written objection or request for hearing, and there having been filed with the Court no objection to the Application or request for hearing within the time period set forth in said notice,

IT IS ORDERED that the following property is hereby abandoned:

Property	Estimated Market Value and Source of Valuation	Identity and Amount of All Alleged Lien Interests
Timeshare in Kissimmee, Florida	\$9,000 Petition Value;	No known liens

IT IS FURTHER ORDERED that the automatic stay of Section 362(a) is modified and lifted as to the above-described property.

THIS the 16 day of March 2004.

William L. Sochz
U.S. Bankruptcy Judge