

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:

**Jerry W. Locklair and
Shelby H. Locklair,

Debtors.**

)
)
)
)
)
)
)

Case No. 03-50924

**ORDER AND OPINION DENYING MOTION
BY TRUSTEE TO REOPEN CASE**

This matter came on before the Court on May 10, 2006, after due and proper notice to all parties in interest, for consideration of the Motion by Trustee to Reopen Case. Having considered the motion and the official record, the Court makes the following findings of fact and conclusions of law:

FACTS

The Debtors filed a petition for relief under Chapter 7 of the Bankruptcy Code on March 31, 2003. On Schedule A of their petition, the Debtors listed real property (the "Real Property") consisting of a residence in Mocksville, North Carolina with a value of \$155,000.00. Branch Banking and Trust Company ("BB&T") held a properly recorded deed of trust against the Debtors' Real Property securing a promissory note in the original principal amount of \$63,750.00. On May 28, 2003, BB&T filed a motion for relief requesting that the automatic stay be modified to allow it to proceed with foreclosure. In support of its motion, BB&T indicated that pursuant to its own appraisal, the value of the Real Property was not greater than the amount owed by the Debtors, and that, according to their Statement of Intentions, the Debtors desired to surrender the Real Property.

The Trustee filed an objection to BB&T's motion for relief on the grounds that there appeared to be substantial equity in the property. As a result of the appearance of equity in the property, the Trustee was given an opportunity to sell the Real Property. The Real Property was listed for sale with a real estate agent for \$129,000.00. Despite his efforts, the Trustee was unsuccessful in selling the Real Property, and at a hearing on October 22, 2003, he withdrew his opposition to BB&T's motion for relief. On October 28, 2003, an Order was entered granting BB&T's motion for relief. This Order made no provision regarding any excess proceeds that might result from a foreclosure sale. The Trustee filed a Report of No Distribution on October 24, 2003 and a Final Decree was entered on January 16, 2004. The case was closed.

Almost two years later, the Trustee received a letter from the Debtor's attorney dated December 22, 2005, advising him that BB&T had sold the Real Property at public auction. The sale resulted in surplus funds in the amount of \$17,299.44 ("Surplus Funds"), which were now being held by the Davie County Clerk pending determination as to who is entitled to receive them. The Trustee requests that the case be reopened to allow for the administration of the Surplus Funds.

ANALYSIS

The Trustee contends that the Surplus Funds are an asset of the estate and should be turned over to the Trustee. There is no doubt that the Debtors' interest in the Real Property, which was not exempted by either debtor, became property of the estate pursuant to 11 U.S.C. § 541 upon the filing of their bankruptcy petition; nevertheless, it did not remain property of the estate after the case was closed. Section 554 provides for three methods by which property of the estate may be abandoned: (1) property may be abandoned by the trustee after notice and a

hearing; (2) the court may order abandonment upon the request of a party in interest; or (3) property scheduled but not otherwise administered at the time of the closing of a case is abandoned to the debtor. 11 U.S.C. § 554. The last method, set forth in § 554(c), is frequently referred to as a "technical abandonment" due to the fact that it occurs by operation of law, rather than by an affirmative act by the trustee or a party in interest.

Pursuant to § 554(c), the Trustee abandoned the Real Property to the Debtors when he failed to administer it prior to the closure of the case. The abandonment of property is generally irrevocable, although some courts have found that, under certain circumstances, a technical abandonment may be revoked upon the reopening of a case. See e.g., In re Balonze, 336 B.R. 160 (Bankr. D. Conn. 2006) (abandonment revoked where case was closed six days after the trustee filed a report of no distribution and a motion to reopen was filed thirteen days later); (In re Shelton, 201 B.R. 147 (Bankr. E.D.Va. 1996) (finding that due to inaccurate information on the debtor's schedules, the trustee did not have sufficient information to make an informed decision with respect to administering assets). A trustee's discovery that an abandoned asset has a value which is greater than what the trustee initially believed, after a reasonable opportunity to investigate such asset, is not grounds to revoke an abandonment. In re Sutton, 10 B.R. 737 (Bankr. Va. 1981) (trustee's abandonment of debtor's interest in real property that resulted in equity proceeds after a foreclosure sale was irrevocable).

In this case, the Trustee attempted to administer the Real Property and, despite his best efforts, he was unable to obtain an offer to purchase. The Trustee made an informed decision when he consented to BB&T's motion for relief from stay and filed the Report of No Distribution. Furthermore, this problem could have been avoided had the order lifting the stay as

to BB&T included a provision reserving the estate's interest in any excess proceeds and requiring that any such proceeds be remitted to the Trustee. Given these facts, this is not case in which revocation of the abandonment of the Real Property is appropriate. In sum, the court finds that pursuant to 554(c) the Real Property was abandoned to the Debtors upon the closure of the case, that this abandonment is irrevokable, and that Surplus Funds are not property of the estate. Based upon the foregoing, there is no need to reopen the case and the Trustee's motion to reopen is denied. The Trustee shall be entitled to a refund of the fee he remitted to the clerk to reopen the case.

IT IS SO ORDERED.

PARTIES TO BE SERVED

JERRY W. LOCKLAIR AND SHELBY H. LOCKLAIR
03-50924 C - 7W

ALL PARTIES OF RECORD AS OF THE DATE OF THE ORDER SHALL BE SERVED BY
THE BANKRUPTCY NOTICING CENTER