

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)
)
Robin Virginia Heinze,) Case No. 02-83050C-7D
)
Debtor.)
)

ORDER AND OPINION OVERRULING OBJECTION

This case came before the court on August 28, 2008, for hearing on a Motion for Public Sale of Personal Property filed by Sara A. Conti as Chapter 7 trustee in this case ("Motion") (Docket #171) and an objection to the Motion filed by George Paul Laroque ("Objection") (Docket #181). Sara A. Conti appeared as Chapter 7 trustee ("Trustee") and George Paul Laroque appeared by telephone. For the reasons that follow, the court has concluded that the Objection should be overruled.

The personal property referred to in the Motion is the subject of Adversary Proceeding No. 08-09012 which the Trustee filed against Mr. Laroque seeking authority to sell such property pursuant to section 363(h) of the Bankruptcy Code. A judgment was entered in that adversary proceeding on August 1, 2008, granting the Trustee authority to sell such property pursuant to section 363(h) free and clear of the interest of Mr. Laroque, with the date, place and manner of sale to be determined by further order of this court. The Motion was filed by the Trustee in order to obtain an order regarding the date, place and manner of sale of such property. The Motion requests that a public auction sale be

authorized and that such sale be held on September 13, 14 and 20, 2008, at 361 JaMax Road, Hillsborough, North Carolina.

Mr. Laroque has filed a notice of appeal in the adversary proceeding asserting that the judgment authorizing the section 363(h) sale is erroneous. One of the grounds for the Objection is the pendency of the appeal in the adversary proceeding. "It is settled law that the filing of a petition to review an order of a bankruptcy judge . . . does not stay the effect of the order unless a supersedeas bond is filed or the order itself provides for a stay." Wittig v. First American Bank of Va. (In re K. Simpson Enter., Inc.), 139 B.R. 161, 162 (E.D. Va. 1991) (citing A & H Holding Corp. v. O'Donnell (In re Abbingdon Realty Corp.), 530 F.2d 588, 589 (4th Cir. 1976)), aff'd 989 F.2d 493 (4th Cir. 1993). See also 10 Collier on Bankruptcy ¶ 8005.01, p. 8005-2 (15th ed. rev. 2008) ("A party who desires to appeal is not obliged to seek a stay of the judgment pending appeal. However, if no stay is in effect, the prevailing party may treat the judgment of the bankruptcy court as final, notwithstanding that an appeal is pending."). No stay has been sought or granted in this case or the adversary proceeding. The Trustee, therefore, is entitled to treat the judgment authorizing the sale of the property referred to in the Motion as final and may proceed as authorized under the judgment.

The Objection also refers to a notice of appeal that was filed by Mr. Laroque in this case on June 5, 2008 (Docket #140). That

notice of appeal is related to the dismissal of an appeal from an earlier order (Docket #88) denying various motions filed by Mr. Laroque on the ground that such motions had become moot. Mr. Laroque's motions were filed in response to a motion filed by the Trustee seeking authority to sell personal property that included the property described in the Motion now before the court. The Trustee withdrew the motion to sell on February 1, 2008 (Docket #86), and the hearing on her motion to sell was cancelled (Docket #93) because there was nothing to be heard once the motion to sell was withdrawn.

Mr. Laroque's only involvement with this case was as a respondent to the Trustee's motion to sell. Once the motion to sell was withdrawn, he no longer had standing or grounds to pursue the motions related to the Trustee's motion to sell or otherwise seek relief in this case. Moreover, the denial of Mr. Laroque's motions as moot was not a final order and did not prejudice him since such denial did not preclude him from later re-filing such motions (which he has done) in Adversary Proceeding No. 08-09012 which the Trustee subsequently instituted as required under Bankruptcy Rule 7001(3). The order from which Mr. Laroque purports to appeal thus is an interlocutory order that did not constitute a final disposition of any matter on the merits. A purported appeal from an interlocutory order does not deprive the bankruptcy court of jurisdiction. See Matter of U.S. Abatement Corp., 39 F.3d 563,

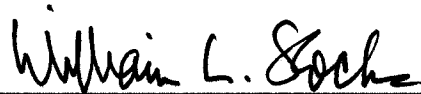
568 (5th Cir. 1994) ("As there is no right to appeal an interlocutory order, the notice of appeal filed by Mobil was simply premature and of no effect.").

Finally, the Objection asserts that the personal property described in the motion is owned solely by Mr. Laroque "and/or" a corporation that is not a party to this case. The ownership of the property referred to in the Motion is a matter that was adjudicated in Adversary Proceeding No. 08-09012 where the court found that the property was jointly owned by the Debtor and Mr. Laroque and authorized a sale pursuant to section 363(h). Unless and until that adjudication is reversed on appeal, Mr. Laroque is bound by such adjudication.

Based upon the foregoing, the court concludes that the objection by Mr. Laroque to the Trustee's Motion to Sell Personal Property should be overruled and denied. A separate order granting the Trustee's Motion to Sell Personal Property shall be entered.

IT IS SO ORDERED.

This 2nd day of September, 2008.



WILLIAM L. STOCKS
United States Bankruptcy Judge