



ORDERED in the Southern District of Florida on December 05, 2006.

A. Jay Cristol, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re:

CASE NO. 03-19939-BKC-AJC

JERRY ONTIVEROS and
LETICIA ONTIVEROS,

Debtors.

_____ /

ORDER DENYING DEBTORS' MOTION FOR REHEARING

THIS CAUSE came before the Court for hearing on September 13, 2006 upon the Debtors' *Motion for Rehearing on Order Granting Trustee's Motion To Approve Sale Of Trustee's 1/3 Interest In Real Property* ("Motion") and the Trustee's Response thereto. The Debtors urge this Court to reconsider the motion to sell the Trustee's interest in certain real property. The Debtors contend the interest is not property of the estate as Debtor/Wife holds only "bare legal title" to the property. The Trustee opposes the Debtors, asserting that whatever interest the Trustee has, bare legal title or otherwise, the Trustee may sell same to maximize the value of the bankruptcy estate.

The Court has reviewed the file and has considered the proffers and representations of the parties, and for the reasons set forth herein, the Motion is DENIED.

On September 12th, 2003, July 12th, 2004, Jerry Robert Ontiveros, Jr. and Leticia Viltres Ontiveros (“Debtors”) filed a joint voluntary petition under Chapter 7 of Title 11 of the United States Code (CP #1). Barry E. Mukamal was appointed as the Chapter 7 Trustee (CP #3).

As of the petition date, the Debtor/Wife owned a 1/3 interest (as reflected in the publicly recorded deed in the Miami-Dade County public records) in and to certain real property located at 5941 Southwest 5th Terrace, Miami, Miami-Dade County, Florida 33144 (**Folio No. 01-4001-006-0100**), the legal description of which is: Lot 10, in Block 1, of Granada Groves No. 3, according to the Plat thereof, recorded in Plat Book 14, at Page 53, of the Public Records of Miami-Dade County, Florida. The property is the homestead of the Debtor’s father, Raul Viltres, who is also 1/3 interest holder in the property, together with the Debtor/Wife’s sister. The facts presented by the Debtors are that the father purchased the property and paid all mortgage payments, real estate taxes, insurance and maintenance on the property and the two daughters were deeded the property “for estate planning purposes” only. The Debtor/Wife listed the above-referenced property in her bankruptcy schedules, and the Court previously determined that said interest is not exempt (CP #24).

The Trustee, claiming a 1/3 ownership interest in the above-described real property, timely recorded a *lis pendens* (CP #20) in the public records of Miami-Dade County, Florida to ensure no action was taken against said real property in violation of the automatic stay and the Trustee’s interest in same.

During the pendency of this case, the Trustee negotiated a sale of all of the Trustee’s right, title and interest in this 1/3 interest. He received an offer of \$25,000.00 from Advocate Group

Holdings, LLC (“Buyer”) for the Trustee’s right, title and interest in and to the real property, and subject to a right of inspection of the interior within ten (10) working days prior to the hearing on the Sale Motion (CP #29). Additionally, the Buyer agreed to prepare the customary documents at no cost to the Trustee and agreed to close within ten (10) days of entry of the order approving the Sale Motion.

The Trustee, after receiving said offer, filed a motion to sell (“Sale Motion”) wherein the Trustee proposed to sell the Trustee’s right, title and interest in and to the real property to the Buyer for the sum of \$25,000.00, subject only to: the outstanding mortgage; the interest in favor of the co-owners (Raul and Mayra Viltres); continued taxing authority; zoning and code rights and obligations; covenants of record; restrictions of record; home owner or condominium owner association rights, bylaws and declarations; declarations of record; and , in “as is” and “where is” condition”, with all faults, and on a cash at closing basis. The Sale Motion was served upon all parties-in-interest, including the Debtors and the co-owner of the real property. In the Sale Motion, the Trustee requested that the Court deem the ultimate purchaser a good faith purchaser for value, pursuant to 11 U.S.C. §363(m), and that the ten (10) day waiting requirement be waived under FRBP 6004(g) for good cause.

The Court initially held a hearing on the Sale Motion on July 26th, 2006, but reset and continued the matter to August 2nd, 2006, upon the request of Debtor’s counsel. At the initial hearing, the Court advised that the Debtors and/or the co-owners could make higher and better offers to acquire the Trustee’s right, title and interest.

The hearing was finally held and concluded on August 2nd, 2006. The Debtors appeared through counsel, together with their father/co-owner. Argument was made by Debtors’ counsel at the August 2nd, 2006 hearing that: 1) the Trustee had no ownership interest; 2) the Trustee should

be barred from sale based upon *laches*; and, 3) the equities were in favor of the debtors and their father and the Trustee should bear the fees and costs associated with litigating against the Debtors and their father to determine what right, title and interest the Estate had in the property. The Court rejected these arguments and determined that the Trustee's interest could be sold as the Trustee was selling his interest, *whatever that interest may be*, without representation, to the Buyer.

The Court entered the order approving the sale on August 4th, 2006 (CP #40) ("Sale Order). The Sale Order included the finding that the Buyer was a good faith purchaser for value and waived the 10-day stay under Bankruptcy Rule 6004(g) for the sale to be effective immediately.

Based upon the waiver of the ten (10) day automatic stay, the Buyer and Trustee concluded the sale and closing on August 9th, 2006 as reflected in the Notice filed with the Court and served on all parties-in-interest and the Debtors, their counsel and the co-owners (CP 44). After entry of the Sale Order, which waived the stay under Bankruptcy Rule 6004(g), and after the closing on August 9th, 2006, the Debtors moved for rehearing on August 14th, 2006 (CP #45). The Debtors argue that pursuant to 11 U.S.C. §541(d), the 1/3 interest in the father's property held by the Debtor/Wife is not property of the estate and is not subject to administration by the Trustee. The Court disagrees with the Debtors for the following reasons.

First, the motion for rehearing is untimely. Bankruptcy Rule 6004(g) states that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise." In this instance, the Sale Order provided in paragraph 3 that "... the Buyer is a good faith purchaser for value, per 11 U.S.C. Section 363(m), and that the ten (10) day waiting requirement is herein waived per Rule 6004(g) of the Federal Rules of Bankruptcy Procedure for good cause." Accordingly, the ten (10) day stay

period set forth in Bankruptcy Rule 6004(g) was modified so as to make the Sale Order effective immediately. The Sale Order was final upon entry. The closing and transfer took place on August 9th, 2006, and therefore the Movants/Debtors' request for relief is moot. *See e.g., In re Rare Earth Minerals*, 445 F.3d 359, 363 (4th Cir. 2006) (where sale of bankrupt's assets has not been stayed, an appeal challenging the sale's validity is moot because the court has no remedy it can fashion even if it would have determined the issues differently). *See also, Anheuser-Busch, Inc. v. Miller (In re Stadium Mgmt. Corp.)*, 895 F.2d 845, 847 (1st Cir.1990); *In re Vlasek*, 325 F.3d 955, 961-62 (7th Cir.2003). The motion for rehearing is therefore denied on the basis that no relief can be granted as the sale has already been consummated.

But even if Debtors' Motion were timely, the fact remains that under the laws of the State of Florida and applicable provisions of the Bankruptcy Code, the Trustee is the co-owner of the real estate with her father and sister. When a bankruptcy case is filed under Chapter 7, the Trustee becomes the owner of all interests in all property of the Debtors as of the petition date, and stands as a hypothetical judgment-lien creditor, duly-perfected, and a bona-fide purchaser for value, without notice of any nature of any defects, as of that date. 11 U.S.C. §§541 and 544(a)(1)-(3). *See, generally, Lewis vs. Manufacturers National Bank*, 364 U.S. 603 (1961) (bankruptcy trustee as perfected hypothetical lien creditor without notice). Pursuant to 11 U.S.C. §541, as a result of the filing of the bankruptcy case, all of the Debtors' real and personal property interests, however held and wherever located, became property of the bankruptcy estate. Property of the estate under section 541 is very broad and includes all forms of assets, including real property, beneficial, legal and equitable interests; lawsuits and claims, and inchoate rights. *See, e.g., Beck vs. Deloitte & Touche*, 144 F.3d 732 (11th Cir. 1998) (professional malpractice claim is property of estate); *Jones vs Harrell*, 858 F.2d 667 (11th Cir. 1988) (personal injury claim is property of the estate); *Miller vs. Shallowford*

Community Hospital, Inc., 767 F.2d 1556 (11th Cir. 1985) (trustee succeeds to all causes of action held by debtor as of petition date); *Matter of Doan*, 672 F.2d 831 (11th Cir. 1982) (tax refund is property of estate). Whatever interest of record the Debtor/Wife held on the date of the filing of the petition became property of the estate and vested in the Trustee.

Although federal law determines what is property of the estate, property rights are determined under state law. See *In re Smith*, 85 F.3d 1555 (11th Cir. 1996); *In re Medlock*, 272 B.R. 360, 363 (Bankr. M.D. Fla. 2001). In the matter at bar, 1/3 ownership interest in the subject real property was quit-claimed deeded to the Debtor and the deed is recorded in the public records of Miami-Dade County, Florida in the Debtor's name. Therefore, notwithstanding the fact that the subject property may have been purchased by and in the name of the Debtor's parents, and notwithstanding the fact that Debtor's parents may indeed have paid for all maintenance on the property, the Debtor's parents subsequently voluntarily, and in an open and notorious manner, transferred an interest in said property to their daughter, and allowed this interest to be reflected in the public records.

The Debtor/Wife argues that the real property becomes property of the estate only to the extent of the Debtors' interest, and if the Debtor only holds "bare legal title" then she had no economic interest in the property. The Court agrees that the property is property of the estate only to the extent of the Debtor/Wife's interest, but whether she holds "bare legal title" or has any economic interest is of no relevance to the issue of what is property of the estate. The Debtor/Wife's interest was property of the estate, whatever that interest is/was; and, the Trustee sold that interest, whatever that interest may be – whether bare legal title or otherwise of no economic value – without representation or warranty. A willing purchaser, in good faith, agreed to pay \$25,000 to the Trustee for that undetermined 1/3 interest, bearing the risk it may have no economic value, but that in no way

changes the determination that the Debtor/Wife's interest in her father's property is property of the estate, subject to administration by the Trustee.

The Debtors rely on *Estey v. Sharp Electronics Corp.*, 409 So2d. 217 (Fla. 4th DCA 1982) to argue that Florida law does not permit a bankruptcy trustee from executing on certain real property as a judgment creditor. In *Estey*, the court found that a judgment creditor cannot have his debt satisfied out of the property held in the name of his judgment debtor under a resulting trust for another, unless it is made to appear that it was on the faith of the judgment debtor's apparent ownership that the credit was given which resulted in the judgment sought to be satisfied. This Court does not disagree with *Estey*. It may or may not be that the Trustee's interest – which was sold for \$25,000 in this case – is held for the benefit of Raul Viltres, as a resulting trust, but that issue is not determinative of whether the interest itself is property of the estate. Property of the estate under 11 U.S.C. §541 is very broad and encompasses the Debtor/Wife's interest in the real property, whatever that interest may be. The Buyer and other co-owners of the property are free to litigate in state court as to just what type of interest was sold to the Buyer by the Trustee for \$25,000. The learned Florida State Court Circuit Judge has full authority and discretion to determine if the Buyer acquired a 1/3 interest in the property or acquired nothing, or acquired something in between. That is a Florida state real property law issue, not decided in the bankruptcy court. The Court's determination that the Debtor's interest, whatever it was, is property of the estate subject to sale by the Trustee stands and the motion for authorization to sell the interest will not be reconsidered.

Accordingly, it is

ORDERED AND ADJUDGED that Debtors' Motion for Rehearing of Order Granting Trustee's Motion to Approve Sale of Trustee's Interest in Real Property is DENIED.

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Copies provided to:

James Miller, Esq.

Michael Frank, Esq.