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IT IS SO ORDERED.

Dated: May 17, 2024



*Beth A. Buchanan*

Beth A. Buchanan  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re )  
 )  
DONALD W. COMBS ) Case No. 21-12180  
 ) Chapter 7  
 ) Judge Buchanan  
 )  
\_\_\_\_\_  
Debtor(s) )

ORDER OVERRULING DEBTOR’S OBJECTION TO TRUSTEE’S NOTICE OF  
ABANDONMENT OF REAL PROPERTY [Docket Number 109]

[This order is not intended for publication.]

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334, and the standing General Order of Reference in this District. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

This matter is before this Court on Debtor Donald W. Combs (“Debtor”)’s Objection to the Trustee’s Abandonment of Real Property [Docket Number 109]; Successor Trustee’s Response to Objection to Abandonment [Docket Number 113]; and Debtor’s Motion Instanter / Reply [Docket Number 122]. On April 15 and 16, 2024, this Court held an evidentiary hearing

on this matter as well as a creditor's motion for relief from stay.<sup>1</sup> Following the hearing, this Court took the matter under advisement.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Debtor's Prepetition Operations and Litigation with the State of Ohio**

Prior to the bankruptcy filing, the Debtor and his former spouse owned two parcels of commercial property at 1503 State Route 28 in Clermont County, Ohio (the "1503 SR 28 Properties") and a residential property at 1779 Parker Road in Clermont County, Ohio (the "Parker Road Property") that were involved in litigation with the State of Ohio [Trustee Ex. U, p. 1-2].<sup>2</sup> In addition, they owned two businesses, Ace Dumpsters and Combs Trucking and Land Improvements that the Debtor operated [*Id.*]. The Debtor's business model initially involved renting dumpsters, filling the dumpsters with debris, and dumping the debris at the 1503 SR 28 Properties and, subsequently, at the Parker Road Property [*Id.*]. The Debtor ran into trouble regarding the legality of his operations and their environmental impact, which led to a lawsuit against the Debtor and other defendants entitled *State of Ohio ex. rel. Dave Yost, Ohio Attorney General v. Donald Combs, et al.*, Case No. 2018 CVH 01272 and filed in the Court of Common Pleas of Clermont County, Ohio (the "State Court Case").

In the State Court Case, the State of Ohio was awarded summary judgment and injunctive relief requiring the Debtor to cease his dumping operations, remove waste materials from the properties and comply with a Clermont County Board of Health's Order to Abate Nuisance that had been previously issued, as well as other required actions [Trustee Exs. U and V]. On March

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<sup>1</sup> The other matter heard was Creditor Clermont County Treasurer Jeannie M. Zurmehly's ("Clermont County") Motion for Relief from Automatic Stay [Docket Numbers 84]; Debtor's Response [Docket Number 104]; Clermont County's Reply [Docket Number 106] and Debtor's Sur Reply [Docket Number 121].

<sup>2</sup> The Successor Chapter 7 Trustee's Exhibits A – NN were admitted at the April 15 and 16, 2024 hearing without objection. The Successor Chapter 7 Trustee's exhibits are filed at Docket Number 137 and each will be referred to in this opinion as "Trustee Ex. \_\_\_".

3, 2021, the State of Ohio was additionally awarded a civil penalty judgment against the Debtor and his businesses in the amount of \$1,490,000 [Trustee Ex. W]. In April of 2021, the State of Ohio obtained a judgment lien against the Debtor's properties in Clermont County on the \$1,490,000 judgment [Trustee Ex. X].

**B. The Debtor's Bankruptcy Filing, Valuation of Real Property and 341 Meeting Notice**

The Debtor filed his Chapter 7 petition on October 11, 2021. In his bankruptcy schedules, the Debtor listed ownership interests in four parcels of real property. First, the Debtor scheduled a fee simple ownership interest in the residential Parker Road Property [Trustee Ex. A (Debtor's Schedule A/B), No. 1.2]. The Debtor valued the Parker Road Property at \$141,400 in his schedules [*Id.*].

In addition to his residential property, he listed an ownership interest in the two commercial parcels comprising the 1503 SR 28 Properties [*Id.*, No. 1.1].<sup>3</sup> The Debtor stated that one of the two parcels was approximately five acres of land zoned heavy industrial that he acquired in 1995 for construction material recycling, processing and storage of inventoried materials [*Id.*] The Debtor noted that the parcel had an auditor value of \$33,800 [*Id.*]. The other parcel at this address was a 0.69 acre parcel that included land and a shop building zoned heavy industrial [*Id.*]. The Debtor also acquired this parcel in 1995 [*Id.*]. The Debtor stated that it had an auditor value of \$50,000 [*Id.*]. In his schedules, the Debtor valued the two 1503 SR 28 Properties at \$83,800 [*Id.*]. The Debtor also valued the "inventory of various materials in process and recycled but subject [to] various court orders" at \$0.00 [*Id.*, No. 41].

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<sup>3</sup> In his original schedules, the Debtor stated that he had a 1/2 ownership interest of the two 1503 SR 28 Properties. However, he subsequently amended his schedules to list full fee simple ownership of both 1503 SR 28 Properties [Trustee Ex. A (Debtor's Schedule A/B), p. 11 and Trustee's Ex. D].

The Debtor also listed an equitable ownership interest in a fourth parcel of real property at 1500 State Route 28 also in Clermont County, Ohio (the “1500 SR 28 Property”), adjacent to the 1503 SR 28 Properties, based on partial payment under a purchase contract [*Id.*, No. 1.3]. In his schedules, the Debtor valued his interest in this property at \$54,000 [*Id.*]

Although the Debtor subsequently amended his Schedule A/B, he did not change his valuation of these properties in his amended schedules [Trustee Ex. D].

Trustee Richard D. Nelson was appointed to serve as the Chapter 7 Trustee in the Debtor’s case. The Official Form 309A Notice of a Chapter 7 Case was served on parties in interest providing them with notice of the bankruptcy case and the November 19, 2021 date for the § 341 Meeting of Creditors (the “341 Notice”) [Trustee Ex. B]. In a section of the 341 Notice entitled “Abandonment,” the following notice was provided:

Pursuant to L.B.R. 6007-1, 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. Further notice to creditors and other parties in interest is not required for the abandonment of any property unless a party in interest, before the conclusion of the § 341 meeting, files a request for further notice of abandonment.

[*Id.*, Para. 13].

The 341 Meeting was held on November 19, 2021 [Trustee Ex. F, p. 3]. Only one party in interest, the State of Ohio / Ohio Environmental Protection Agency, filed a request for further notice of any abandonment of property [Trustee Ex. C].

### **C. Trustee’s Abandonment of Real Property and Debtor’s Objection**

On October 24, 2023, the Successor Chapter 7 Trustee, Henry E. Menninger, Jr. (the “Trustee”),<sup>4</sup> filed a Notice of Abandonment indicating that he was abandoning the Parker Road Property, the 1500 SR 28 Property and the 1503 SR 28 Properties [Trustee Ex. G (“Notice of”

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<sup>4</sup> Henry E. Menninger, Jr. was appointed as the Successor Chapter 7 Trustee on December 22, 2022 after Richard D. Nelson resigned [Docket Number 57].

Abandonment”). In the Notice of Abandonment, the Trustee indicated that he had determined the parcels to be burdensome and of inconsequential value to the bankruptcy estate [*Id.*].

Subsequently, the Debtor filed an objection to the Trustee’s Notice of Abandonment [Docket Number 109]. The Debtor asserted that he was not properly notified that the Trustee was going to abandon the properties and, if he had been noticed, he would have objected.<sup>5</sup> He asserted that creditors including the State of Ohio and Clermont County Treasurer were trying to shut down his recycling business and steal the land by asserting toxic and hazardous materials exist on the land even though, the Debtor alleged, no toxic or hazardous materials exist on the properties. Alternatively, he noted that he has been convicted<sup>6</sup> for hazards to the public and the environment in association with the properties and, consequently, the Trustee cannot abandon the properties until the hazardous conditions have been identified. He alleged that the determinations by the State of Ohio that his properties contain toxic and hazardous materials has led the properties to be undervalued and caused the Trustee to determine the properties to be burdensome and of inconsequential value to the estate. He requested that this Court stop the abandonment because, once abandoned, the Clermont County Treasurer will foreclose and sell the property at a severely reduced price.

#### **D. Hearing on Abandonment of Real Property**

Following the filing of additional responsive documents by the Debtor and Trustee, a hearing was held on April 15 and 16, 2024 to consider the Debtor’s objection to abandonment of the real property.

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<sup>5</sup> As part of the Debtor’s objection, the Debtor argued a lack of sufficient notice of the abandonment in time to file a timely objection and obtain a hearing. This Court concludes that the Trustee complied with the notice requirements of Federal Rule of Bankruptcy Procedure 6007 and Local Bankruptcy Rule 6007-1(b). Nonetheless, this Court allowed the Debtor’s untimely objection to the Notice of Abandonment and held the April 15 and 16, 2024 hearing on the matter so this particular portion of the Debtor’s argument has been rendered moot.

<sup>6</sup> The Debtor is serving time at the London Correctional Institution related to the environmental issues on the properties.

At the hearing, the Trustee, who has served as a chapter 7 trustee for 35 years, testified to the process and determinations made prior to abandoning the Parker Road Property, the 1500 SR 28 Property and the 1503 SR 28 Properties. First, he met with the original Chapter 7 Trustee in this case, Richard D. Nelson, to discuss the case and what occurred at the § 341 Meeting of Creditors.

After meeting with Mr. Nelson and reviewing the Debtor's schedules, the Trustee walked the Debtor's properties in May of 2023. The Trustee testified that he found piles of debris, some 15 or 20 feet high, and, while there, stepped on a nail that went into his foot and required him to get a tetanus shot. The Trustee also provided aerial photographs of the properties from the Clermont County Auditor [Trustee Exs. FF-KK] that, he testified, fairly represented the condition of the 1503 SR 28 Properties and Parker Road Property. The photographs show piles of debris including concrete, asphalt, wood and shingles as well as abandoned vehicles and trailers.

The Trustee took into consideration the valuation of the properties and the liens against them to determine whether there was equity in the properties that could be administered on behalf of the estate.

With respect to the 1503 SR 28 Properties, the Trustee adopted the Debtor's valuation of \$83,000 in his schedules that was based on the auditor's value. The Trustee further submitted an appraisal of the 1500 SR 28 Property [Trustee Ex. N] from the Debtor's prior 2015 bankruptcy case which valued that property at \$54,000 consistent with the Debtor's scheduled valuation in his current bankruptcy case. The Trustee also took into consideration that the Debtor valued the inventory of materials on the properties at \$0.00. With respect to the liens on the properties, the Trustee testified that Mike Duckwall filed a secured claim for \$125,000 based on a mortgage lien

against the 1503 SR 28 Properties [Trustee Ex. J] and that David Schooler filed a secured claim for \$39,388 based on a judgment lien against the Debtor's properties in Clermont County [Trustee Ex. H]. The Trustee also took into consideration the Clermont County Treasurer's claim for \$90,945 for real estate taxes owed on the properties [Trustee Ex. I] and the State of Ohio / Ohio EPA's secured claim based on its judgment lien against the properties totaling \$1,490,000 [Trustee Ex. K]. Taking these liens into account, including the large judgment lien of the State of Ohio / Ohio EPA, and the tens of thousands of dollars of unpaid real estate taxes, the Trustee concluded that there was no equity in these properties that could be administered on behalf of the estate's creditors.

With respect to the Debtor's residential Parker Road Property, the Trustee testified that the Debtor valued the property at \$141,400 in his schedules which was a little less than the Debtor's homestead exemption in the residence. Although the auditor did value the property at somewhat higher than the exemption amount [Trustee Ex. T], when the Trustee took into consideration the judgment liens against the Debtor's properties, there was still no equity in the property to administer. The Trustee testified that he became convinced there was no net equity in any of the properties to benefit the estate.

The Trustee testified to familiarizing himself with the State of Ohio's pre-petition litigation against the Debtor and his properties. He talked with the State of Ohio, Goshen Township and Clermont County to determine that there was no risk of hazard to surrounding properties and ensure that the properties did not jeopardize the health of the community. The Trustee further stated that he discussed abandonment with the State of Ohio / Ohio EPA and that it had no objection. Only after those steps were taken did the Trustee file his Notice of

Abandonment and serve it on the Debtor, Debtor counsel,<sup>7</sup> and State of Ohio per its request for further notice.

Following the Trustee's testimony, the Debtor asked the Trustee if he was an expert on toxic materials and whether he obtained an appraisal for the properties based on the use of the properties as a recycling facility. The Trustee answered that he is not an expert on toxic materials and, because this case was filed as a chapter 7 liquidation rather than a reorganization case, the trustee did not have authority to run a recycling operation. Instead, the Trustee based his valuations on the record including the Debtor's statements in his schedules made under penalty of perjury.

## **II. LEGAL ANALYSIS**

Bankruptcy Code Section 554 provides that “[a]fter 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.” 11 U.S.C. § 554(a). In essence, this statute provides a procedure by which a bankruptcy trustee may divest the estate of property that cannot be effectively liquidated or sold in an amount in excess of encumbrances against the property to benefit the debtor's unsecured creditors. A bankruptcy trustee's power to abandon property is discretionary and courts defer to the trustee's judgment. *In re Blasingame*, 598 B.R. 864, 871 (B.A.P. 6th Cir. 2019) (further citations omitted). The burden is thus placed on the party opposing abandonment to prove a benefit to the bankruptcy estate beyond “mere speculation about possible scenarios in which there might be a benefit to the estate” and that abandonment constitutes an abuse of the trustee's discretion. *Id.* (citing *In re Slack*, 290 B.R. 282, 284 (Bankr. D. N.J. 2003)).

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<sup>7</sup> When the Notice of Abandonment was filed, the Debtor was represented by Attorney David Kruer. This Court subsequently granted Mr. Kruer's request to withdraw and the Debtor now proceeds without representation.

A chapter 7 bankruptcy trustee “is not obliged to accept property so encumbered with liens as to be burdensome to the estate.” *In re Haber*, 547 B.R. 252, 258 (Bankr. S.D. Ohio 2016) *aff’d*, 2017 U.S. Dist. LEXIS 37973, 2017 WL 1017731 (S.D. Ohio March 16, 2017), *aff’d*, 2017 U.S. App. LEXIS 21888 (6th Cir. Oct. 30, 2017). Thus, “[a]s a rule, the trustee should abandon or disclaim all assets encumbered in excess of their value.” *Id.* Once property is abandoned, it ceases to be property of the bankruptcy estate and reverts back to the debtor. *Id.* (“Abandonment by the trustee of an asset immediately reverts title to that asset in the bankrupt.”). The practical effect of abandonment is to remove the asset entirely from the jurisdiction of the bankruptcy court allowing the debtor and lienholders<sup>8</sup> to exercise their rights in the property “as they normally would under applicable state law.” *Id.*

To determine whether to abandon the properties, the Trustee compared the values of the 1503 SR 28 Properties, 1500 SR 28 Property and the Parker Road Property to the liens encumbering them. For valuation, the Trustee relied on the Debtor’s schedules valuing the properties at \$83,000, \$54,000 and \$141,400 respectively. These values were provided by the Debtor under penalty of perjury and, as testified to by the Trustee, reasonably matched the auditor’s values of the properties and an appraisal of the 1500 SR 28 Property in a prior bankruptcy case. Based on those valuations, the State of Ohio’s \$1,490,000 judgment lien, alone, would fully encumber the Debtor’s properties even without consideration of the \$90,945 in outstanding real estate taxes, the \$125,000 Duckwall Mortgage (against the 1503 SR 28 Properties), the \$39,388 Schooler judgment lien, and the Debtor’s homestead exemption in the Parker Road Property. This evaluation led to the Trustee’s reasonable conclusion that there was no excess equity in the properties to liquidate for the benefit of unsecured creditors and that they were burdensome and of inconsequential value to the estate.

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<sup>8</sup> Abandonment has no effect upon the validity of liens encumbering the property. *Haber*, 547 B.R. at 258.

The Debtor objects arguing that the Trustee undervalued the properties. He asserts that with appropriate licenses or registrations, he could bring the properties into compliance and operate a recycling facility. He stated his belief that this could make his properties worth millions.

The Debtor's testimony as to the future value of the properties is mere speculation. He provided no admissible evidence<sup>9</sup> as to the steps necessary to bring the properties into environmental compliance, no admissible evidence that a recycling facility could be operated on the properties once compliance was reached, and no basis for concluding that the properties would be worth millions of dollars at that point. Accordingly, this Court affords the Debtor's opinion of value little weight. Based on the Trustee's evidence presented at the hearing, this Court concludes that the 1503 SR 28 Properties, 1500 SR 28 Property and the Parker Road Property are fully encumbered assets that are burdensome and of inconsequential value to the estate.

Nonetheless, there are limits to the Trustee's ability to abandon such assets. In *Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Prot.*, the United States Supreme Court held that when § 554(a) was enacted, Congress did not grant a bankruptcy trustee the right to "abandon property in contravention of a state statute or regulation that is reasonably designed to protect public health or safety from identified hazards." 474 U.S. 494, 507 (1986) (concluding that a bankruptcy court may not authorize such an abandonment without formulating conditions that will adequately protect the public); *see also Lancaster v. State of Tenn. (In re Tube & Metal Prods., Co.)*, 831 F.2d 118 (6th Cir. 1987).

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<sup>9</sup> The Debtor attempted to submit as evidence documents purporting to be applications and guides for the operation of a Construction and Demolition Debris recycling facility [Docket Number 154]. However, the Trustee objected to the evidence for lack of authentication and the objection was sustained. Regardless, the Debtor submitted no testimony or documentary evidence to support that any such applications would be granted for the properties nor, evidence that, if granted, would bring his properties into compliance with environmental laws.

Although the Supreme Court did not allow the trustee to abandon the property at issue in *Midlantic*, the Supreme Court reiterated that the exception to a trustee's power to abandon property under § 554(a) "is a narrow one":

It [the exception] does not encompass a speculative or indeterminate future violation of such laws that may stem from abandonment. The abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the public health or safety from imminent and identifiable harm.

474 U.S. at 507 n.9. Courts addressing abandonment post-*Midlantic* have held that, under limited circumstances, a trustee may abandon property that violates state environmental laws by considering factors such as: 1) whether the property constitutes an imminent threat to the health and safety of the public; and 2) whether the estate has unencumbered assets with which to comply with environmental laws. *In re MCI, Inc.*, 151 B.R. 103, 107-08 (E.D. Mich. 1992) (concluding that bankruptcy estates with unencumbered assets should be held to stricter compliance with environmental laws before abandonment is permitted).

The Debtor argues that the properties cannot be abandoned because they have been found to be contaminated and in violation of environmental laws. While true, this Court considers the factors discussed in *MCI, Inc.* to conclude that abandonment of the properties is permissible. First, the Trustee did not proceed with the filing of the Notice of Abandonment until after discussing the matter with the governmental entities and environmental protection agency involved with the Debtor's properties to ensure that they did not object to abandonment and that the properties posed no imminent risk to the community. Second, there are no unencumbered assets in this "no asset" chapter 7 bankruptcy case that could be used to remediate the properties to bring them in to compliance with environmental laws. Accordingly, under the facts and circumstances of this case, the 1503 SR 28 Properties, the 1500 SR 28 Property, and the Parker Road Property are properly abandoned.

**III. CONCLUSION**

For the reasons stated, this Court overrules the Debtor's Objection [Docket Number 109] to the Trustee's Notice of Abandonment.

**SO ORDERED.**

Distribution list:

Default List Plus

Jason A. Fountain, Esq.

Michael E. Idzkowski, Esq.

Timothy J. Kern, Esq.

Thomas A. Wietholter, Esq.

Donald W. Combs  
(Inmate 788726)  
London Correctional Institution  
P.O. Box 69  
London, Ohio 43140