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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
<u>Debtor(s)</u>)	

ORDER GRANTING CLERMONT COUNTY TREASURER JEANNIE M. ZURMEHLY'S MOTION FOR RELIEF FROM AUTOMATIC STAY [Docket Number 84 / 89]

[This order is not intended for publication.]

This matter is before this Court on Clermont County Treasurer Jeannie M. Zurmehly (“Treasurer”)’s Motion for Relief from Automatic Stay [Docket Numbers 84 / 89]¹; Debtor Donald W. Combs (“Debtor”)’s Response [Docket Number 104]; Treasurer’s Reply [Docket Number 106] and Debtor’s Sur Reply [Docket Number 121].

¹ A substitute motion for relief from stay was filed at Docket Number 89 to comply with this Court’s electronic case filing requirements.

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)(G).

On April 15 and 16, 2024, this Court held an evidentiary hearing on this matter as well as the Debtor's Objection to the Trustee's Notice of Abandonment.² Following the hearing, this Court took the matter under advisement.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Valuation of Properties and Liens Against Them

The Debtor filed his Chapter 7 petition on October 11, 2021. In his bankruptcy schedules, the Debtor listed ownership interests in parcels of real property including two commercial parcels located at 1503 State Route 28 (the "1503 SR 28 Properties") and his residence at 1779 Parker Road (the "Parker Road Property") in Clermont County, Ohio. On December 27, 2023, the Treasurer filed a motion requesting relief from the automatic stay to permit continuance of in rem enforcement of tax foreclosure proceedings against these Clermont County properties.

At the evidentiary hearing, Successor Chapter 7 Trustee Henry E. Menninger, Jr. (the "Trustee") testified to determining the values of these properties and whether there was equity in them that could be administered on behalf of creditors of the Debtor's bankruptcy estate.³ The Trustee has served in the capacity of a chapter 7 trustee for 35 years. In making his determination of value, he first considered the Debtor's schedules, which the Debtor signed under penalty of perjury and compared those values to the Clermont County auditor's valuations. In addition, the

² The other matter heard was the Debtor's Objection to the Trustee's Abandonment of Real Property [Docket Number 109]; Successor Chapter 7 Trustee's Response to Objection to Abandonment [Docket Number 113]; and the Debtor's Motion Instant / Reply [Docket Number 122].

³ The Trustee testified at the evidentiary hearing with respect to the Debtor's Objection to the Trustee's Notice of Abandonment that was set at the same time as the Treasurer's Motion for Relief from the Automatic Stay. To avoid having the Trustee testify to the same matters twice, the parties agreed that the Trustee's testimony was also admitted as evidence in relation to the Treasurer's motion.

Trustee met with the original Chapter 7 Trustee, Richard D. Nelson, to discuss the case and what occurred at the § 341 Meeting of Creditors. Finally, the Trustee walked the properties in May of 2023 and found piles of debris, some 15 or 20 feet high, related to the Debtor's constructing debris and recycling business. The debris included concrete, asphalt, wood and shingles as well as abandoned vehicles and trailers.

From this assessment, the Trustee formulated an opinion of value that he then compared to the liens against the properties to determine whether equity existed. 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. With respect to the liens against the 1503 SR 28 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 and that David Schooler filed a secured claim for \$39,388 based on a judgment lien against the Debtor's properties in Clermont County. The Trustee also took into consideration the Clermont County Treasurer's proof of claim for \$90,945 for real estate taxes owed on the commercial and residential properties and the State of Ohio / Ohio EPA's secured claim based on its judgment lien against the properties totaling \$1,490,000. 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 determined that there was no equity in the 1503 SR 28 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 a somewhat higher amount, when the Trustee took into consideration the outstanding real estate

taxes and judgment liens against the Debtor's Clermont County properties, there was still no equity in the residential real property. The Trustee testified that he became convinced there was no net equity in any of the properties to benefit the estate and abandoned the properties.

B. Property Taxes Owed and Tax Foreclosure Proceedings

The elected Treasurer for Clermont County Ohio, Jeannie M. Zurmehly ("Ms. Zurmehly") testified to the property taxes owed on the properties. She presented auditor records for the parcels showing the current and delinquent taxes for each parcel beginning with the Parker Road Property. The auditor's records showed property taxes due on the Parker Road Property totaling \$24,574.51 with \$21,563.09 of that amount being delinquent taxes for prior years [Treasurer Ex. A].⁴ She also testified to the property taxes due on the two commercial parcels comprising the 1503 SR 28 Properties. The auditor's records showed \$33,222.21 due with respect to one parcel and \$48,822.53 due on the other for a total of \$82,044.74 in property taxes due on the 1503 SR 28 Properties [*Id.*].

In September of 2015, the former Treasurer obtained a Default Judgment Entry, Decree of Foreclosure and Order of Sale against the 1503 SR 28 Properties [Treasurer Ex. C]. It permitted the former Treasurer to sell the 1503 SR 28 Properties, subject to the Debtor's right of redemption, in order to pay the delinquent property taxes due at that time. Ms. Zurmehly testified that, after the judgment, the Debtor filed a 2015 bankruptcy case and the property became subject to the environmental concerns involving the State of Ohio / Ohio EPA so no sale of the 1503 SR 28 Properties has occurred and the case remains pending.

In 2017, the Debtor entered into a Consent Judgment Entry of Foreclosure with respect to the residential Parker Road Property [Treasurer Ex. D]. By way of this document, the Debtor

⁴ The Treasurer's Exhibits A and C – I and M filed at Docket Number 136 were admitted into evidence without objection. They will be referred to as "Treasurer's Ex. ___" in this order.

admitted to delinquent taxes owed on the property but a foreclosure sale was held in abeyance to allow the Debtor and his former spouse to enter into a delinquent tax contract for the taxes due. Ms. Zurmehly testified that the Debtor did enter into a tax contract with her office creating a repayment plan, but that the Debtor did not keep up with his payments. Under the terms agreed to, the contract became void and the foreclosure sale was able to go forward. However, the sale did not proceed and remains stayed by the Debtor's current bankruptcy case.

Ms. Zurmehly testified that, since the bankruptcy filing, the Debtor has not contacted her regarding repayment. However, approximately a month prior to the hearing, the Debtor's daughter called her office to see what needed to be done to stop the foreclosure sale. Ms. Zurmehly testified that no one offered to pay nor tendered payment of the taxes on any of the properties and both the delinquent and current taxes remain due and owing. Upon questioning by the Debtor, Ms. Zurmehly testified that she told the Debtor's daughter that no payments for delinquent taxes could be accepted until the properties were compliant with regulations.⁵

C. Intended Actions with Respect to the Properties

Ms. Zurmehly testified that if relief from the automatic stay is granted, the properties would go to foreclosure sale. If the properties are not sold after two attempts, however, the properties may be forfeited to the township or school district that could pay the taxes, clean up the properties, and keep them. If that does not occur, the properties would be forfeited to the State of Ohio. When questioned by the Debtor, Ms. Zurmehly testified that she was unaware of any laws preventing the sale of the properties even though they were not compliant with

⁵ Ms. Zurmehly testified that, even if the taxes were paid in full, this would not resolve the tax foreclosure. She stated that, under Ohio Revised Code § 5721.25, when a tax foreclosure is pending, payment of the taxes must come with proof of compliance with health and safety codes. *See* Ohio Rev. Code § 5721.25 (redemption of delinquent land). She testified to the existence of the State of Ohio / Ohio EPA judgment and other state court litigation finding the properties in violation of such codes [*See* Treasurer Ex. E – I]. She also testified that she had driven by the properties and that they have not been cleaned up.

regulations. She testified that there are no other ways to address delinquent real estate taxes besides a tax foreclosure sale.

The Executive Director of the Clermont County Land Bank, Desmond Maaytah, was also called to testify. Mr. Maaytah testified that the Land Bank was created about two years ago to address unsafe and tax delinquent properties and revitalize them to a more productive use. He had become familiar with the Debtor's properties when Goshen Township contacted the Land Bank to see if it was able to help out. Mr. Maaytah testified that he was not an environmental professional but is personally familiar with the conditions of the properties and that the conditions were similar on both the 1503 SR 28 Properties and the Parker Road Property. He described debris piles as high as 15 to 20 feet consisting of construction debris, asphalt, shingles, and discarded trailers. He also stated that asbestos and heavy metals were found in the materials on the site that makes the clean up more expensive which is why the Land Bank decided to apply for a grant.

Mr. Maaytah testified that the Land Bank applied for a Brownfield Remediation Grant to clean up the 1503 SR 28 Properties [Treasurer Ex. M]. He testified that one of the requirements to utilize the grant is that the Land Bank cannot be partnered with the person who caused the contamination. If the tax foreclosure does not result in the sale of the property, Mr. Maaytah testified that, ideally, the Land Bank would assume title as an alternative to forfeiting the property to the state. Once the properties are cleaned of contaminants, and the Ohio EPA has signed off by stating that no further action is needed, then the Land Bank would work with developers to redevelop the properties to a productive use and return them to private owners.

D. Debtor's Objection to Granting Relief from Stay

The Debtor objects to relief from stay asserting that the Treasurer, Clermont County Prosecutor and the Ohio EPA, among others, made determinations regarding environmental hazards on his properties that negatively impacted their value and caused the Debtor to lose his income from operating a business on the properties. The Debtor also testified that \$300,000 in unauthorized test holes have been drilled on the properties while he was incarcerated.⁶ The Debtor testified that the Order of Permanent Injunction granted to the Clermont County General Health District in a nuisance action involving the properties, allowed the Debtor to either remove the solid waste on the properties or become a Class IV composting facility [Treasurer Ex. E]. The Debtor stated that he has applied to operate a recycling facility on the site and that, if permitted, he believes this would resolve the environmental issues, void the Brownfield grant, and increase the values of the properties.⁷

II. LEGAL ANALYSIS

Upon the filing of a bankruptcy petition, an automatic stay is imposed that enjoins creditors from commencing or continuing most judicial actions to collect a debt from the debtor or the debtor's property. 11 U.S.C. § 362(a). However, the Bankruptcy Code provides creditors with the ability to request relief from the automatic stay if certain requirements are met.

The Treasurer requests relief from the automatic stay under 11 U.S.C. § 362(d) to proceed with pending tax foreclosure actions in state court against the 1503 SR 28 Properties and the Parker Road Property. Section 362(d) provides, in pertinent part:

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

⁷ The Debtor attempted to submit exhibits into evidence but received objections that the exhibits were not properly authenticated. The objections were sustained.

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

* * *

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

11 U.S.C. § 362(d)(2). Under this Bankruptcy Code provision, this Court must lift the automatic stay if the debtor has no equity in the property and the property is not necessary for an effective reorganization. *Id.* Furthermore, because a Chapter 7 case involves the liquidation of assets rather than reorganization, ““where the debtor has no equity in the property, the automatic stay must be lifted.”” *In re J & M Salupo Dev. Co., Inc.*, 388 B.R. 809, 812 (Bankr. N.D. Ohio 2008) (quoting *In re Roxrun Estates, Inc.*, 74 B.R. 997, 1003 (Bankr. S.D.N.Y. 1987)).

As the party requesting relief, the Treasurer carries the burden of proving that the Debtor lacks equity in the properties. 11 U.S.C. § 362(g)(1). A debtor lacks equity in property when the value of the property is less than the amount of debt that it secures. *In re Cambridge Woodbridge Apartments, LLC*, 292 B.R. 832, 840 (Bankr. N.D. Ohio 2003).

In this instance, the Treasurer relied on the Trustee’s testimony to establish the value of the commercial 1503 SR 28 Properties and the residential Parker Road Property. The Trustee valued the 1503 SR 28 Properties at \$83,000 and the residential Parker Road Property at \$141,400 based on the Debtor’s own statements of value in his schedules as well as the auditor’s valuations and the Trustee’s walk-through of the properties.

To determine whether equity exists, these values must be compared to the secured debt or liens that exist against the properties. The Treasurer established that current and delinquent real estate taxes are due on the 1503 SR 28 Properties and the Parker Road Property totaling \$82,044.74 and \$24,574.51, respectively. *See* Ohio Rev. Code § 323.11 (creating a statutory lien for real estate taxes). In addition, other significant liens exist including a mortgage lien totaling \$125,000 against the 1503 SR 28 Properties and two judgment liens against all of the Debtor's properties in Clermont County: the Schooler judgment lien totaling \$39,388 and the State of Ohio / Ohio EPA's judgment lien totaling \$1,490,000.

Comparing the significant liens, including the \$1,490,000 judgment lien of the State of Ohio / Ohio EPA, to the value of the properties, the Trustee determined that the liens far exceed the properties' values and abandoned the properties on behalf of the bankruptcy estate. Based on this same evidence of value, this Court concludes that the Treasurer has met its burden of proving that the Debtor lacks equity in the properties.

Because this is not a reorganization case, the lack of equity alone requires this Court to grant the Treasurer's request for relief from the automatic stay. Nonetheless, the Debtor argues that the Treasurer, Clermont County, the State of Ohio and others have come together to improperly determine that his properties are contaminated causing him to lose his ability to operate a recycling business and to devalue his properties.⁸ He believes that if his application to operate a recycling facility on the sites would be approved, it would resolve the environmental issues, void the Brownfield Grant and increase the properties' values.

⁸ To the extent that the Debtor's objection to relief from stay seeks review of the pre-petition state court judgments against him, this Court lacks jurisdiction to conduct such a review. *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (stating that, "under what has come to be known as the *Rooker-Feldman* doctrine, lower federal courts are precluded from exercising appellate jurisdiction over final state-court judgments").

The Debtor's statements about the potential future value of his properties if his business proposition is approved amount to mere speculation. He submitted no admissible evidence to support that his application to operate a recycling facility has been or will be approved nor evidence to support a value for the properties above that established by the Trustee using, in part, the Debtor's own schedules submitted under penalty of perjury.

For these reasons, this Court concludes that the Debtor lacks equity in the properties and that the Treasurer is entitled to relief from the automatic stay.⁹

III. CONCLUSION

For the reasons stated, Clermont County Treasurer Jeannie M. Zurmehly's Motion for Relief from Automatic Stay [Docket Numbers 84 / 89] is GRANTED. The Clermont County Treasurer may exercise its state law rights with respect to the properties at 1503 State Route 28 and 1779 Parker Road in Clermont County, Ohio.

SO ORDERED.

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⁹ Once relief from the automatic stay is granted, that relief remains valid even if the bankruptcy case is converted from one chapter to another. *British Aviation Ins. Co. v. Menut (In re State Airlines, Inc.)*, 873 F.2d 264, 268-69 (11th Cir. 1989).