



9:03 am, 8/2/05

Joyce W. Harris
Clerk of Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF WYOMING

In re)	
)	
JOHN DAVID TADLOCK)	Case No. 04-20249
and JOAN LINIHAN TADLOCK,)	CHAPTER 7
)	
Debtors.)	
)	
R. MICHELE RUSSELL ,)	
)	
Plaintiff,)	
)	
v.)	Adv. No. 04-2084
)	
RISK MANAGEMENT ALTERNATIVES,)	
MARK FOXWELL, JOHN DAVID)	
TADLOCK, JOAN LINIHAN TADLOCK,)	
)	
Defendants.)	

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

On June 2, 2005, the court held a hearing on the motions for summary judgment filed by the plaintiff/trustee, R. Michele Russell (Trustee), the defendant Risk Management Alternatives, Inc. (RMA), and the defendant/debtors, John David Tadlock and Joan Linihan Tadlock (Debtors). The defendant Mark Foxwell did not answer the complaint, and on July 18, 2005 the Clerk of Court entered his default.

JURISDICTION

The court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the definition of 28 U.S.C. § 157(b)(2)(E) and

(K). The motions are brought under Fed. R. Civ. P. 56, made applicable in adversary proceedings by Fed. R. Bankr. P. 7056.

DISCUSSION

Summary judgment is appropriate when there is no disputed issue of material fact and the moving party is entitled to judgment as a matter of law. *Hardy v. S.F. Phosphates Ltd. Co.*, 185 F.3d 1076, 1079 (10th Cir. 1999). Under Rule 56(c), summary judgment is proper only if the evidence, reviewed in the light most favorable to the party opposing the motion, demonstrates no genuine issue of any material fact. *Frandsen v. Westinghouse Corp.*, 46 F.3d 975, 976 (10th Cir. 1995).

Undisputed Facts

The parties agree the facts are undisputed. On February 24, 2004, John Tadlock and Joan Tadlock filed their voluntary chapter 7 petition. The property of the Debtors' estate included a residence in Casper, Wyoming (Real Property). The Real Property was encumbered, in order of priority, by a first mortgage recorded by CitiMortgage, Inc., a second mortgage recorded by Foxwell, a tax lien recorded by the Internal Revenue Service (IRS), and a judgment lien recorded by RMA which was collecting a debt owed to the Wyoming Medical Center.

The Debtors scheduled the value of the Real Property as \$99,000, and listed a total amount for the four encumbrances of \$122,689.73. The Debtors did not schedule an IRS tax debt aside from the lien on the Real Property. The IRS filed a proof of claim in the

bankruptcy case for 1997, 1998 and 2001 income taxes. On July 14, 2004, the IRS released the 1995 tax lien. Based on the scheduled encumbrances, the Trustee filed a No Distribution Report, effectively abandoning the Real Property. The bankruptcy case was subsequently closed.

On April 14, 2004, Federal National Mortgage Association (Fannie Mae), on behalf of CitiMortgage, Inc., obtained an order modifying the automatic stay to begin foreclosure proceedings. Fannie Mae foreclosed the first mortgage by a power of sale foreclosure. The Sheriff's sale, held on September 16, 2004, resulted in a sale price of \$85,000 and net proceeds (Sale Proceeds) of \$56,602.78 which Fannie Mae turned over to the Trustee.

On September 28, 2004, the court reopened the chapter 7 case. The Trustee paid the Debtors their homestead exemptions of \$10,000 each.

This adversary proceeding followed. When filed, the Trustee's complaint was an interpleader complaint. The Trustee was not asserting an interest in the Sale Proceeds. The Debtors filed a Motion to Dismiss RMA's cross claim against them. In the order entered April 1, 2005 on the Motion to Dismiss, the court revoked the technical abandonment of the estate's interest in the Real Property. Consequently, the Trustee, the Debtors, and RMA all allege entitlement to the Sale Proceeds.

Legal Analysis

The court must determine which party has the superior interest in the Sale Proceeds. Although the Debtors' motion for summary judgment did not address their position vis a vis

the estate, the Debtors argued their entitlement to the Sale Proceeds in the context of their Motion to Dismiss RMA's Cross Claim, specifically in their Supplement to Defendant Tadlocks' Motion to Dismiss. The court did not rule on the issue in the April 1, 2005 Order, viewing it as premature. Now, having been fully apprised of the parties' positions and because no facts are in dispute, the court will address the rights of all parties in the Sale Proceeds at this time.

A bankruptcy estate is made up of all legal and equitable interests of the debtor as of the commencement of the bankruptcy case. 11 U.S.C. § 541(a). The existence and extent of the interest is determined by state law, in this case Wyoming law. *In re Taylor*, 133 F.3d 1336, 1341 (10th Cir. 1998).

The foreclosure sale of the first mortgage on the Real Property was a power of sale foreclosure held pursuant to Wyo. Stat. Ann. §§ 34-4-101 through 34-4-113 (LexisNexis 2003). Some, if not all, of the judicial foreclosure statutes are also expressly or impliedly applicable to a power of sale foreclosure. *See, e.g.*, Wyo. Stat. Ann. §§ 1-18-103 & 104 (LexisNexis 2003) (providing redemption rights and procedures).

A debtor's right to redeem from a foreclosure sale is set forth in Wyo. Stat. Ann. § 1-18-103. If a debtor does not redeem, a junior mortgagee or a judgment creditor has a right to redeem under Wyo. Stat. Ann. § 1-18-104(a).

No redemption occurred in this case. Consequently, Mr. Foxwell's mortgage and RMA's judgment lien were extinguished by the Sheriff's sale.

Nevertheless, RMA contends it is entitled to the Sale Proceeds under the language of Wyo. Stat. Ann. § 34-4-113 (LexisNexis 2003). That section provides:

If after any sale of real estate as herein prescribed, there shall remain in the hands of the officer or other person making the sale any surplus money after satisfying the mortgage on which such real estate was sold and payment of the costs and expenses of such foreclosure and sale, the surplus shall be paid over by such officer or other person on demand to the mortgagor, his legal representatives or assigns.

RMA contends it holds an assignment by operation of law, specifically two sections of the execution statutes, Wyo. Stat. Ann. §§ 1-17-301 & 302 (LexisNexis 2003).

An assignment may occur by operation of law, but when a statute creates such a right, the language is generally explicit. For example, the Child Support Enforcement Act specifically establishes an assignment of child and spousal support by operation of law as required by the Social Security Act under Title IV-D and 42 U.S.C. §§ 651 & 654(5). Wyo. Stat. Ann. § 20-6-106(a) (LexisNexis 2003).

The execution statutes cited by RMA do not provide for an assignment by operation of law. The court is unwilling to read such a right into the statute without explicit assignment language. A judgment lien creditor has the right to redemption or the right to execute on sale proceeds. As a creditor whose judgment lien was foreclosed, RMA has no right to the Sale Proceeds as an assignee of the Debtors.

By so ruling, the court takes no position on the issue of whether a mortgagee with a consensual right to a lien on proceeds would be considered an assignee under Wyo. Stat. Ann. § 34-4-113. Foxwell, the second mortgage holder, did not respond to the complaint and

is in default. A default judgment will be entered against him accordingly.

The Debtors argue that because the Sale Proceeds did not exist when they filed their chapter 7 petition and the value of the Real Property was enhanced by postpetition events, the estate has no interest in the funds. The court disagrees.

On the date of filing, a chapter 7 trustee succeeds to whatever interest a debtor has in property. The Debtors' interest in surplus proceeds under the foreclosure statutes was a right the debtors owned on the date they filed the petition and that right belongs to the estate.

This case is not analogous to a scenario where the debtor personally improves the value of property which a trustee then seeks to liquidate. A debtor in that situation has a remedy for post petition funds contributed to value. The events subsequent to the petition in this case merely served to satisfy the contingency necessary to realize on the right to surplus proceeds.

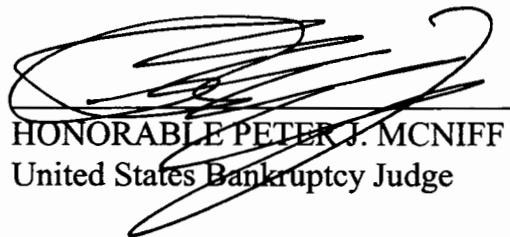
Finally, the Debtors contend the Trustee's complaint does not state a claim against them. At the commencement of this case, the complaint was filed as an interpleader action, and the Trustee did not assert an interest in the funds for the estate. However, the facts before the court establish that the Sale Proceeds belong to the estate. The complaint is deemed amended to conform to the evidence under Fed. R. Bankr. P. 7015, incorporating Fed. R. Civ. P. 15(b). No purpose would be served by expending further resources to reach the same end.

IT IS, THEREFORE, ORDERED:

1. The Trustee's complaint is deemed amended to include a claim for declaratory judgment as to the estate's interest in the proceeds vis a vis the debtors;
2. The Trustee's motion for summary judgment against Risk Management Alternatives, Inc. is granted and RMA's motion for summary judgment is denied;
3. The Debtors' Motion for Summary Judgment against RMA is granted, but the Debtors' interest in the Sale Proceeds is property of the estate;
3. The Trustee is granted a default judgment against the defendant Mark Foxwell;
4. The Trustee is granted a declaratory judgment against the Debtors and the Sale Proceeds are declared property of the bankruptcy estate of John and Joan Tadlock; and
5. Each party shall bear its own costs.

DATED this 7 day of August, 2005.

By the Court


HONORABLE PETER J. MCNIFF
United States Bankruptcy Judge

Service to:

Michele Russell
Spar Stormo
Stephen Winship