

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:)	
)	JUDGE RICHARD L. SPEER
Roger D. Brown)	
)	Case No. 11-3223
Debtor(s))	
)	(Related Case: 11-31421)
Ericka S. Parker, Trustee)	
)	
Plaintiff(s))	
)	
v.)	
)	
Roger D. Brown, et al.)	
)	
Defendant(s))	

DECISION AND ORDER

This cause comes before the Court on the Motion of the Plaintiff/Trustee, Ericka S. Parker, for Summary Judgment and Memorandum in Support. (Doc. No. 18). The Plaintiff brings her Motion for Summary Judgment in support of her Complaint to Sell Jointly Owned Property pursuant to 11 U.S.C. § 363(h). (Doc. No. 1). Neither of the three Defendants in this case, including the Debtor, filed a response to the Plaintiff’s Motion for Summary Judgment. For the Plaintiff’s Complaint and Motion for Summary Judgment, the Court has now had the opportunity to review all of the materials relevant to the disposition of the controversy. Based upon this review, and for the reasons set forth herein, the Court finds that the Plaintiff’s Motion for Summary Judgment should be Granted.

FACTS

On March 21, 2011, the Debtor, Roger D. Brown, filed a petition in this Court for relief under Chapter 7 of the United States Bankruptcy Code. On the date he filed his petition for bankruptcy relief, the Debtor, an Ohio resident, held a 1/2 fee interest in real property located in the

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state of Alabama. The remaining 1/2 fee interest in this property was held by the Defendant, Opal M. Stancil, mother of the Debtor. The Alabama property is not encumbered by a mortgage, but is subject to an interest held by the co-defendant, the Etowah County Tax Collector.

The deed to the Alabama property shows that, at the time he filed for bankruptcy, the Debtor and his mother each held a right of survivorship in the other's interest in the property. At some point after the Debtor filed for bankruptcy relief, however, the Debtor's mother passed away, vesting the Debtor with the entire fee interest in the Alabama property.

DISCUSSION

The Trustee's Complaint before the Court is entitled "Complaint to Sell Real Estate Free and Clear of Liens, pursuant to 11 U.S.C. § 363(h)." (Doc. No. 1). Based upon the Trustee's reference to § 363(h), as well as the tenor of the arguments put forth by the Trustee and the factual underpinnings of this proceeding, the Court will construe the Trustee's action as a Complaint to Sell Jointly Owned Property, and not as a Complaint to Sell free and clear of liens which is governed by 11 U.S.C. § 363(f). The determination of this matter, because it concerns the sale of property from the estate, is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A)/(N)/(O). Accordingly, this Court has jurisdiction to enter final orders and judgments in this matter. 28 U.S.C. § 157(b)(1).

On her Complaint to Sell Jointly Owned Property, the Trustee filed a Motion for Summary Judgment. (Doc. No. 18). Federal Rule of Civil Procedure 56(c), which is made applicable to this proceeding by Bankruptcy Rule 7056, sets forth the standard for a summary judgment motion and provides for in part: A party will prevail on a motion for summary judgment when "[t]he pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). With respect to this standard, the movant must demonstrate all the elements of his cause of action. *R.E. Cruise Inc. v. Bruggeman*, 508 F.2d 415, 416 (6th Cir.1975). In making

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this determination, the Court is directed to view all the facts in a light most favorable to the party opposing the motion. *Matsushita v. Zenith Radio Corp.*, 475 U.S. 574, 586–588, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986).

When a debtor files a petition for relief under the Bankruptcy Code, all legal and equitable interests they hold in property become property of an estate. 11 U.S.C. § 541(a). Property of the estate is subject to administration by a trustee for the benefit of the debtor’s creditors. 11 U.S.C. § 323; § 704. During its administration, estate property is subject to sale by the trustee under § 363(b)(1).

In the instant matter, the Trustee seeks to sell property the Debtor co-owned with his mother. Section 363(h) provides for such relief, allowing a trustee to sell property, otherwise subject to sale under § 363(b)(1), in which a non-debtor has an interest. In full, § 363(h) provides:

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate’s interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if–

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate’s undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

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The trustee carries the burden of showing that a sale under § 363(h) is proper. *In re Prakope*, 317 B.R. 593, 602 (Bankr. E.D.N.Y.2004).

As set forth in § 363(h), a sale of property in which a non-debtor holds an interest is permissible only if the four conditions, as set forth in those paragraphs numbered (1) through (4), are met. Additionally, the applicability of § 363(h) is limited by a threshold question: whether, at the time of the commencement of the case, the debtor held an undivided interest in the property, as determined under applicable non-bankruptcy law, that was classified as a (1) tenancy in common, (2) joint tenancy, or (3) tenancy by the entirety?

For the threshold question, the Trustee in this matter has sustained her burden. Attached to her complaint, the Trustee submitted the deed to the Alabama property evidencing that the Debtor and his mother owned the property as joint tenants, thus qualify the property as a joint tenancy for purposes of the second classification of interest, *supra*, subject to sale under § 363(h). Similarly, for the reasons below, the Court finds that the Trustee has sustained her burden with respect to the four conditions needed to warrant a sale of a co-owner's interest in property under § 363(h).

The first condition of § 363(h) requires the Trustee to show that partition in kind of the co-owner's interest in the subject property is impracticable. 11 U.S.C. § 363(h)(1). For this requirement, this Court has recognized, as have other courts, that as a general proposition “[w]here property is a single family residence, there is no practicable manner of partition other than a sale and division of the proceeds.” *In re Zeigler*, 320 B.R. 362, 382–383 (Bankr. N.D.Ill.2005); *see also Bakst v. Griffin (In re Griffin)*, 123 B.R. 933, 935 (Bankr. S.D.Fla.1991). This principle applies to the instant matter, with an appraisal of the Alabama property being attached to the Trustee's Complaint wherein it was set forth that the property is a “single family residence.” (Doc. No. 1). Consequently, with no response coming from the Defendants to refute the impracticality of partitioning the Alabama property in a manner other than a sale of the entire property, it must be concluded that the first condition of § 363(h) is satisfied.

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For similar reasons, the Court finds that the Trustee has sustained her burden with respect to the second condition set forth in § 363(h)(2). This provision requires that, as a condition precedent to the sale of a co-owner's interest in property, the trustee must show that a sale of only a debtor's interest in the property would realize significantly less for the estate than a sale of the property free from the interests of the property's co-owners.

Concerning this requirement, it is recognized that, particularly with a single family residence, a prospective purchaser will not normally be amenable to becoming a co-owner of property with a stranger. As a result, a sale of only a debtor's co-ownership interest in property is likely to have a chilling effect on any prospective purchasers of the property. *Yoppolo v. Missler (In re Missler)*, 418 B.R. 259, 263 (Bankr. N.D.Ohio 2009); *Bostic v. National City Bank (In re DeRee)*, 403 B.R. 514, 523 (Bankr. S.D.Ohio 2009). Therefore, again, with no response being filed by any of the Defendants, the Court can only conclude that the Trustee has sustained her burden for purposes of § 363(h)(2).

The final two conditions of § 363(h) require, respectively, the Trustee to show that (1) the benefit to the estate in selling the property outweighs the detriment to the co-owners, and (2) that the property to be sold is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power. Although no specific evidence was presented to the Court regarding these elements, the factual circumstances presented to the Court show that these requirements are necessarily satisfied.

First, only a single, non-debtor co-owner had an interest in the Alabama property, this being the Debtor's mother who has since passed away. Given, therefore, the unfortunate circumstance of the passing of the Debtor's mother, the only non-debtor having a co-owner's interest in the property, it is axiomatic that, for purposes of § 363(h)(3), a sale of the Alabama property will not cause any detriment to said co-owner. Second, as it concerns the last condition set forth in § 363(h), it has been represented to the Court that the Alabama property is used as a single family residence. Thus, the

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property cannot, by definition, be used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

For these reasons, the Court concludes that the Trustee has demonstrated all of the necessary elements of § 363(h). Accordingly, the Court authorizes the Trustee to sell the estate's interest in the Alabama property free and clear of the interests of the Defendant, Opal M. Stancil, in the property. Furthermore, since the interest of the Defendant, Opal Stancil, in the Alabama property is now vested in the Debtor, the Debtor's bankruptcy estate shall encompass, and the Trustee may administer for the benefit of the Debtor's creditors, all of the proceeds received from a sale of the property, minus only those interests not held by the Debtor such as the interest of the Co-Defendant, the Etowah County Tax Collector.¹

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

¹

See 11 U.S.C. 541(a)(5)(A) (estate property includes property acquired by a debtor through a bequest, devise, or inheritance within 180 days of the commencement of the case); and 11 U.S.C. § 541(a)(7) (estate property includes any interest in property that the estate acquires after the commencement of the case). *See also Hill v. Quinlan (In re Quinlan)*, 12 B.R. 824, 828 (Bankr. M.D.Ala.1981) (pursuant to § 541(a)(7), estate acquires a decedent's interest in property where, upon the postpetition death of the decedent, the debtor has a fee simple title to the property with the right of survivorship.)

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Accordingly, it is

ORDERED that the Motion for Summary Judgment filed by the Plaintiff/Trustee, Ericka Parker, be, and is hereby, GRANTED.

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. § 363(b) and § 363(h), the Trustee is hereby authorized to sell the real property at issue in this proceeding free from the claims of the Defendant, Opal M. Stancil, and the Debtor/Defendant, Roger D. Brown. All the proceeds received from the sale of the property shall be subject to administration by the Trustee as property of the Debtor's bankruptcy estate.

Dated: May 4, 2012

Richard L. Speer
United States
Bankruptcy Judge