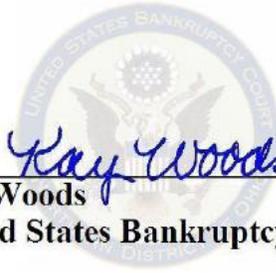


IT IS SO ORDERED.

Dated: May 10, 2016
03:14:29 PM



Kay Woods

 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA DUNCAN,

Debtor.

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CASE NUMBER 15-40842

CHAPTER 7

HONORABLE KAY WOODS

MEMORANDUM OPINION FINDING DEBTOR VIRGINIA DUNCAN IN CONTEMPT

This cause is before the Court on Motion to Assess Sanctions for Debtor's False Police Report to the Monroe County Sheriff's Office ("Motion for Sanctions") (Doc. 163) filed by Andrew W. Suhar, Chapter 7 Trustee ("Trustee"), on May 3, 2016. The Trustee requests that the Court sanction Debtor Virginia Duncan for interfering with the administration of real property located at 27970 Lobstertail Trail, Little Torch Key, Florida 33042 ("Florida Property") as an asset of the bankruptcy estate. Ms. Duncan did not file a written objection to the Motion for Sanctions.

Upon the request of the Trustee (Doc. 164), the Court scheduled the Motion for Sanctions for an expedited hearing to be held on May 6, 2016 ("Sanctions Hearing") (Doc. 165). The following parties appeared at the Sanctions Hearing: (i) the Trustee; (ii) Ms. Duncan; and (iii) James G. Floyd, Esq. on behalf of Robert G. Birrell, Jr., the current owner of the Florida Property. Following the presentation of each party and proffered testimony by Ms. Duncan, the Court (i) found that Ms. Duncan knowingly and willfully violated the Contempt Order and the Sale Order, as defined *infra* at 6-7 and 9-10, respectively; (ii) granted the Motion for Sanctions; and (iii) sanctioned Ms. Duncan \$1,000.00. The Court hereby enters this Memorandum Opinion and accompanying Order to memorialize that oral ruling.¹

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

¹ To the extent the Court's oral ruling is inconsistent with this Memorandum Opinion and accompanying Order, the Memorandum Opinion and Order shall control.

I. BACKGROUND

Ms. Duncan commenced this case by voluntarily filing a chapter 13 bankruptcy petition on May 8, 2015. With her Voluntary Petition (Doc. 1 at 1-3), Ms. Duncan filed Schedule A - Real Property (Doc. 1 at 8), in which she listed "None." (Sched. A at 1.) On October 2, 2015, Ms. Duncan filed Amended Schedule A (Doc. 40 at 3), in which she listed the Florida Property with the following notation: "Property Titled to Debtor in [sic] 10/19/11. Debtor signed Quit Claim deed to transfer property to Scott Daugherty on January 3, 2012. It is unknown at this time why deed was not recorded." (Am. Sched. A at 1.)

A. Motion to Employ Real Estate Agent

On January 22, 2016, the Trustee filed Motion to Employ Real Estate Agent ("Motion to Employ") (Doc. 92), in which he sought to employ a real estate agent to market and sell the Florida Property. On February 1, 2016, Scott Daugherty a/k/a Scott Dougherty filed Objection to Motion to Employ Real Estate Agent and Objection to Sale of Real Estate (Doc. 97), in which Mr. Daugherty asserted that he was the equitable owner of the Florida Property. The Court held a hearing on the Motion to Employ, at which appeared (i) the Trustee; (ii) Michael J. McGee, Esq. on behalf of Mr. Daugherty; and (iii) T. Robert Bricker, Esq. on behalf of Ms. Duncan.

The Trustee represented that the title work and Ms. Duncan's Schedules indicated that Ms. Duncan was the vested owner of the

Florida Property, but Ms. Duncan had testified at her meeting of creditors that Mr. Daugherty had provided some money for its purchase. At her meeting of creditors, Ms. Duncan had agreed to provide the Trustee with proof of insurance and keys for the Florida Property, but she failed to do so. As a result, it would be necessary for the real estate agent to secure the Florida Property by changing its locks.

Mr. McGee represented that Mr. Daugherty provided "well over 50 percent" of the funds for the purchase of the Florida Property, had lived at the Florida Property, and was in possession of an unrecorded quitclaim deed from 2011 transferring the Florida Property from Ms. Duncan to Mr. Daugherty.

The Court determined that ownership of the Florida Property was an issue to be resolved in conjunction with any future motion to sell the Florida Property, if any, rather than the Motion to Employ. The Court granted the Motion to Employ and entered an order to that effect on February 10, 2016 (Doc. 103).

B. Order to Appear and Show Cause and Contempt Order

On February 29, 2016, the Trustee filed Motion for Order to Appear and Show Cause ("Show Cause Motion") (Doc. 111), in which the Trustee alleged that Ms. Duncan was interfering with his efforts to market and sell the Florida Property by prohibiting access to the Florida Property by the real estate agent. The Show Cause Motion stated that Ms. Duncan had told the real estate agent

that the Florida Property "was not included in her bankruptcy, that she owned the property free and clear, and that a mistake was made because she had a homestead exemption." (Show Cause Mot. ¶ 6.)

Based on the allegations in the Show Cause Motion, on February 29, 2016, the Court issued Order for (i) Debtor Virginia Duncan; and (ii) T. Robert Bricker, Esq., Debtor's Counsel, to Appear and Show Cause on March 8, 2016 ("Show Cause Order") (Doc. 114). The Court held a hearing on the Show Cause Order on March 8, 2016, at which the Trustee, Ms. Duncan, and Mr. Bricker appeared in person. Appearing by telephone were (i) Scott R. Belhorn, Esq. on behalf of the United States Trustee; and (ii) Mr. Daugherty.

After being sworn in, Ms. Duncan admitted that she (i) was at the Florida Property on the date in question; (ii) had observed the real estate agent putting up a for sale sign; and (iii) had asked the real estate agent to leave. She further testified that she did not know that the Trustee was going to sell the Florida Property. Ms. Duncan stated that she did not want the Florida Property sold in her chapter 7 case,² but wanted it to be "homesteaded." The Court had the following exchange with Ms. Duncan:

² Ms. Duncan voluntarily converted her case from chapter 13 to chapter 7 on November 12, 2015 (Doc. 64).

The Court: And while the case is progressing, the Trustee not only has the right, he has the obligation to gather up all of your nonexempt property and to liquidate it and to distribute that according to the priorities in the Bankruptcy Code to your creditors. That's the way it's done. You don't get to keep property back. You don't get to keep it just because you want it. You don't get to keep it just because it might be useful to you. . . .

But I need you to understand that I'm not going to listen to you say that you don't know what's going on anymore. Because you should know, and I'm telling you this is the way it works. But I'd like you to acknowledge that you've heard me say this.

Ms. Duncan: I have heard you say that.

(March 8, 2016 hr'g at 2:14:24.) The Court further explained to Ms. Duncan that she was prohibited from interfering with the administration of the Florida Property as follows:

The Court: I am finding that you are in contempt of Court Ms. Duncan for interfering with the Trustee's administration of property of the bankruptcy estate. And I'm directing you not to take any action with respect to the Florida Property at all. Not to go there. Not to enter the premises. Not to change the locks. Not to tell people that it's your place and they can't put up signs. Not to talk to the realtor and discourage them from doing anything. Not to prevent any showing of the property. Not to have anyone else do any of those things on your behalf. Whether it's Mr. Daugherty or anyone else. Do you understand?

Ms. Duncan: I do.

(*Id.* at 2:20:46.)

On March 9, 2016, the Court entered Order (i) Finding Virginia Duncan in Contempt for Interference with the Administration of the Bankruptcy Estate; and (ii) Sanctioning Virginia Duncan for Such

Contempt ("Contempt Order") (Doc. 123). In the Contempt Order, the Court stated:

This Court finds Virginia Duncan in contempt of Court for her interference with the administration of property of the estate. As a consequence, the Court prohibits Virginia Duncan, including anyone acting at her direction or on her behalf, from entering into or upon the [Florida Property] for any purpose. Ms. Duncan, or anyone acting at her direction or on her behalf, is further prohibited from taking any action to (i) inhibit or prevent the Trustee from administering the [Florida Property] as an asset of this bankruptcy estate; and (ii) alter, deface, remove property or fixtures from, or in any way make changes to the [Florida Property].

Failure to abide by this Order will result in further penalties including monetary sanctions (\$1,000.00 per day for each event of interference) and/or other actions by the U.S. Marshals, including the issuance of a warrant for her arrest.

(Contempt Order at 7 (emphasis added).)

C. Motion to Sell the Florida Property and Sale Order

On March 14, 2016, the Trustee filed Motion to Sell Real Property Free and Clear of All Liens, Encumbrances and Other Interests by Private Sale; Notice of Trustee's Intent to Sell Property Other than in the Ordinary Course of Business ("Sale Motion") (Doc. 127), in which the Trustee sought authority to sell the Florida Property. On that same date, the Trustee filed Motion for Expedited Hearing (Doc. 128) with respect to the Sale Motion on the basis that, because the Trustee was unable to secure insurance on the Florida Property, it was in the best interest of the bankruptcy estate to effectuate a sale of the Florida Property

as soon as possible. The Court granted the Trustee's Motion for Expedited Hearing (Doc. 130) and scheduled a hearing on the Sale Motion for March 24, 2016.

On March 24, 2016, the Court held the expedited hearing on the Sale Motion ("Sale Hearing"), at which the following appeared: (i) the Trustee; (ii) Ms. Duncan; (iii) Mr. Bricker; (iv) Gary Rosati, Esq. on behalf of potential purchaser Neal Rosenbaum; (v) Mr. Floyd on behalf of potential purchaser Mr. Birrell; and (vi) Mr. Birrell. The Trustee represented that the highest and best offer to purchase the Florida Property was made by Mr. Birrell for \$202,995.00. Noting that no party had objected to the Sale Motion, the Trustee renewed his request that the Court grant the Sale Motion, as modified to incorporate the offer by Mr. Birrell.

Although she had not filed an objection to the Sale Motion, Ms. Duncan stated that she wished to be heard, but only after the Court heard from her counsel, Mr. Bricker. At the time of the Sale Hearing, pending before the Court was Motion to Withdraw as Counsel (Doc. 112) filed by Mr. Bricker. The Court had not yet granted the Motion to Withdraw because it did not know if Mr. Bricker had complied with the Court's condition precedent for the withdrawal.³ Mr. Bricker represented that he was in compliance;

³ Mr. Bricker had moved to withdraw as counsel on February 29, 2016 on the grounds that communications between Mr. Bricker and Ms. Duncan had broken down and Mr. Bricker did not believe that further representation was possible. Ms. Duncan did not file a response to Mr. Bricker's Motion to Withdraw. The Court held a hearing on the Motion to Withdraw on March 8, 2016, at which it ordered

as a result, on the record, the Court granted Mr. Bricker's Motion to Withdraw, effective immediately.

The Court then allowed Ms. Duncan to proceed *pro se* and address the Court. Ms. Duncan made an oral objection to the Sale Motion on the basis that she had (i) filed a motion for a change of venue;⁴ (ii) filed a chapter 13 bankruptcy petition in the Southern District of Florida the day before the Sale Hearing, in which case she had requested a stay of the Sale Motion and claimed the homestead exemption for the Florida Property; and (iii) sold the Florida Property to Scott Daugherty in October or November 2011 even though the quit claim deed was not recorded.

The Court found that Ms. Duncan failed to assert a valid basis for her objection and entered Order Overruling Oral Objection of Debtor Virginia Duncan to Motion to Sell Real Property Free and Clear of All Liens, Encumbrances and Other Interests by Private Sale ("Order Overruling Debtor's Objection") (Doc. 144) on March 24, 2016 to memorialized that ruling.

The Court granted the Sale Motion and entered Order Authorizing the Sale of Real Property Located at 27970 Lobstertail Trail, Little Torch Key, Monroe County, Florida Free and Clear of

Mr. Bricker to amend certain documents prior to being permitted to withdraw as counsel. Although the amended documents were filed on March 16, 2016, there was a corrective entry in connection with such filing. It was not clear prior to the Sale Hearing if Mr. Bricker had taken all necessary corrective actions.

⁴ No such motion appeared on the docket.

All Liens, Encumbrances and Other Interests ("Sale Order") (Doc. 150) on March 29, 2016 to memorialize that ruling. The Sale Order incorporated by reference (i) the Order Overruling Debtor's Objection; and (ii) the Contempt Order's prohibition on Ms. Duncan interfering with the administration of the Florida Property. The Sale Order reiterated,

The [Contempt Order] shall be and is hereby incorporated in this order. The Debtor Virginia Duncan shall be and is hereby enjoined from entering the [Florida Property], or the premises of the [Florida Property]. This injunction shall continue as a permanent order of this Court and will not be extinguished by closing of the sale transaction, or the closing of this bankruptcy case.

(Sale Order ¶ 4.)

On April 7, 2016, Ms. Duncan filed Notice of Appeal and Statement of Election (Doc. 155), which appealed the Sale Order. Ms. Duncan did not seek a stay of the Sale Order pending appeal. On May 3, 2016, the Trustee filed Report of Sale (Doc. 166), in which he reported that the sale of the Florida Property had been consummated for gross sale proceeds of \$202,995.00.

D. Motion for Sanctions

In the Motion for Sanctions, the Trustee states the following:

1. The closing of the sale of the Florida Property occurred on April 13, 2016. (Mot. for Sanctions ¶ 5.)
2. On April 14, 2016, the Trustee received a phone call from his real estate agent stating that Ms. Duncan had made an

emergency 911 call to the Monroe County, Florida Sheriff's Office ("Sheriff") alleging that there was a burglary in progress at the Florida Property. (*Id.* ¶ 6.)

3. Mr. Birrell, the purchaser and current owner of the Florida Property, had hired a cleaning crew to clean the Florida Property. (*Id.* ¶ 9.)
4. The Sheriff entered the Florida Property with weapons drawn, frightening the cleaning crew and otherwise causing undue distress to Mr. Birrell. (*Id.*)

The Trustee asserts that Ms. Duncan's false report of a burglary in progress at the Florida Property was a violation of the Contempt Order, as incorporated in the Sale Order. Exhibit B to the Motion for Sanctions is a call history record from the Sheriff. The Trustee requests that the Court impose appropriate sanctions against Ms. Duncan.

E. Sanctions Hearing

Because the Court scheduled the Motion for Sanctions for an expedited hearing and Ms. Duncan was representing herself *pro se*, the Court began the Sanctions Hearing by asking Ms. Duncan if she was prepared to proceed with the Sanctions Hearing. Ms. Duncan stated that she has access to PACER and had previously reviewed the Motion for Sanctions. Ms. Duncan represented that she was prepared to go forward with the Sanctions Hearing. As a consequence, the Court proceeded with the Sanctions Hearing.

The Trustee asserted that Ms. Duncan had no right to report a burglary in progress at the Florida Property because Ms. Duncan knew that the Florida Property was to be sold to Mr. Birrell and, in fact, the closing of the sale of the Florida Property had occurred one day earlier. Moreover, Ms. Duncan had not sought a stay of the Sale Order. The Trustee noted that the Sale Order specifically incorporated the Contempt Order and provided that "[t]his injunction shall continue as a permanent order of this Court and will not be extinguished by closing of the sale transaction, or the closing of this bankruptcy case." (Sale Order ¶ 4.)

Ms. Duncan, whose presentation the Court accepted as proffered testimony, admitted that she reported the burglary in progress to the Sheriff on April 14, 2016. Ms. Duncan stated that she was not in Florida on that date. Rather, Mr. Daugherty called Ms. Duncan and stated that people were at the Florida Property removing items from the house. Mr. Daugherty allegedly received this information from a neighbor near the Florida Property named Bill. After receiving the phone call from Mr. Daugherty, Ms. Duncan called the Monroe County, Florida "courts" and was told that she was still the owner of record of the Florida Property. Ms. Duncan stated that she inquired regarding the ownership of the Florida Property because the Sheriff would only respond to a burglary report made by the owner of the property. Ms. Duncan

stated that she was afraid someone was burglarizing or vandalizing the Florida Property, so she called the Sheriff "in a panic." Ms. Duncan asserted that she was not attempting to hinder the sale of the Florida Property.

When questioned by the Court, Ms. Duncan made the following admissions:

Court: When you were testifying at a prior hearing and I asked you if you knew that Mr. Suhar was going to be selling the property, you indicated that you had no such information – that as of that hearing you definitely knew that the Florida Property was property of your bankruptcy estate and Mr. Suhar was going to sell it.

Ms. Duncan: Correct.

(Sanctions Hr'g at 11:05:22.)

Court: But you did know that was property of the bankruptcy estate at that time. That you were enjoined from taking any action with respect to the property.

Ms. Duncan: Yes.

(*Id.* at 11:07:37.)

Mr. Floyd appeared on behalf of Mr. Birrell to state that Mr. Birrell desired to have total control and quiet enjoyment of the Florida Property following the closing of the sale of the Florida Property.

II. ANALYSIS AND CONCLUSION

The Court finds that Ms. Duncan knowingly and willfully violated this Court's Contempt Order, as incorporated in the Sale

Order. As a consequence, the Court will grant the Trustee's Motion for Sanctions.

The Contempt Order expressly prohibited Ms. Duncan from "inhibit[ing] or prevent[ing] the Trustee from administering the [Florida Property] as an asset of this bankruptcy estate." (Contempt Order at 7.) In addition, the Sale Order expressly provided that the Contempt Order would survive the closing of the sale of the Florida Property. Thus, the Contempt Order was in full force and effect on April 14, 2016, which was the date on which Ms. Duncan admittedly reported a burglary in progress at the Florida Property.

At the March 8, 2016 hearing on the Show Cause Order, Ms. Duncan acknowledged the Court's explanation that the Florida Property was property of the bankruptcy estate and that she could not interfere with its sale. Thus, Ms. Duncan knowingly violated the Contempt Order. The Court also finds that Ms. Duncan willfully violated the Contempt Order. Ms. Duncan's testimony concerning her reason for reporting a burglary in progress was not credible. While Ms. Duncan stated that she contacted the Sheriff in a panic, such "panic" did not prevent her from first contacting the Monroe County, Florida "courts" to determine if she was still the titled owner of the Florida Property. Due to her participation at the Sale Hearing, Ms. Duncan knew that the Trustee had sold the Florida Property to Mr. Birrell and that Ms. Duncan no longer had any

interest in the Florida Property. If Ms. Duncan truly believed that someone was at the Florida Property unlawfully, she should have contacted the Trustee. This is particularly true since Ms. Duncan had ample time to determine who was the titled owner of the Florida Property prior to contacting the Sheriff. Ms. Duncan willfully interfered with Mr. Birrell's ownership of the Florida Property in violation of the Contempt Order.

The Contempt Order expressly warned Ms. Duncan the she could be sanctioned \$1,000.00 per day for each event of interference with the administration of the Florida Property as an asset of the bankruptcy estate. Having found that Ms. Duncan knowingly and willfully interfered with Mr. Birrell's quiet enjoyment of the Florida Property, the Court hereby sanctions Ms. Duncan \$1,000.00. However, the Court will hold in abeyance imposition of the \$1,000.00 sanction pending the closing of Ms. Duncan's bankruptcy case. If Ms. Duncan takes no further action to hinder the administration of the bankruptcy estate in any way – including, but not limit to, Mr. Birrell's quiet enjoyment of the Florida Property – the Court will purge Ms. Duncan of the \$1,000.00 sanction.

An appropriate order will follow.

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IT IS SO ORDERED.

Dated: May 10, 2016
03:15:28 PM



Kay Woods

 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

VIRGINIA DUNCAN,

Debtor.

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CASE NUMBER 15-40842

CHAPTER 7

HONORABLE KAY WOODS

ORDER FINDING DEBTOR VIRGINIA DUNCAN IN CONTEMPT

This cause is before the Court on Motion to Assess Sanctions for Debtor's False Police Report to the Monroe County Sheriff's Office ("Motion for Sanctions") (Doc. 163) filed by Andrew W. Suhar, Chapter 7 Trustee ("Trustee"), on May 3, 2016. The Trustee requests that the Court sanction Debtor Virginia Duncan for interfering with the administration of real property located at 27970 Lobstertail Trail, Little Torch Key, Florida 33042 ("Florida Property") as an asset of the bankruptcy estate. Ms. Duncan did not file a written objection to the Motion for Sanctions.

Upon the request of the Trustee (Doc. 164), the Court scheduled the Motion for Sanctions for an expedited hearing to be held on May 6, 2016 ("Sanctions Hearing") (Doc. 165). The following parties appeared at the Sanctions Hearing: (i) the Trustee; (ii) Ms. Duncan; and (iii) James G. Floyd, Esq. on behalf of Robert G. Birrell, Jr., the current owner of the Florida Property.

For the reasons set forth in the Court's Memorandum Opinion Finding Debtor Virginia Duncan in Contempt entered on this date, the Court hereby:

1. Finds that Ms. Duncan knowingly and willfully violated this Court's Contempt Order, as incorporated in the Sale Order.
2. Grants the Trustee's Motion for Sanctions.
3. Sanctions Ms. Duncan \$1,000.00.
4. Holds in abeyance imposition of the \$1,000.00 sanction pending the closing of Ms. Duncan's bankruptcy case.

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