

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 04-15726
)
RALPH E. DEROSE,) Chapter 7
)
Debtor.) Judge Arthur I. Harris

ORDER REGARDING TRUSTEE'S MOTION FOR AUTHORITY TO SELL
REAL PROPERTY (DOCKET #15)

This case is currently before the Court on the Chapter 7 trustee's motion for authority to sell real property (Docket #15) and the debtor's objection (Docket #17). For the reasons that follow, the trustee is ordered to file and serve a worksheet on or before December 30, 2004, indicating the estimated net value to the estate from a sale of the debtor's residence. The debtor may file and serve any written response on or before January 7, 2005. The Court will then hear oral argument on the motion during the Chapters 7 and 11 motion docket at 10:00 A.M. on January 11, 2005.

BACKGROUND AND PROCEDURAL HISTORY

The debtor, Ralph E. DeRose, filed this Chapter 7 case on May 6, 2004. Among the assets listed in the debtor's schedules is the debtor's undivided half interest in real property in his residence located at 1799 Kenton Circle in Lyndhurst, Ohio, which the debtor owns with his non-debtor spouse. The debtor

values this real property in his schedules (husband and wife's interests combined) at \$165,000. The debtor also identifies a first mortgage indebtedness of \$105,377.82 and a second mortgage indebtedness of \$39,512.37. The debtor also claimed a personal exemption of \$5,000 in this real property. The trustee asserts in his motion for authority to sell real property (Docket #15) that this real property has sufficient value in excess of liens, encumbrances, and interest as to justify a sale of the property for the benefit of unsecured creditors. In opposing the motion, the debtor asserts that the real property has a value of only \$160,000 and is encumbered by liens totaling not less than \$141,934. *See* exhibit to Docket #17. He further asserts that after the costs of sale and the debtor's \$5,000 exemption, there will be no net assets for unsecured creditors if the property were sold for \$160,000 (Docket #17).

DISCUSSION

As the Court indicated during oral argument, it is unclear, at least to the Court, whether a sale would be beneficial to unsecured creditors. The Court's uncertainty stems not only from the parties' disagreement over the property's value, but also from incomplete information as to the likely costs of sale, the amount of the liens, and the anticipated administrative expenses and fees. The Court therefore requests that the trustee prepare a worksheet indicating a

breakdown of this information to assist the Court. The trustee is free to use whatever format he chooses; however, the Court requests that the worksheet include at least the following information:

estimated market value (including source of valuation)

approximate payoff value for all existing liens (as of some specific calendar date for a hypothetical closing approximately 90 to 120 days in the future)

estimated real estate taxes as of closing

estimated real estate broker's commission

estimated total for all other closing costs

estimated value of debtor's exemption in the real property

estimated attorney fees, if any, for trustee

estimated trustee fees attributable to proposed sale

estimated net proceeds to be paid to non-debtor's spouse

estimated net proceeds available to unsecured creditors.

This worksheet is to be filed and served no later than **December 30, 2004**.

The debtor may file and serve any written response on or before **January 7, 2005**.

The Court will then hear oral argument on the motion during the Chapters 7

and 11 motion docket at 10:00 A.M. on **January 11, 2005**, if the matter is not otherwise resolved.

IT IS SO ORDERED.

/s/ Arthur I. Harris 12/13/2004
Arthur I. Harris
United States Bankruptcy Judge