

THIS OPINION NOT INTENDED FOR PUBLICATION

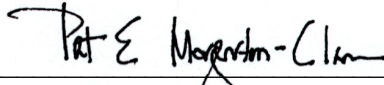
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:	)	Case No. 02-16621
)	
CAROL RAPISARDA, aka	)	Chapter 7
CAROL RAPISARDA SHANKER,)	
)	
Debtor.	)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
MARY ANN RABIN, TRUSTEE,	)	Adversary Proceeding No. 03-1301
)	
Plaintiff,)	
)	
v.	)	<u>ORDER</u>
)	
CAROL RAPISARDA SHANKER, et al.,)	
)	
Defendants.)	

For the reasons stated in the memorandum of opinion filed this same date, the chapter 7 trustee's motion for turnover of the real property located at 16903 Chillicothe Road, Chagrin Falls, Ohio, is granted. The debtor Carol Rapisarda Shanker is ordered to vacate the property within 48 hours after this order is entered.

IT IS SO ORDERED.



 Pat E. Morgenstern-Clarren
 United States Bankruptcy Judge

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CAROL RAPISARDA SHANKER,)	
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Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
MARY ANN RABIN, TRUSTEE,)	Adversary Proceeding No. 03-1301
)	
Plaintiff,)	
)	
v.	)	<u>MEMORANDUM OF OPINION</u>
	)	<u>GRANTING THE TRUSTEE'S</u>
CAROL RAPISARDA SHANKER, et al.,	)	<u>MOTION TO TURN OVER</u>
	)	<u>PROPERTY AT CHILlicothe</u>
Defendants.	)	<u>ROAD AND DIRECTING THE</u>
	)	<u>DEBTOR TO VACATE THE</u>
	)	<u>PROPERTY WITHIN 48 HOURS</u>

The debtor Carol Rapisarda Shanker, D.V.M. filed her chapter 7 case in 2002. Much of the time since then has been devoted to disputes over the real property located at 16903 Chillicothe Road, Chagrin Falls, Ohio which is property of the estate. The chapter 7 trustee Mary Ann Rabin now moves to have the debtor turn over the property.¹ The debtor does not oppose the motion. The debtor's husband Howard Shanker, however, does object.²

¹ Docket 177.

² Docket 180.

BACKGROUND

Following two extensive evidentiary hearings, this court issued memoranda of opinion and orders³ finding, among other things, that:

(1) Real property located at 16903 Chillicothe Road, Chagrin Falls, Ohio titled in the debtor's name is property of the chapter 7 estate. The debtor has continued to use the property for her veterinary practice since the bankruptcy filing, without paying rent;

(2) In 1994, the debtor and Howard Shanker gave the law firm of McIntyre, Kahn & Kruse Co., LPA a mortgage on the property to secure payment of legal fees they owed to the firm. The mortgage is a valid first mortgage in an amount of at least \$200,000.00;

(3) Howard Shanker holds a dower interest in the property by virtue of his marriage to the debtor;

(4) Howard Shanker had a statutory right to purchase the property based on his dower rights;⁴ and

(5) If Howard Shanker did not timely exercise his purchase right within a stated time frame, the chapter 7 trustee was authorized to sell the property to the McIntyre firm.

Howard Shanker did not exercise his right to purchase the property and the trustee sold it to the McIntyre firm on March 23, 2006.⁵ The debtor has failed to vacate the property, despite the trustee's request.

³ The reader is directed to the memoranda of opinion and orders dated November 2, 2005 and March 2, 2006.

⁴ See 11 U.S.C. § 363(i).

⁵ Docket 179.

THE TRUSTEE'S TURNOVER MOTION

On April 7, 2006, the trustee filed a motion for the debtor to turn over the property to the trustee. Howard Shanker responded with a document titled "Objection to trustee's motion to order turnover of the property to the trustee and motion to recuse the trustee and order a new trial." In it, he moves the court for an order "to recuse the Trustee Mary Ann Rabin, Order a new Trial and stop the turnover of the property due to the appearance of impropriety and conflict on the part of the Trustee Mary Ann Rabin former attorney of Robert McIntyre." He does not cite any law to support the recusal request or the request for a new trial, and does not explain why any of the statements he makes would be a legal defense to a turnover motion. The trustee and the McIntyre firm object to his filing.

DISCUSSION

The chapter 7 trustee has a statutory obligation to "collect and reduce to money the property of the estate." 11 U.S.C. § 704(1) (renumbered as § 704(a)(1) under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). A person in possession of property of the estate must turn the property over to the trustee for the benefit of the estate, with exceptions not relevant here. 11 U.S.C. § 542. Additionally, a debtor has an affirmative obligation to cooperate with the trustee. 11 U.S.C. § 521(3) (renumbered as § 521(a)(3) under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). The Chillicothe property is property of the chapter 7 estate and the debtor is in possession of it. She is, therefore, required to turn the property over to the trustee. The trustee's motion states good cause and is granted.

Howard Shanker's objection to the turnover motion is overruled for these reasons, individually and collectively:

(1) A turnover motion directs the debtor to deliver property of the estate to the chapter 7 trustee. Howard Shanker is not the debtor. He does not have a possessory interest in the real estate and does not explain why he has standing to object to the motion.

(2) A request to remove a chapter 7 trustee is not a defense to a turnover action when raised by a third party without standing to object to the turnover. Even if it were a defense, Mr. Shanker has not stated a legal basis to remove the trustee.

A court, after notice and a hearing, may remove a trustee for “cause.” 11 U.S.C. § 324. Cause means ““for reasons which law and public policy recognize as sufficient warrant for removal and such cause is “legal cause” and not merely a cause which the appointing power in the exercise of discretion may deem sufficient . . . The cause must be one in which the law and sound public policy will recognize as a cause for official [sic] no longer occupying his office’.” *In re Brookover*, 352 F.3d 1083, 1087 (6th Cir. 2003) (quoting BLACK’S LAW DICTIONARY 644 (6th ed. 1990)). Mr. Shanker does not supply any legal argument for his request, making only two factual allegations on this issue. The first is that, before 1989, Ms. Rabin represented Robert McIntyre, a principal in the McIntyre law firm. Mr. McIntyre apparently sued her as a result of that representation. Mr. Shanker somehow leaps from this to the allegation that Ms. Rabin, now acting as trustee, is “repaying” Mr. McIntyre by “giving him” the debtor’s house.

The facts, as found by this court following evidentiary hearings, are clear and to the contrary: the debtor and Howard Shanker met, did business, and retained the McIntyre law firm starting in 1984 and continuing for 20 years. The Shankers are the ones who in 1994 independently gave the McIntyre firm the mortgage on the Chillicothe property that resulted in

the McIntyre firm being in a position to purchase the real estate from the bankruptcy estate. Ms. Rabin had no connection to any of this. This situation is not cause to remove the trustee.

Second, Howard Shanker states in his opposition that: “the trustee has even told Howard Shanker that she is a long time friend of the Court and Defendant Howard Shanker should be aware of that fact.” At the hearing on the turnover motion, the trustee stated that Mr. Shanker called her recently and said “I understand that you are a friend of the judge” to which she replied “I have known the judge for 25 years.” As this court told Mr. Shanker at the hearing, having been born here, gone to public school here, attended law school here, practiced law here for more than 18 years, and then served on the federal bench in this community for more than 10 years, the court by this point at some level knows most of the attorneys who appear in court. Again, there is nothing about this situation that would constitute cause to remove the trustee.

Based on presiding over numerous contested matters in this case, the court finds and concludes that Mr. Shanker’s allegations do not constitute cause to remove the trustee and are instead his latest attempt to avoid having his wife move out of her business location.

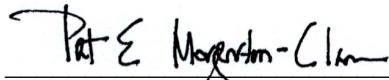
(3) A request for a new trial is not a defense to a turnover action. Additionally, although Mr. Shanker does not state what trial he refers to, the court assumes it is the trial that resulted in the memorandum of opinion and order issued March 2, 2006. Motions for new trials are governed by federal rule of bankruptcy procedure 9023. Such a motion “shall be filed no later than 10 days after entry of the judgment.” Fed. R. Civ. P. 59(b) (incorporated by Fed. R. Bankr. P. 9023). Mr. Shanker’s motion was not timely filed and is, in any event, irrelevant to the turnover motion.

CONCLUSION

For the reasons stated, the trustee's motion is granted.

The debtor has been on specific notice since April 7, 2006 that the trustee sold the property to the McIntyre law firm. She is, therefore, ordered to vacate the property within 48 hours after this order is entered. If the debtor fails to do so, she is subject to being held in contempt of this court, among other possible consequences.

A separate order will be entered reflecting this decision.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge