UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

KEITH PILLICH — Case No. 94-10400 K

Debtor

MEMORANDUM OF DECISION

This is a Motion by Melvin E. Rupp, Jr. to lift the 11 U.S.C. § 362 stay to permit a foreclosure sale of the Debtor's home (owned solely by his non-debtor spouse), in enforcement of a $232,401.89 foreclosure judgment on a $200,000 first mortgage "taken back" by Melvin E. Rupp (Senior, presumably) when the Debtor and his wife purchased the home for $264,000 in 1986. The mortgagee's appraiser has set a value of $375,000 on the home. The movant believes there to be a second mortgage owed to Citibank (NYS) in the current amount of $225,000. If so, then even if the property were worth $450,000, there would still be no equity.

The Debtor is a convicted felon, guilty of investment "scams." He is currently in jail.

Regular mortgage payments have not been made on this mortgage for more than two years, nor have property taxes been paid by the Debtor or his wife for a similar period. The Debtor filed this *pro se* case under Chapter 11 a few minutes before the scheduled foreclosure sale of the property.

Although the Debtor is not in title, the mortgagee, erring on the side of caution, called off the sale and made the

present motion.

Since the filing of the motion this case has been converted to Chapter 7 as discussed below. Ordinarily, this Court recognizes no defenses by a Chapter 7 Debtor in response to a motion to lift stay to sell pursuant to a judgment of foreclosure and sale, although the Court might give a Chapter 7 debtor a brief period (30-45 days) in which to complete a pending sale or refinance of the property. Here it is not suggested that any sale or refinancing is imminent.

As explained below, this Court does not revisit or review matters already adjudicated in State Court; one who files a voluntary petition does not thereby acquire a new means of prolonging or reopening state court disputes. Rather, one acquires an opportunity to propose a means of abiding by the state court's determination.

Chapter 7 debtors are relegated to state law rights of redemption, appeal, and the like, but Chapter 11 debtors are accorded somewhat greater latitude in view of congressional solicitude for bona fide efforts to pay debts in whole or in part. The guiding principle in such cases was stated thusly by our highest court: "What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization <u>that is in prospect.</u> This means ... that there must be 'a reasonable possibility of a successful

reorganization within a reasonable time.'" [Emphasis in original].[1]

Since the Debtor was a Chapter 11 Debtor when this Motion was filed and may have believed himself still to be a Chapter 11 Debtor when he responded, I have examined his response in light of the standards that are more favorable toward him, the Chapter 11 standards. But even so, I rule in favor of the mortgagee.

By prior Order the Court determined the procedure to be followed upon this Motion to Lift Stay, in light of the Debtor's incarceration. I specifically invited the Debtor to explain how his wife's real estate is necessary to his reorganization.

I have considered the Debtor's written responses dated April 20, 1994 and April 25, 1994, and that of his wife, filed April 22, 1994.

The Motion of the mortgagee will be granted if the recently-appointed Chapter 7 Trustee has no objection.

Procedure

In light of the Debtor's failure to notify the Court of his change in address, the notice he received was adequate. Full consideration is being given herein to his April 20 and April 25

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[1] *United Savings v. Timbers of Inwood Forest*, 484 U.S. 365 (1988).

replies. Furthermore, the attorney the Debtor cites as his likely attorney, Angelo Buffamante, Esq., called these chambers as early as April 26, 1994 for information regarding the present Motion, but has made no appearance.

The Court also notes that the affidavit of one Iris Belt, attesting to personal service of the present motion upon Keith Pillich at 9:30 a.m. at Groveland "Ct," Sonyea, New York, on March 31, 1994, is on file at the Court.

The Debtor also complains that notice was not provided to his wife. His wife is not a Debtor here and is not entitled to notice of this Motion; nonetheless she filed an affidavit on April 22, 1994, and the Court has considered it.

Discussion

The Debtor's responses reflect a gross misconception regarding the bankruptcy process. In his April 20, 1994 affidavit he raises the following questions that are of no avail to him in defending the present Motion to lift stay:

1. He questions whether the true mortgagee is Melvin Rupp Senior, Melvin Rupp, Jr., or the Melvin Rupp Trust and whether the foreclosure was proper. The fact that the Debtor would prefer to have those matters heard here is not availing. An order lifting stay would simply restore the parties to their State law rights. He is free to pursue whatever rights he has, if any, under State

law. He is not entitled to his choice of forum where, as here, he has already suffered a judgment of foreclosure and sale; Bankruptcy Courts do not sit in review of such state court decisions. His rights here consist only of making suitable provision to pay the mortgage; he has no right to revisit what state courts have already adjudicated. *In re Andrijevic*, 825 F.2d 692 (2d. Cir. 1987).

2. The "real ownership claim" of the Seneca Indians needs to be resolved, he claims, by "the Supreme Court or whomever" before appraisals of his wife's home are valid for purposes such as those at Bar. It is not a function of bankruptcy courts to insulate a Debtor from economic or market forces; bankruptcy courts merely provide an opportunity to productively cope with economics and market forces, if that can be done without injury to secured creditors. This Debtor suggests that he be permitted to "wait-out" the Seneca suit, living in his wife's upscale, waterfront home (with boat dock and guest house), free of mortgage payments in the meantime. This argument insults those who struggle under the protection of this Court to preserve a modest abode in the face of less obscure market forces, such as crime and blight, which depress the value of what is usually their sole significant physical asset.

3. He raises "Due Process" concerns regarding his incarceration. It is the view of this Judge that the fact that this Debtor has gotten himself convicted of defrauding his creditors earns him narrower latitude when supposedly acting as a

fiduciary in this Court,[2] not broader latitude. He suggests that he is a "victim"; that his absence is "beyond [his] control," that he needs "a chance to develop" a plan to collect his "multimillion dollar assets estate"; and he has "no access to [a] bankruptcy attorney." The Debtor voluntarily filed this petition on February 16, 1994. To date he has failed to file a schedule of assets. He claims to have "multimillions" now that it suits his purpose, but has not reported to this Court a single specific asset despite a duty to so report.

He does not even own the home that is the subject of this Motion. Although he is liable on the mortgage, and may have some possessory "interest" in the property, the property is owned solely by his wife.

His April 26 affidavit adds nothing of merit except that he admits that he was served with the present motion on March 31, 1994. Now, on May 6, 1994, this Court is no closer than on the date of Pillich's submission to the jurisdiction of this Court (February 16, 1994), to anything vaguely resembling assets for creditors. Rather we have only pages of specious arguments,[3] vague

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[2]See footnote 6.

[3] E.g. "These people are trying to steal a property worth $600,000 with a replacement value of $1,000,000. ... If the land is only worth $375,000 now, it is because of the Seneca suit." (4/20/94 affidavit at ¶3.) "Mr. Rupp's attorney of long record knew in advance of ... the various claims by the Seneca Indians [and] ... should have disclosed such defects to the title and given us the facts, "(4/25/94 affidavit at ¶ "Eighth".)

references to solutions,[4] and meaningless phrases[5]. Chapter 11 is not a free ride.[6]

Conclusion

A debtor's "plan" to commence or wait-out extensive litigation and to collect "multimillion" dollar assets that he has hidden from the Court (by disobedience of rules and orders

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[4]E.g. "Rupp mentions we had a purchaser for his mortgage. That party is concerned about the claims that may come from the Rupp handicapped children ..., such a Seneca Mess ..., real ownership claim of the Indians and the various siblings of Junior...." (Aff. of 4/20/94 at ¶3.)

[5]E.g. "Since my records are in Buffalo, I am preparing schedules as best I can, with the understanding that they are estimates only." (4/20/94, ¶2). "Another important point is that Rupp's mortgage is inchoate. I.R.S. filed a tax lien before Rupp's judgment. I.R.S. has failed to investigate properly that its ahead of Rupp. Just as the County tax man is." (4/20/94, "Reason" #1.) "There is no way now to protect for the loss of equity due to the Indian suit other than to sue in Bankruptcy Court or Federal Court where the Seneca matter is. That is why a hearing in extremely necessary to provide answers to these question. It is a key participant in my reorganization plan." (4/25/94, ¶ "Eighth".)

[6]A Chapter 11 Debtor-in-Possession is a fiduciary, holding all assets in trust for the benefit of creditors. Albion Disposal, Inc., 152 B.R. 794. This Debtor's utter failure to perform even the most minimal tasks incident to this charge, such as to file schedules of assets and monthly "operating" reports, resulted in conversion of this case to Chapter 7 after a hearing on April 20, 1994, upon the U.S. Trustee's motion dated March 28, 1994. "Reorganization" is no longer at issue although I have carefully considered the Debtor's arguments to see if some type of potential reorganization were actually "in prospect."

commanding disclosure) is not a "reorganization in prospect." The stay must be lifted, and the parties relegated to their State law rights as to this real estate. Since this Debtor is not an owner of this real estate, it is not clear that the Chapter 7 Trustee who was recently appointed in this case will express any interest in the present Motion, but he must be given an opportunity to be heard, particularly if this Debtor is a former owner of the real estate and might have transferred it to his wife in a fraudulent transfer or preferential transfer. (Even if it had been so transferred, bona fide encumbrances may be vastly in excess of any realistic property value. It is for the Trustee to make such determinations.)

The Movant may submit an Order lifting stay as soon as the Chapter 7 Trustee is willing to state that he will not or cannot oppose such Order.

Finally, the Debtor is cautioned that he may not use any of his own non-exempt assets (wherever and whatever they are) to protect his wife's property without leave of this Court or of the Chapter 7 Trustee. All non-exempt assets attributable to the pre-conversion past now belong to the bankruptcy trustee.

Dated: Buffalo, New York
May 6, 1994

U.S.B.J.