

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

In the Matter of:

Thomas A. Nockels

Case No. 13-01330-als7

Debtors

Chapter 7

Charles L. Smith, Trustee

Adv. Pro. 13-30052-als

Plaintiff

v.

JERAA, LLC,
Patricia J. Nockels

Defendants

Charles L. Smith, Trustee

Adv. Pro. 13-30078-als

Plaintiff

v.

Thomas Alan Nockels

Defendants

**MEMORANDUM OF DECISION
(date entered on docket: November 10, 2015)**

In November 2014 the Court entered judgment against the Defendants in favor of the Chapter 7 trustee (“Smith”) on his complaint to avoid the fraudulent transfers by Thomas Nockels of his interest in twelve parcels of real estate to JERAA, LLC, an entity solely owned by

his non-filing spouse, Patricia Nockels (“Nockels”). The original judgment took into account the one-half interests of both the bankruptcy estate and JERAA and was also subject to perfected mortgages. Six months after judgment entry, Smith filed a Motion for Contempt against JERAA and Nockels for failing to turn over the properties. At hearing on this Motion counsel explained that there was confusion as to the meaning and implementation of the judgment. In an attempt to clarify its prior ruling, the Court entered an Amended Judgment in favor of Smith. The parties still were unable to accomplish turnover of the properties at issue and requested the Court determine the one-half value of each property and the manner in which it must be conveyed to the bankruptcy estate. None of these extraneous matters disrupt the ultimate effect or finality of the original judgment which avoided the transfers of real estate pursuant to 11 U.S.C. § 548. The Court has jurisdiction of this core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. The following findings and conclusions of law are entered by the Court pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014.

DISCUSSION

The statutory basis for avoidance of a fraudulent transfer made by a debtor under certain conditions is found at 11 U.S.C. § 548. What entities or individuals may be pursued for turnover of the property or its value is provided for at 11 U.S.C. § 550. Each of these statutes serves a different purpose to obtain the goal of placing the debtor in the same financial position as if the transfer had not occurred and providing an avenue for recovery of this value to the bankruptcy estate. *See In re Willaert*, 944 F.2d. 463, 464 (8th Cir. 1991) (discussing recovery under 11 U.S.C. § 550 for avoidance of a preferential transfer). Upon proof that a fraudulent transfer has occurred, it is within the Court’s discretion to determine the manner in which the bankruptcy

estate is made whole through either turnover of the property or by payment of its value. *Schnittjer v. Linn Area Credit Union (In re Sickels)*, 392 B.R. 423, 426 (Bankr. N.D. Iowa 2008).

Smith's amended complaint recites in its preamble that relief is sought under 11 U.S.C. §§ 542, 544, 550 and 551. Count IV of the complaint requested specific relief under 11 U.S.C. § 542 for Turnover of Property by stating: "[T]he Trustee prays that this Court enter an Order directing Defendants to immediately turn over the Properties to the Trustee, or for an accounting of such Properties or their value and damages for the detention of same, and for such other and further relief as the Court deems just and proper." No specific request was contained in the complaint for relief pursuant to 11 U.S.C. § 550. The Judgment entered by the Court simply granted turnover of the property as requested under Count IV. An Amended Judgment was entered after hearing on Smith's Motion for Contempt which addressed turnover of the property and issues arising under 11 U.S.C. § 550, leaving again to the parties how the turnover could best be accomplished. It is based upon these facts that the Court considers the parties' request for valuation and the manner of conveyance.

According to the Amended Judgment the value of the property was to be determined as of the date of transfer after deducting one-half of any perfected mortgages and expenses paid by JERAA (or Nockels) to improve or maintain the property. Appraisals have been conducted for each parcel as of the date of transfer. Some of the properties have generated income and others have been the subject of a net loss which must be included in the value owed to the estate. The parties have agreed to utilize the amounts identified on the filed tax returns to establish the total expenses that have been advanced by JERAA (or Nockels) to improve or maintain each property.

By way of background, the parties have had difficulty reaching a consensus on how expenses relate to the improvement and maintenance of the various parcels of real estate.

Smith's counsel states that the mortgages have been verified and the parties now appear to agree on the amount of these secured claims. It is clear from the statements made by counsel that there are continuing disputes as to the verification of other expenses. In his role as trustee, Smith is exercising due diligence by attempting to verify income and expenses that have been paid on a particular property. JERAA's counsel explains that his client does not keep accounting records in a traditional fashion and that many of the items are recorded on post-it notes. At the hearing both sides eventually stipulated that the expenses stated on JERAA's filed tax returns would be utilized to determine the one-half amount to be contributed by the bankruptcy estate. In the event JERAA elects to convey one or more properties to the bankruptcy estate it is likely that the parties may continue to disagree on the calculation, application and verification on the net profit for the rental properties. This ruling will address these issues by establishing a protocol for the parties in an effort to avoid future court intervention. Based upon these agreements and the appraisals the Court adopts the amounts set forth on Trustee's Exhibit 13A to establish the value of the bankruptcy estate's one-half interest in each individual property.

Three specific issues appear to have complicated Smith's ability to enforce his judgment to obtain these values on behalf of the bankruptcy estate. First is whether a warranty deed or a quit claim deed should be utilized to transfer a one-half interest in real estate to the estate. In order to place the estate in the same position as if the fraudulent transfer had not occurred, any such conveyance to the bankruptcy estate must be accomplished by warranty deed, the same method utilized to transfer the real estate to JERAA.

Second is whether JERAA's proposal to Smith, that includes a combination of turnover of property and cash payment to achieve the aggregate amount owing to the bankruptcy estate, is acceptable. The concept of structuring a combination of turnover of real estate in combination

with cash payments to the bankruptcy estate is overly cumbersome. JERAA may elect one of two alternatives for each individual property. One, it may pay the total value in certified funds to Smith as Trustee for Thomas Nockels. Two, it may convey the property to Smith as Trustee for Thomas Nockels.¹ Under either of these scenarios the following applicable conditions shall be applied:

1. Upon completion of JERAA's 2015 tax return, and completed returns for any subsequent tax year, Smith shall prepare an updated calculation under the formula utilized in Exhibit 13A to determine if there has been an increase in the one-half value owing to the estate. To the extent there has been an increase, any such amount shall be added to the value established by this Order.
2. In the event JERAA does not complete its 2015 tax return prior to the time one or more of the individual properties are sold, Smith shall calculate the estimated monthly rental income that has been received based upon the figures contained in the most recently filed tax return.
3. JERAA shall have 30 days after closing of a sale to provide the trustee with a listing that verifies the income and expenses that have been paid as to the subject property and that will be reflected on JERAA's upcoming tax return. Failure to provide this information within the described time period will constitute a waiver by JERAA to request that the bankruptcy estate pay for any share of these expenses and will trigger Smith's ability to estimate monthly rental income as set forth in paragraph 2 of this Order.
4. Upon the sale of real estate and timely receipt of the verified income and expenses required in paragraph 3, JERAA will be paid one-half of the net proceeds not later than 45 days after closing.
5. The conveyance of an individual property to the bankruptcy estate shall be deemed a consent by JERAA to Smith's ability to sell the real estate and will operate as a waiver of any right of JERAA to object to Smith's sale of the property under 11 U.S.C. § 363.
6. Upon conveyance of real estate from JERAA to the bankruptcy estate and the parties' inability to agree on how the real estate will be managed prior to sale the Court

¹ Of course, JERAA also retains the option of turning over all of the properties or paying the total one-half value to the trustee.

directs that Smith undertake the collection of rents and payment of the mortgage and other necessary expenses.

Third, at the last hearing it appeared to be JERAA's position that it need only pay the amount of filed claims to satisfy its obligation of turnover under 11 U.S.C. § 550. Such a concept has specifically been rejected in this Circuit. *See Stalnaker v. DLC, Ltd. (In re DLC, Ltd.)*, 295 B.R. 593, 606 (B.A.P. 8th Cir. 2003).

Based upon the foregoing,

IT IS HEREBY ORDERED that:

1. The amounts stated below are the values of the bankruptcy estate's one-half interest in the identified real estate based upon the data available at the time this matter was submitted:

| ADDRESS | VALUE |
|------------------------------|----------|
| 7016 Winston | \$74,153 |
| 4517 62 nd Street | \$19,756 |
| 4026 68 th Street | \$52,502 |
| 4135 68 th Street | \$13,665 |
| 1811 62 nd Street | \$48,266 |
| 6901 Urbandale Avenue | \$60,908 |
| 4525 69 th Street | \$85,610 |
| 1501 Elder Lane | \$37,278 |
| 1701 56 th Street | \$15,029 |
| 1422 57 th Street | \$15,889 |
| 3210 64 th Street | \$ 9,425 |

Each property shall be treated individually for purposes of conveyance or payment of its value to the bankruptcy estate.

2. Conveyance of real estate to the bankruptcy estate shall be by warranty deed.
3. The conditions outlined in this Order shall serve to govern the conduct of the parties under the Court's prior judgments related to the turnover and sale of the bankruptcy estate's interest in the real estate.
4. Within 10 days of this Order the bankruptcy estate shall pay JERAA the amount of \$64,511.18 which represents one-half of the proceeds from the sale of 1230 70th Street.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Adversary Proceeding