

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: SUPERTRAIL MANUFACTURING CO., INC.
DEBTOR

CASE NO. 96-20040-DWH

OPINION

On consideration before the court is a Motion to Amend and/or for Additional Findings (Motion to Amend) filed by Judy Circo and Noreen Wilson as Co-Trustees of the Mortgage Trust (Mortgage Trust); response to said motion having been filed by Claudia Holliman (Holliman); and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (B), and (O).

II.

The Motion to Amend seeks clarification regarding an order entered by this court on April 25, 2008. The order resolved certain issues concerning a Request for Issuance of Notice of Transfer of Claim Pursuant to Federal Rules of Bankruptcy Procedure 3001(e), filed by Holliman. Because no one party prevailed on all of the issues presented, the court, before the order was entered, had the parties contacted to determine whether the language in the order, as proposed, was acceptable as to form. Believing that all disputes had been resolved, the order was then executed and entered. Having now reviewed and considered the issues raised in the Motion to Amend, the court agrees that certain matters in the order should be clarified.

III.

The court has once again examined the following documents:

1. Deed Order, entered July 30, 1999, which described the judgment, assignments of judgment, and mortgage which secured an indebtedness owed to Dr. Mustafa Atac (Atac). A provision in this order lifted the automatic stay insofar as the Atac indebtedness was concerned and alternatively contemplated the execution of a deed in lieu of foreclosure as adequate protection.
2. Order, entered December 13, 1999, which authorized the debtor, Supertrail Manufacturing Co., Inc., (Supertrail), to borrow the sum of approximately \$1,820,000.00 from an entity designated as the "Payment in Full Lender" and to secure said borrowing by a first lien upon the Phase II real property located in Palm Beach County, Florida.
3. Order on Motion to Aid in Sale of Property, entered December 23, 2002, which, in effect, provided that Atac would not alienate the mortgage(s) so that the anticipated sale of the underlying real property would not be jeopardized. This order, which was to remain in effect until January 14, 2003, was the first "anti-assignment order."
4. Order, entered February 7, 2003, which extended indefinitely the Order on Motion to Aid in Sale of Property. This latter order addressed a motion filed on behalf of the Internal Revenue Service, and was referred to as the second "anti-assignment order."
5. Non-Recourse Secured Revolving Promissory Note, dated January 14, 2005, in the amount of \$500,000.00, executed on August 25, 2005 by Atac in favor of Holliman.
6. Non-Recourse Secured Promissory Note, dated January 14, 2005, in the amount of \$1,300,000.00, executed on August 25, 2005 by Atac in favor of Holliman.

7. Security Agreement and Collateral Partial Assignment of Lien, undated, but executed on August 25, 2005 by Atac in favor of Holliman. This instrument recited that it conveyed a security interest in a superpriority lien held by Atac and was an assignment of the lien proceeds. It secured both the Non-Recourse Secured Revolving Promissory Note and the Non-Recourse Secured Promissory Note.

8. A transcription of this court's ruling on March 29, 2007, wherein the court recognized that Holliman had claims against Atac, but specifically indicated that Holliman had no claim against the Supertrail bankruptcy estate.

9. Order, entered April 5, 2007, which permitted the distribution of certain proceeds realized from the sale of the real property formerly owned by the Supertrail bankruptcy estate. These proceeds were attributable to a mortgage encumbering the property, dated August 7, 1987, which had been assigned by Richard P. Zaretsky, Trustee, to Atac. This was the first mortgage on the property and had originally been executed by GAP Estates to Zaretsky as Trustee.

10. Order Approving Settlement, entered April 23, 2007, wherein the court made the following comment:

...As stated in the Court's bench opinion, the assignment that was given to Holliman by Dr. Atac violates the language of previous orders entered by the Court, which clearly prohibit an assignment by Dr. Atac of his mortgage interest in the mortgages he held. The so-called "superpriority lien" or "superpriority mortgage" that was given to Dr. Atac in this Court's order of December 13, 1999, was an additional advance against two previously existing mortgage interests held by Dr. Atac, as trustee (and now held by the Mortgage Trust). The assignment to Holliman by Dr. Atac was not undertaken with the permission of the Court. While Holliman was allowed to participate in hearings in connection with the Motion, her standing to object is, at best, tenuous. Holliman simply has no independent claim against the Supertrail bankruptcy estate....

The court, however, did specifically point out once again that Holliman had claims against Atac individually as to proceeds which might be payable to him.

IV.

When considering the facts and rendering the decision which resulted in the entry of the order of April 25, 2008, this court was not called upon to construe the legal efficacy of the two promissory notes or the security agreement and collateral partial assignment of lien that were executed by Atac in favor of Holliman. Precisely how much may be owed to Holliman and what interest Atac legally has in the sales proceeds, realized from the Supertrail property, must be adjudicated subsequently. The court attempted to articulate these factors in its bench comments at the most recent hearing, as well as, at the conclusion of previous hearings.

The court has always been of the opinion that Atac, individually, is equitably estopped from asserting the anti-assignment order and its extension as affirmative defenses to preclude Holliman from enforcing her claims, resulting from Atac's execution of the promissory notes and security agreement, exclusively against his interest, whatever it might be, in the property sales proceeds.

The docket entry that was entered by the court on April 14, 2008, following the telephonic hearing, reflects specifically the court's opinion which, as noted hereinabove, is consistent with the court's previous opinions. For purposes of clarity, the relevant portion of this docket entry is set forth herein, to-wit:

...[T]he court determines that the claim of Ms. Holliman depends on the proceeds that will be ultimately payable to Dr. Atac for [sic] this bankruptcy estate. Her claims are not against the bankruptcy estate, but rather are specifically against Dr. Atac. The anti-assignment orders relative to the Atac mortgages does [sic] not preclude Ms. Holliman's claim directly against Dr. Atac...

V.

The court concludes that the comments set forth herein sufficiently clarify the matters set forth in the subject order entered April 25, 2008. As such, the Mortgage Trust's Motion to Amend and/or for Additional Findings is sustained consistent with this opinion.

A separate order will be entered contemporaneously herewith.

This the 6th day of June, 2008.

/s/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE