

**United States Bankruptcy Court
Northern District of Illinois
Eastern Division**

Transmittal Sheet for Opinions

Will this opinion be published? No

Bankruptcy Caption: In re ASHLAND PARTNERS III, an Illinois Limited Partnership

Bankruptcy No. 99 B 21777

Adversary Caption:

Adversary No.

Date of Issuance: January 20, 2000

Judge: Susan Pierson Sonderby

Appearance of Counsel:

Attorney for Movant or Plaintiff: Paul M. Heller

Attorney for Respondent or Defendant: Neil G. Gantz

Trustee or Other Attorneys:

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	99 B 21777
)	
ASHLAND PARTNERS III, an Illinois)	
Limited Partnership,)	Chapter 11
)	Hon. Susan Pierson Sonderby
Debtor.)	

MEMORANDUM OPINION

This matter comes before the Court on three motions. Initially, creditor Peoples Gas Light & Coke Company (“Peoples Gas”) filed a motion to lift the automatic stay so that it can proceed with its state court remedies against the debtor, Ashland Partners III (“Debtor”). Then, the Debtor filed a motion seeking to strike that motion filed by Peoples Gas on the grounds that Peoples Gas lacks standing to bring its motion. Finally, Peoples Gas filed a motion asking that this Court modify its ruling of September 8, 1999.

Facts

The Debtor is a limited partnership. Liskor International, a corporation, is its general partner. Liska Blodgett is the CEO of Liskor International.

The sole asset of the Debtor was a building and land located at 110 South Ashland Avenue in Chicago. The building consists of two structures - a two story building and a five-story building with total square footage of approximately 266,300 square feet. The Debtor intended to rehabilitate the structures to create residential condominiums but was mostly unsuccessful.

Title to the Property was held in an Illinois Land Trust with Parkway Bank and Trust Company as Trustee and the Debtor as beneficiary under Trust # 11394.

On June 23, 1997 People's Gas obtained a judgment in the amount of \$179,590.87 against the Debtor, David Blodgett, Liska Blodgett, Carl Soriaga, Edna Soriaga and other defendants in an action in the Circuit Court of Cook County ("Peoples Gas Action").

In June 1998, Peoples Gas initiated supplemental proceedings in the Peoples Gas Action by issuing citation proceedings against Parkway Bank as Trustee under the Land Trust.

On September 2, 1998 the Honorable Thomas P. Quinn of the Circuit Court of Cook County entered an order in which the Trustee was ordered to turn over the beneficial interest in the Land Trust to the sheriff and the sheriff was ordered to conduct a public sale.

Later in September 1998 Peoples Gas issued additional citation proceedings against the Debtor.

On October 6, 1998 Judge Quinn entered an order amending the September 2 order so that the Debtor was ordered to turn over the beneficial interest in the Land Trust. The Court further ordered that if the Debtor failed to execute the necessary documents to convey the beneficial interest, Jo Ann Kubinski, an officer of Parkway Bank, was appointed to execute the assignment on behalf of the Debtor. Both orders provided that the beneficial interest was to be conveyed "for the purpose of conducting a public sale the proceeds of which are to be used to satisfy plaintiff's judgment against the defendants."

On or about October 16, 1998 Kubinski executed an assignment of the beneficial interest to the sheriff of Cook County.

On or about October 22, 1998, the sheriff of Cook County accepted the assignment. The sheriff of Cook County issued "Notice of Real Estate Levy Sale" regarding the Property, which stated

that a “real estate levy judicial sale” would be held on January 6, 1999.

As noticed, on January 6, 1999 the sheriff of Cook County held a sale of the beneficial interest in the Land Trust and Peoples Gas was the successful bidder. Peoples Gas bid the amount of its judgment plus its costs and interest for a total of approximately \$196,000.00 and received a Certificate of Sale.

Peoples Gas proceeded with supplementary proceedings against co-judgment debtors, Carl and Edna Soriaga.

On March 2, 1999 a stipulation was entered into between Peoples Gas and the Soriagas in which Peoples Gas agreed to dismiss its pending supplemental proceedings and release the Soriagas in exchange for the sum of \$153,476.30, to be paid over a period of about eight months.

The Soriagas paid the first two required payments under the Stipulation totaling approximately \$63,000.00 to Peoples Gas. An action is pending in state court between Peoples Gas and the Soriagas regarding this money.

On or about July 7, 1999, the sheriff transferred the beneficial interest in the Land Trust to Peoples Gas. Peoples Gas then entered into an agreement with Patricia Evers to sell the Certificate of Sale for approximately \$135,000.00.

Simultaneous with the Peoples Gas Action, Parkway sought to foreclose its mortgage on the Property. Following a fifteen month proceeding, a foreclosure sale of the Property was scheduled by Parkway for July 13, 1999 at noon.

The Debtor filed its chapter 11 petition on the morning of July 13, 1999. The Property was sold by the sheriff for \$4,000,000.00 to American Invesco subject to order of the Bankruptcy Court.

One of the first motions heard by this Court in this case was Parkway's motion to lift the automatic stay to allow it to proceed with its foreclosure. A hearing was held on three afternoons in August 1999. Proposed findings of fact and conclusions of law were submitted by the parties on September 1, 1999. This Court issued an oral ruling on September 8, 1999 finding that the sale to Peoples Gas was never confirmed and was void under Illinois law. This Court also found sufficient cause to lift the stay to allow Parkway Bank to proceed with its state court remedies.

According to the parties, the Property was sold at a sheriff's sale on November 16, 1999 for \$5,000,000.00 resulting in a surplus for the estate of \$1,194,537.53. On November 30, 1999 the sale was confirmed by the Circuit Court of Cook County.

Discussion

In the motions now before the Court, Peoples Gas requests that this Court modify the stay to allow it to proceed with state court remedies to recover the balance due on its judgment. The Debtor objects and filed a motion to strike the motion made by Peoples Gas. It makes two arguments. First, it argues that Peoples Gas is not a secured creditor because its citation proceedings, which created a lien, have expired. Second, it asserts that Peoples Gas has been paid in full based on \$63,000 it was paid by co-defendants in the Peoples Gas Action and \$135,502.36 it was allegedly paid by Patricia Evers. Having been paid in full, the Debtor argues, Peoples Gas lacks standing to bring its motion.

In its response, Peoples Gas argues that it has standing to bring the motion and continues to have a lien on the Property based not on the citation proceeding but on the fact that it received a Certificate of Sale from the sheriff. It asserts that that Certificate gives it a continuing interest in the Property. It also filed a motion arguing that this Court should reconsider its decision of September 8,

1999 on the grounds that a sale of personal property does not require confirmation.

Peoples Gas has standing to bring a motion to modify the stay.

The threshold question before the Court is whether Peoples Gas has standing to move for relief from the stay. The Debtor argues that because Peoples Gas is not a secured creditor, it does not have standing to file the motion. Pursuant to 11 U.S.C. § 362(d) the automatic stay may be terminated, annulled or modified (1) for cause, including a lack of adequate protection of a creditor's interest in property or (2) with respect to an act against property, if the debtor lacks equity and the property is not necessary to a reorganization. Relief under this section may be sought by "a party in interest." 11 U.S.C. § 362(d). Generally, a party in interest is one who has a legal right which is sought to be enforced or is a party entitled to bring suit. In re Comcoach Corp., 698 F.2d 571 (2d Cir. 1983). Despite the Debtor's assertions to the contrary, "an unsecured creditor may seek relief from the automatic stay. In re Holtkamp Farms, Inc., 669 F.2d 957 (7th Cir.1982). There is nothing in the Code which provides that only secured creditors may seek relief from the automatic stay." In re Westwood Broadcasting, Inc., 35 B.R. 47, 48 (Bankr. D. Haw. 1983).

The Debtor therefore raises a specious issue in its argument that Peoples Gas lacks standing. Its motion to strike the Peoples Gas motion is denied.

What the Debtor failed to point out is that the standards for obtaining relief from the stay are different for an unsecured creditor than they are for a secured creditor. An unsecured creditor must establish extraordinary circumstances before it can obtain relief from the automatic stay. An unsecured creditor has to show why it is more entitled to relief from the stay than other unsecured creditors. In re Tristar Automotive Group, Inc., 141 B.R. 41 (Bankr. S.D.N.Y. 1992). In In re Clark, 69 B.R. 885

(E.D. Pa. 1987), *amended on other grounds*, 71 B.R. 747, a judgment creditor whose efforts to execute on his judgment were found to be void was an unsecured creditor not entitled to relief from the stay to execute *on the debtor's real property*.

Peoples Gas is not a secured creditor.

In September 1999 this Court found that the sale to Peoples Gas was never completed and is void. Peoples Gas argues that this Court should modify its earlier determination. While not citing to any authority regarding the reconsideration of prior rulings, it appears to loosely base its argument on Fed. R. Bankr. P. 9024 that this Court made an error of law. It asserts that a beneficial interest in a land trust is personal property and that a sale of personal property does not have to be confirmed under the Illinois statutes governing the enforcement of judgments. Therefore, it argues this Court should never have found void the sale to Peoples Gas.

As this Court stated in its September 8 ruling, it is true that in Illinois the beneficial interest under a land trust is personal property. 765 ILCS 415/2(a). This Court found that generally, a sale of personal property can be conducted as an execution sale. The only requirement for a valid execution sale is proper notice. See 735 ILCS 5/12-166. In this case, however, Judge Quinn treated this sale as a judicial one. The differences between the two types of sales were set forth in Maywood-Proviso State Bank v. Cokins, 11 Ill.App. 659, 662 (1st Dist. 1973)(quoting Craddick v. Cotta Gear Co., 306 Ill. App. 459 (2nd Dist. 1940)) where the Court explained that an execution sale is based on a general judgment for a certain amount of money and is conducted by an officer of the law in pursuance of the directions of a statute. A judicial sale, in contrast, is based on an order to sell specific property, is

conducted by an agent or officer of a court in pursuance of the directions of the court *and must be confirmed by the supervising court.*

In Maywood-Proviso, just as in this case, debtors owned a beneficial interest in a land trust. When they defaulted on a loan, the bank pursued its remedies against the debtors, obtained a judgment and filed a Citation to Discover Assets against them. A hearing was held in state court and the court entered an order directing that the beneficial interest in the land trust be assigned to the sheriff and sold to satisfy the judgment. The sale was later voided for a variety of reasons - one of those reasons was that the sale was a judicial sale requiring confirmation. The appellate court agreed because the trial court had directed the sheriff to sell specific property and the sale was therefore a judicial sale requiring confirmation even though it was a sale of personal property.

This Court is obliged to follow Illinois precedent when Illinois courts have ruled on issues of Illinois law. In re Crawford, 217 B.R. 558 (N.D. Ill. 1998).

In this case, Judge Quinn's orders created a judicial sale requiring confirmation. Each of his orders states that "the citation respondent is directed to convey the beneficial interest in and to Trust 11394 to the Sheriff of Cook County for the purpose of conducting a public sale the proceeds of which are to be used to satisfy plaintiff's judgment against the defendants." He directed the sheriff to sell a specific property to satisfy a judgment. The language of the orders brought this matter within the definition of a judicial sale requiring confirmation. Such confirmation was never obtained. Accordingly, this Court ruled in September 1999 that the sale to Peoples Gas was never completed and is void. Nothing in the Peoples Gas motion for reconsideration addresses the Illinois precedents relied on by this Court.

Peoples Gas did argue that the Certificate of Sale gives it continuing rights in the Property greater than that of a lienholder. Once the sale giving it those rights has been found to be void, it can no longer retain those rights. Therefore, Peoples Gas no longer has a secured interest or any other interest in the Property. It holds only an unsecured claim against the estate.

Peoples Gas is not entitled to a modification of the automatic stay

Peoples Gas has not made a convincing argument that it is entitled to a modification of the stay. It has not presented any argument as to why it is more entitled to relief from the stay than other unsecured creditors. It has not alleged any extraordinary circumstances. Peoples Gas' motion to modify the stay is denied.

The Debtor's argument that Peoples Gas' judgment was paid in full is premature.

Another of the arguments presented by the Debtor is that Peoples Gas has been paid in full satisfaction of its judgment by a combination of the Soriagas and Patricia Evers. The payment of \$63,000.00 made by the Soriagas is not in dispute before this Court. The parties argue vigorously however over the validity of the sale by Peoples Gas to Evers.

The Debtor argues that Evers bought the Certificate of Sale subject to its possible infirmities and that if she is stuck with a worthless piece of paper, that is a risk she took. The Debtor attaches a document entitled "Absolute Assignment" to its papers which appears to indicate that the Property was assigned to Evers. However, the "Absolute Assignment" is incomplete, signature lines for Evers and the Bank are blank. According to Paul Heller, counsel for Peoples Gas, the transaction was never

completed and was subject to conditions which never took place. He submitted an affidavit stating that the check he received from Evers was never negotiated, that it will never be negotiated pursuant to an agreement between Peoples Gas and Evers and that the sum of \$135,502.36 is still due on its judgment. The Debtor has not provided any contradicting testimony or proof in response.

This is an issue that is more appropriately addressed as an objection to Peoples Gas' claim. If the Debtor has an objection to the claim it may interpose that objection.

Therefore, at this time, Peoples Gas still holds an alleged claim against the estate for the balance of its judgment and may pursue that claim under the bankruptcy laws.

Conclusion

For the foregoing reasons, Peoples Gas' motion to modify the stay is denied. The Debtor's motion to strike Peoples Gas' motion to modify is denied. Peoples Gas' motion for reconsideration of this Court's ruling of September 8, 1999 is also denied.

ENTERED:

Date: January 20, 2000

SUSAN PIERSON SONDERBY
United States Bankruptcy Judge