

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILTON THOMAS : CIVIL ACTION  
: :  
v. : :  
: :  
UNIVERSAL AMERICAN MORTGAGE, and : NO. 97-3995  
EDWARD SPARKMAN, Trustee : NO. 97-4001  
: NO. 97-4123  
: NO. 97-5048

**MEMORANDUM AND ORDER**

Norma L. Shapiro, J.

February 6, 1998

Milton Thomas, debtor, appeals from orders of the United States Bankruptcy Court in these four related actions consolidated for appeal. The Bankruptcy Court's decisions were correct, and the orders will be affirmed.

**BACKGROUND**

Milton Thomas ("Thomas") and Diane Williams ("Williams"), co-owners of real property located at 7003-7005 Old York Road, Philadelphia ("the premises"), mortgaged the property to Universal Mortgage Company ("Universal") in September, 1981. The mortgage principal was \$34,850, with an interest rate of 16.5%. Two structures were located on the premises, one of which was destroyed by fire on February 7, 1993. The insurance covered both structures, so an insurance company check for \$13,901.38 was issued to Universal, payee under the insurance policy, on March 30, 1993. Thomas filed suit against the insurance company to collect more on the policy.

On August 4, 1995, Thomas filed a voluntary petition for

bankruptcy under Chapter 13. This filing, Thomas's fourth such petition, stayed a sheriff sale scheduled for August 7, 1995. Under his bankruptcy reorganization plan, Thomas declared normal monthly expenses of \$1,198.00, including his usual mortgage payment. In his bankruptcy petition, Thomas declared the mortgage obligation was approximately \$70,000, although he valued the property at \$40,000 on the same schedule. His petition contemplated continued monthly mortgage payments to Universal. He failed to make any mortgage payments between September, 1995 and March, 1996, but foreclosure attempts by Universal were automatically stayed by the bankruptcy petition.

Thomas' action against the insurance company resulted in an additional insurance proceeds of \$14,806.09; this amount was paid to the Bankruptcy Trustee although it was compensation for pre-bankruptcy fire damage. The total of the insurance payments was \$28,707.47.

In March, 1996, Universal requested termination of the automatic stay and leave to foreclose on its mortgage, because Thomas had failed to comply with his Chapter 13 plan. On June 7, 1996, U.S. Bankruptcy Judge Bruce Fox accepted the Trustee's implicit suggestion that Thomas might be able to formulate a viable plan for reorganization. Although Thomas's three previous Chapter 13 petitions had been dismissed, Judge Fox denied Universal's motion, but ordered the Trustee to distribute the additional \$14,806.09 in insurance proceeds to Universal and applied to Thomas's prepetition debt.

On August 2, 1996, Thomas filed an amended plan requiring monthly payments of \$125.50. On January 9, 1997 Universal filed another motion for relief from stay; it was continued. On March 10, 1997, Thomas filed an objection to Universal's claim to the property.

On April 30, 1997, Thomas's objection was denied, and the Trustee's motion to dismiss Thomas's bankruptcy petition was continued. The premises have fallen into disrepair. Based on the advice of two experts and other evidence, the Bankruptcy Court valued the property at \$34,000. Universal's secured interest in the property was set at that amount, less an approximate \$5,000 City lien for razing expenses. Finding that Universal's interest was not adequately protected, the Bankruptcy Court also granted Universal relief from the automatic stay. The Bankruptcy Court ordered Thomas to amend his Chapter 13 plan, convert to a Chapter 7 petition, or dismiss the petition within thirty days. Before the thirty day period had expired, Thomas filed four separate notices of appeal to this court (civil action #97-3395, civil action #97-4001, civil action #97-4213, and civil action #97-5048).

While this dispute over the premises was in progress, Thomas had not been making child support payments; Thomas' support obligations were not included in his Chapter 13 petition or schedules. In March, 1997, the Pennsylvania Department of Public Welfare sought reimbursement for welfare payments for Thomas' children. After a hearing on paternity and support obligations,

the Court of Common Pleas had a wage attachment filed. Thomas had informed the court of his bankruptcy, but not that it was under Chapter 13. Under Chapter 7, debtors can attach post-petition wage income; but under Chapter 13, post-petition wage income is protected by the automatic stay. When this was brought to the attention of the Philadelphia Court Administrator, the wage attachment was promptly vacated.

Thomas filed a motion in Bankruptcy Court to hold Court of Common Pleas officials and the Department of Public Welfare in contempt for issuing the attachment order, and sought punitive damages. The Bankruptcy Judge found "the wage attachment was issued inadvertently, and is being promptly withdrawn." (Order, May 27, 1997, pp. 3), denied the contempt motion and declined to impose punitive damages. The Judge observed that the support obligations should have been included in Thomas's Chapter 13 petition.

Thomas, allegedly having made improvements to the premises after the court's valuation, claimed remuneration for services rendered. He filed a motion to sell the property free and clear of liens. Thomas argued that any money over and above the secured liens should be paid to him, as "opportunity compensation."

Civil Action No. 97-3995

Thomas contends that the Bankruptcy Court was in error in granting Universal's requested relief from the automatic stay. He also asserts that Universal has received the equivalent value

to which it was entitled.

Civil Action No. 97-4001

Thomas challenges the Bankruptcy Court's decision to distribute \$14,806.09 to Universal. Thomas argues: 1) the Bankruptcy Court's decision the property is only worth \$34,000 proves Universal has received the equivalent value to which it was entitled; 2) \$14,806.09 should have been applied to postpetition secured debt, rather than prepetition debt; and 3) since Universal received insurance proceeds in the amount of \$28,707.47, it recovered all the proceeds to which it was entitled.

Civil Action No. 97-4213

Thomas contends the Bankruptcy Court incorrectly denied his motion to hold Court of Common Pleas officials in contempt, and impose punitive damages.

Civil Action 97-5048

Thomas contends that he has the right to sell the property free and clear of Universal's lien, and the court's valuation of \$34,000 less a \$5,000 razing lien (approximately \$29,000) constitutes Universal's entire claim in the property. He claims the right to sell the property, pay Universal \$29,000, pay the City \$5,000 for razing expenses, and retain the excess.

**DISCUSSION**

Standard of Review

In reviewing decisions of a bankruptcy court, a district

court applies different standards of review to questions of fact and questions of law. Rule 8013 of the Rules of Bankruptcy

Procedure states:

on an appeal the district court . . . may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses. Fed. R. Bankr. P. 8013.

When a bankruptcy judge's legal conclusions are challenged, the district court makes an independent determination of the applicable law. Matter of Dunes Casino Hotel, 63 B.R. 939, 944 (D.N.J. 1986).

Civil Action No. 97-3995

Thomas contends that the Bankruptcy Court was incorrect in granting Universal relief from the automatic stay. Under 11 U.S.C. § 362(d), a bankruptcy court may terminate an automatic stay "for cause, including the lack of adequate protection" of a party's interest. 11 U.S.C. § 362(d)(1) (1997).

The Bankruptcy Court's determination of whether to vacate the automatic stay will be overturned only for abuse of discretion. In re Sonnax Industries, Inc., 907 F.2d 1280, 1288 (2d Cir. 1990); Gibraltar Sav. v. LDBrinkman Corp., 860 F.2d 1275, 1285 n. 14 (5th Cir. 1988); Pursifull v. Eakin, 814 F.2d 1501, 1504 (10th Cir. 1987); Stephens Industries, Inc. v. McClung, 789 F.2d 386, 391 (6th Cir. 1986); In re MacDonald, 755 F.2d 715, 716 (9th Cir. 1985); In re Holtkamp, 669 F.2d 505, 507 (7th Cir. 1982); In re Zeits, 1988 WL 220217 (E.D. Pa., Feb 29,

1988).

Thomas had failed to make payments on the mortgage or for insurance. The Bankruptcy Court found the secured portion of Universal's claim was \$34,000, less an approximate \$5,000 razing lien of the City of Philadelphia. Thomas's Second Amended Chapter 13 plan proposed fifty monthly payments of \$125.50, a total of \$6,275.00. The Bankruptcy Court was correct that a plan to pay a total of \$6,275 did not adequately protect Universal's secured claim of approximately \$29,000.

Thomas had the burden of showing his continued ownership of the premises was necessary for a successful bankruptcy plan and there was a reasonable possibility of successful reorganization within a reasonable amount of time. See United Savings Assoc. v. Timbers of Inwood Forest, 484 U.S. 365, 375-6 (1988). As the Bankruptcy Court stated, even if the premises were worth only \$25,000, as Thomas argued, a mortgage in that amount at 6% would require payments of \$836.55 per month. Thomas has income of approximately \$1,200 per month, so he could not assure the court there was a reasonable possibility he would be able to propose a successful reorganization plan, or reorganize within a reasonable amount of time. The Bankruptcy Court did not abuse its discretion in granting Universal relief from the automatic stay. Civil Action No. 97-4001

Thomas contends the \$14,806.09 in additional insurance proceeds distributed to Universal should have been applied to postpetition rather than prepetition secured debt. Thomas must

establish that: 1) the postpetition insurance proceeds received for prepetition damages were property of Thomas's bankruptcy estate; and 2) the mortgage provisions requiring insurance proceeds to be paid to Universal were overridden by Thomas' bankruptcy petition.

Under 11 U.S.C. § 1306(1), the property of Thomas' estate includes "all property [as defined in 11 U.S.C. § 541] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under Chapter 7, 11, or 12 of this title." 11 U.S.C. § 1306(1)(1997). Section 541 defines property very broadly, generally encompassing "all legal or equitable interests of the debtor in property." See 11 U.S.C. § 541(a)(1). See also U.S. v. Whiting Pools, Inc., 462 U.S. 198, 203-5 (1983); In re Sacred Heart Hospital of Norristown, 175 B.R. 543, 549-50 (Bankr. E.D. Pa. 1994).

Thomas filed an action against the insurance company for additional insurance proceeds prior to his bankruptcy petition. "Numerous cases have consistently held that hazard insurance proceeds generated during the course of a bankruptcy case by damage to a debtor's property are themselves property of the estate." In re Jones, 179 B.R. 450, 454 (Bankr. E.D. Pa. 1995). The insurance proceeds became property of Thomas' bankruptcy estate because they were recovered after his bankruptcy petition was filed.

Including the additional insurance proceeds in the estate did not entitle Thomas to reduce the secured portion of his debt

to mortgagee Universal. Under the Universal mortgage Thomas was required to maintain property insurance. The mortgage stated, "the insurance proceeds, or any part thereof may be applied by the mortgagee at its option either to the reduction of the indebtedness thereby secured, or to the restoration and repair of the property damaged." Universal had the option to apply the funds to the mortgage debt or repair the structure. "[T]he owner of an insurance policy cannot obtain greater rights to the proceeds of that policy . . . by merely filing a bankruptcy petition." In re Jones, 179 B.R. at 455 (citing First Fidelity Bank v. McAteer, 985 F.2d 114, 117 (3d Cir. 1993)). Thomas' bankruptcy petition does not override the contractual provisions of the mortgage agreement. Universal could use the insurance proceeds to reduce Thomas' prepetition debt. The Bankruptcy Court correctly ordered the insurance proceeds paid to Universal and applied to the prepetition mortgage debt.

Thomas argues that the current secured value of the property should have been reduced by the insurance proceeds Universal recovered for prepetition damage. The insurance proceeds were paid to the mortgagee because fire damage reduced the property's value. The Bankruptcy Court determined the current value of the damaged property was \$34,000. This was the correct secured portion of the Universal debt.

Civil Action No. 97-4213

Thomas contends the Bankruptcy Court incorrectly denied his motion to hold Court of Common Pleas officials in contempt, and

should have imposed punitive damages. To award punitive damages, the court must find "outrageous conduct," defined as an act importing not only actual damages but insult or outrage and committed with a view to oppress or done in contempt of Thomas' rights. Klinger v. State Farm Mut. Auto. Insur. Co., 115 F.3d 230, 235 (3d Cir. 1997).

The Court of Common Pleas officials entered an order attaching Thomas's wages because he had failed to fulfill his child support obligations. Thomas had informed the officials of the bankruptcy petition, but not that it was under Chapter 13. Under Chapter 13, post-petition wage income is protected by the automatic stay, but under Chapter 7, debtors can attach post-petition wage income. See 11 U.S.C. § 362(b)(2)(A)(ii) and (2)(B); see also 11 U.S.C. § 1306(a)(2). The conduct of the officials would have been entirely appropriate if Thomas had filed his bankruptcy petition bankruptcy under Chapter 7 instead of Chapter 13,. When the error was brought to the attention of the Court Administrator of Pennsylvania, the attachment was promptly vacated. The Bankruptcy Court found that "the wage attachment was issued inadvertently and is being promptly withdrawn." (Order, May 29, 1997, at 3). This finding was not an abuse of discretion, especially in light of Thomas' failure to inform the Court of Common Pleas that he filed under Chapter 13. There was no outrageous conduct; punitive damages were inappropriate. It is unnecessary to consider whether the officials had Eleventh Amendment immunity.

Civil Action No. 97-5048

In this action, Thomas appeals the Bankruptcy Court's decision denying his petition to sell the property free and clear of liens, and to keep any money in excess of the claims of secured creditors.

Thomas had not proposed a plan specific enough to warrant the sale of the premises. Before the Bankruptcy Court could grant Thomas' petition to sell the property, the petition must have contained certain commitments:

"The plan should specify the terms under which the debtor proposes to market the property, including the listing price and the length and commencement date of the listing agreement. It also should incorporate a default remedy to relieve the affected mortgagee(s) from the automatic stay, if the sale does not close by the end of the proposed cure period."

In re Erickson, 176 B.R. 753, 757 (Bankr. E.D. Pa. 1995).

If there is inadequate assurance that the creditor's secured claim will be satisfied "within a circumscribed, specified, and 'reasonable' cure period, the court cannot confirm the plan." Id. Thomas' motion merely states that the "sale would realize the full value of the home," but does not provide any of these required details or assurances. The Bankruptcy Court's refusal to confirm Thomas' plan was not an abuse of discretion, because his so-called "plan" lacked the required specific plan of sale.

**CONCLUSION**

The decisions of the Bankruptcy Court were correct in all respects. There was no abuse of discretion in granting Universal relief from the automatic stay. The decision to apply the fire

insurance proceeds to Thomas' prepetition debt was appropriate. Not holding the Court of Common Pleas officials in contempt or imposing punitive damages was correct. Denying Thomas' motion to sell the property free and clear of liens was not an abuse of discretion. The decisions of the bankruptcy court will be affirmed.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILTON THOMAS	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	NO. 97-3995
UNIVERSAL AMERICAN MORTGAGE, and	:	NO. 97-4001
EDWARD SPARKMAN, Trustee	:	NO. 97-4123
	:	NO. 97-5048

**ORDER**

AND NOW this 6th day of February, 1998, upon consideration of appellant's four consolidated appeals from the U.S. Bankruptcy Court for the Eastern District of Pennsylvania, it is **ORDERED** that:

The decisions of the bankruptcy court are **AFFIRMED**.

---

Norma L. Shapiro, J