

The document below is hereby signed.

Signed: May 20, 2014



S. Martin Teel, Jr.

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
GARY STANCIL,)	Case No. 11-00747
)	(Chapter 7)
)	
Debtor.)	
_____)	
)	
GARY STANCIL,)	
)	
Plaintiff,)	
)	
v.)	Adversary Proceeding No.
)	12-10006
BRADLEY INVESTMENTS, LLC, et)	Not for publication in
al.,)	West's Bankruptcy Reporter.
)	
Defendants.)	

MEMORANDUM DECISION AND ORDER REGARDING MOTION TO RECONSIDER

This addresses the plaintiff's *Motion for Reconsideration of April 16 Order Denying Plaintiff's Motion to Compel Defendants to Accept the \$250,000 Tender* (Dkt. No. 205) filed on April 25, 2014. The *Motion for Reconsideration* will be denied for the following reasons.

The plaintiff, Gary Stancil, commenced two bankruptcy cases

in this court in 2011. During the pendency of the first case, Case No. 11-00465, 12th Street Real Estate, LLC, caused a foreclosure sale to be held of property that Gary Stancil contends was jointly owned by Gary Stancil and his mother, Delores Stancil. He contends that the foreclosure sale violated the automatic stay of 11 U.S.C. § 362(a) that arose in that case. That case was commenced also by Delores Stancil, but no automatic stay arose as to her by reason of 11 U.S.C. § 362(b)(21). After Case No. 11-00465 was dismissed, Gary Stancil commenced a case under Chapter 11 of the Bankruptcy Code, Case No. 11-00747. As a debtor in possession under 11 U.S.C. § 1101, he was entitled to invoke a trustee's power to sue on causes of action belonging to the estate. See 11 U.S.C. §§ 323 and 1107(a). Pursuant to that authority, he filed the complaint commencing this adversary proceeding in the new bankruptcy case.

The complaint asserted claims premised on the foreclosure sale having allegedly violated the automatic stay of § 362(a) in the earlier bankruptcy case. Unless the foreclosure sale was invalid, it divested Gary Stancil and Delores Stancil of any title they had to the property. In response to the complaint, 12th Street raised various defenses, including seeking to establish that Gary Stancil and Delores Stancil had not been

owners of the Property.¹

The parties then went to mediation. On August 28, 2013, Gary Stancil and 12th Street executed a written settlement agreement. Rufus Stancil executed the settlement agreement on behalf of the estate of Delores Stancil, who had died. This court approved the settlement agreement by an order entered on October 2, 2013. The settlement agreement resolved the claims Gary Stancil asserted regarding alleged violations of the automatic stay as it provided that, except as provided in the settlement agreement, "the Parties hereto release one another from all claims relating to the Property, the above-referenced Adversary Proceeding, or otherwise arising in Stancil's bankruptcy case." After the settlement agreement was approved, the case was converted to chapter 7 on November 13, 2013. Marc Albert was appointed the chapter 7 trustee, succeeding to the right to enforce the estate's rights under the settlement agreement.

The settlement agreement contemplated that Gary Stancil would be entitled to have title to the property vested in him if he paid 12th Street \$250,000 by January 31, 2014. That did not

¹ On May 9, 2013, 12th Street filed a *Motion to File Amended Answer and Counterclaim* by which it sought leave to file an amended answer and counterclaim alleging that neither Gary Stancil, nor his now-deceased mother Delores Stancil, owned the subject property as of June 17, 2011, when the foreclosure sale occurred and when the Debtor and Delores Stancil filed their joint Chapter 13 bankruptcy petition.

occur. The settlement agreement provided that upon Gary Stancil not timely making the \$250,000 payment, "title to the Property shall vest in 12th Street and Stancil and the Estate of Delores Stancil shall relinquish any and all claim to any interest in the Property." The settlement agreement called for 12th Street to pay \$65,000 to Gary Stancil and the Estate of Delores Stancil if Gary Stancil did not make the \$250,000 payment to 12th Street. Effectively, the claims for violation of the automatic stay were released in exchange for the promised \$65,000 payment.

Sometime prior to February 21, 2014, 12th Street made the required payment of \$65,000 to the chapter 7 trustee, who had succeeded to Gary Stancil's rights under the settlement agreement. The settlement agreement had called for a \$65,000 payment to Gary Stancil and the Estate of Delores Stancil, but Delores Stancil had no claim for violation of the automatic stay (the only claim Gary Stancil asserted in this adversary proceeding) as no stay arose as to her when she filed the petition in Case No. 11-00465 with Gary Stancil. On February 21, 2014, the chapter 7 trustee filed a *Motion for Order Implementing Court Approved Settlement* in the bankruptcy case, seeking an order confirming that the Property was now vested in 12th Street. On March 11, 2014, the court granted that *Motion* and entered a *Memorandum Opinion and Order* in the bankruptcy case, ordering "that this Court declares and establishes that title to the

Property be and hereby is vested in 12th Street Real Estate, LLC pursuant to this Order, and the Deeds recorded September 30, 2011 as Instrument No. 2011099958 and Instrument No. 2011099959."

Gary Stancil did not take an appeal from the *Memorandum Opinion and Order*, and the time to appeal has expired.²

Rufus Stancil had been designated by Delores Stancil's will to be the personal representative of her decedent's estate. The Settlement agreement provided that "Rufus Stancil will open an Estate for Delores Stancil within 60 days of this Agreement." Eventually, a probate proceeding was commenced in the Superior Court of the District of Columbia, and Rufus Stancil was appointed the personal representative of the estate of Delores Stancil, although well beyond 60 days after the execution of the settlement agreement, and well beyond the January 31, 2014 deadline for Gary Stancil to make the \$250,000 payment.

On February 18, 2014, Gary Stancil filed a *Motion to Compel Defendants 12th St. [sic] Real Estate, LLC to Accept Tender of*

² Gary Stancil similarly failed to oppose the entry of an order directing the trustee to turn over to 12th Street rents collected from the Property after execution of the settlement agreement. On April 16, 2014, the trustee filed a *Motion for an Order Directing Trustee to Release Rent Payments in Accordance with Court Approved Settlement* in the bankruptcy case, seeking an order directing him to pay to 12th Street the rents he had or might collect from the Property, consistent with a provision of the settlement agreement that 12th Street would receive any rents received in the future if Gary Stancil did not make the \$250,000 payment. Gary Stancil failed to oppose that motion, and it was granted by an order entered on May 12, 2014.

\$250,000 in Performance of August 28, 2012 [sic] Settlement Agreement (Dkt. No. 193), noting that the estate of Dolores Stancil had been the source he contemplated would be used to make the \$250,000 payment, and the opening of a decedent's estate had been delayed, thus making it impossible to make the \$250,000 payment by the deadline of January 31, 2014. Pursuant to the court's oral ruling at the hearing held in the adversary proceeding on April 15, 2014, the court issued an order on April 16, 2014 (Dkt. No. 202) denying that *Motion to Compel*.

II

Gary Stancil filed his *Motion for Reconsideration* on April 25, 2014, seeking to vacate the order denying the *Motion to Compel*. The *Motion for Reconsideration* seeks an order directing "that the Estate of Dolores Stancil shall have 30 days from the date of this order to tender the \$250,000 in compliance with the settlement agreement," and noting that Rufus Stancil had not been appointed the personal representative of the decedent's estate of Dolores Stancil until just recently. In pertinent part, the *Motion for Reconsideration* argues:

4. The settlement agreement required that the estate of Dolores Stancil be created in the State court of the District of Columbia as a condition precedent to its operation. The time of the essence clause included in its considerations required that the Estate of Dolores Stancil be opened in the state court or the land is situated.

5. District of Columbia laws are clear with regard to probate of the Estate of the decedent who is the owner of real property: That no title can pass without the

Estate being created and in operation. This mandate of law is not only to protect the heirs at law but to protect as well creditors of the decedent.

6. As a matter of law the parties to the settlement agreement could not divest the decedent of her title to real property without the creation of the estate. Although the agreement was procured under federal statutes in a bankruptcy matter the state law with regard to property within the state governs.

In large part, the arguments are a rehash of the arguments previously raised in the *Motion to Compel*, already rejected by the court, and thus not the appropriate subject of a motion under Fed. R. Civ. P. 59. In any event, they fail on the merits.

A.

I reject the argument that the settlement agreement "required that the estate of Dolores Stancil be created in the State court of the District of Columbia as a condition precedent to its operation" insofar as that concerns the right of Gary Stancil to obtain title to the property by making the \$250,000 payment. That right was one for which time was expressly of the essence, and the settlement agreement cannot be read as modifying that right to be one to make the payment once the opening of a decedent's estate proceeding had been accomplished as to the estate of the late Delores Stancil.

B.

I reject the argument that the time of the essence clause "included in its considerations required that the Estate of Dolores Stancil be opened in the state court or [sic] the land is

situated." It is impossible to read that clause as dealing with anything other than the payment of the \$250,000 by January 31, 2014.

C.

Upon the court approving the settlement agreement between Gary Stancil and 12th Street, that resolved his claim that the foreclosure sale ought not be allowed to stand:

- if Gary Stancil paid \$250,000 by January 31, 2014, title would vest in him despite the foreclosure sale;
- but if Gary Stancil did not timely make the \$250,000 payment, title would vest in 12th Street notwithstanding the alleged violations of the automatic stay.

Once Gary Stancil defaulted in making the \$250,000 payment, title remained vested in 12th Street pursuant to the foreclosure sale, and the settlement agreement released 12th Street from Gary Stancil's claims seeking to invalidate the foreclosure sale.

D.

The arguments that "no title can pass without the Estate [of the decedent] being created and in operation" and that "the parties to the settlement agreement could not divest the decedent of her title to real property without the creation of the [decedent's] estate [in the Superior Court]" must be rejected for three reasons.

First, the arguments disregard that the foreclosure sale was held while Delores Stancil was still living. She was bound, and in turn her decedent's estate is bound, by the consequences of that foreclosure sale. If it was a valid sale, she no longer had an interest in the property, nor does the decedent's estate, and the power of the decedent's estate to pass title (that is, to pass a title that does not exist) is irrelevant. Gary Stancil sued to invalidate the foreclosure sale based on alleged violations of the automatic stay as to *his* interest in the property. He has released his claim that the automatic stay voided the foreclosure sale. As noted previously, Delores Stancil signed the petition commencing Case No. 11-00465, but pursuant to 11 U.S.C. § 362(b)(21), no automatic stay arose as to *her* interest in the property. Accordingly, her decedent's estate cannot attempt to invalidate the sale based on a violation of the automatic stay as to *her* interest in the property.³

Second, the arguments disregard that, regardless of whether the settlement agreement is enforceable against the decedent's estate of Delores Stancil, and regardless of whether that decedent's estate might have some claim to invalidate the

³ Moreover, the settlement agreement provided that if Gary Stancil caused 12th Street to be paid \$250,000 by January 31, 2014, then title would vest in Gary Stancil, but not also in Delores Stancil's estate. Gary Stancil is not in the position to argue rights of Delores Stancil's estate that did not exist under the settlement agreement he reached with 12th Street.

foreclosure sale, the settlement agreement remains enforceable against Gary Stancil. Gary Stancil's right to obtain title by making the \$250,000 payment was lost when he failed to make the \$250,000 payment by January 31, 2014, and he has released his claims seeking to set aside the foreclosure sale as violative of the automatic stay.

Third, Gary Stancil's motion does not seek to set aside the settlement agreement. Instead, he seeks to have the court extend the time for him to make the \$250,000 payment under the settlement agreement. He cannot have his cake and eat it too: he cannot claim that the settlement agreement should remain enforceable (assuming the court extends the time for making the \$250,000 payment) and yet assert that the settlement agreement is ineffective because the estate of Delores Stancil did not properly execute the settlement agreement.

III

In accordance with the foregoing, it is

ORDERED that the *Motion for Reconsideration of April 16 Order Denying Plaintiff's Motion to Compel Defendants to Accept the \$250,000 Tender* (Dkt. No. 205) is DENIED.

[Signed and dated above.]

Copies to: All counsel of record.