

The order below is hereby signed.

Signed: February 28 2014



S. Martin Teel, Jr.

S. Martin Teel, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
FAIRFAX HOMES, INC.,)	Case No. 13-00744
)	(Chapter 11)
Debtor.)	Not for publication in
)	West's Bankruptcy Reporter.

MEMORANDUM DECISION AND ORDER
AUTHORIZING SALE OF REAL PROPERTY
FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES

The debtor's *Motion to Sell Real Property Free and Clear of All Liens and Encumbrances* is unopposed. The *Motion* seeks three inappropriate forms of relief.

First, it seeks to have the court direct that funds be disbursed as set forth in a draft HUD-1 form attached to the *Motion*. Although the court may authorize a sale of property free and clear of all liens, those liens attach to the proceeds of sale with the same amount and priority as against the property that was sold. Fixing the amount of a lien would require an adversary proceeding. Fed. R. Bankr. P. 7001. Nevertheless, it is probably a good bet that the lienors have agreed to the distributions the debtor's *Motion* proposes, and the order

reflects that distributions to lienors may be made as such lienors agree.

Second, the *Motion* seeks to have the court decree "that the debtor is exempt from the payment of the conversion fees due to the conversion of a former rental housing accommodation to condominium ownership." The debtor may or may not be right that the sale is exempt from the payment of such fees. The issue has not been briefed. But Fed. R. Bankr. P. 7001(9) provides that a declaratory judgment concerning an interest in property should be sought by adversary proceeding and not via a motion commencing a contested matter. See *In re Cogliano*, 355 B.R. 792, 804-05 (B.A.P. 9th Cir. 2006); *In re Eastman Kodak Co.*, 2012 WL 2255719, at *2 (Bankr. S.D.N.Y. June 15, 2012); *In re Aztec Supply Corp.*, 399 B.R. 480 (Bankr. N.D. Ill. 2009). Even if Rule 7001(9) does not apply (*i.e.*, if the declaration sought does not relate to determining an interest in property), there has not been proper service on the District of Columbia. Accordingly, this aspect of the *Motion* must be denied.

Finally, the *Motion* seeks to pay the debtor's fees owed the United States Trustee out of the sale proceeds. If all lienors agree to that, fine. But unless they do, the proceeds subject to their liens cannot be used to pay the United States Trustee fees, an unsecured claim.

It is thus

