


 Honorable Mike K. Nakagawa
 United States Bankruptcy Judge



Entered on Docket
 April 03, 2017

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA

* * * * *

In re:)	Case No. 13-13672-MKN
)	Chapter 7
CHRISTINA S. WOLBERT,)	
)	Date: January 4, 2017
Debtor.)	Time: 2:30 p.m.
)	

**ORDER ON MOTION TO CONFIRM THE VALIDITY OF THE
 BANKRUPTCY TRUSTEE'S QUITCLAIM DEED¹**

On January 4, 2017, the court heard the Motion to Confirm the Validity of the Bankruptcy Trustee's Quitclaim Deed ("Motion"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On April 26, 2013, Christina S. Wolbert ("Debtor") filed a voluntary Chapter 7 petition, along with her schedules of assets and liabilities ("Schedules"). (ECF No. 1). The case was assigned to David Rosenberg as Chapter 7 trustee ("Trustee"). On her real property Schedule "A," Debtor listed her residence at 6648 Chimes Tower Avenue, Las Vegas, Nevada ("Residence"), along with an indication that the Residence would be surrendered. On her Schedule "D," Debtor listed Specialized Loan Servicing as having a first mortgage securing a loan against the Residence, and Coronado Ranch, LMC, as having a homeowners association

¹ In this Order, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. Similar references to documents filed in other cases are preceded by the name of the debtors in those cases. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "FRE" are to the Federal Rules of Evidence.

1 (“HOA”) lien against the Residence. On her Chapter 7 Statement of Intention, she indicated her
2 intention to surrender the Residence with respect to the claims of Specialized Loan Servicing and
3 the HOA.

4 On May 13, 2013, a motion for relief from automatic stay (“MRAS”) was brought by The
5 Bank of New York Mellon (“BONY”) asserting that it was the successor in interest to the first
6 mortgage against the Residence. (ECF No. 11). BONY sought relief from the automatic stay so
7 that it could proceed to foreclose on the Residence. The MRAS was served on the HOA. (ECF
8 No. 13).

9 On June 26, 2013, an order was entered granting the MRAS inasmuch as no objection
10 had been filed by the Debtor, the assigned Trustee, the HOA, or any other party in interest
11 (“RAS Order”). (ECF No. 19). On June 28, 2013, BONY’S notice of entry of the RAS Order
12 was timely served on the same parties, including the HOA. (ECF No. 21).

13 On July 23, 2013, an order was entered authorizing the Trustee to employ a real estate
14 broker to sell the Residence for the benefit of the bankruptcy estate. (ECF No. 23).

15 On July 31, 2013, an order was entered granting the Debtor’s discharge. (ECF No. 24).

16 On March 4, 2014, the Trustee filed a motion to sell the Residence free and clear of liens,
17 or, in the alternative, to sell the Residence subject to all existing liens (“Sale Motion”). (ECF
18 No. 26). At the time the Sale Motion was filed, BONY still had not foreclosed on the Residence,
19 and the Debtor was still residing there. (ECF No. 29). Notice of the hearing on the Sale Motion
20 was sent to all creditors and parties in interest, including BONY and the HOA. (ECF No. 34).
21 BONY filed a limited objection to the Sale Motion. (ECF No. 35).

22 On April 23, 2014, an order was entered granting the Sale Motion (“Sale Order”). (ECF
23 No. 36).

24 On May 9, 2014, the Trustee filed a report (“Trustee’s Sale Report”) for a different
25 bankruptcy case, i.e., In re Charles and Julie Holl, Case No. 10-24263-BTB, attesting that certain
26 real property located at 8221 Sedona Flats Street, Las Vegas, Nevada, had been sold on April 28,
27 2014, to H&N Investments, LLC (“H&N”), subject to all existing liens and encumbrances.
28

(ECF No. 37).²

On August 20, 2014, the Trustee filed his Final Report (“TFR”) (ECF No. 38), attesting that on May 9, 2014, that the Residence had been sold to H&N for \$9,600, subject to liens. Id. at page 5 of 9.

On April 2, 2015, a final decree was entered closing the bankruptcy case. (ECF No. 45).

On November 14, 2016, an order was entered granting the motion (ECF No. 49) of HMLV Capital, LLC (“HMLV”) to reopen the bankruptcy case. (ECF No. 54).

² The Trustee’s Sale Report filed in the Holl bankruptcy case attached a copy of a Residential Purchase and Sale Agreement (“Sale Agreement”), entered on April 28, 2014, by which the subject property was sold to H&N from that bankruptcy estate. Section 6 of that Sale Agreement, entitled “Recordation Required After Closing,” states in pertinent part as follows:

At Closing, Seller will have provided Buyer with **the Deed, the DOV, and the bankruptcy court order approving the sale** (“Documents”); **these must be recorded with the Clark County Recorder’s Office no later than fourteen (14) days after delivery to Buyer.** By accepting the Documents, **Buyer agrees that it is solely responsible for ensuring this timely recordation and for presenting evidence of this timely recordation to Seller within twenty (20) days of the aforementioned delivery. Failure to timely record shall automatically void the Buyer’s Documents, meaning any attempt to record them after the fourteen (14) days has expired shall provide Buyer no legal basis to successfully transfer the Estate’s ownership and interest in the Property.** Failure to timely record shall also automatically result in a complete forfeiture to Seller of all monies paid by Buyer. Additionally, failure to timely record shall immediately permit Seller to resell the Property to someone other than Buyer and provide a purchaser with new Documents to record.

(Emphasis added.). In the instant case, the Trustee has not filed with the court a copy of the Sale Agreement by which H&N subsequently purchased the Residence on May 9, 2014. The sale agreement used by the same parties in the Holl bankruptcy clearly required H&N, as the buyer, to timely record the bankruptcy court order approving the sale. The Sale Agreement in the Holl bankruptcy case was signed by H&N approximately 10 days before another agreement was signed for the sale of the Residence in the instant case. The suggestion that H&N was not aware in the subsequent transaction of its obligation to timely record a copy of the Sale Order is not credible. In fact, H&N subsequently purchased yet another residential property on July 11, 2014, from the same Trustee in another case, In re Dennis and Jennie Gasmin, Case No. 10-34005-MKN. The same form of sale agreement was used, including an identical Section 6 requiring H&N to timely record, inter alia, a copy of the bankruptcy court order authorizing the sale. (Gasmin ECF No. 181).

1 On November 29, 2016, HMLV filed the instant Motion. (ECF No. 58).

2 On December 21, 2016, opposition to the Motion (“Opposition”) was filed by Nationstar
3 Mortgage LLC (“Nationstar”). (ECF No. 60). The Opposition is supported by the Declaration
4 of Tenesa S. Scaturro (“Scaturro Declaration”) (ECF No. 61), to which is attached as Exhibit
5 “A” a draft “Declaration of David A. Rosenberg, Re: Trustee’s Compliance with Bankruptcy
6 Court Order Entered on April 23, 2014 [Dkt. No. 36].”

7 DISCUSSION

8 This court has jurisdiction to interpret and enforce the Sale Order. See Beneficial Trust
9 Deeds v. Franklin (In re Franklin), 802 F.2d 324, 326 (9th Cir. 1986); In re Mega-C Power
10 Corporation, 460 Fed.Appx 693, 695 (9th Cir. 2011); Huse v. Huse-Sporsem, A.S. (In re Birting
11 Fisheries, Inc.), 300 B.R. 489, 499 (B.A.P. 9th Cir. 2003). See also In re Nicole Energy Servs.,
12 2015 WL 1321567 at *2 (Bankr. S.D. Ohio 2015).

13 Paragraph 3 of the Sale Order specifies that the buyer (H&N) is purchasing the Residence
14 “subject to all existing liens, interests, encumbrances, and claims, without warranty, in ‘as is’
15 condition.” In relevant part, Paragraph 4 then specifies as follows:

16 Upon payment of the Final Price, **the Trustee will provide the § 363(b) Buyer**
17 **with a Declaration of Value and a Trustee’s Quitclaim Deed (together, the**
18 **“Documents”); these Documents, along with this Order, must be recorded**
19 **with Clark County Recorder’s Office no later than 14 days after delivery to**
20 **the § 363(b) Buyer. By accepting the Documents, the § 363(b) Buyer agrees**
21 **that it is solely responsible for ensuring this timely recordation and for**
22 **presenting evidence of this timely recordation to the Trustee within 20 days**
23 **of the delivery. Failure to timely record shall automatically void the § 363(b)**
24 **sale and the Documents delivered, meaning any later attempt to record them**
25 **after the 14 days has expired shall provide the § 363(b) Buyer with no legal**
26 **basis to successfully transfer the estate’s interest in the Property.** Failure to
27 timely record shall also automatically result in a complete forfeiture to the estate
28 of all monies paid by the § 363(b) Buyer. Additionally, failure to timely record
shall immediately permit the Trustee to resell the estate’s interest in the Property
to someone other than the § 363(b) Buyer and provide said purchaser with new
Documents to record with this Order.

Sale Order at 2:10-22 (Emphasis added).

There is no dispute in the instant case that a Bankruptcy Trustee’s Quitclaim Deed
 (“Quitclaim Deed”) to H&N was recorded with the Clark County Recorder’s Office on May 21,
 2014. See Motion, Exhibit 1 at p. 19 of 41. That Quitclaim Deed twice refers to “**the**

1 **bankruptcy court order recording concurrently herewith**” in providing title of the Residence
 2 to H&N, “without warranty, whether express or implied, in ‘as-is, where-is’ condition” and
 3 ‘SUBJECT TO ANY AND ALL CLAIMS, LIENS, AND OTHER ENCUMBRANCES.’ There
 4 also is no dispute that a copy of the Sale Order was never recorded with the Clark County
 5 Recorder’s Office.

6 There also is no dispute that HMLV has sued Nationstar in the Eighth Judicial District
 7 Court for the State of Nevada, Clark County (“State Court”), in a civil action denominated Case
 8 No. A-15-728120-C (“State Court Action”). See Opposition, Exhibit “G.” In that action,
 9 HMLV alleges that on February 26, 2015, it acquired title to the Residence through receipt from
 10 H&N of a Grant, Bargain and Sale Deed that was recorded the same day. See Motion, Exhibit
 11 “4.” That deed is signed by Noriko Hosoda as manager of H&N. Moreover, HMLV alleges that
 12 the named defendants recorded a notice of default to proceed with a non-judicial foreclosure of
 13 the Residence. Through that State Court Action, HMLV seeks, inter alia, to enjoin the non-
 14 judicial foreclosure.

15 In the State Court Action, Nationstar asserted that H&N’s failure to record the Sale Order
 16 invalidated any sale of the Residence and prevented H&N from transferring title to HMLV. On
 17 or about January 13, 2016, the State Court entered an order staying the action pending a
 18 determination by the bankruptcy court of the validity of the Quitclaim Deed. The same order
 19 also temporarily enjoined the non-judicial foreclosure pending the bankruptcy court’s
 20 determination. On or about September 19, 2016, the State Court entered a further order setting a
 21 deadline for HMLV to seek relief from the bankruptcy court. See Motion, Exhibit “1” at p. 16 of
 22 41. On November 29, 2016, the Motion was filed.

23 In its Motion, HMLV alleges that H&N never received a copy of the Sale Order, nor was
 24 it advised or informed that it was required to record the Sale Order. See Motion at 5:7-19, and
 25 Affidavit of Noriko Hosoda (“Hosoda Affidavit”) at ¶ 4, attached as Exhibit “5” to Motion.
 26 There is no dispute, however, that H&N has acquired other properties from the same Trustee
 27 under sale orders having language identical to the Sale Order. See, e.g., In re Jeffrey A. Dryer
 28 and Lisa S. Dryer, Case No. S-10-24292-MKN and In re Dennis C. Gasmin and Jennie R.

1 Gasmin, Case No. S-10-34005-MKN. In those proceedings, H&N purchased from the same
 2 Trustee, residential real properties located, respectively, at 6117 Kitamaya Street, North Las
 3 Vegas, Nevada 89031 and 10516 Sun Palace Court, Las Vegas, Nevada 89129. In those cases,
 4 similar to the present case, disputes arose as to whether H&N had recorded the documents within
 5 14 days after delivery by the same Trustee and whether it had valid title giving it standing to sue
 6 the lender in State Court. See In re Dryer, Order on Motion that Purchaser of Real Property's
 7 Interest is Extinguished for Failure to Comply with Bankruptcy Court's Order, etc., (Dryer ECF
 8 No. 156 at 4-5)³; In re Gasmin, Order on Motion that Purchaser of Real Property's Interest is
 9 Extinguished for Failure to Comply with Bankruptcy Court's Order, etc. (Gasmin ECF No. 198,
 10 at 4).⁴

11 Whether H&N in the instant case ever received a copy of the Sale Order from the Trustee
 12 or otherwise obtained a copy on its own is disputed. Compare Hosoda Affidavit at ¶ 4, with
 13 Scaturro Declaration at ¶ 6.⁵ Resolution of this dispute is unnecessary, however, because the
 14 Sale Order specifically placed the sole responsibility on H&N to timely record a copy of the Sale
 15 Order as a condition to the effectiveness of the sale. Additionally, the specific language of the
 16 Sale Order automatically voided the Quitclaim Deed. That the Sale Order otherwise was
 17 required to be recorded was confirmed by the very language of the Sale Agreement and the
 18 Quitclaim Deed.

19 Whether H&N was actually aware of the requirement to record the Sale Order also is
 20 disputed. Compare Motion at 5:8:3-8, with Opposition at 3:25 to 4:8 & n.1. Resolution of this
 21 _____

22 ³ This court denied the motion brought by Citimortgage because Citimortgage failed to
 23 provide sufficient evidence that H&N had not timely recorded the required documents.

24 ⁴ This court granted the motion brought by Citimortgage because H&N conceded that it
 25 had not timely recorded the required documents.

26 ⁵ This paragraph of the Scaturro Declaration would be subject to a hearsay objection
 27 under FRE 802, but no such objection was raised in writing or at the hearing. The unsigned draft
 28 declaration of the Trustee attached as Exhibit "1" to the Scaturro Declaration appears to be
 identical to another declaration by the same Trustee filed in the Dryer proceeding, attesting that
 copies of the sale orders and transactional documents were delivered to a representative of H&N.
 (Dryer ECF No. 159).

1 dispute also is unnecessary, however, inasmuch as the language of the Sale Order is self-
2 executing. Moreover, given H&N's purchase of other residential properties from the same
3 Trustee, as well as the language of Section 6 of the purchase and sale agreements used in those
4 transactions, see note 2, supra, H&N clearly would have been informed of the requirement to
5 record the Sale Order in a timely manner.

6 Under these circumstances, the Trustee's sale of the Residence to H&N failed because
7 H&N never recorded the Sale Order. As a result, the Bankruptcy Trustee's Quitclaim Deed to
8 H&N is null and void. It is for the State Court to determine whether H&N had any interest in the
9 Residence to convey to HMLV through the Grant, Bargain, and Sale Deed that was recorded on
10 February 26, 2015.

11 **IT IS THEREFORE ORDERED** that the Motion to Confirm the Validity of the
12 Bankruptcy Trustee's Quitclaim Deed, brought by HMLV Capital, LLC, Docket No. 58, be, and
13 the same hereby is, **DENIED**.

14 **IT IS FURTHER ORDERED** that Nationstar Mortgage, LLC shall file a copy of this
15 Order with the Eighth Judicial District Court, Clark County, Nevada, in the matter of HMLV
16 Capital, LLC v. First American Trustee Servicing Solutions, LLC, et al., denominated Case No.
17 A-15-728120-C.

18
19 Copies sent to all parties via CM/ECF ELECTRONIC FILING

20 Copies sent via BNC to:

21 CHRISTINA S. WOLBERT
22 6648 CHIMES TOWER AVE.
23 LAS VEGAS, NV 89139

24 # # #
25
26
27
28