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at _____ O'clock & _____ min _____ M
AUG 28 2003
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (4)

ENTERED

AUG 28 2003

B. R. M.

FINDINGS OF FACT

4. Property of the estate includes the Debtors' residence located at 101 Tat Road,

Columbia, Richland County, South Carolina (hereinafter the "Property").

5. On or about March 12, 2003, Counsel for the Trustee met with the Debtors and their attorney regarding their assets and liabilities. The Debtors were advised that the 101 Tat Road property would be liquidated by the Trustee. The Debtors indicated that a brother may be interested in purchasing the Property. However, the brother never made an offer.

6. On March 12, 2003, an Order was entered allowing the Trustee 240 days to liquidate the Property. Otherwise, the Automatic Stay would be lifted and the Property sold at foreclosure sale.

7. On March 31, 2003, the Trustee filed an application to employ Cobb & Sabbagha as real estate agent to assist in the liquidation of the Property. The Property was placed on the Multiple Listing Service. The Trustee received several offers for the purchase of the Property.

8. The Trustee accepted Col. Wendell and Janie Shelton's (the "Sheltons") offer to purchase the Property for \$184,000.00. On June 30, 2003, the sale to the Sheltons was noticed to the creditor body (hereinafter referred to as the "Notice of Sale").

9. While the sale was being noticed, the Sheltons conducted an inspection of the Property. The inspection report indicated that the Property needed structural repairs including mold remediation. The inspection report estimated costs of repairs of approximately \$21,500.00.

10. On July 17, 2003, the Trustee filed and served an Amended Application requesting authority to sell the Property to the Sheltons for \$184,000.00 with a credit being given to the purchaser at closing of \$21,500.00 for the repairs and \$1,400.00 for the delay in closing (hereinafter referred to as the "Amended Application").

11. The last day to object to the Amended Application was August 8, 2003.

12. As of August 8, 2003, the total time period that had elapsed to object to the first Notice of Sale and the Amended Application was approximately 39 days.

13. The Trustee's agents advised the Debtors of the last day for objections to be filed to the Amended Application and requested that they vacate the Property.

14. No objections to the Notice of Sale or the Amended Application were filed with the Court or served on the Trustee.

15. There have been no allegations that the notice procedures used by the Trustee were improper.

16. By this time, the Debtors had been in a bankruptcy proceeding for approximately 580 days. The Property had been listed for sale for approximately 130 days.

17. The Trustee advised the Debtors several times to vacate the property including a written request dated July 10, 2003. The Debtors continue to occupy the Property.

18. The Trustee scheduled the closing with the Sheltons for August 14, 2003 at 4:00 p.m. The closing statement and Deed were prepared. The Sheltons were scheduled to move into the house immediately thereafter since Col. Shelton's temporary government housing had expired.

19. The Sheltons had family members travel from Kentucky to help in the anticipated August 14, 2003 move into the Property.

20. On August 13, 2003, Mr. Williams, a former attorney, without the assistance of his counsel, filed a Motion for Reconsideration of Order of Sale, for Vacation of Order of Sale and Opportunity for Expedited Hearing, and Ex Parte Motion for Emergency Protective Order (the "Motions").

21. In the Debtors' Motion to Reconsider, they alleged, in part:

- a. That Debtors' counsel failed to file a request for hearing and objection to the Amended Application in order to present offers for the Property that would have resulted in a greater recovery for the estate;
- b. That the Court should vacate its order because the reason behind legal counsel's failure to file the objection rises to excusable neglect;
- c. That the Trustee's agent was not available to accept competing bids; and
- d. That the Sheltons would not be disadvantaged since they would have an opportunity to bid again on the Property if the Sale Order was vacated.

22. The Trustee could not hold the August 14, 2003 closing since the Debtors continued to occupy the Property.

23. On August 18, 2003, the Debtors filed an Offer to Redeem the Property for \$30,000 and Elroy Whitaker and Viola Townsend filed an offer to purchase the Property for \$188,000.00.

24. On August 19, 2003, the Trustee filed a Response to the Motions and made a request for sanctions against the Debtors for damages caused by (1) the Debtors' refusal to vacate the property and (2) the bad faith filing of the Motions, both of which prevented the August 14, 2003 closing on the Property.

25. On August 25, 2003, the Court entered its Order denying the Debtors' Motions for lack of standing and entered its Order requiring the Debtors to vacate the Property.

26. In support of his Motion for Sanctions, the Trustee submitted an Affidavit of Attorney's Fees evidencing legal fees of \$3,636.50 which are directly related to the eviction of the Debtors and the response to the Motions.

27. At the hearing, the Trustee asserted that the closing has been delayed by 15 days and, as a result of this delay, the estate will incur additional closing costs for mortgage interest in the amount of \$279.60 and real estate taxes of \$75.30.

CONCLUSIONS OF LAW

The Bankruptcy Code specifically provides that the role of the debtor is to cooperate with the Trustee as necessary to enable the trustee to perform his duties, 11 U.S.C. §521. The Court may sanction a debtor for violating the debtor's statutory duty to cooperate with the trustee. *See in Re Stinson*, 221 B.R. 726, 729 (E.D. Mich 1998) (citing *Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F. 3d 472 (6th Cir. 1996)). Additionally, the Court has the power under 11 U.S.C. §105(a) and Bankruptcy Rule 9011 to impose sanctions for submitting matters before the Court for improper purpose, to cause delay, or without factual support.

The present case is similar to *In re Marve*, 2002 U.S. App. LEXIS 17700, wherein the Sixth Circuit affirmed the Bankruptcy Court's award of sanctions against the Debtor's homestead exemption for the Debtors' failure to vacate his residence which delayed the sale of the property.

Here, the Debtors failed to vacate the Property and filed Motions for which they had no standing to bring. The Debtors have been in a bankruptcy proceeding for over 1 ½ years. Since the conversion to the Chapter 7, the Debtors have been informed by the Trustee that their residence would be sold. The Trustee made numerous requests that the Debtors vacate the Property. However, the Debtors failed to do so. The sale of the Property was notice, without objection, for a period of approximately 39 days. On the eve of closing, the Debtors filed the Motions to prevent the closing. These actions prevented the Trustee from selling the Property.

The estate has been diminished by the actions of the Debtors. The Trustee has incurred legal fees associated with the defense of the Motions and the eviction of the Debtors in the amount of \$3,636.50. The estate will also incur costs in the amount of \$354.90 for additional mortgage interest and real estate taxes due to the Trustee's inability to close on the sale August 14, 2003. Accordingly, the Debtors should be sanctioned for their actions which delayed the sale of the Property. It is

therefore

ORDERED, ADJUDGED AND DECREED, that the Debtors shall pay sanctions to the Trustee in the amount of \$3,200.00, which funds will be withheld from the Debtors' homestead exemption from the sale of their residence. Furthermore, if the Debtors fail to vacate the Property as previously ordered, the sanction shall increase by \$500.00 per day for each day or part of day that Debtors fail to vacate and such shall likewise be withheld from the homestead exemption.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
August 22, 2003.