

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

ROBERT F. KIRVEN, d/b/a PINWOOD
BUILDERS AND BARBARA KIRVEN,

Debtor(s).

CHAPTER 7 ASSET

CASE NO: 93-74025

ENTERED

MAY 5 1995

C.H.B.

FILED
95 MAY -4 PM 4:17
U.S. DISTRICT COURT
DIST. OF SOUTH CAROLINA

JUDGMENT ON ORDER OF THE COURT ISSUED MAY 2, 1995

THAT THE OBJECTION OF THE DEBTOR, ROBERT F. KIRVEN, TO THE SALE
OF REAL ESTATE BELONGING TO THE ESTATE, IS OVERRULED; AND

THAT THE TRUSTEE BE, AND HE HEREWITH IS, AUTHORIZED TO SELL
FREE AND CLEAR OF LIENS, THE ESTATE'S INTEREST IN REAL PROPERTY
LOCATED AT 228 E. CLARK STREET, PINWOOD, SOUTH CAROLINA, SUMTER
COUNTY, UPON THE TERMS AND CONDITIONS SET FORTH IN THE TRUSTEE'S
NOTICE OF SALE.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

May 4, 1995

FILED

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

MAY 5 1995

95 MAY -2 AM 11:12

IN RE:

Case No. 93-74025
DISTRICT OF SOUTH CAROLINA

Robert F. Kirven, d/b/a Pinewood Builders,
and Barbara Kirven,

ORDER ON OBJECTION TO SALE

Chapter 7

Debtors,

This matter comes before me upon the objection of the Debtor, Robert F. Kirven, to the duly-noticed sale of certain real property of the estate, given by the Trustee pursuant to 11 U.S.C. §365. In the Notice, the Trustee seeks to sell free and clear of liens the estate's interest in real property located at 228 E. Clark Street, Pinewood, South Carolina, Sumter County. The Trustee has represented to the estate that the property, except for *ad valorem* taxes thereon, is free and clear of liens and encumbrances. Debtor's counsel at hearing proffered, without objection, the factual circumstances upon which the Debtor's objection was based. Despite this, and in light of the Trustee's persuasive arguments, and for the reasons hereinbelow set forth, this Court finds no compelling reason to delay the administration of this case, and the objection to sale is herewith overruled, and the sale, subject to the terms and conditions set forth in the notice be, and it herewith is, directed and approved.

FINDINGS OF FACT

This voluntary Chapter 7 was commenced on August 18, 1993, when the Debtors, Robert F. Kirven, d/b/a Pinewood Builders, and his wife, Barbara Kirven, filed a voluntary Chapter 7 Bankruptcy petition in this Court. Robert F. Anderson [the "Trustee"] was appointed to his office on August 20, 1993.

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In the course of his investigation of the affairs of the Debtors, the Trustee discovered that there were several undisclosed assets belonging to the Debtors¹, including (1) a 1/2 interest in a house and lot located at 512 5th Avenue in Surfside Beach, South Carolina with a total value of approximately \$105,000.00 and a single mortgage of \$30,000.00; (2) an inheritance received by Mr. Kirven within the year prior to his filing for bankruptcy²; and (3) the inheritance, within six months after the filing of the Chapter 7 petition³, by Mr. Kirven under the Last Will and Testament of his mother⁴, with a substantial value⁵.

As a result of the failure to disclose the existence of the bankruptcy estate's interest in the decedent's estates of the Debtor's parents, the Trustee brought an action under §727(a), claiming that the Debtor had attempted to conceal his pre-bankruptcy interest in his father's estate; had attempted to conceal his post-filing interest in his mother's estate; and had made false oath or account by failing to disclose either of the interests. The Debtor voluntarily, before trial of that adversary proceeding, waived his discharge under Section 727.

¹ See Adv. Pro. No. 94 - 8011, a Section 727 suit brought by the Trustee to deny the discharge of Mr. Kirven. This complaint for the General Denial of the Discharge of the Debtor resulted in a judgment in favor of the Trustee.

² The Debtor Mr. Kirven inherited and received \$107,184.52, with no disclosure thereof in his Schedules and Statements of Affairs filed in conjunction with this Case; and no accounting therein for the funds received or expended.

³ 11 U.S.C. §541(a)(5) provides that property of the estate includes "Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date . . . by bequest, devise, or inheritance"

⁴ The debtor was bequeathed, *inter alia*, a one-third interest in approximately \$502,276.92 in liquid assets from this probate estate, as well as the realty [appraised at \$35,000.00] the Trustee seeks herein to sell; and a 1988 Lincoln Continental automobile, which the record of this Case reflects that the Debtor refuses to turn over to the Trustee.

⁵ The Debtors did not amend their schedules in accordance with the United States Bankruptcy Code to reflect these assets or in any way notify the Court, the United States Trustee or the Trustee of the existence of these assets.

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The Debtor has repeatedly taken the position that this estate is solvent; and that the Trustee should not be permitted to pursue liquidation of the assets of the Estate⁶. The Debtor asserts and the Trustee does not dispute for purposes of this objection that the bankruptcy estate has in excess of \$160,000 on hand. The Debtor also asserts and the Trustee does dispute that (1) the valid claims against the estate are substantially less than the cash generated, and turned over to, the bankruptcy estate from settlement of the decedents' estates, [those claims total, as filed and excluding the claim of the Resolution Trust Corporation, further discussed, *infra*, approximately \$40,000], and (2) the claim of the Resolution Trust Corporation against this estate should be considered to be a nullity, or at least disregarded pending disposition on appeal of an earlier decision by this court that the RTC claim against the bankruptcy estate is valid as a general, unsecured claim in the amount of \$165,053.22.

This position of the Debtor is untenable.

The Debtor has challenged, and lost, the claim of the Resolution Trust Corporation in this case. That adverse verdict is now on appeal. The Debtor has not requested a stay of any activities by the Trustee pending disposition of that appeal⁷; nor has the Debtor shown any compelling reason why his bankruptcy estate should not be administered in a timely and expeditious fashion by the Trustee. If the decision of this Court concerning the Resolution Trust Corporation is reversed, any funds realized from the sale of the Debtor's interest in the real estate will be transferred to him. However, the Bankruptcy

⁶ Section 704 mandates that "The trustee shall--(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest"

⁷ Bankruptcy Rule 8005 governs stays of any actions pending appeal.

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estate's creditors will be harmed by the continued delay in liquidation of this Estate of the decision of this Court is upheld. It is therefore,

ORDERED that the objection of the Debtor, Robert F. Kirven, to the sale of real estate belonging to the estate, is overruled; and it is further

ORDERED that the Trustee be, and he herewith is, authorized to sell free and clear of liens, the estate's interest in real property located at 228 E. Clark Street, Pinewood, South Carolina, Sumter County, upon the terms and conditions set forth in the Trustee's Notice of Sale.

IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina

~~April~~, 1995

May 1, 1995 (gw)