

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON
NOV 20 2007
DOCKET

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| IN RE: |) | CASE NO. 05-92328 |
| |) | |
| JOHNNY SIMMONS, |) | |
| |) | CHAPTER 7 |
| Debtor |) | |
| _____ |) | |
| |) | |
| JOHNNY SIMMONS, |) | CONTESTED MOTION |
| |) | |
| Movant, |) | |
| |) | |
| v. |) | |
| |) | |
| TOWN OF LIBERTY, MISSISSIPPI, |) | |
| MICHAEL FORMAN, |) | |
| |) | |
| Respondents. |) | |

ORDER

The Chapter 7 Trustee filed a Motion to Intervene and to be substituted as the moving party in a motion previously filed by the debtor styled as "Motion to Set Aside Transfer of Title for Violation of the Automatic Stay" against the Town of Liberty, Mississippi. (Docket No. 119). The Motion to Intervene came before the Court for a hearing on October 31, 2007, following notice issued on October 11, 2007. Appearances were made by Edwin K. Palmer as the Chapter 7 Trustee, Ralph Goldberg as attorney for the debtor, and Stephen H. Block as attorney for the Town of Liberty, Mississippi and Michael Forman, the tax sale purchaser of the real property at issue in the debtor's Motion to Set Aside the Transfer.

On the day of the scheduled hearing, the Court received a telephone call from a Mrs. Simmons advising that the debtor would not be able to attend the hearing and requesting a continuance. At the hearing, Mr. Goldberg also moved for a continuance based on the debtor's absence, but acknowledged that he had no argument or case law to cite in opposition to the Chapter 7 Trustee's motion to intervene. Accordingly, the motion for continuance was denied.

Debtor's Motion to Set Aside the post-petition tax sale alleges a violation of 11 U.S.C. § 362 by the Town of Liberty, Mississippi. Debtor alleges that the Town of Liberty transferred property of the estate to a third party post-petition in violation of the automatic stay, and debtor seeks to have the transfer of title declared void. After considering the record, the Motion to Set Aside as filed by the debtor, the Chapter 7 Trustee's Motion to Intervene and the arguments of counsel, the Court finds the Chapter 7 Trustee is the proper party to prosecute the claims raised in the Motion to Set Aside and the Motion to Intervene should be granted.

In some instances, a debtor who has suffered an injury resulting from a violation of the automatic stay may bring a claim for damages under 11 U.S.C. § 362. In this case, however, debtor does not allege that he suffered any individual injury, nor does debtor claim the property at issue as exempt. The only relief sought by the Motion to Set Aside is to declare the transfer void so that the real property is deemed property of the estate. The Chapter 7 Trustee is the only party with standing to prosecute a claim belonging to the bankruptcy estate. *Parker v. Wendy's Int'l., Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004); *see also Price v. Gaslowitz* (In re *Price*), 173 B.R. 434, 440 (Bankr. N.D. Ga. 1994) (citing *Miller v. Shallowford Community Hospital, Inc.* (In re *Miller*), 767 F.2d 1556, 1559 (11th Cir. 1985)). The debtor may not unilaterally assert a claim that belongs to the estate. *Price*, 173 B.R. at 440. The Bankruptcy

Code specifically vests the authority to avoid a post-petition transfer of property of the estate with the Trustee. 11 U.S.C. § 549. Because debtor does not allege that he has suffered any individual injury and the requested relief would return the property at issue to the bankruptcy estate, the Chapter 7 Trustee, and not the debtor, is the proper party to prosecute the claims raised in debtor's Motion to Set Aside.

In accordance with the above reasoning, the Chapter 7 Trustee's Motion to Intervene is hereby GRANTED. Future pleadings filed with reference to the Motion to Set Aside should reflect in the caption that the Chapter 7 Trustee is substituted in place of the debtor as the moving party.

IT IS SO ORDERED, this 19th day of November, 2007.



JOYCE BIHAM
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

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Date: November 30, 2007