

ENTERED ON

OCT 25 2004
DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 13
)
FREDDIE LEE JONES) CASE NO. 00-61222-MHM
)
Debtor)

FREDDIE LEE JONES)
)
Plaintiff) **ADVERSARY PROCEEDING**
) **NO. 02-9226**
)

v.)

ARTHUR E. FERDINAND, FULTON)
COUNTY TAX COMMISSIONER)
JACKIE BARRETT, FULTON COUNTY)
SHERIFF; VESTA HOLDINGS, I, LLC)
FOXWORTHY, INC.)
)
Defendants)

ORDER DENYING DEBTOR'S MOTION

On August 10, 2004, Debtor filed an Amended Request for Clarification of Consent Order and Motion for Declaratory Judgment. A response was filed by the Fulton County Tax Commissioner and by the Sheriff of Fulton County. The other Defendants filed no response. Debtor filed no reply to the response of the Fulton County Tax Commissioner and the Sheriff of Fulton County.

A consent order (the "Consent Order") was entered in this adversary proceeding January 9, 2003. As a result of the entry of the Consent Order, this adversary proceeding was closed February 13, 2003. The Consent Order, which was executed by Plaintiff's attorney and all Defendants, provided the following relief:

- The tax levy and sale proceeding of the Subject Property, which took place on November 7, 2000, and the subsequent tax deed issued as evidence of such sale is hereby set aside and voided.
- Foxworthy, Inc shall execute and deliver to the Sheriff of Fulton County the referenced Cancellation deed. Upon receipt of such deed, the Sheriff of Fulton County shall immediately disburse and deliver to Foxworthy, Inc. the sum of \$20,375.52.
- Vesta Holdings I, LLC shall deliver to the Sheriff of Fulton County its check for \$7,187.79, representing that amount paid to Vesta Holdings as payment for the tax *fi. fa.s.*
- Upon payment as made by Vesta Holdings, all of the *ad valorem* tax *fi. fa.s* against the Subject Property held by Vesta Holdings will be revived, and such *fi. fa.s* will constitute priority lien(s) against the Subject Property.

The "Subject Property" is 2662 Campbellton Road, Atlanta, Fulton County, Georgia.

In Debtor's request for clarification of the Consent Order, Debtor admits that each of the actions required by the Consent Order have been completed. Nevertheless, Debtor asserts he has not "been restored the rights of ownership, to wit: possession and control of the Subject Property." Debtor asserts that the Subject Property remains deeded to Vestal Holdings (sic) I, LLC "with that entity receiving all tax and financial information concerning the Subject Property to the detriment to the Plaintiff." The only document attached to Debtor's pleading which appears to be a deed is a tax deed conveying the property to Foxworthy, Inc. Attached to the response of the Fulton County Tax Commissioner and the Sheriff of Fulton County is a copy of a Cancellation of Tax Deed executed by Foxworthy, Inc. October 14th, 2002. Debtor admits that the payments required by the Consent Order have been made. Therefore, it appears that all parties have complied with the Consent Order. No clarification is necessary.

Debtor's Motion for Declaratory Judgment continues with allegations concerning two other parcels of property which were not the subject of this adversary proceeding or the Consent Order. Debtor makes vague allegations that he is making double payments for "for the above described properties." The Fulton County Tax Commissioner and the Sheriff of Fulton County set forth in their response, supported by an affidavit by Thomas Biggers, who works in the delinquent tax department of the Fulton County Tax Commissioner, that no such double payments have been made and that the County's taxing system would automatically generate a refund if such double payments were made.

Debtor's Motion for Declaratory Judgment concerns property that was not the subject of this adversary proceeding and concerns factual matters that were not alleged in the complaint. The allegations in Debtor's complaint were resolved by the Consent Order. Following entry of the Consent Order, this adversary proceeding was closed. Debtor has presented no facts which would constitute grounds for attack upon the Consent Order. Debtor's attempt to raise new claims not included in the original complaint is improper. Accordingly, it is hereby

ORDERED that Debtor's Amended Request for Clarification of Consent Order and Motion for Declaratory Judgment is DENIED.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 22^d day of October, 2004.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE