UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
MICHAEL HENRY RICHARDSON,	)	CASE NO. 05-84614-MHM
	)	
Debtor.	)	
	)	

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	)	
BARBARA B. STALZER, TRUSTEE,	)	
	)	**CONTESTED MATTER**
Movant,	)	
	)	
v.	)	
	)	
WASHINGTON MUTUAL BANK,	)	
N.A., NATIONAL CITY BANK,	)	
	)	
Respondents.	)	

ORDER GRANTING TRUSTEE'S MOTION TO SELL

This case is before the court on Trustee's motion to approve the sale of Debtor's real property, which he owns jointly with his former wife, Sherri Richardson. The facts are unusual and complicated and have been gleaned from the parties' pleadings, and from the testimony, exhibits and arguments presented at the hearings held December 5, 2006, continued to December 18, 2006, February 6, 2007 and concluded May 1, 2007. It is upon the pleadings, testimony, and exhibits that the following findings of fact are based.

This case commenced October 16, 2005.[1] Prior to the date this case was filed, Debtor and his wife had commenced divorce proceedings. Postpetition, the automatic stay was modified to allow Debtor and Ms. Richardson to conclude their divorce proceedings. The parties' divorce decree was entered following a jury trial November 21, 2006 (the "Divorce Decree"). The Divorce Decree memorialized the jury verdict that the marital residence should be awarded to Ms. Richardson.

At the time this case was filed, Debtor and Ms. Richardson jointly owned the marital residence, real property located at 640 Boxwood Terrace, Alpharetta, Fulton County, Georgia (the "Property"). Prior to entry of the Divorce Decree and with Ms. Richardson's consent, the Chapter 7 Trustee ("Trustee") had marketed the Property and obtained an offer to purchase the Property for $466,000. Trustee filed a motion to obtain the bankruptcy court's approval of the sale. In her motion, Trustee proposed to pay at closing the first mortgage of approximately $285,289, the second mortgage of approximately $78,594, and the costs of sale, including a real estate commission. Trustee proposed to pay one-half of the net proceeds to Ms. Richardson with the other half of the net proceeds to be escrowed pending determination of the appropriate division of the proceeds between Ms. Richardson and Debtor's bankruptcy estate. Trustee's motion also disclosed that the jury in the parties' divorce proceedings had awarded the Property to Ms. Richardson and that Ms. Richardson asserted that the second mortgage and promissory note was executed by Debtor only.

[1] This case was filed one day before the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") and thus, its provisions are inapplicable in this case.

The motion to approve the sale of the Property was served upon Ms. Richardson and her attorney, as was the order and notice that provided an objection deadline of November 27, 2006. On November 27, 2006, Ms. Richardson's attorney filed an objection to distribution of the proceeds of sale, asserting that the second mortgage should not be paid at closing but instead should be paid into the Registry of the Court for later determination as to whether any portion of the second mortgage should be paid from Ms. Richardson's one-half interest in the Property. Ms. Richardson's attorney sent a copy, apparently one that did not exhibit a "filed" stamp, to Trustee. The objection, although filed November 27, 2006, did not appear on the Clerk's docket until November 29, 2006, the day scheduled for the closing of the sale.

When Trustee received Ms. Richardson's objection to the sale, Trustee notified the realtor and the closing attorney that the closing would have to be delayed, at least until after the hearing scheduled for December 5, 2006. The closing attorney, however, was communicating with Ms. Richardson's attorney about an attorney's lien he had filed against the Property October 30, 2006. In connection with these communications, the closing attorney had sent by telefacsimile a copy of the settlement statement and a copy of the payoff letters from the first and second mortgagees. The closing statement clearly set forth a proposed disbursement of the sale proceeds in accordance with Trustee's motion. On the day of closing, Ms. Richardson's attorney sent by telefacsimile a letter to the closing attorney in which he agreed to execute a quitclaim deed releasing the Attorney Lien

"upon the assurance that you will take the approximate $35,000 that otherwise would be paid to Mrs. Richardson and hold it in your escrow account giving me time to speak to Mrs. Richardson...." The letter clearly contemplated that the closing would occur that day as scheduled.

Having spoken with her attorney in the days prior to closing, Ms. Richardson appeared at the closing attorney's offices for closing. The closing attorney and her realtor reviewed with her the figures on the settlement statement. Ms. Richardson signed the settlement statement and the disbursements were made in accordance with that document, i.e. the first *and second* mortgages were paid, one half of the net proceeds were paid to Trustee for the benefit of the estate and the other half was placed in the closing attorney's escrow account for Ms. Richardson. On January 9, 2007, Ms. Richardson's attorney delivered to the closing attorney the original of the quitclaim deed he had executed and received the check for Ms. Richardson's share of the proceeds.

Hearing on Trustee's motion to sell was held December 5, 2006, and continued as set forth above. At these hearings, Trustee argued that Ms. Richardson's appearance at closing and her signing of the settlement statement constituted a waiver of her objection to the sale or, alternatively, rendered her objection moot. Ms. Richardson and her attorney contend that they misunderstood the meaning of the settlement statement and had no intention of waiving their objection to the payoff of the second mortgage from the gross proceeds of the sale.

At the hearings, testimony was received from the closing attorney, the realtor, Ms. Richardson, Trustee and Ms. Richardson's attorney. Having assessed the witnesses' testimony and credibility, the undersigned concludes that Ms. Richardson's execution of the settlement statement, which allowed the closing to go forward and allowed the disbursement of the sale proceeds in accordance with the settlement statement, rendered her objection to the sale moot. Mootness occurs when "events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give a party meaningful relief." *Jews for Jesus v. Hillsborough County Aviation Authority,* 162 F. 3d 627 (11th Cir. 1998). The sale and disbursement of the proceeds cannot now be undone. Ms. Richardson had ample opportunity to consult with her attorney, who had been provided a copy of the settlement statement, and Ms. Richardson herself had ample opportunity to review the settlement statement at the closing table. Whether Ms. Richardson had simply decided to concede or simply misunderstood the import of the figures on the settlement statement, her actions nevertheless rendered her objection to the disbursement of the proceeds moot.

Approval of Trustee's motion to sell, however, does not constitute a determination that Ms. Richardson's arguments regarding the second mortgage are without merit and does not deprive Ms. Richardson of a remedy. As Trustee has pointed out, Ms. Richardson may assert her claims regarding the payment of the second mortgage against Debtor's estate, and to the extent those claims are found to be valid, Ms. Richardson may be entitled to be paid from the assets of the estate.

Accordingly, it is hereby

ORDERED that Trustee's motion to sell is ***approved.***

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtor, Debtor's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 17th day of September, 2007.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE