

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON
JUL 17 2008

DOCKET

IN RE:	:	CASE NO. 05-92328-JB
	:	
JOHNNY SIMMONS,	:	
	:	CHAPTER 7
Debtor.	:	

ORDER

The debtor filed a motion on June 12, 2008 *pro se* requesting that his discharge be granted and for other relief. (Docket # 148). The Clerk has now processed the discharge. The delay in granting the discharge was due to the debtor having sought and obtained a conversion of the case from Chapter 7 to Chapter 13. When the case was later reconverted back to Chapter 7, debtor appealed the reconversion which further delayed the administration of the case. However, the Clerk has now processed the debtor's discharge and provided notice of the discharge to all creditors on the mailing matrix.

Debtor's motion seeks relief or direction with respect to one remaining asset, some real property in Mississippi (the "Mississippi Property"). The Mississippi Property is commercial property located in the Town of Liberty, Mississippi, that was damaged by Hurricane Katrina in 2005. The debtor filed a motion on March 15, 2007 through attorney Ralph Goldberg to set aside a purported tax sale of the Mississippi Property. Mr. Goldberg originally self-scheduled the motion for a hearing for April 11, 2007 and then reset the matter for April 25, 2007. Prior to the April 25, 2007 hearing,

however, Mr. Goldberg requested that the motion be taken off the calendar and be reset upon debtor's request. In September of 2007, the Chapter 7 Trustee filed a motion to intervene in debtor's motion to set aside the tax sale and scheduled a hearing on the motion for October 31, 2007. The Court granted the motion to intervene, and the Trustee next sought to resolve the motion to set aside the tax sale with the Town of Liberty, Mississippi and the alleged purchaser of the Mississippi Property Michael Forman. The debtor objected to the Trustee's proposed settlement and filed pleadings docketed as entries # 132, #138 and #139. After a hearing on February 28, 2008, the Court denied the Trustee's motion to settle and entered an order to that effect on February 29, 2008. The documents and representations at the hearing suggested that there may be grounds to set aside the purported tax sale. Since the motion to set aside was to be prosecuted by the Trustee as the estate representative, the February 29, 2008 Order provided that the motion would be reset upon the request of the Trustee.

The debtor seeks a determination with respect to his rights and the estate's rights in the Mississippi Property. The record is confused regarding the facts surrounding the purported tax sale of the Mississippi Property and the Town of Liberty's alleged subsequent transfer to Michael Forman. At the February 28, 2008 hearing, Stephen Block appeared as counsel for the Town of Liberty, Mississippi and Michael Forman. The facts argued by Mr. Block were not consistent with facts presented in pleadings filed by the Town of Liberty and Michael Forman, notably their response to debtor's motion to set aside and their motion to compromise (Docket #120 and #128). Mr. Block

indicated that he had learned new facts only one day prior to the hearing, and he did not present any evidence in support of his arguments.

In the Town of Liberty and Michael Forman's motion to compromise and in their response to debtor's motion to set aside the tax sale, they assert that the Town of Liberty became vested with an interest in the Mississippi Property on August 24, 2004 for unpaid real property taxes. The pleadings do not disclose any details or supporting documents to explain how and why the Town of Liberty became vested with any interest on this date. At the February 28, 2008 hearing, Mr. Block informed the Court that this information was incorrect and that the Town of Liberty had conducted a tax sale of the Mississippi Property in August of 2004, that no one appeared, and that the Mississippi Property was "struck off" to the Town of Liberty. In the pleadings filed, the Town of Liberty and Mr. Forman also allege that the Town of Liberty's interest in the Mississippi Property became absolute on August 24, 2006, and that the Mississippi Property was transferred from the Town of Liberty to Michael Forman at a tax sale on August 26, 2006. Mr. Block stated that this too was incorrect, and that "it's obvious I need to get something better to the Court." To date, no additional information has been provided to the Court regarding this matter.

The debtor submitted two letters from the Town of Liberty as attachments to his motion to reset the February 28, 2008 hearing. (Docket # 139). The first letter, dated March 3, 2006, from Shawn Felder, the Town Clerk of Liberty, to the debtor, stated that certain property of the debtor's "was on the 26th day of August, 2004, sold for the

2003 unpaid realty taxes, and that the title to said property will become absolute in the name of the Town of Liberty unless redemption from said tax sale is made on or before August 28, 2006." The second letter, dated July 18, 2006, from Shawn Felder, the Town Clerk of Liberty, to the debtor, notified the debtor of delinquent taxes listed in the debtor's name for 2003, 2004 and 2005. The letter further directed the debtor to "[p]lease review your personal records. If you have paid these taxes to the Town of Liberty, please bring/send us a copy of your check or receipt so that we may correct these records. However, should you find that this was an oversight on your part, please come by and pay your taxes before the August 28th tax sale to avoid legal action. If the 2003 taxes on this property remain unpaid by August 28, 2006, ownership of this property will transfer to the Town of Liberty."

These letters from the Town of Liberty raise questions regarding the validity of the transfer to Mr. Forman. Assuming the tax sale took place August 26, 2004, as stated in the March 3, 2006 letter from the Town of Liberty to the debtor, the two year redemption period under Mississippi law had not expired on August 24, 2006, the date the Town of Liberty asserts that its rights in the Mississippi Property became absolute. Second, the Town of Liberty asserted in both its motion to compromise and its response to debtor's motion to set aside, that the Mississippi Property was transferred to Michael Forman on August 26, 2006. However, both letters from the Town of Liberty to the debtor gave the debtor until August 28, 2006 to pay any delinquent taxes on the Mississippi Property. The papers suggest that the Town of Liberty may have transferred

the Mississippi Property to Michael Forman prior to the expiration of the debtor's and the estate's redemption period.

It is significant that the Town of Liberty transferred the Mississippi Property to Michael Forman after the debtor filed this bankruptcy. Pursuant to 11 U.S.C. § 362, the filing of the bankruptcy petition operates as a stay to prevent certain actions against property of the bankruptcy estate. If the Mississippi Property was property of the bankruptcy estate at the time of the transfer to Michael Forman, the transfer was a violation of the automatic stay and should be set aside. Because the record in this case is confused regarding the actual dates of the purported tax sale and subsequent transfer to Michael Forman, it is unclear whether the transfer was a violation of the automatic stay. The Town of Liberty and Michael Forman did not submit any evidence supporting their assertions that the transfer was not a violation of the automatic stay. It is also significant that the Town of Liberty has not presented any evidence of notice to the Trustee of the purported tax sale and redemption period.

In debtor's pleadings, he contends that the delinquent taxes were paid prior to the expiration of the redemption period. Debtor alleges that a family member made a payment in the amount of \$557.05 on March 31, 2006, and that on April 3, 2006, the Liberty Tax Officials confirmed that this was the amount due and would prevent the sale of the Mississippi Property. Debtor further alleges that the Town of Liberty waited until February 2007 to inform him that the amount paid in March of 2006 was short by approximately \$100.00. The Town of Liberty has not refuted debtor's allegations.

Finally, counsel has not explained Mr. Forman's role. It appears from the record that Mr. Forman was renting the Mississippi Property from the debtor prior to and at the time of the purported sale or transfer. Debtor contends that Mr. Forman was delinquent in making his monthly rent payments and yet purchased the very property he was renting at a tax sale. The pleadings filed indicate that Mr. Forman was still renting the Mississippi Property from the debtor *after* the date of the purported tax sale and transfer, as debtor attached a letter dated September 5, 2006 from Mr. Forman addressed to the debtor, asking the debtor to allow him to deduct some amounts from his next rent payment. (Docket # 139). This letter casts doubt on the Town of Liberty and Mr. Forman's contention that the Mississippi Property was even transferred to Mr. Forman on August 26, 2006.

After the February 28, 2008 hearing, where many questions were raised regarding the validity and timing of the purported tax sale and subsequent transfer of the Mississippi Property, the Court expected that counsel for the Town of Liberty and Michael Forman would file a proper pleading to clarify the facts and that if the facts warranted, the alleged sale and transfer would be set aside consensually or the Trustee would have the matter put back on the calendar to try any disputed facts. Instead, the debtor filed a motion on June 12, 2008 requesting some relief or direction from the Court with respect to the Mississippi Property. Specifically, debtor requests an abandonment of the Mississippi Property by the Trustee or a finding that the transfer of the title to Mr.

Forman be declared void.¹ (Docket # 148). The Trustee filed a status report on July 7, 2008, indicating that he has determined that the Mississippi Property was sold while the debtor was in bankruptcy with no notice to the Trustee and without Court approval and that he is in settlement negotiations with the parties.

In view of the foregoing, the Trustee, counsel for the Town of Liberty and Michael Forman, and the debtor are ORDERED to appear and show cause on **September 4, 2008 at 10:00 AM**, in COURTROOM 1402, UNITED STATES COURTHOUSE, RICHARD B. RUSSELL FEDERAL BUILDING, 75 SPRING STREET, SW, ATLANTA, GEORGIA, why the tax sale of the Mississippi Property should not be declared void.

IT IS SO ORDERED, this 16th day of July, 2008.


JOYCE BHARY
UNITED STATES BANKRUPTCY JUDGE

¹The debtor also requested that the Court give him permission to hire a Mississippi lawyer. The debtor has the right to hire a Mississippi lawyer at any time and does not need Court approval to do so.

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

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Mailed: 07/16/08