

RECEIVED CLERK OF COURT
MAR 17 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 05-66411-JB
	:	
BARBARA R. ANDREWS,	:	CHAPTER 7
	:	
Debtor.	:	

ORDER

This Chapter 7 case came before the Court on March 8, 2006 on two motions: (1) a motion filed by the Chapter 7 Trustee, Edwin Palmer, requesting authorization to sell the Estate's interest in unimproved real property in Mississippi, free and clear of liens and encumbrances of any kind, pursuant to 11 U.S.C. § 363(b) and § 363(f) with any such valid liens and encumbrances to attach to the proceeds of the sale (#55) and, (2) a motion by Janette Wade, co-owner of the property, for payment of sums advanced by her for the preservation of property (#58). The Trustee was present, and the co-owner of the property Janette Wade appeared with counsel Lynwood Maddox in support of the Trustee's motion to sell. Debtor appeared *pro se* and argued in opposition to the motion. This matter is a core proceeding under 28 U.S.C. § 157 (b)(2)(A), (N), and (O). After carefully considering the evidence and arguments presented and the record in this case, the Court concludes that the Chapter 7 Trustee's motion to sell should be granted and that Janette Wade's motion for authorization should be granted in part such that the Trustee will be authorized to reimburse Ms. Wade up to \$2,966.86.

The Debtor filed this Chapter 7 case through counsel Samuel Hicks on April 4, 2005. Edwin K. Palmer was appointed as Chapter 7 Trustee (hereinafter "Trustee"). Mr. Hicks filed a motion to withdraw as counsel for the Debtor on August 16, 2005, and the Court granted the motion on August 30, 2005. Since that time, Debtor has proceeded *pro se*.

The property which is the subject of the Trustee's motion is described as 540 acres, more or less, located in the East ½ of Section 29 and the West ½ of Section 28, all in Township 10 North, Range 3 West, Yalobusha County Mississippi, shown on tax map 1011 as parcels 1.00, 1.01 & 2.00, including all timber rights, and all owned gas, oil and mineral rights ("the Property"). The Debtor and her sister, Janette Wade, each own a one-half (½) undivided interest in the Property, having inherited their interest from a trust upon the death of their mother.

On August 3, 2005, the Trustee filed an application to employ Carter Speed, a Mississippi real estate broker with the Southern Land Company, Inc., to market and sell the Property. The Court granted the application on August 11, 2005. On January 29, 2006, the Trustee filed the instant motion to sell the Property in its entirety, including both the Debtor's one-half (½) interest, and Ms. Wade's one-half (½) interest, for a purchase price of \$637,800.00 to Sanford C. Thomas. Ms. Wade signed the Sales Contract and supports the sale.

On February 1, 2006, Ms. Wade filed a response to the Trustee's motion to

sell (#57). In her response, Ms. Wade requested that the Court authorize the sale of the Property, that she receive 50% of the proceeds of the sale and that she be paid, from the Trustee's proceeds, an amount equal to payments she had made for the benefit of the Debtor to preserve and protect the Property. On February 10, 2006, Ms. Wade filed a motion to authorize payment by the Trustee of approximately \$7,500.00 as amounts advanced by her to preserve the Property for the Debtor's benefit.

On March 6, 2006, Debtor filed a response *pro se* objecting to the Trustee's motion to sell. Debtor contends that the sale is not in the best interest of the estate, that the price is inadequate, and that partitioning and selling her one-half ($\frac{1}{2}$) interest in the Property separate from her sister's one-half ($\frac{1}{2}$) interest, would yield a higher price. To support this argument, Debtor attached a handwritten exhibit purporting to show prices per acre of some property in Mississippi based on information she had obtained on the internet. Debtor's response also requests that instead of approving the sale of her interest in the Property, she be granted the opportunity to pay off all her creditors and administrative expenses in cash.

At the March 8, 2006 hearing, the Trustee persuasively argued that this sale was in the best interest of creditors. He argued that this was a difficult sale due to the economic climate in Mississippi and that the broker Carter Speed was qualified and properly marketed the Property. The Trustee had negotiated a 7% brokerage commission instead of the more standard 10% commission used in the sale of this type of land. The

Trustee argued that the purchaser had come forward in December of 2005 and after a good deal of negotiation, a sales contract was signed in late January of 2006 with a sales price of \$637,800.00. The Trustee further argued that the price was fair and reasonable. The Trustee also stated that he had no objection to Ms. Wade's request that she be reimbursed for expenses she paid on behalf of the Debtor.

The Debtor appeared and requested that the Court allow her to pay off her unsecured debt, the Chapter 7 Trustee's fees, and administrative expenses in cash rather than allowing the Property to be sold. Debtor stated that she and her daughter had been unable to determine the total of these amounts. According to the Trustee, the exact amount of claims is unknown as the bar date for filing claims is June 9, 2006. Debtor acknowledged receiving a letter from the Trustee providing the details of all assets currently held in the estate. When the Debtor was asked if she had cash to pay these amounts at this time, Debtor stated that she had funds in an account. When requested to provide details regarding the account, Debtor stated and that she had been asked to not divulge any details regarding the funds or the account. Upon further questioning, Debtor stated that her daughter was making her a personal loan so that she could keep the Property. When asked if the Debtor's daughter was present to testify as to the availability of funds, the Debtor stated that her daughter had been unable to attend the hearing, and Debtor presented no proof of any account or available funds and failed to provide any credible evidence that she has the means to pay creditors and administrative expenses.

Ms. Wade, the Debtor's sister and co-owner of the Property, testified at the March 8, 2006 hearing. Ms. Wade is a residential realtor, having worked in the metro Atlanta area for over thirty years. Ms. Wade testified that she performed research and interviewed approximately four other brokers before determining that Mr. Speed would be able to do the best job. She testified that Mr. Speed was uniquely qualified as both a broker and as a Mississippi registered forester. At the time the Trustee determined it would be necessary to sell Debtor's interest in the Property, Ms. Wade had already contracted with Mr. Speed to sell her one-half ($\frac{1}{2}$) interest in the Property. After deciding to sell Debtor's interest in the Property, the Trustee had elected to engage Mr. Speed as well.

Ms. Wade identified copies of cancelled checks supporting her claim that she is entitled to be reimbursed for certain expenses paid to preserve the Property for the Debtor's benefit. According to the cancelled checks, Ms. Wade paid \$3,199.88 in property taxes in 2005 and an additional \$2,733.83 in 2006. Both the Trustee and the Debtor agreed that Ms. Wade is entitled to reimbursement for one-half ($\frac{1}{2}$) of the property taxes amounting to \$2,966.86.

Ms. Wade also presented a valuation, dated March 7, 2006, estimating the value of the timber on the Property at \$175,000.00 and a separate appraisal from February 9, 2006 by J. Filo Coats, a Mississippi Licensed Certified General Real Estate Appraiser, valuing the Property, not including timber, at approximately \$459,000.00. Ms. Wade

stated that the Property had been listed since August 2005 and that the Sales Contract was negotiated and, in her opinion, was a fair offer and the best price that could be obtained under the circumstances.

After carefully considering the testimony and arguments at the March 8, 2006 hearing as well as the pleadings filed, the Court finds that the Chapter 7 Trustee has shown that the proposed sale is in the best interests of the Estate and all creditors. Accordingly, it is hereby

ORDERED that the Trustee's Motion is granted, and the Trustee is authorized to sell the Property on the terms and conditions as set out in the Motion, free and clear of all liens and encumbrances, with any such liens and encumbrances, if valid, to attach to the proceeds of the sale.

IT IS FURTHER ORDERED that the Trustee is authorized to pay at closing the real estate commission, closing costs per the contract, any property taxes due and owing, and \$2,966.86 to Ms. Wade as reimbursement for expenses paid on behalf of the Debtor.

IT IS SO ORDERED, this 15th day of March, 2006.


JOYCE BHARY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Office of the United States Trustee

362 Richard B. Russell Building
75 Spring Street, SW
Atlanta, GA 30303

Barbara Andrews

13865 Providence Road
Alpharetta, GA 30004

Carter Speed

Southern Land Company, Inc.
8590/1 Farmington Blvd.
Germantown, TN 38139

Maddox & Maddox. P.C.

1455 Lincoln Parkway East
Suite 300
Atlanta, GA 30346-2209

Janette Wade

755 Brickwood Lane
Alpharetta, GA 30004

Edwin K. Palmer

Edwin K. Palmer, P.C.
118 East Trinity Place
Decatur, GA 30030