

AUG 27 2009

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

ALLIANCE RESOURCE
MANAGEMENT, LLC,

Debtor.

CASE NO. 07-61934-JB

CHAPTER 7

W. FRANK NEWTON and
LINC INVESTMENTS, LLC,

Movants,

CONTESTED MATTER

v.

HARRY W. PETTIGREW, Chapter 7
Trustee, CHICAGO TITLE INSURANCE
COMPANY and FIDELITY NATIONAL
TITLE INSURANCE COMPANY,

Respondents.

CHICAGO TITLE INSURANCE CO.
and FIDELITY NATIONAL TITLE
INSURANCE CO.,

Movants,

CONTESTED MATTER

v.

HARRY W. PETTIGREW, Chapter 7
Trustee,

Respondent.

ORDER

This Chapter 7 case came before the Court on July 23, 2009 for a hearing on two related motions: (1) a motion for relief from the automatic stay filed by Chicago National

Title Insurance Company (“Chicago Title”) and Fidelity National Title Insurance Company (“Fidelity Title”) (collectively the “Title Insurers”) (Docket No. 553) and (2) a motion filed by W. Frank Newton and Linc Investments, LLC (“Newton” and “Linc”) to enforce a settlement agreement (Docket No. 543). In the motion for relief from the automatic stay, the Title Insurers seek permission to pursue a civil action which they filed in the District Court in January of 2009 against Newton, Linc, H. Oliver Welch (“Welch”) and Equity Trust Company as custodian for the benefit of the IRA account of H. Oliver Welch (“ETC”).¹ The Title Insurers’ complaint in District Court alleges state fraudulent conveyance claims, RICO claims and claims for unjust enrichment in connection with transfers made by the Chapter 7 debtor Alliance Resource Management, LLC (“Alliance”). In the motion to enforce the settlement agreement, Newton and Linc seek a determination that a settlement agreement approved by the Bankruptcy Court on April 1, 2008 among the Chapter 7 Trustee in the Alliance case, Chicago Title Insurance Company, Ticor Title Insurance Company, Linc, Newton, and WFN Finance Company precludes the Title Insurers from suing Newton and Linc in the District Court.

At the hearing, Todd Hennings and Frank Wilensky appeared for Newton, Linc, Welch and ETC, Craig Pendergrast and Paul Baisier appeared for the Title Insurers, and Stewart Clayton and James C. Cifelli appeared for the Chapter 7 Trustee. This is a core

¹ The District Court Action is *Chicago Title Insurance Co. and Fidelity National Title Insurance Co. v. Equity Trust Company as Custodian for the benefit of the IRA account of H. Oliver Welch, Linc Investments, LLC, H. Oliver Welch, and W. Frank Newton*, No. 09-CV-0271, (N.D. Ga. filed Jan. 30, 2009).

proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (G). After considering the motions, the briefs, the documents admitted, and the arguments of counsel, the Court issued an oral ruling on the record on July 23, 2009 and directed counsel to prepare a brief order memorializing the ruling. It appears that counsel were unable to present such an order on a timely basis. Accordingly, a summary of the Court's oral rulings is set forth in this Order.

A. Claims against Mr. Welch and ETC.

There is no prior settlement agreement between the Chapter 7 Trustee and Mr. Welch and his related entity ETC. Rather, the Chapter 7 Trustee has filed an adversary proceeding now pending in the Bankruptcy Court against Mr. Welch and ETC, Adversary Proceeding No. 09-6060, to avoid preferential transfers in the amount of \$119,103.24 pursuant to §§ 547 and 550 of the Bankruptcy Code, to avoid and recover monetary transfers in the amount of \$2,764,574.20 pursuant to §§ 548(a)(1)(A) and 550 of the Bankruptcy Code, and to avoid certain security deeds. The Court concludes that fraudulent conveyance claims against Mr. Welch and ETC belong to the Chapter 7 Trustee and to the estate, and the Title Insurers' motion for relief from the automatic stay to proceed with fraudulent conveyance claims on their own against Mr. Welch and ETC in the District Court Action is denied.

The question remains whether the automatic stay shouldn't be lifted to allow the Title Insurers to pursue RICO claims and claims for unjust enrichment against Mr. Welch and ETC in the District Court. The Court allowed the parties, including the Chapter 7 Trustee, time to brief the narrow issue of whether there is any basis to claim that the

automatic stay applies, and, if so, whether there is any factual or legal argument not to lift the stay to allow the Title Insurers to pursue the RICO claims and claims for unjust enrichment against Mr. Welch and ETC in the District Court.

B. Claims against Linc and Newton.

Linc and Newton's motion to enforce the settlement agreement relates to a settlement agreement approved after notice and hearing. A key factual issue in this motion is whether the claims asserted by the Title Insurers against Linc and Newton in the District Court are the same claims that the Trustee settled with Linc and Newton. After hearing from counsel and reviewing Trustee's Exhibit 18, and Linc's Exhibits 22, 23 and 24, the Court concluded that the Trustee settled all of the Trustee's avoidance claims that were a part of a demand made by the Trustee against Linc and Newton. Trustee's Exhibit 18 contains a list of the Trustee's demands against Linc and Newton, and counsel appeared to agree that there was no transaction identified by the Title Insurers in the District Court complaint against Linc and Newton that was not a part of the transactions described in Trustee's Exhibit 18. The Court concluded that all of the avoidance claims identified in Trustee's Exhibit 18 were settled by the Chapter 7 Trustee and that the Title Insurers received notice of the settlement and filed no objections. The Court concluded that the motion to enforce the settlement should be granted such that the Title Insurers may not pursue any fraudulent conveyance claims in the District Court against Newton or Linc, as all such claims belonged to and were settled by the Chapter 7 Trustee.

Linc and Newton's arguments that the settlement agreement should also prevent the Title Insurers from pursuing RICO claims and claims for unjust enrichment against Linc and Newton in the District Court were less persuasive. In the settlement agreement, there is no mention of settling any RICO claims or claims for unjust enrichment. Unlike the situation with Mr. Welch and ETC, against whom the Trustee has an adversary proceeding, the Trustee has released his claims against Linc and Newton. Newton and Linc's arguments are couched in terms of issue preclusion or "claims splitting". While these arguments might be more appropriately advanced before the District Court, the Court gave counsel time to brief the arguments more clearly to see if they pertain to the motions pending in the Bankruptcy Court.

The parties agreed to conduct limited discovery to advance the parties' understanding of the disputed merits of the underlying claims and to explore the possibility of settling such claims. After the discovery is conducted, counsel may submit briefs on the issues remaining in the motions before the Bankruptcy Court. The Chapter 7 Trustee may submit a further brief on or before **September 21, 2009**; Newton, Linc, Welch, and ETC may submit a further brief on or before **October 4, 2009**; and the Title Insurers may submit a further brief on or before **October 18, 2009**.


One additional matter should be noted. As stated above, at the conclusion of the July 23, 2009 hearing, the Court announced its rulings which included a determination that fraudulent conveyance claims against Linc, Newton, Welch, and ETC belong to or were

settled by the Trustee and a denial of the Title Insurers' motion for relief from the automatic stay to pursue such fraudulent conveyance claims in the District Court Action. After conducting an all day hearing and stating the Court's findings and conclusions on the record, counsel for the Title Insurers announced that he might now dismiss or withdraw the fraudulent conveyance claims in the District Court Action. In essence, after hearing the Court's ruling, but before a written order could be prepared memorializing the ruling, the Title Insurers would withdraw the fraudulent conveyance claims so as to attempt to moot any effect these rulings might have. The Court advised counsel that withdrawing the fraudulent conveyance claims in the District Court would not change the fact that the hearing was conducted in the Bankruptcy Court and that the Court made certain rulings. The following day, on July 24, 2009, the Title Insurers filed a "Notice of Withdrawal of Claims and Related Actions" (Docket No. 614), stating that they had just withdrawn their Georgia Uniform Fraudulent Transfers Act claims against all of the parties in the District Court Action. It is not clear what the Title Insurers hope to achieve by withdrawing the fraudulent conveyance claims "without prejudice" after the Bankruptcy Court has ruled that the claims belong to the Trustee, not the Title Insurers. The fact remains that the Court made its rulings on July 23, 2009, and this Order serves to memorialize those rulings stated in open court on the record with all counsel present.

In accordance with the above reasoning and the reasoning set forth in open court, the Title Insurers' motion for relief from the automatic stay is denied in part, the

motion by Linc and Newton to enforce the settlement agreement is granted in part, and the Court will address the remaining issues after all the briefs are filed.

IT IS SO ORDERED, this 2nd day of August, 2009.



JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

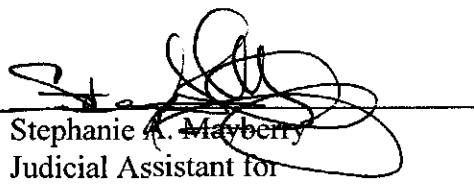
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