

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division**

IN RE:

RICHIE H. CONNER,

Case No. 08-50354-13

Debtor

MEMORANDUM DECISION AND ORDER

At Harrisonburg in said District this 14th day of July, 2008:

This matter is before the court on a Motion to Reinstate Case filed by a creditor, United Bank (herein “Creditor”), of the above-captioned Debtor, Richie H. Conner (herein “Debtor”). After consideration of the facts of this case as well as the arguments as presented by counsel for the Creditor at the hearing on the matter, the Motion to Reinstate Case is DENIED for the reasons stated herein.

Facts

On April 11, 2008, the Debtor filed a petition for relief pursuant to Chapter 13 of the United State Bankruptcy Code. The court entered an order of deficiency on April 15, 2008, requiring that certain schedules, a statement of financial affairs, an official form B22, and a certificate of credit counseling be filed with the court by April 28, 2008. That same day, the court entered another order of deficiency requiring the Debtor to correct the misfiling of the related entity’s petition in the Debtor’s case by April 25, 2008, which the Debtor corrected in an amended petition filed April 24, 2008. Also on April 24, 2008, the Debtor filed a motion to extend time to file schedules, to file a plan, and to waive counseling, but never obtained a court

date on the motion. An order of deficiency was entered on April 25, 2008, requiring a notice of hearing and a certificate of service for the motion to extend time be filed by May 5, 2008. An order dismissing the case was entered on May 6, 2008, for failure to timely correct the deficiencies noticed in the court's orders of deficiency dated April 15 and April 25 of 2008.

Prior to the Debtor filing for bankruptcy protection, United Bank scheduled an auction of certain parcels of real estate owned by the Debtor on which United Bank held deeds of trust. Although the Debtor filed for bankruptcy protection on April 11, 2008, counsel for the Creditor was not informed of the filing prior to the auction on April 12, 2008. Currently, the Creditor has secured purchase agreements on the properties auctioned on April 12, 2008 but is unable to consummate the sale of those properties without validation of the bankruptcy court that the properties sold were revested in the Debtor at dismissal of the bankruptcy case and subject to the valid foreclosure of the holder of the deeds of trust. A validation by the bankruptcy court would enable the purchasers to obtain title insurance on the properties.

Although counsel filed a notice of appearance on behalf of the Creditor in this case prior to its dismissal, he did not file a motion seeking annulment of the automatic stay. A review of the docket indicates that he has now filed such a motion since the hearing upon the present Motion to Reinstate.

Discussion

This court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this court by order from the district court on July 24, 1984.

In this case, the Creditor has requested that the court reinstate the above-

captioned case that was dismissed for failure to timely file certain schedules and other required documents. A motion to reinstate a dismissed case is in the nature of a motion to vacate the dismissal order, which if not brought within ten (10) days of dismissal, must show grounds for relief under Bankruptcy Rule 9024 and must be served upon all creditors as well as other parties in interest. The motion to reinstate the case filed by the Creditor did not provide grounds for relief under Rule 9024 and was not served upon all creditors.

In seeking validation of the purchase agreements entered into at the April 12, 2008 auction, the Creditor cites Bankruptcy Code section 549(c) for the proposition that a bankruptcy trustee may not avoid a postpetition transfer of an interest in real property to a good faith purchaser without actual or deemed notice of the bankruptcy case. In this instance, parties that entered into the purchase agreements at the foreclosure auction are not protected by section 549(c) because there has been no “transfer of an interest in real property” within the meaning and intent of such section. *Collier on Bankruptcy* ¶ 549.06 (15th ed. rev.) notes that the purpose of this section is to protect purchasers of real estate who purchase real estate from bankruptcy debtors after filing without knowledge of such filing and that it should be narrowly construed. While it might have some application if the foreclosure sales had been fully consummated before knowledge of the bankruptcy filing was acquired, that is not what occurred here. Indeed, it is the bidders at such foreclosure sales, or their prospective title insurers, having become aware of the bankruptcy filing before closing on their purchasers, want a court order confirming their good titles before they are willing to pay. They have simply made successful bids to purchase the properties, not actually paid for them before learning of the bankruptcy filing. The proper procedure in such a situation is a motion to the court seeking annulment of the automatic stay

retroactive to the time of filing. Under the circumstances of this case any such motion filed ought to be served upon all known creditors and other parties in interest in the case.

Conclusion

Because United Bank did not file its motion to reinstate within the 10 day period for filing a request for an alteration or amendment of the judgment pursuant to Bankruptcy Rule 9023 and because United Bank did not state grounds for relief from the judgment or order pursuant to Bankruptcy Rule 9024, the dismissed case cannot be reinstated upon the motion to do so now before the Court.

Accordingly, it is

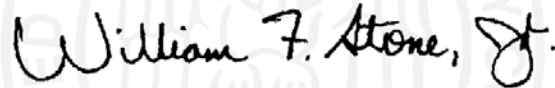
ORDERED:

That the Creditor's motion to reinstate the above-captioned bankruptcy case is DENIED. It is:

FURTHER ORDERED:

That for cause shown, the Movant pursuant to Bankruptcy Rule 8002 (c) shall have thirty (30) days to note an appeal to this decision and order.

Copies of this decision and order are directed to be sent to Counsel for the Movant, Mark B. Callahan, Esquire; to Counsel for the Debtor, William L. Stables, Jr., Esquire, and to the Trustee, Herbert L. Beskin, Esquire.



William F. Stone, Jr.

William F. Stone, Jr.
U. S. Bankruptcy Judge