

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

LOEL J. HAYDEN
Debtor(s).

Bankruptcy No. 97-01866S
Chapter 7
Contested No. 7156

ORDER RE: TRUSTEE'S APPLICATION TO SELL REAL ESTATE

Donald H. Molstad has filed a motion to sell certain real estate, pay the costs of sale and distribute proceeds of sale to a bank which holds a mortgage against the property. The motion was filed August 7, 1997 (docket no. 16). Notice of the motion was served on all creditors and parties-in-interest in this bankruptcy case (docket no. 17). No objections were filed. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). As there was no objection to the motion, no hearing was set. A proposed order approving the sale was presented to the court on September 4, 1997. This order was discussed by telephone on September 5 among the undersigned, Donald H. Molstad and William Horneber who is the attorney for the debtor.

Loel J. Hayden filed his chapter 7 petition on June 16, 1997. He listed certain real estate on schedule A. It was described as follows:

Lots 1-9, Block 30, Moan's Addition, South Sioux City, Dakota County, Nebraska-- 2231
4th Avenue, South Sioux City, NE 68776.

Docket 1, Schedule A. The debtor noted the following regarding the ownership of the property: "Principal/sole shareholder in Timberline Investments, Inc. owner in fee simple subject to unperformed stock purchase agreement (See Schedule G)."

Hayden also scheduled his ownership in Timberline Investments, Inc. and listed it as having a value of \$15,000.00. No creditor was listed as having a security interest in the stock.

Donald H. Molstad was appointed trustee in this case (docket no. 4). In his capacity as trustee of Hayden's bankruptcy estate, he filed the motion ("application") to sell the scheduled real estate. It is identified in the motion as "Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9, Block 30, Moan's Addition, South Sioux City, Dakota County, Nebraska." He alleges that the "State National Bank and Trust Company has a duly recorded mortgage on the premises which has an outstanding balance of \$18,887.68." *Id.* Bank is not scheduled as a creditor of the debtor. Trustee proposes to sell the real estate to Harold T. and Sandra J. McArthur for \$62,000.00. He served notice of the motion on all creditors and parties-in-interest in this case. He asks that the court enter an order authorizing the sale.

The trustee and the debtor's counsel do not dispute that the property is not owned by Hayden but is owned instead by Timberline Investments, Inc. Both parties also agree that the stock of Timberline Investments, Inc. was owned entirely by Hayden at the time he filed bankruptcy.

There is no question that I have jurisdiction of Hayden's chapter 7 case and that by virtue of the reference of bankruptcy cases to this court by the district court, I have jurisdiction of "all of the property, wherever located, of the debtor as of the commencement of the case, and of the property of the estate." 28 U.S.C. § 1334(e).

However, I find that the real estate is neither property of the debtor nor of the bankruptcy estate. It is admittedly property of Timberline Investments, Inc., there being no evidence of a corporate dissolution and distribution in kind to stockholders.

The bankruptcy estate includes debtor's rights in the shares of Timberline Investments, Inc. 11 U.S.C. § 541(a)(1). The duties of the trustee include the duty to "collect and reduce to money the property of the estate for which the trustee serves...." 11 U.S.C. § 704(1). Section 363(b)(1) permits the trustee to sell property of the estate, other than in the ordinary course of business.

The trustee is pursuing the sale of the corporation's property as though it were the debtor's. I conclude I have no jurisdiction of this real estate so as to be able to approve the sale.

That does not prevent the trustee from completing the sale if, as a shareholder, he has the capacity to do so or the capacity to require that it be done. Section 959(b) of Title 28 of the United States Code provides that:

Except as provided in section 1166 of title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of the valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

28 U.S.C. § 959(b). It would seem, therefore, that the trustee, in his capacity as a shareholder of stock, may take any lawful action under the laws of the state of incorporation to deal with property of the corporation. He must follow the laws of such state and any state where the corporation operates. The trustee, in his capacity as a shareholder, officer or director, may not bypass the corporation's formalities or the applicable state law by obtaining an order of the bankruptcy court, if the court has no jurisdiction over the corporation's property.

The trustee, under his powers and duties arising under the Bankruptcy Code and by state law, may take whatever action he may need to sell corporate property, if state law so permits. However, as the real estate in question is not property of this estate, I cannot grant the motion permitting the sale. Court permission for this sale is not required under 11 U.S.C. § 363 because the real estate is not property of debtor's bankruptcy estate. Moreover, trustee does not need a court order to act as a shareholder, officer or director of the corporation.

IT IS ORDERED that the motion to sell real estate is denied.

SO ORDERED THIS 5th DAY OF SEPTEMBER 1997.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I provided a copy of this order to Don Molstad, William Horneber and U. S. Trustee.