UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

RALPH URBAN,

Debtor.

CASE NO.91-B-15142(PCB)
(S.D.N.Y.)

RALPH URBAN,

Plaintiff,

V.

WILLIAM C. HURLEY, LINDA HAAG, GERALD TUTTLE, CONNIE MILLER, COUNTY OF YATES, STATE OF NEW YORK, STANLEY OLEVNIK and BEVERLY OLEVNIK,

Defendants.

DECISION & ORDER

AP #91-6570A (S.D.N.Y.)

AP #00-2180 (W.D.N.Y.)

BACKGROUND

On November 13, 1991 Ralph Urban (the "Debtor") filed a voluntary petition initiating a Chapter 11 case in the United States Bankruptcy Court for the Southern District of New York (the "Southern District Bankruptcy Court").

Attached to this Decision & Order are four decisions filed by the Southern District Bankruptcy Court or the United States District Court for the Southern District of New York (the "Southern District District Court"), which, when read together,

provide a detailed background of the Debtor's Chapter 11 case and this moving target Adversary Proceeding. After more than seven years of litigating this Adversary Proceeding, this Court will finally decide the question of whether the Debtor had any interest in the property (the "Foreclosed Property") deeded to William C. Hurley ("Hurley") in 1994 by the County of Yates ("Yates County") in connection with the In Rem Foreclosure Proceeding (the "Foreclosure Action") that it commenced when certain real property taxes were not paid.[1]

The attached decisions are as follows:

(1) the Southern District Bankruptcy Court's March 31, 1994 Memorandum Decision, published at 202 B.R. 565, (the "March 1994 Decision");

(2) the Southern District District Court's January 13, 1998 Opinion and Order, published at 1998 W.L. 9389, (the "Southern District District Court Order");

(3) the Southern District Bankruptcy Court's March 27, 1997 Memorandum Decision and Order, (the "March 1997 Decision"); and

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[1] In the Southern District District Court Order, the Court determined that if there had been a violation of the automatic stay provided for by Section 362 (the "Stay"), because the Debtor had an ownership interest in a portion of the Foreclosed Property and Yates County had failed to obtain relief from the Stay before it foreclosed and sold the Property, it had not been a willful violation. The ownership determination is necessary, therefore, to determine if there may have been a technical violation of the Stay which might render void the transfer of any of the Foreclosed Property in which the Debtor had an ownership interest.

(4) the Southern District Bankruptcy Court's August 24, 2000 Memorandum Statement of Status Issued in Connection with Orders, (the "Transfer Order"), which transferred the Adversary Proceeding to the United States Bankruptcy Court for the Western District of New York.

Although the ongoing dispute between the Debtor and Hurley, as more fully described in the attached decisions, may be correctly characterized as it was by the Southern District Bankruptcy Court in its March 1997 Decision as "a feud bordering on Hatfield-McCoy proportions, complete with vicious name calling and threats against person, property and animals," that dispute is irrelevant to the determination that this Court must make as to whether the Debtor had any ownership interest in the Foreclosed Property.[2] The answer to that question would be the same whether Hurley or a third party had purchased the Foreclosed Property from Yates County. However, because it was

[2] As set forth in the findings of fact portion of the March 1994 Decision, the Southern District Bankruptcy Court permitted the Debtor to reject, as executory, a March 3, 1998 contract between the Debtor and Hurley for the purchase of 103 acres of land, which included the Foreclosed Property. This rejection was permitted notwithstanding the facts that: (1) the Debtor and Hurley had entered into a State Court-Approved Stipulation to Settle a Specific Performance Action that Hurley had commenced; and (2) Linda Haag ("Haag") had sued the Debtor and obtained a monetary judgment against him for an amount equal to the down payment paid to the Debtor in connection with a 1988 deed executed and delivered to Gerald Tuttle ("Tuttle") and Haag (the "Haag-Tuttle Deed"), which the Court stated, "did not contain any language divesting Haag-Tuttle and/or Haag of title..."

Hurley who purchased the Foreclosed Property, it has afforded the Debtor and Hurley additional opportunities to continue to argue and reargue their prior positions and feelings about each other.

After reading the attached decisions and conducting a pretrial conference, I believed that the only further fact finding that would be necessary in order for this Court to make the ownership determination would be to finally determine whether: (1) Tuttle was deceased at the time the deed to Hurley was executed and delivered by Yates County (the "Foreclosure Deed");[3] and (2) the property description in the Foreclosure Deed was identical to the description in the Haag-Tuttle Deed.[4]

Even though these facts could have been determined without an evidentiary hearing, one was scheduled for February 21, 2002 (the "Evidentiary Hearing") in order to determine the necessary facts and afford all of the parties in interest, the Debtor, Yates County and Hurley, the opportunity to make whatever record they felt was appropriate in connection with the ownership determination.

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[3] See Attached.

[4] See Attached.

At the Evidentiary Hearing, Haag and the Yates County Treasurer, Bonnie L. Percy ("Percy"), testified, and the following additional facts were determined: (1) Tuttle was alive when the Foreclosure Deed was executed and delivered; (2) after the Haag-Tuttle Deed was delivered and recorded, no deed was ever executed and delivered to the Debtor by Haag or Tuttle that conveyed to him any of the acreage described in the Haag-Tuttle Deed; (3) the property described in the Foreclosure Deed appeared to be identical to the property described in the Haag-Tuttle Deed[5]; and (4) in connection with the Foreclosure Action, Yates County had sent the required redemption notice to the property owners of the soon to be foreclosed property, Haag and Tuttle, at the address where Haag was then residing, and Haag acknowledged that she received the notice.

DISCUSSION

A. The Debtor's Failure to Appear at the Evidentiary Hearing

[5] To confirm this, the Court required Yates County to obtain, at its expense, a certification from a Court suggested independent title company, Monroe Title Insurance Co., that the descriptions were identical. This required the review of Yates County tax map references. The certification was filed with the Court on April 9, 2002. See Attached.

On numerous occasions prior to the Evidentiary Hearing, the Debtor indicated that he would not appear at any evidentiary hearing conducted by the Court. His reasons included that the Court would be violating his constitutional rights because he had made a covenant with God not to litigate in the Western District of New York.

The Debtor had further indicated to the Court that: (1) even if he elected to appear at the Evidentiary Hearing, he would not appear without an attorney; and (2) he would not retain an attorney until after he had completed his appeal of the Transfer Order to the United States Supreme Court.

As set forth above, in scheduling the Evidentiary Hearing the Court intended to afford the parties in interest every opportunity to make a complete record, anticipating that its ownership determination would be appealed. Even though the Debtor elected not to avail himself of the opportunity to make whatever record he deemed appropriate, because, as a result of the Evidentiary Hearing and post-hearing submissions by Yates County, it is clear that the material facts necessary for the Court to make its ownership determination are not in dispute, the Debtor has not been prejudiced by: (1) his failure to appear

at or participate in the Evidentiary Hearing; or (2) the Court's unwillingness to afford him an unlimited period of time to retain an attorney, at his convenience, to represent him at the Evidentiary Hearing.

For over eleven years the Debtor has gone unrepresented in: (1) his Chapter 11 case; and (2) this Adversary Proceeding.[6] Therefore, his suggestion that when he got around to it he might retain an attorney to appear at and participate in an evidentiary hearing completely lacked credibility. I believe that this suggestion by the Debtor was simply another of his delay tactics to prevent the Court from making the ownership decision and putting an end to his dispute with Hurley.[7]

B. <u>Summary of Decision</u>

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[6] After the Evidentiary Hearing, the Debtor did retain an attorney to assist him in withdrawing the Adversary Proceeding with prejudice. However, when the Court scheduled a hearing regarding the proposed withdrawal, in order to put all parties on notice as to whether a withdrawal was appropriate and to obtain their input as to what a "withdrawal with prejudice" would actually mean given the history of the Adversary Proceeding, the Debtor terminated the attorney, who then advised the Court that the Debtor was not withdrawing the Adversary Proceeding. Thereafter, notwithstanding what the attorney had advised the Court, the Debtor advised the Court that he did intend to withdraw the Adversary Proceeding.

[7] On February 21, 2002, the United States District Court for the Western District of New York (the "Western District Court") denied the Debtor's February 11, 2002 Petition for a Writ of Mandamus requesting an Order Staying the Evidentiary Hearing until such time as he could be represented by counsel.

When Yates County commenced the Foreclosure Action, and later when it executed and delivered the Foreclosure Deed, which covered the identical property that the Debtor had conveyed out by the Haag-Tuttle Deed, the Debtor did not have a legal or equitable ownership interest or any other interest in the Foreclosed Property that would have required Yates County to seek relief from the Stay before commencing the Foreclosure Action and delivering the Foreclosure Deed, for the following reasons: (1) when the Debtor executed and delivered the Haag-Tuttle Deed, he conveyed out to Haag and Tuttle, as joint tenants with the right of survivorship, all of his right, title and interest in the property described in the Haag-Tuttle Deed; (2) the Haag-Tuttle Deed: (a) was executed and delivered in connection with a contract of sale (the "Sale Contract")[8] entered into between the Debtor, as seller, and Haag and Tuttle, as buyers; (b) set forth a description of the property conveyed that was the same as described in the Sale Contract; and (c) was otherwise fully consistent with the terms of the Sale Contract; (3) a deed labeled "Corrective Deed," executed by the Debtor and signed by Haag on December 19, 1988, apparently for the purpose

[8] See Attached.

of acknowledging her assumption of an existing first mortgage (the "Corrective Deed")[9], did not: (a) correct any inadvertent or minor mistakes in the Haag-Tuttle Deed to make it consistent with the terms of the Sale Contract; (b) specifically, by its language or otherwise, constitute a conveyance to the Debtor by Tuttle or Haag of any interest in all or any portion of the property previously fully conveyed out by the Debtor by his execution and delivery of the Haag-Tuttle Deed; (c) in any way divest Tuttle of his interest in the entire property described in the Haag-Tuttle Deed; or (d) put any third-party, including Yates County and Tuttle, on notice that the Debtor might have an interest in the property described in the Haag-Tuttle Deed, which the Debtor had fully divested himself of by reason of the execution, delivery and recording of the Haag-Tuttle Deed; (4) after the execution, delivery and recording of the Haag-Tuttle Deed, no deed, including the Corrective Deed, was ever executed and delivered by Haag or Tuttle to the Debtor that specifically, by its language or otherwise, conveyed to the Debtor any interest in the property described in the Haag-Tuttle Deed; and (5) after the execution, delivery and recording of the Haag-

[9] See Attached.

Tuttle Deed, none of the Orders entered: (a) in the various State Court actions in connection with the Debtor's Yates County farm; or (b) by the Southern District Bankruptcy Court or the Southern District District Court, determined that the Debtor had an ownership interest in the property described in the Haag-Tuttle Deed, or otherwise resulted in the Debtor being deemed to have an ownership interest in the property described in the Haag-Tuttle Deed.

C. <u>The Transaction Between the Debtor and Haag and Tuttle</u>

The Sale Contract between the Debtor and Haag and Tuttle described the property to be sold as approximately seventy-five acres of land, being the one hundred three acres of land conveyed to the Debtor by Stanley and Beverly Olevnik (the "Olevniks") in 1984, less approximately twenty-eight acres being retained by the Debtor. The seventy-five acres to be conveyed were set forth on a handwritten diagram included on Page 1 of the Sale Contract.[10] The Haag-Tuttle Deed fully implemented the

[10] In its March 1994 Decision, the Southern District Bankruptcy Court apparently incorrectly stated at Page 568 that "Urban entered into a contract on May 20, 1988 to sell seventy-three acres of the land to Linda Haag and Gerald Tuttle ('Haag-Tuttle'). Urban was to retain a thirty acre parcel." On the other hand, at Page 1 of the Southern District District Court Order, the Court stated that, "in mid-1988, Urban contracted to sell seventy-five acres of the property to Linda Haag and Gerald Tuttle." This may explain the apparent confusion as to whether the Foreclosed Property was the same as the property described in the

terms of the Sale Contract, in that: (1) the grantees were Haag and Tuttle, as joint tenants with rights of survivorship; (2) the property conveyed was the same as the property conveyed to the Debtor by the Olevniks with the exception of twenty-eight acres; (3) the Deed included a diagram essentially the same as the diagram included on the Sale Contract; and (4) the conveyance was subject to the existing Olevnik first mortgage.

The Haag-Tuttle Deed also contains the following paragraph:

> Party of the first [part] does not warrant the outcome of case listed in lis pendens filed May 23, 1988, #88-50. However, if plaintiff [sic] in that case wins the right to buy, party of the first part will refund to party of the second part $16,500, paid on account of this purchaser from proceeds of that purchase.

Although the above paragraph provides for a refund to be paid to Haag and Tuttle in the event that Hurley was ultimately successful in obtaining all or a portion of the property conveyed to them as a result of his prior contract with the Debtor to purchase a portion of the property: (1) Hurley never finally won the right to buy the property because the Southern District Bankruptcy Court permitted the rejection of his

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Haag-Tuttle Deed.

contract as executory; (2) nothing in the above paragraph provided for the reconveyance of the property to the Debtor in the event that he was required to and paid the refund; and (3) nothing in the above paragraph otherwise permitted Haag and Tuttle to rescind their purchase.

In addition, the Haag-Tuttle Deed was a Warranty Deed which provided that, "[a]nd the party of the first part covenants as follows: First, That the party of the second part shall quietly enjoy the said premises; Second, That the party of the first part will forever Warrant the title to said premises."

By reason of the foregoing, I find that: (1) by the execution, delivery and recording of the Haag-Tuttle Deed, the Debtor conveyed all of his right, title and interest in the seventy-five acres described in the Deed to Haag and Tuttle, as joint tenants with the right of survivorship; (2) the Haag-Tuttle Deed conformed to and fully implemented the agreement of the parties as set forth in the Sale Contract; and (3) upon the execution and delivery of the Haag-Tuttle Deed, the Debtor had an obligation to: (a) insure that Tuttle quietly enjoyed the property; and (b) forever warrant title to the property that he had conveyed to Tuttle.

D. <u>The Corrective Deed</u>

The Corrective Deed contained a clear warning that, in retrospect, the Debtor should have heeded. It stated that, "this is a legal instrument and should be executed under supervision of an attorney."

I find that the Corrective Deed was of no legal effect when executed by the Debtor for the following reasons: (1) when the Debtor executed and delivered the Corrective Deed, he no longer had any interest in the seventy-five acres described in the Haag-Tuttle Deed which he could convey to Haag and her three sons; (2) the excluded or retained acreage in the Corrective Deed was different than that which was excluded in the Sale Contract and the Haag-Tuttle Deed, so that the Deed did not correct minor or inadvertent errors to make the Deed and the transaction conform to the terms of the Sale Contract; (3) Tuttle was not a party to the Corrective Deed and did not otherwise consent to its recording; (4) the Corrective Deed evidenced a transaction involving Haag and the Debtor that was entirely different than the transaction evidenced by the Sale Contract and the Haag-Tuttle Deed; (5) the Debtor had warranted that Tuttle, as a co-owner with Haag, would quietly enjoy the

entire premises described in the Sale Contract and the Haag-Tuttle Deed, and this warranty would have been breached if the Corrective Deed were given any legal effect; and (6) the Debtor had assured Tuttle that he would forever warrant title to the property conveyed, and this warranty would have been breached if the Corrective Deed were given any legal effect.

Although the Corrective Deed that Haag executed may have estopped her under some circumstances from challenging the Debtor's right to use the additional acreage conveyed by the Haag-Tuttle Deed but not conveyed by the Corrective Deed, the Corrective Deed did not constitute a conveyance back to the Debtor of any of the property that he conveyed out in the Haag-Tuttle Deed.

Furthermore, because of the inequitable and improper conduct of the Debtor and Haag in attempting to unilaterally freeze Tuttle out of the seventy-five acres jointly conveyed to him, this Court, as a Court of equity, will not look behind the plain language of the Corrective Deed in order to construe or interpret it as a conveyance by Haag to the Debtor of an interest in some of the acreage conveyed to Haag and Tuttle by the Haag-Tuttle Deed. The Debtor chose this ineffective

instrument because he could not obtain a reconveyance directly from Tuttle of the additional property he now wished he had retained, and he should not be rewarded for his attempted subterfuge.[11]

In addition, in this Court's opinion, the ineffective Corrective Deed, which was recorded without any acknowledgment, either on the Deed or by a separate document, that Tuttle had accepted the purported corrections, did not serve to put any

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[11] It is clear to this Court that the Debtor and Haag conspired to execute the Corrective Deed to unilaterally freeze Tuttle out of the seventy-five acres which had been conveyed to Haag and Tuttle in accordance with the Sale Contract by the Haag-Tuttle Deed. Haag testified that she had become concerned about Tuttle's trustworthiness with regard to taking care of her children should anything happen to her, and Urban was desirous of getting back some of the acreage he had conveyed to Haag and Tuttle in part because he was having difficulties with Tuttle over the parties' respective rights in their adjoining properties. Because they could not do this properly and directly by working with Tuttle, the Debtor and Haag attempted to do it behind his back. Haag perhaps acted out of naivety because she believed Urban's representations that what she wanted to accomplish could be done this way. Urban appears to have acted with manipulative, improper and inequitable motives. Perhaps the best of many examples of Urban's fraud in connection with this whole matter is a Clarification of Corrective Deed which he signed on September 19, 1989 and recorded in the Yates County Clerk's Office on September 20, 1989. It stated in part that "Notice Is Further Given that Linda Haag signed off on the above-mentioned [C]orrective Deed & agreement – received, etc., on behalf of herself, her children, and Gerry Tuttle, as his senior partner and authorized agent, and that undersigned is holder in good faith for value (in any event) of any share of interest Tuttle may have had under pretense of original deed in old dairy barn area set forth in corrective deed, and to said Linda's share outright." Haag indicated that on a number of occasions Tuttle had informed her that what she and the debtor had attempted to accomplish by way of the Corrective Deed was improper, and that he had no intention of giving up his interest in the property. Therefore, the Debtor's statement that Haag had executed the Corrective Deed as the authorized agent of Gerald Tuttle was knowingly fraudulent.

third party, including Yates County, on notice that the Debtor might have an ownership interest in any of the property which he had fully conveyed out to Haag and Tuttle by the Haag-Tuttle Deed.

In its Memorandum Decision and Order, the Southern District Bankruptcy Court stated on Page 5 that, "Urban's Rejection Motion was directed only at Hurley and the granting of it by the Court had the effect of leaving the Haag-Tuttle Property in the hands of its then owners. Thus the automatic stay under Code Section 362 would not have precluded Yates County's tax sale, provided that it did not, in fact, include any of the Debtor's retained thirty acres." Assuming that this demonstrates nothing more than the continuing misunderstanding by the Southern District Bankruptcy Court that seventy-five acres had been conveyed to Haag and Tuttle, with twenty-eight acres, not thirty acres, retained by the Debtor, it is clear that there was no violation of the automatic stay by Yates County which would have invalidated the Tax Sale with respect to any portion of the Foreclosed Property that was included in the Haag-Tuttle Deed.

E. <u>The Hurley Motions</u>

Hurley has filed the following four motions with this Court: (1) Motion for Determination of Core Status Pursuant to 28 U.S.C. § 157(b)(3); (2) Motion for an Order of Mandatory Abstention; (3) Motion for Summary Judgment; and (4) Motion for Involuntary Dismissal of the Adversary Proceeding.

These Motions are denied for the following reasons: (1) the ownership determination, whether the Debtor, as a debtor-in-possession, had any legal or equitable interest in the property described in the Foreclosure Deed, and, as a result, whether the execution and delivery of the Foreclosure Deed violated the Stay, are clearly core matters; (2) the Southern District District Court Order and the Transfer Order, when read together, clearly required this Court to make the ownership and Stay determinations, so abstention by this Court would not be appropriate; (3) until the additional facts discussed in this Decision & Order were finally determined by the Evidentiary Hearing and the post-hearing Yates County submissions, Hurley's Motion for Summary Judgment could not be granted because, in this Court's opinion, there were unresolved material issues of fact; and (4) in view of the mandate of the Southern District District Court Order and the Transfer Order, which required this

Court to make the ownership and Stay determinations, dismissal of the Adversary Proceeding would not be appropriate.

CONCLUSION

The execution and delivery of the Foreclosure Deed by Yates County did not violate the automatic stay in the Debtor's Chapter 11 case, because at the time of the execution, delivery and recording of the Deed, the Debtor had no interest in the Foreclosed Property conveyed by the Deed, which was identical to the property that the Debtor had conveyed out to Haag and Tuttle by his execution and delivery of the Haag-Tuttle Deed. Therefore, the Foreclosure Deed is valid and unavoidable.

IT IS SO ORDERED.

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HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dated: April 25, 2002