

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

JEANETTE WILLIAMS,

Case No. 1-03-19205-dem
Chapter 13

Debtor.

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DECISION AND ORDER

APPEARANCES:

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Trust and NYCTL 1998-2 Trust and JER Revenue Services
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DENNIS E. MILTON
United States Bankruptcy Judge

Before the Court is the application of 264 St. James Corp. for an Order (1) reopening the debtor Jeanette Williams (the “debtor”)’s chapter 13 case; (2) vacating the order directing the dismissal of the debtor’s case; (3) declaring JER Revenue Services (“JER”)’s refusal to release certain tax liens on the property located at 264 St. James Place, Brooklyn, New

York (the “Property”) a violation of this Court’s Order dated December 12, 2003 (the “Sale Order”) which authorized the sale of the Property; and (4) imposing costs, penalties and fees on JER for its violation of that Order (the “Application”). In opposition, JER contended that the liens on the Property were not extinguished because the Chapter 13 case trustee (the “Trustee”) failed to pay JER the full amount of the liens, including interest and attorneys fees. After due deliberation, the Court hereby grants that portion of the Application which seeks the reopening of the debtor’s case, the vacatur of the prior order of dismissal and a declaration that JER had violated the Sale Order. The Court denies that portion of the Application which seeks the imposition of costs, penalties and fees upon JER.

JURISDICTION

This Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§1334(b) and 157(b)(2) and the Eastern District of New York standing Order of reference dated August 28, 1986. This decision constitutes the Court’s findings of facts and conclusions of law to the extent Fed. R. Bank. P. 7052 requires.

FACTUAL BACKGROUND

The factual background of this case is substantially set forth in an earlier opinion of this Court, familiarity with which is assumed. See In re Jeanette Williams, Case No. 1-03-19205-dem (Bankr. E.D.N.Y. August 13, 2004). The facts relevant to this Application are detailed below.

On July 14, 2003, the debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code. On October 5, 2003, the debtor filed an application to sell the Property free and clear of all liens and interests. On December 12, 2003, the Court issued the Sale Order.

The Sale Order authorized the sale of the Property “free and clear of all liens and interests” to Mark Scheiner (“Scheiner”) and Frank Boccagna (“Boccagna”). It further provided that all proceeds of the sale be delivered to the Trustee and that any existing liens and interests would attach to these proceeds. The Sale Order also authorized the Trustee to pay the balance, as filed, and updated for interest and attorneys’ fees¹, due upon the three tax liens of Bank of New York (the “Liens”) as collateral agent and custodian for the NYCTL 1999-1 Trust and the NYCTL 1998-2 Trust (collectively, the “Trusts”).

On January 15, 2004, the sale of the Property took place. On January 19, 2004, JER² sent to debtor’s counsel payoff statements for the Liens for one week beyond the closing date. On January 21, 2004, the Trustee paid JER the amounts listed on the Trusts’ three proofs of claims, an amount less than that set forth on the payoff statements.³ On several subsequent dates, the Trustee advised JER’s counsel that he as a matter of policy would not pay claims based on pay off letters and requested that JER file amended proofs of claims for any additional sums due. As of the hearing date, JER had not filed amended proofs of claims to reflect the attorneys fees and the interest that had accrued. In contrast, JER had discontinued two law suits

¹ The Sale Order provided in pertinent part:

ORDERED that the Chapter 13 Trustee, Michael Macco, is hereby authorized and directed to pay the balance due upon the three NYC Tax Lien Trust claims, as filed, and updated for interest and attorneys’ fees by said Trusts, as soon as practicable after closing ...
Sale Order at p. 2.

² JER is the collection agent for the City of New York with regard to tax liens.

³ On behalf of the Trusts, JER filed the following three proofs of claims totaling \$79,363.40 plus statutory interest: (1) \$36,342.92 owed to Bank of New York as Collateral Agent & Custodian for the NYCTL 1998-2 Trust; (2) \$32,469.17 owed to Bank of New York as Collateral Agent & Custodian for the NYCTL 1999-1 Trust; and (3) \$10,551.31 owed to the Bank of New York as Collateral Agent & Custodian for the NYCTL 1998-2 Trust.

which had been commenced in Kings County Supreme Court to satisfy the Liens, NYCTL 1998-2 Trust v. Jeanette Williams, et al., Kings County Supreme Court, Index No.: 19027/01 and NYCTL 1998-2 Trust v. Jeanette Williams, et al., Kings County Supreme Court, Index No.:4837/02, after receiving payment from the Trustee, and released the two related lis pendens.

In 2004, Scheiner and Boccagna sold the Property to 264 St. James Corp. On August 24, 2006, 264 St. James Corp. sold the Property again. However, prior to this sale, 264 St. James Corp. contacted JER to confirm that there were no outstanding taxes due on the Property. JER informed 264 St. James Corp. that the Liens on the Property still existed with interest continuing to accrue. Due to this information, the purchaser's title insurance company required 264 St. James Corp. to put \$15,390.52 in escrow pending resolution of this matter.

On September 15, 2006, 264 St. James Corp. filed the Application. On December 14, 2006, counsel for JER filed a Certification in Opposition to the Application. JER contended that the Sale Order directed the Trustee to pay JER interest and attorney fees on behalf of the Trusts and the Trustee's failure to do so resulted in the Liens remaining on the Property. JER further argued that according to case law the Trusts were not required to file updated proofs of claims to recover payment from the Trustee. On December 27, 2006, the Trustee's counsel filed an Affirmation in Response to the Application. In the Affirmation, Trustee's counsel referred to its policy of not making distributions pursuant to pay off letters and claimed that JER's failure to file updated proofs of claims waived the Trusts' right to any additional payment. On January 10, 2007, 264 St. James Corp. filed an Affirmation in Support of the Application. On January 17, 2007, the Court held a hearing on the Application and

reserved decision.

DISCUSSION

A. The Sale Order Extinguished The Liens On The Property

Section 363(f) of the Bankruptcy Code permits the bankruptcy court to authorize
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sale free of any interest that an entity has in property of the estate. This provision is commonly used to permit a trustee to liquidate property of the estate without first having to resolve disputes about the validity, priority, or amount of liens that encumber the property. Sale of property pursuant to Section 363(f) is also beneficial to purchasers who for a higher price can obtain property free of any liabilities.

On December 12, 2003, the Court issued the Sale Order authorizing the debtor to sell the Property free and clear of all liens and interests, with liens and interests if any, to attach to the proceeds. The consequence of this Order was that once the sale of the Property closed, the Liens on the Property no longer existed. That the Trusts did not receive any additional payment for lien interest or attorneys fees does not change the terms of the Sale or restore the Liens on the Property.

B. The Trustee Correctly Paid The Filed Proofs Of Claims

JER also contended that it was not required to file amended proofs of claims to receive the additional disbursements from the Trustee. This position is unfounded. While it

may appear that the provisions of the Bankruptcy Code do not contain such a requirement⁴, the Federal Rules of Bankruptcy Procedure require the filing of a proof of claim in order for a claimant to receive a payment in a chapter 13 case. Rule 3021 of the Federal Rules of Bankruptcy Procedure states that upon confirmation of a Chapter 13 plan “distribution shall be made to creditors whose claims have been allowed.”⁵ Thus, a Chapter 13 trustee will not pay a secured creditor who has not filed a proof of claim in connection with the case. See In re Quintana, 2006 WL 2620505, *2 (Bankr.N.D.Tex. September 12, 2006); In re Mehl, 2005 WL 2806676, *2 (Bankr. C.D.Ill. October 25, 2005); In re Bowden, 315 B.R. 903,906 (Bankr.W.D.Wash. 2004); In re Meadowbrook Estates, 246 B.R. 898, 902-03 (Bankr. E.D.Cal. 2000); In re Gray, 28 B.R. 348,349 (Bankr. S.D.N.Y., 1983).

In this case, the Trustee appropriately paid the proofs of claims that were filed. Since JER failed to list the updated amount of interest and attorneys fees on any proof of claim, the Trustee lacked authorization to pay JER for those charges. Insofar as the Sale Order provided that the sale of the Property was free and clear of liens and encumbrances, with such liens to attach to the proceeds of sale, it would appear that JER’s only recourse is against the debtor who obtained a benefit from the sale as the proceeds were distributed to her other creditors in partial satisfaction of her debts.

⁴ Section 501 of the Bankruptcy Code does not require creditors to file proofs of claims. Similarly, Section 506 makes it clear that a secured creditor may not lose its lien through bankruptcy if the sole reason for the loss of the lien is the failure of that creditor to file proofs of claims. 11 U.S.C. §506(d)(2). See also, Harmon v. United States, 101 F.3d 574,581-82 (8th Cir. 1996); In re Be-Mac Transport Co., Inc., 83 F.3d 1020,1025 (8th Cir.1996); Cen-Pen Corp. v. Hanson, 58 F.3d 89,94 (4th Cir. 1995); In re Penrod, 50 F.3d 459,461 (7th Cir. 1995); CIS Corp. v. Hassett, 1997 WL 666265, *2-3 (S.D.N.Y. October 24, 1997).

⁵ Section 502(a) of the Bankruptcy Code states that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects.”

CONCLUSION

For the reasons set forth above, the Court finds that the Sale Order authorized the debtor to sell the Property free and clear of all liens. The consequence of this Order was that once the sale of the Property closed, the Liens on the Property no longer existed. The Trustee paid the creditors who filed a proof of claim those amounts set forth on the proofs of claim. Since JER failed to list the amount of interest and attorneys fees on any proof of claim, the Trustee's distribution to JER did not include those amounts. The Court grants that portion of the Application reopening the debtor's case, vacating the prior dismissal and declaring JER's refusal to release the Liens on the Property a violation of the Sale Order. The Court denies that portion of the Application asking the Court to impose costs, penalties and fees on JER.

IT IS SO ORDERED.

Dated: Brooklyn, New York
March 9, 2007

s/Dennis E. Milton
DENNIS E. MILTON
United States Bankruptcy Judge

