

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:
DULIO F. VITALE JR.

Debtor.

Chapter 13

Case No.: 21-10932 (BLS)

DULIO F. VITALE JR.

Plaintiff.

v.

REGINA M. CORRIDORI; FORAKER
PROPERTIES, LLC; and CASA BELLA
RENTALS LLC.

Defendants.

Adv. Pro. No.: 22-50356 (BLS)

Re: D.I. 27, 28, 29, 33, 34, 37, 43,
45

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Date: September 13, 2023

MEMORANDUM ORDER

Upon consideration of the motions for summary judgment¹ filed by Defendants Regina M. Corridori and Foraker Properties, LLC, as well as the motion for judgment on the pleadings² filed by Defendant Foraker Properties, LLC (collectively, the “Defendants” and the “Motions”), as well as all corresponding responsive briefing filed, the Court will **GRANT** the Defendants’ Motions and overrule Plaintiff’s objections on the following grounds:³

BACKGROUND

The relevant facts are not in material dispute. Duilio Vitale (the “Debtor” or “Plaintiff”) and Corridori were previously married but divorced by way of a Family Court order entered on June 21, 2017.⁴ Prior to the divorce, Plaintiff and Corridori had established three businesses: (1) Casa Bella Builders, LLC, (2) Casa Bella Rentals, LLC and (3) Casa Bella Property Management, LLC. The nature of the businesses was ownership in rental properties.

Prior to the divorce, Plaintiff, Corridori, and Casa Bella Rentals, LLC had interests in a total a total of eight properties, which included a primary residence held exclusively by Plaintiff and Corridori (the “Primary Residence”)⁵ and seven rental properties titled between the two parties and Casa Bella Rentals, LLC. Two of the seven rental properties were sold by way of stipulated order by this Court (the “Disposed Properties”),⁶ and the remaining five properties are the subject of the dispute before the Court today (the “Subject Properties”).⁷

¹ Adv. Doc. No. 33.

² Adv. Doc. No. 27.

³ The Court today limits its holding to two threshold issues: (1) whether the sale of the Subject Properties violated the automatic stay, and if so, (2) whether the Court should annul the stay pursuant to 11 U.S.C. 362(d)(1).

⁴ Compl. At ¶10.

⁵ The Primary Residence is located at 3205 Bristol Drive, Wilmington DE 19808 and has since been awarded to Vitale by way of a Family Court order. Adv. Doc. No. 37.

⁶ Those properties are (1) 1339 Linden St., Wilmington, DE 19805, and 1737 W. 6th St., Wilmington, DE 19805. D.I. 20, 22, 25.

⁷ Those properties are: (1) 203 North Harrison St., Wilmington, DE 19805; (2) 1735 W. 5th St., Wilmington, DE 19805; (3) 511 South Harrison St., Wilmington, DE 19805; (4) 1130 Elm St., Wilmington, DE 19805; and (5) 103 Ruth St., Wilmington, DE 19805. *Id.*

The dispute between the parties has a long and convoluted history, beginning in 2017 with the commencement of the divorce proceeding in the Delaware Family Court. As noted above, the parties were divorced on June 21, 2017. The Family Court entered an order on June 6, 2018 (the “2018 Order”) directing that Corridori would retain the two Disposed Properties, and Plaintiff would retain the Primary Residence and Subject Properties.⁸ Additionally, the Family Court ordered that 60% of the value of Plaintiff’s retained assets be distributed to Corridori in lieu of alimony (approximately \$178,828.00,⁹ later reduced to \$140,892.58)¹⁰ within 90 days of the 2018 Order. To accomplish the distribution, the 2018 Order anticipated the sale of either the Principal Residence, or several of the Subject Properties.¹¹

By October 2020, over two years after entry of the 2018 Order, the Subject Properties were not yet sold, and no distribution had yet been made to Corridori.¹² By order dated October 16, 2020 (the “2020 Order”), the Family Court issued a finding that Plaintiff was in contempt and directed that Plaintiff list the five Subject Properties for sale within 30 days.¹³ After Plaintiff’s continued failure to comply with the 2020 Order, the Family Court issued yet another order (the “2021 Order”) awarding Corridori exclusive authority to sell seven of the eight properties held by Plaintiff, Corridori and Casa Blanca Rentals, LLP. The 2021 Order also granted the Clerk of Court the authority to sign, on behalf of the Plaintiff, “any and all documents necessary to sell the homes, including, but not limited to, listing agreements, contracts, deeds, and transfer tax affidavits.”¹⁴

⁸ See Adv. Doc. No. 33-2.

⁹ Adv. Doc. No. 33-1.

¹⁰ Adv. Doc. No. 33-3.

¹¹ *Id.* at 18.

¹² *See Id.* The record reflects and the Court acknowledges that both parties had failed to satisfy portions of the 2018 Order, including Ms. Corridori’s failure to remove her name from Casa Bella Rentals, LLC.

¹³ *See* Adv. Doc. No. 33-3 at 2. The 2020 Order required Plaintiff to pay Corridori in full, less \$12,690.96 as credit for keeping up mortgage payments.

¹⁴ Adv. Doc. No. 33-4.

The Subject Properties were bundled and sold to Defendant Foraker through the execution of standard Agreements of Sale. New deeds were prepared for each Property and were signed by Corridori and the Clerk of Court on June 10, 2022.¹⁵ The settlement took place on June 15, 2022. Plaintiff filed his Chapter 13 Petition on June 11, 2022, several days before the closing on the Subject Properties.¹⁶

Plaintiff is seeking, among other things, to vacate and set aside the transfer of the Subject Properties, alleging that (1) the sales occurred in violation of the automatic stay, (2) the sales were an unauthorized post-petition transfer and (3) that the Family Court did not have jurisdiction to sell properties owned in part by Casa Bella Rentals because that entity was not a party to the divorce and Family Court settlement.¹⁷ Alternatively, Plaintiff requests that the Court order a new sale of the Subject Properties and only reimburse Defendant Foraker for its purchase price. Defendants Corridori and Foraker argue that the sale was not in violation of the automatic stay, and to the extent that it was, this Court should retroactively annul the stay and permit the transactions to stand.

STANDARD OF REVIEW

The Defendants seek summary judgment under Federal Rule of Civil Procedure 56, made applicable through Rule 7056 of the Federal Rules of Bankruptcy Procedure. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the

¹⁵ Adv. Doc. No. 33-1.

¹⁶ Doc. No. 1.

¹⁷ With respect to the Plaintiff’s third argument, the Court finds this line of reasoning unpersuasive. Casa Bella Rentals, LLC was owned entirely by both Plaintiff and Defendant. The assets held by the entity are listed as assets of the parties in the divorce proceeding, as well as in this Bankruptcy Case.

record the reasons for granting or denying the motion.”¹⁸ “A material fact is one that ‘might affect the outcome of the suit under the governing law.’”¹⁹

“[S]ummary judgment's operative goal is to isolate and dispose of factually unsupported claims or defenses in order to avert full-dress trials in unwinnable cases, thereby freeing courts to utilize scarce judicial resources in more beneficial ways.”²⁰ A moving party bears the initial burden of demonstrating the absence of a dispute of material fact.²¹ The nonmoving party must then present specific facts showing that there is a genuine issue for trial.²²

Foraker likewise seeks a judgment on the pleadings under Federal Rule of Civil Procedure 12(c), as incorporated by Rule 7012 of the Federal Rules of Bankruptcy Procedure. “After the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings.”²³ A motion for judgment on the pleadings is a method to dispose of claims where material facts are undisputed and the only disputes concern questions of law.²⁴ The same standards as on a motion to dismiss apply, namely, the Court must accept as true the factual allegations in the complaint or counterclaim and review those allegations favorably to the party making them.²⁵

As noted by the U.S. Court of Appeals for the Third Circuit, the standard courts apply when considering a Rule 12 motion is also related to the requirements set forth in Rule 8 of the Federal Rules of Civil Procedure.²⁶ Consequently, a complaint must state a claim for relief that is

¹⁸ Fed. R. Civ. P. 56(a).

¹⁹ *In re Fah Liquidating Corp.*, 2019 WL 4034007, at *2 (Bankr. D. Del. Aug. 26, 2019) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

²⁰ *In re Delta Mills, Inc.*, 2009 WL 723271 (Bankr. D. Del. Mar. 17, 2009) (internal citations omitted).

²¹ *Anderson v. Liberty Lobby*, 477 U.S. at 249; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

²² *Id.* quoting *Schoch v. First Fid. Bancorporation*, 912 F.2d 654, 657 (3d. Cir. 1990).

²³ Fed. R. Civ. P. 12(c).

²⁴ *In re Dex Media, Inc.*, 564 B.R. 208, 212 (Bankr. D. Del. 2017); see also *Jang v. Boston Scientific Scimed, Inc.*, 817 F.Supp.2d 409, 413-14 (D. Del. 2011).

²⁵ *In re Dex Media*, 564 B.R. at 212.

²⁶ See *Phillips v. County of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008).

“plausible on its face”.²⁷ “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”²⁸

DISCUSSION

As a threshold matter, the Court finds that the sale of the Subject Properties occurred in violation of the automatic stay under Section 362 of the Bankruptcy Code. The automatic stay is one of the foundational principles upon which the Bankruptcy Code is built.²⁹ Its scope is deliberately broad: the filing of a petition operates as a stay of any act to obtain possession of property of the estate or to exercise control over property of the estate.³⁰ In that same vein, the Bankruptcy Code defines property of the estate broadly to include “*all legal or equitable interests* of the debtor in property as of the commencement of the case.”³¹

Historically, property ownership has been referred to as a bundle of rights.³² “A common idiom describes property as a ‘bundle of sticks’ -- a collection of individual rights which, in certain combinations, constitute property.”³³ As Defendants correctly point out, the 2021 Order had awarded Corridori the right to sell the Subject Properties, and granted the Clerk of Court the authority to sign on behalf of Plaintiff to facilitate the sale. However, while the 2021 Order clearly impaired the rights of the Plaintiff in the Subject Properties, his rights were far from stripped completely. Indeed, that would only have been possible through completion of a legal transfer or sale of the Properties in their entirety. Such a sale did occur, but only after the commencement of the bankruptcy case when the automatic stay was in effect. Consequently,

²⁷ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

²⁸ *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

²⁹ *In re Potter*, 2021 Bankr. LEXIS 2728, *1.

³⁰ 11 U.S.C. § 362 (a)(3)-(6).

³¹ 11 U.S.C. § 541 (emphasis added).

³² *United States v. Craft*, 535 U.S. 274, 276 (2002).

³³ *Id.*

there was a violation of the automatic stay: Mr. Vitale still had a cognizable interest in the Subject Properties on the Petition Date and whatever interest he possessed became property of his bankruptcy estate at the moment of filing by operation of Bankruptcy Code § 541.

Despite the fact that the automatic stay was in force at the time of the sale, the Court will grant the Defendants' request for an annulment. A bankruptcy court has the power to annul the automatic stay under 11 U.S.C. § 362(d). Section 362(d)(1) sets forth the grounds for relief from the stay and provides that, "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause."³⁴

While actions in violation of the stay are generally deemed void, the Third Circuit has held that those actions may be "revitalized" in certain circumstances through retroactive annulment.³⁵ Although retroactive annulment of the stay is an "extraordinary action" and a "radical form of relief" to be used "sparingly,"³⁶ the decision to do so lies within the sound discretion of the Court.³⁷ Courts will consider the following factors in determining whether to annul a stay: "(1) whether the creditor was aware of the filing or encouraged violation of the stay; (2) whether the debtor engaged in inequitable, unreasonable or dishonest behavior; and (3) whether the creditor would be prejudiced."³⁸ The creditor's "unclean hands" in violation of the stay will typically be weighed against the debtor's behavior and the prejudice to the creditor.³⁹

The decision to annul the automatic stay with respect to the sale of the Subject Properties does not come lightly. In so ruling, the Court emphasizes several key circumstances contributing

³⁴ 11 U.S.C. § 362(d), (d)(1).

³⁵ *In re Myers*, 491 F.3d 120, 127 (3d Cir. 2007).

³⁶ *Id.* at 129 quoting *Mataya v. Kissinger (In re Kissinger)*, 72 F.3d 107 (9th Cir. 1995).

³⁷ *Id.*

³⁸ *In re Rupari Holding Corp.*, 2017 WL 3600381 (Bankr. D. Del. Aug. 18, 2017); *In re Levitz Furniture Inc.*, 2000 WL 33534561 (Bankr. D. Del. June 14, 2000).

³⁹ *In re Myers*, 491 F.3d at 129.

to its decision. The parties have been embroiled in litigation surrounding the Subject Properties for the last five years both in this Court and the Family Court. Prior to the filing of this Bankruptcy Case in June 2022, the Plaintiff received not one, but three separate Family Court orders⁴⁰ directing him to sell the Subject Properties in satisfaction of the property distribution award resulting from the 2017 divorce. Plaintiff not only failed to sell the Subject Properties in violation of the Family Court orders, but filed his bankruptcy petition on the eve of the closing in an attempt to frustrate both the sale and the purpose of the Family Court orders. The record supports a finding that Plaintiff's conduct has been unreasonable and inequitable.

Enforcement of the stay under this set of facts would result in severe prejudice to Corridori, who for years has been denied her share of the assets otherwise to be distributed pursuant to the Family Court order. Foraker would also be deeply prejudiced by enforcement of the automatic stay and the subsequent unwinding of the transaction.

Finally, the record also indicates that Corridori likely had no notice of the Plaintiff's bankruptcy filing. She and the Clerk of Court signed the deeds on June 10, 2021, with a settlement scheduled for June 15, 2021. Plaintiff filed his bankruptcy petition on June 11, 2021, but the Notice to Creditors was not docketed or mailed until June 14, 2021. Accordingly, while it is clear that Corridori's actions violated the stay, she does not appear to have knowingly committed that violation.

Given the unreasonable conduct of the Plaintiff, the prejudice to Corridori should the stay be enforced, and her lack of notice of the bankruptcy filing, this Court finds that annulment of the stay is appropriate in this circumstance.⁴¹ Accordingly, for the foregoing reasons, the

⁴⁰ See 2018 Order, 2020 Order, and 2021 Order.

⁴¹ The Court notes that Plaintiff expresses concern over his lack of control over the sale process, as well as the possibility that the Subject Properties may have been sold for less than he could have sold them for. Plaintiff had half a decade to take the requisite steps to sell the Properties and comply with the Family Court orders. Given his

Defendants' motions for summary judgment and for judgment on the pleadings are **GRANTED** and the Plaintiff's objections are **OVERRULED**. The Court will conduct a status conference in this matter on September 19, 2023 at 10:00 a.m. in the United States Bankruptcy Court for the District of Delaware, Courtroom 1, Wilmington, Delaware 19801.

Dated: Wilmington, Delaware
September 13, 2023


BRENDAN LINEHAN SHANNON
UNITED STATES BANKRUPTCY JUDGE

repeated failure to comply with proper court orders, as well as his efforts to stymie the sale process itself, he cannot be heard to complain at this juncture that he is unhappy with the results of the sale.