



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: May 18, 2016**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**HERITAGE REAL ESTATE
INVESTMENT, INC.,**

CASE NO. 14-03603-NPO

DEBTOR.

CHAPTER 7

ORDER DENYING MOTION FILED BY WILLIAM HARRISON

This matter came before the Court for hearing on April 28, 2016 (the “Hearing”), on the handwritten letter (the “Motion”) (Dkt. 239) filed by William Harrison (“Harrison”), acting *pro se*; the Trustee’s Response to Motion Filed by Creditor, William Harrison [Dkt. No. 239] (the “Trustee’s Response”) (Dkt. 249) filed by Stephen Smith (“Smith”), the case trustee (the “Trustee”); the Answer of Secured Creditor, Bruce Johnson to Motion Filed by Secured Creditor, William Harrison (“Johnson’s Response”) (Dkt. 251) filed by Bruce Johnson (“Johnson”); and the Answer and Response to William Harrison’s Motion (the “Debtor’s Response”) (Dkt. 252) filed by the debtor, Heritage Real Estate Investment, Inc. (the “Debtor”), in the above-referenced chapter 7 bankruptcy case (the “Bankruptcy Case”). Harrison represented himself at the Hearing, as he has since December 23, 2015, when the Court signed the Order Granting Request

to Proceed *Pro Se* (the “*Pro Se* Order”) (Dkt. 221).¹ Also at the Hearing, Eileen N. Shaffer (“Shaffer”) and Jim F. Spencer (“Spencer”) represented the Trustee; Craig M. Geno represented the Debtor; and Pat. A. Catchings represented Johnson.

Two witnesses testified at the Hearing, Harrison and the Trustee. No exhibits were offered or introduced into evidence. After considering the pleadings, testimony, and arguments of counsel, the Court denied the Motion from the bench. This Order memorializes and supplements that bench ruling.

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Hearing was proper under the circumstances.

Facts

1. The Debtor, one of several related entities under the organizational umbrella of the Christ Temple Apostolic Church (the “Church”), is a for-profit corporation established in Mississippi as a holding company for multiple businesses in 1989. Of specific relevance to the Motion, Alabama-Mississippi Farm Inc. and Dynasty Group, Inc. are also among the corporate entities under the Church’s organizational umbrella. (Dkt. 68 at 13).

2. On August 25, 2011, Harrison and Johnson, former employees and/or affiliates of the Church, obtained a default judgment of approximately \$7 million against the Debtor and others in the Circuit Court of Greene County, Alabama in *Bruce L. Johnson et al. v. Luke Edwards et al.*, CV-2010-32 (the “Alabama Default Judgment”). The Supreme Court of

¹ In the *Pro Se* Order, the Court reminded Harrison that he “must comply with all applicable rules of procedure and substantive law” and “must act in good faith.” (*Pro Se* Order at 2).

Alabama affirmed the Alabama Default Judgment and issued a Certificate of Judgment on January 10, 2014. According to Harrison, he enrolled the Alabama Default Judgment in Greene County, Alabama; Sumter County, Alabama; and Kemper County, Mississippi.

3. On June 18, 2014, Harrison, Johnson, and others filed a fraudulent conveyance action in the Circuit Court of Sumter County, Alabama in Case No. 60-CV-2014-900049, alleging that the Debtor transferred to Dynasty Group, Inc. fourteen (14) tracts of land, substantially all of the Debtor's real property, in an attempt to defraud its creditors and judgment holders (the "Alabama Fraudulent Conveyance Action").

4. On September 4, 2014, the Debtor and others filed a legal malpractice suit in the Circuit Court of Sumter County, Alabama in *Luke Edwards et al. v. William C. Brewer, III*, Civil Action No. CV-2014-900026 (the "Alabama Malpractice Suit"), alleging that their former counsel failed to prevent or challenge the Alabama Default Judgment.

5. On November 6, 2014, the Debtor commenced the Bankruptcy Case by filing a petition for relief under chapter 11 of the Bankruptcy Code. (Dkt. 1). This Bankruptcy Case is the Debtor's fourth bankruptcy filing in the past decade and its third bankruptcy filing in the past two years.²

6. In Schedule A—Real Property ("Schedule A") (Dkt. 25 at 3), the Debtor listed nine (9) tracts of land located in Mississippi, Alabama, and Tennessee in which the Debtor held an ownership interest. In Schedule B—Personal Property ("Schedule B") (Dkt. 25 at 5), the Debtor listed the Alabama Malpractice Suit as an asset of the bankruptcy estate.

² The Debtor previously filed bankruptcy in the following cases: 03-53351-ERG (Bankr. S.D. Miss. July 8, 2003); 13-70116-BGC (Bankr. N.D. Ala. Jan. 18, 2013); and 14-70349-BGC (Bankr. N.D. Ala. Mar. 2, 2014).

7. On January 21, 2015, the Court converted the Bankruptcy Case to a chapter 7 case “thereby allowing for a prompt and orderly liquidation of the Debtor’s assets” (the “Conversion Order”) (Dkt. 75). Smith was appointed as the Trustee.

8. Shortly after his appointment, the Trustee obtained the Court’s approval to retain Shaffer as counsel to assist him in the administration of the Bankruptcy Case. (Dkt. 85). Also with the Court’s approval, the Trustee retained three (3) other attorneys to act as special counsel: (1) Jerry M. Blevins to pursue the Alabama Malpractice Suit (Dkt. 89, 100 & 208); (2) Spencer “to investigate and pursue any fraudulent conveyance actions on behalf of the estate, lien avoidance issues and the collection of accounts receivable” (Dkt. 150); and (3) Jamie Planck Martin to advise the Trustee on real estate matters (Dkt. 146, 153).

9. On May 21, 2015, Johnson filed a proof of claim (Cl. 11-1 at 7) in the Bankruptcy Case in the amount of \$9,094,862.00, consisting of the principal amount of the Alabama Default Judgment of \$6,599,648.00 plus interest and other fees, “less sales.” The deadline for filing a proof of claim for all creditors except a governmental unit expired on June 3, 2015, without Harrison filing a proof of claim in the Bankruptcy Case. (Dkt. 83).

10. On June 23, 2015, the Court authorized the Trustee to retain Benny Taylor of Taylor Auction & Realty, Inc. (“Taylor Auction”) as an auctioneer “to assist him in liquidating the assets of the [D]ebtor.” (Dkt. 155).

11. The Trustee filed separate motions on July 16, 2015, and August 4, 2015, seeking permission from the Court to enter into an on-line only auction contract with Taylor Auction regarding the sale and liquidation of six (6) tracts of land listed by the Debtor in Schedule A. *See* Motion for Approval of Auction Contract/Proposal, Sale of Property, Free & Clear of Liens and Auctioneer’s Fees and Expenses (the “Sale Motions”) (Dkt. 164 & 179). Of the six (6) tracts of

land, all but one of them is located in Mississippi. The sixth tract of land is located in Tennessee. The Trustee attached to the Sale Motions a copy of the Auction Proposals (Dkt. 164-5, Ex. E; Dkt. 179-3, Ex. C) prepared by Taylor Auction with regard to the advertisement and marketing strategy of the auction sale (the “Auction”). Harrison did not file a response opposing the Sale Motions.

12. On September 1, 2015, and September 8, 2015, the Court signed separate orders approving the sale of the six (6) tracts of real property in the manner described in the Auction Proposals. *See* Order Approving Trustee’s Motion to Sell Property, Free and Clear of Liens, Approval of Auction Contract/Proposal and Approval of Auctioneer’s Commission and Expenses (Dkt. 202); Order Approving Trustee’s Motion for Approval of Auction Contract/Proposal, Sale of Property, Free and Clear of Liens and Auctioneer’s Commission and Expenses (Dkt. 204) (the “Sale Orders”). Harrison did not appeal the Sale Orders.

13. On December 4, 2015, the Trustee filed the Trustee’s Report of Auction Sale (the “Trustee’s Sale Report”) (Dkt. 214) pursuant to Rule 6004(f)(1) of the Federal Rules of Bankruptcy Procedure.³ At the Auction, which closed on October 14, 2015, Taylor Auction sold

³ Rule 6004(f)(1) of the Federal Rules of Bankruptcy Procedure provides, in relevant part:

(f) Conduct of Sale Not in the Ordinary Course of Business.

(1) Public or Private Sale. All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee

the Debtor's interest in all five (5) tracts of land located in Mississippi. These properties included:

- a. The "Choctaw Meats Property," located in Weir, Choctaw County, Mississippi, which was sold for \$15,400.00;
- b. The "5th Street Property," located in Meridian, Lauderdale County, Mississippi, which was sold for \$3,850.00;
- c. The "Key Field Property," located in Meridian, Lauderdale County, Mississippi, which was sold for \$4,950.00;
- d. The "8th Street Property," located in Meridian, Lauderdale County, Mississippi, which was sold for \$17,050.00; and
- e. The "Farm Land with Bins," located in West Point, Clay County, Mississippi, which was sold for \$18,700.00.

(Dkt. 214 at 1-2). Attached to the Trustee's Sale Report is a letter from Taylor Auction (the "Auctioneer's Report") (Dkt. 214 at 3) summarizing the bidding history for each tract of land. Also attached to the Trustee's Sale Report are closing statements for each sale (the "Closing Statements"). (Dkt. 214 at 4-13). The Closing Statements reveal that Fannie Grantham ("Grantham") purchased three (3) of the five (5) tracts of land sold by the Trustee. (Dkt. 214-at 4-5, 8-11). According to Harrison, Grantham is a member of the Church.

14. At the Hearing, Harrison testified that he intended to "credit bid" the amount of his claim at the Auction but did not do so because he believed that he would have been denied that right. He also stated that he did not bid cash for any of the tracts of land.

15. Harrison insisted at the Hearing that the Trustee sold all five (5) tracts of land at a loss, given the expenses incurred in the sales. He specifically discussed only the sale of the "Office Complex Building," known as the 8th Street Property. (Mot. at 2). He alleged that the fair market value of the 8th Street Property was "probably" \$45,000.00, but that the Trustee sold it to Grantham, a member of the Church, for only \$17,050.00. He recalled that the Debtor

obtained a loan in excess of \$150,000.00 to construct the building there. He did not present any appraisal report or other evidence in support of his allegation.

16. As explained by the Trustee in the Trustee's Sale Report, a tract of land in Tennessee listed in the Sale Orders was not sold by Taylor Auction because the Trustee discovered a defect in its legal description. The Trustee indicated in the Trustee's Sale Report that he intended to administer the Tennessee property when the title defect is cured. (Dkt. 214 at 2).

17. On March 28, 2016, Harrison filed the Motion asking the Court for various relief, all of which related to the payment of his claim against the estate arising out of the Alabama Default Judgment. The relief he requested in his Motion is paraphrased below:

a. That the Court authorize him to hire a consultant to assist the Trustee and/or Taylor Auction with the sale of the Debtor's real property;

b. That the Court allow him to credit bid the amount of his claim;

c. That the Court order the Trustee to use the "bond" from the Alabama Malpractice Suit solely to pay his claim;⁴

d. That the Court substantively consolidate the Debtor with Alabama-Mississippi Farm Inc. and other non-debtor entities organized under the umbrella of the Church;

e. That the Court set a deadline for the closure of the Bankruptcy Case; and

f. That the Court compel the Trustee to sell seventeen (17) tracts of land owned by the Debtor, including the fourteen (14) tracts of land that Harrison alleges the Debtor fraudulently transferred to Dynasty Group, Inc.

Harrison's testimony at the Hearing reiterated the relief requested in the Motion.

⁴ According to Harrison, the "bond" from the Alabama Malpractice Suit initially was intended to fund the Debtor's "reorganization plan under chapter XI." (Mot. at 3). Because the Bankruptcy Case was converted to a chapter 7 case and is no longer a chapter 11 case, this aspect of his argument is moot.

18. In the Trustee's Response and the Debtor's Response, the Trustee and Debtor opposed the Motion. In Johnson's Response, Johnson opposed the Motion but only to the extent that Harrison sought payment ahead of all other creditors.

19. Alabama-Mississippi Farm Inc. filed a chapter 11 bankruptcy case in Case No. 16-01156-NPO on March 31, 2016.

20. After the Court heard from Harrison, the Trustee, and counsel for the Trustee, the Debtor, and Johnson, who spoke only to inform the Court that Johnson had nothing to add, the Court provided an opportunity at the Hearing to anyone in the courtroom to speak on any of the matters before the Court, regardless of whether that person filed a response to the Motion in the Bankruptcy Case. No one accepted the Court's invitation to be heard.

Discussion

The Court addresses each of Harrison's requests in the Motion separately below.⁵

A. Authority to Hire a Consultant to Assist the Trustee and/or Taylor Auction with the Sale of the Debtor's Real Property

Although the Motion is not clear, Harrison apparently sought approval from the Court to hire a consultant to assist the Trustee and/or Taylor Auction in liquidating the real property of the Debtor's bankruptcy estate. At the Hearing, Harrison testified that he did not intend to "take the

⁵ As noted previously, the claims bar date passed without Harrison filing a proof of claim in the Bankruptcy Case. FED. R. BANKR. P. 3002(a) ("unsecured creditor . . . must file a proof of claim or interest for the claim to be allowed"). Given that the Trustee disputes Harrison's status as a secured creditor, a question arises as to whether he has standing to assert the relief he requests. *See infra* p. 12-13; *In re Howard*, 533 B.R. 532, 542-43 (Bankr. S.D. Miss. 2015) (discussing "bankruptcy" standing). Even assuming that Harrison is an unsecured creditor, however, he may be entitled to receive a distribution under 11 U.S.C. § 726(a)(3) if he "tardily" files a proof of claim in time to share in that distribution. The Court, therefore, finds that there is no standing issue at this stage of the Bankruptcy Case, but the Court may revisit the matter.

authority away from the Trustee.”⁶ Indeed, Harrison made no allegation of any intentional misconduct or negligence by the Trustee that would justify in any way his removal as the Trustee in the Bankruptcy Case. 11 U.S.C. § 324(a) (authorizing the removal of a trustee after notice and a hearing for cause); *Smith v. Robbins (In re IFS Fin. Corp.)*, 803 F.3d 195 (5th Cir. 2015) (discussing legal standard for removing a trustee). Harrison, nevertheless, insisted that the employment of a sales consultant—at the expense of “other creditors”—was necessary in order to reach out to local buyers. Harrison’s main concern was that local residents, unlike “New York or California people,”⁷ may not have access to the Internet, yet they would be more likely to buy small tracts of rural land in Mississippi. He suggested that a sales consultant would assist the Trustee and/or Taylor Auction by advertising the sales of the real property in local newspapers, flyers, and radio spots, and, therefore, would obtain higher sales prices, offsetting the expense of the consultant’s services. He complained specifically about the sale of the 8th Street Property which he stated “probably” had a fair market value of \$45,000.00 but was sold for only \$17,050.00. He did not present any evidence in support of his allegation.

In the Trustee’s Response, the Trustee opposed Harrison’s request to retain a sales consultant for two (2) main reasons. First, the Trustee contended that hiring a consultant would require the estate to absorb an additional and unnecessary administrative expense. As to the issue of necessity, counsel for the Trustee stated at the Hearing that Taylor Auction had advertised the Auction not only on its website but also in the following local newspapers: *West Point Daily Times Leader*, *The Choctaw Plaindealer*, *The Meridian Star*, *Starkville Daily News*, and *Humboldt Chronicle*. In other words, contrary to Harrison’s conclusory statements, there

⁶ Test. of Harrison at 1:34:17-1:34:30. The Hearing was not transcribed. The references to testimony are to the time stamp of the audio recording.

⁷ *Id.* at 1:36:00-1:36:17.

was adequate notice and local advertising of the Auction, according to the Trustee. As indirect proof of the adequacy of the notice, the Trustee pointed to the Auctioneer's Report, which indicated there were twenty-two (22) registered bidders and twelve (12) active bidders during the Auction.

The second reason why the Trustee opposed Harrison's request was that hiring a consultant would be counterproductive and would unduly delay the liquidation of assets. The Trustee testified that he was familiar with the assets of the bankruptcy estate and even had met with Harrison, Johnson, and other creditors to discuss the liquidation of those assets. He retained special counsel to pursue the Alabama Fraudulent Conveyance Action on behalf of the estate with the objective of increasing the estate property. In the Debtor's Response, the Debtor likewise opposed the Motion on the ground a consultant was unnecessary and "would work in cross purposes with the Trustee's actions." (Debtor's Resp. at 1).

Under 11 U.S.C. § 704, a chapter 7 trustee has multiple fiduciary duties to creditors of the estate. The primary duty of a chapter 7 trustee is to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704(1); *In re McComb*, 436 B.R. 421, 439 (Bankr. S.D. Tex. 2010). In addition to this primary duty, the trustee shall:

- (2) be accountable for all property received;
- (3) ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B) of this title;
- (4) investigate the financial affairs of the debtor;
- (5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
- (6) if advisable, oppose the discharge of the debtor;

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires;

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

11 U.S.C. § 704(2)-(9).⁸ In the Conversion Order, the Court specifically found that the above statutory duties of a chapter 7 trustee were conducive to a full and thorough investigation of the Debtor's assets. In his role as a general representative of the estate's creditors, the chapter 7 trustee serves as a fiduciary. *In re JMW Auto Sales*, 494 B.R. 877, 881 (Bankr. S.D. Tex. 2013) (citation omitted).

Based on the Trustee's testimony, the Court finds the Trustee is acting in the best interest of the creditors and in accordance with the Bankruptcy Code. The Court further finds that Harrison has not shown sufficient reason to usurp the Trustee's role as a representative of the estate in the Bankruptcy Case by forcing the Trustee to work with a sales consultant in addition to Taylor Auction 11 U.S.C. § 324(a). Also, the Trustee has fiduciary obligations to all creditors of the estate, yet Harrison's request appeared to be for his own benefit. Certainly, Harrison may hire attorneys and experts to assist him in this Bankruptcy Case and pay their fees and expenses himself. For those reasons, the Court finds that Harrison's request for authority to hire a sales consultant should be denied.

⁸ There are additional fiduciary duties that are not relevant to the present matter. 11 U.S.C. § 704(10-12).

B. Right to Credit Bid

At the Auction, Harrison alleged that he was denied the right to bid using the amount of his claim against the estate (arising out of the Alabama Default Judgment) to offset the purchase price of the land, a right articulated in 11 U.S.C. § 363(k) and commonly referred to as “credit-bidding.” *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2069 (2012). According to the U.S. Supreme Court, credit bidding insures that if the bidding at a sale is less than what a secured creditor considers to be the fair market value of the collateral, the secured creditor may bid up the price to as high as the amount of his security interest without paying any cash. *Id.* at 2070 n.2.

Harrison admitted at the hearing that he did not seek permission from the Court prior to the Auction to credit bid and did not attempt to credit bid at the Auction. Nevertheless, Harrison suggested that the Trustee sold the tracts of land in contravention of 11 U.S.C. § 363 and *RadLAX*. In the Motion, Harrison asked the Court for permission to credit bid in future sales of the Debtor’s land “if it should be sold too cheaply.” (Mot. at 2).

Section 363(k) reads:

At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. § 363(k). In *RadLAX*, the Supreme Court held that a debtor may not sell real property free and clear of a lien without allowing a lienholder to credit bid. *RadLAX*, 132 S. Ct. at 2072-73.

The Trustee argued at the Hearing that the right to credit bid at a sale is limited to the creditor who holds a lien on the real property subject to that sale. 11 U.S.C. § 363(k). Harrison

testified on cross-examination that he did not hold a mortgage or deed of trust on any of the tracts of land sold at the Auction and did not enroll the Alabama Default Judgment in any of the counties where the tracts of land were sold. The Trustee asserted that because Harrison was not a secured creditor, he was ineligible to credit bid at the Auction. The Trustee further maintained that even if Harrison were a secured creditor, there was at least one other secured creditor ahead of him in priority.

The Debtor adopted the arguments of the Trustee and further argued that allowing Harrison to credit bid would “chill” or stop any active bidding. The right to credit bid under 11 U.S.C. § 363(k) is not absolute but may be denied “for cause,” which, according to the Debtor, includes the “chilling” of third party bids. *See In re RML Dev., Inc.*, 528 B.R. 150, 154-56 (Bankr. W.D. Tenn. 2014) (discussing “for cause” standard for denying a secured creditor’s right to credit bid).

The Court finds that a plain reading of 11 U.S.C. § 363(k) limits the right to credit bid to creditors holding an allowed secured claim. Although Harrison referred to himself as a “secure [sic] creditor” in the Motion, his testimony at the Hearing established that he was an unsecured creditor with respect to the real property sold at the Auction. For that reason, the Court finds that Harrison did not have the right to credit bid at the Auction. As to future sales of property by the Trustee, Harrison must file a separate motion seeking the right to credit bid and must show in the motion that he satisfies the requirements set forth in 11 U.S.C. § 363(k), including that he holds a lien secured by the property subject to the sale.

C. Use of the “Bond” Solely to Pay Harrison’s Claim

Harrison asked the Court to require the Trustee to pay him any “bond” recovered in the Alabama Malpractice Suit to satisfy his claim arising out of the Alabama Default Judgment.

Harrison explained at the Hearing that he believed that the plaintiffs who filed the Alabama Malpractice Suit had posted a “bond” in the amount of damages they sought against the Debtor’s former counsel. He later clarified that by “bond” he really meant the proceeds of the legal malpractice insurance policy owned by the defendant.

The Alabama Malpractice Suit was pending when the Trustee was appointed in the Bankruptcy case. After his appointment, the Trustee was substituted for the Debtor as a plaintiff. Because there are three (3) other plaintiffs in the Alabama Malpractice Suit, the Trustee’s interest is limited to twenty five percent (25%). Harrison is not a party in the Alabama Malpractice Suit.

The Trustee maintained that no creditor, including Harrison, holds a lien on the insurance proceeds. Thus, according to the Trustee, any monies recovered by the Trustee in the Alabama Malpractice Suit will be used to pay the claims against the bankruptcy estate, and not solely to satisfy the debt owed to Harrison.

The parties do not appear to dispute that the proceeds of the insurance policy are property of the estate. *See* 11 U.S.C. § 541(a); (Schedule B). Here, the dispute is between Harrison and all other creditors of the estate and does not involve the owner of the policy. In that context, the Court agrees with the Trustee that Harrison does not have any greater rights to the insurance proceeds than what he otherwise would be entitled to receive under the distribution scheme set out in 11 U.S.C. § 727. Accordingly, the Court finds that Harrison’s request to use the “bond” or insurance proceeds to satisfy his claim should be denied.

D. Substantive Consolidation of the Debtor with Alabama-Mississippi Farm Inc. and Other Non-Debtor Entities

Harrison asked the Court to consolidate the Debtor with all legally distinct corporate entities organized under the umbrella of the Church, including Alabama-Mississippi Farm Inc.,

so that their assets may be combined into a common pool for the payment of his claim. Although Harrison did not describe the proposed consolidation as “substantive” in his Motion, “substantive” consolidation appears to be the remedy he seeks.

In the only U.S. Supreme Court case addressing the doctrine of substantive consolidation, *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941), the Supreme Court held that bankruptcy courts have the power to disregard the corporate form of an entity in order to reach its assets to satisfy the debts of a related but separate debtor. *Id.* at 218-19. Such power is part of a bankruptcy court’s general equitable powers found in 11 U.S.C. § 105; *see S.I. Acquisition, Inc. v. Eastway Delivery Serv. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1145 n.2 (5th Cir. 1987) (holding that “[t]he bankruptcy court has authority to order *de facto* disregard of the corporate form through [substantive] consolidation proceedings”) (citation omitted).

Although most courts agree on the general principles underlying substantive consolidation, there is no standard analysis for determining when it is appropriate. 2 COLLIER ON BANKRUPTCY ¶ 105.09[2][a] (15th ed. 2015). The Fifth Circuit Court of Appeals has not adopted a standard test. *In re Permian Producers Drilling, Inc.*, 263 B.R. 510, 517 (W.D. Tex. 2000). The two major factors most courts consider are whether creditors dealt with the debtor and its affiliated entity prior to the bankruptcy as if they were the same and whether the affairs of the debtor after the bankruptcy are so intertwined that the time and expense necessary to untangle them would likely erode the recovery of those assets and create substantial delays in effecting a distribution to creditors. *In re Coleman*, 417 B.R. 712, 726 (Bankr. S.D. Miss. 2009) (citing *Union Savs. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 518 (2d Cir. 1988)).

In support of substantive consolidation, Harrison contended that all of the entities organized under the umbrella of the Church, regardless of their separate corporate forms, are “one and the same” because they share board members, officers, and employees, and because they commingled their funds. He mentioned a decision from a state court in Macon County, Alabama, that purportedly declared Alabama-Mississippi Farm Inc. a “nonexistent corporation,” although he also stated that consolidation was not an issue in that proceeding.

The Trustee opposed Harrison’s request to consolidate the Debtor with non-debtor entities. He viewed as unsettled the legal authority for substantively consolidating a debtor with a non-debtor. He also pointed out that substantive consolidation of the Debtor with Dynasty Group, Inc. was unnecessary because he was already pursuing the Alabama Fraudulent Conveyance Action, which, if successful, would result in the return of certain real property transferred by the Debtor to Dynasty Group, Inc. As to the consolidation of the Debtor with Alabama-Mississippi Farm Inc., which commenced its own bankruptcy case on March 31, 2016, the Trustee did not take a position, except to state that he was currently reviewing the matter.

Counsel for the Debtor argued at the Hearing that the corporations under the umbrella of the Church are separate legal entities. He disputed Harrison’s testimony that they shared the same shareholders and commingled funds. The Debtor opposed any attempt to pool the assets of the Debtor with any other affiliated entities.

Here, Harrison alluded only to two matters that could be relevant in making this determination: the alleged sharing of board members, officers, and employees and the commingling of funds. He made these general allegations without providing any proof. He did not name the shared individuals and did not produce any financial records concerning the Debtor or any other related entity.

The substantive consolidation inquiry is highly fact intensive. The analysis generally requires an in-depth investigation of financial records and corporate transactions. Yet Harrison presented very few facts and failed to support his allegations with proper evidence. For those reasons, the Court finds that Harrison's request to substantively consolidate the Debtor with Alabama-Mississippi Farm Inc. and other related non-debtor entities should be denied.

E. Schedule the Closure of Bankruptcy Case

Harrison asked the Court to schedule a date certain for closure of the Bankruptcy Case. The Trustee opposed any deadline largely because of the pending Alabama Malpractice Suit, Alabama Fraudulent Conveyance Action, and a collection action against Apostolic Advancement Association, Inc., all of which made it difficult for him to anticipate when the estate would be fully administered and the Bankruptcy Case would be ready for closing. The Alabama Malpractice Suit and the Alabama Fraudulent Conveyance Action, if successful, will substantially increase distributions to creditors. They are both set for a pretrial conference on August 4, 2016, and tentatively set for trial in October 2016. Until all of that litigation is resolved, the Trustee may not make final distributions to creditors of the estate. In addition to the pending litigation, the Trustee explained that the sale of the Debtor's real property had been delayed because of problems in the title. Some of the property thought to be owned by the Debtor was lost through tax sales, was not titled in the Debtor's name, or was transferred to other entities. Because of these factors, the Trustee was unwilling to commit to a date when the Bankruptcy Case would be ready to close.

As previously noted, the primary duty of a chapter 7 trustee is to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." 11 U.S.C. § 704(1).

There are two (2) requirements that must be met before a bankruptcy case may be closed: (1) the estate must be fully administered and (2) the trustee must be discharged. 11 U.S.C. § 350(a). In a chapter 7 case, a presumption arises that the estate has been fully administered when the trustee files a final report and final account pursuant to 11 U.S.C. § 704(9) and certifies that the estate has been fully administered, and when no objection has been filed within thirty (30) days. FED. R. BANKR. P. 5009.

Here, the Trustee has satisfactorily explained why the performance of his statutory duties in this Bankruptcy Case has been time consuming and why he was unable to anticipate when the Bankruptcy Case may be closed. Harrison did not suggest that the Trustee had been derelict in his pursuit of assets of the estate. His request apparently arises out of his desire that the Trustee pay his claim as quickly as possible. As of the Hearing date, however, only fifteen (15) months had passed since the conversion of the Bankruptcy Case to a chapter 7 case and the appointment of Smith as the Trustee. Since then, the Trustee had sold five (5) tracts of land and hired special counsel to pursue the Alabama Fraudulent Conveyance Action, to substitute himself as the plaintiff in the Alabama Malpractice Suit, and to bring a collection action against Apostolic Advancement Association, Inc. The Trustee demonstrated at the Hearing that since the conversion of the Bankruptcy Case, he has been fulfilling his statutory duties in an expeditious manner, given the facts and circumstances of the Bankruptcy Case. The Court, therefore, finds that Harrison's request to schedule the closure of the Bankruptcy Case should be denied.

F. Compel the Trustee to Sell Certain Tracts of Land

Harrison asked the Court to require the Trustee to sell seventeen (17) tracts of land allegedly owned by the Debtor, including fourteen (14) tracts of land that he contended were

fraudulently transferred from the Debtor to Dynasty Group, Inc. Harrison also asked the Court to require the Trustee to provide a “good reason” why he had not yet sold these properties.

As to the steps the Trustee has taken so far to sell the real property of the estate, the Trustee pointed to the Alabama Fraudulent Conveyance Action in which Spencer represents him as a plaintiff. He also mentioned that he filed a motion for authority to sell two (2) additional tracts of land (Dkt. 246), including the Tennessee property.⁹ He explained the problems he had encountered in selling some the property. For example, the Debtor owns tracts of land not only in Mississippi but also in Alabama and Tennessee. All of the land will require extensive title work before it may be sold. The Trustee believed that some of the tracts of land were simply not owned by the Debtor. He explained the difficulty he had reconciling the land listed by the Debtor in its two (2) prior bankruptcy cases with Schedule A. Based on the Trustee’s testimony, the Court finds that Harrison’s request to compel the trustee to sell certain real property should be denied.

Conclusion

For the above and foregoing reasons, the Court finds that all of Harrison’s requests in the Motion should be denied. By filing the Motion, Harrison caused the Trustee, the Debtor, and Johnson to incur additional attorney’s fees and expenses. The Motion was unclear and included conclusory statements instead of factual allegations. When given an opportunity to support his conclusions at the Hearing, Harrison relied solely on his own testimony, which consisted mostly of his suppositions about the administration of the Bankruptcy Case. He admitted more than once that he lacked knowledge of certain relevant facts. Also, he failed to introduce any exhibits

⁹ After the Hearing, on May 5, 2016, the Trustee withdrew this motion for reasons not disclosed to the Court. (Dkt. 259).

into evidence. In short, Harrison appeared to be unprepared to meet his burden of proof at the Hearing.

The Court cautions Harrison and others that *pro se* litigants are bound by the U.S. Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Uniform Local Rules of the U.S. Bankruptcy Court for the Southern District of Mississippi. (*See Pro Se Order*). Rule 9011(b) of the Federal Rules of Bankruptcy Procedure provides that an attorney or *pro se* party who presents a written motion or other paper to the court certifies that the motion or other paper is not presented for an improper purpose, that his arguments are warranted by existing law or by nonfrivolous arguments to modify or reverse existing law, and that factual assertions (or denials) are supported by evidence. FED. R. BANKR. P. 9011(b). Rule 9011 imposes on an attorney or an unrepresented litigant a duty to “stop, look, and listen” before signing and filing a document. *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 157 (3d Cir. 1986). Its purpose is “to deter baseless filings in bankruptcy court and thus avoid unnecessary judicial effort, the goal being to make proceedings in the court more expeditious and less expensive.” 10 COLLIER ON BANKRUPTCY ¶ 9011.01 (16th ed. 2015). The type of sanctions available for violating Rule 9011 include “some or all of the reasonable attorney’s fees and other expenses incurred as a direct result of the violation.” FED. R. BANKR. P. 9011(c)(2). In addition to Rule 9011, the bankruptcy court also possesses fee-shifting authority under 11 U.S.C. § 105 and its inherent powers. *Rogers v. Air Line Pilots Ass’n, Int’l*, 988 F.2d 607, 615-16 (5th Cir. 1993) (attorney’s fees may be awarded against a litigant who has acted in bad faith). There is no pending request for fee-shifting sanctions, but the Court includes this instructive discussion for future filings in this Bankruptcy Case.

IT IS, THEREFORE, ORDERED that Harrison's request for authority to hire a consultant to assist the Trustee and/or Taylor Auction with the sale of the Debtor's property is hereby denied.

IT IS FURTHER ORDERED that Harrison's request to credit bid at future sales of property is hereby denied.

IT IS FURTHER ORDERED that Harrison's request to use the "bond" or legal malpractice insurance proceeds solely to pay his claim is hereby denied.

IT IS FURTHER ORDERED that Harrison's request to substantively consolidate the Debtor with Alabama-Mississippi Farm Inc. and other non-debtor entities is hereby denied.

IT IS FURTHER ORDERED that Harrison's request to schedule the closure of the Bankruptcy Case is hereby denied.

IT IS FURTHER ORDERED that Harrison's request to compel the Trustee to sell certain tracts of land allegedly owned by the Debtor is hereby denied.

IT IS FURTHER ORDERED that all other relief requested by Harrison is hereby denied.

##END OF ORDER##