



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: February 3, 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:

RICHARD L. WALKER, JR.,

CASE NO. 15-03322-NPO

DEBTOR.

CHAPTER 13

**ORDER SUSTAINING OBJECTION TO
CONFIRMATION OF PLAN AND GRANTING
MOTION TO LIFT STAY REGARDING PROPERTY**

This matter came before the Court for hearing on February 1, 2016 (the "Hearing"), on the Objection to Confirmation of Plan/Motion to Lift Stay Regarding Property (the "Objection" or "Motion" or together, the "Objection and Motion") (Dkt. 22) filed by 20/20 Investments, LLC ("20/20") and the Response to Objection to Confirmation of Plan/Motion to Lift Stay Regarding Property (the "Response") (Dkt. 38) filed by Richard L. Walker, Jr., the debtor (the "Debtor"), in the above-styled chapter 13 bankruptcy case (the "Bankruptcy Case"). At the Hearing, Robert D. Drinkwater ("Drinkwater") appeared on behalf of 20/20. Neither the Debtor nor his attorney of record appeared at the Hearing. After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (L). Notice of the Objection and Motion was proper under the circumstances.

Facts

1. 20/20 purchased the property in dispute, 17 Nicholson Rd., Pickens, MS 39146 (the “Property”), at a Holmes County tax sale in August 2010. (Obj. at 1; Ex. A at 1). The tax sale matured two (2) years later, and Holmes County issued a tax deed conveying the Property to 20/20. (Obj. at 1). 20/20 subsequently paid taxes on the Property for fiscal years 2010, 2011, and 2012 in the total amount of \$4,402.09. (*Id.*).

2. The Debtor filed a voluntary petition for relief (the “Petition”) pursuant to chapter 13 of the Bankruptcy Code on October 27, 2015. (Dkt. 1). The Petition listed the Property as the Debtor’s street address. (Pet. at 1).

3. On November 11, 2015, the Debtor filed his proposed Chapter 13 Plan (the “Plan”) (Dkt. 9) listing 20/20 as the holder of a non-mortgage secured claim in the amount of \$1,056.51 secured by a tax deed. (Plan at 2).

4. 20/20 filed the Objection and Motion on December 8, 2015. In the Objection and Motion, 20/20 argued that because the Property is not property of the Debtor’s estate, the Court should deny confirmation. (Obj. at 1). 20/20 also asked the Court to terminate the automatic stay to the extent it finds that the Debtor possesses an interest in the Property. (*Id.* at 2).

5. The Debtor filed the Response on December 28, 2015. In the Response, the Debtor denied 20/20’s allegation that the Property is outside of the bankruptcy estate and asked the Court to deny the Objection and Motion. (Resp. at 1).

Discussion

To rule on the Objection and Motion, the Court must determine what interest, if any, the Debtor or the bankruptcy estate has in the Property. Congress intentionally defined “estate” broadly in 11 U.S.C. § 541(a)(1)¹ to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204 (1983). Once the estate is created at the time of the filing of the petition, § 362(a)(3) provides that the petition operates as a stay of “any act to obtain possession of property of the estate. . . .”

Generally, state law defines the property rights of a debtor in a bankruptcy estate “[u]nless some federal interest requires a different result. . . .” *Butner v. United States*, 440 U.S. 48, 55 (1979). In Mississippi, landowners have two (2) years from the date of sale to redeem property sold for taxes. MISS. CODE ANN. § 27-45-3. Once the statutory period runs and the debtor has not exercised the right of redemption, the tax sale becomes valid and title passes to the purchaser. *Hancock Bank v. Ladner*, 727 So. 2d 743, 746 (Miss. Ct. App. 1998) (quoting *Russell Inv. Corp. v. Russell*, 178 So. 815, 816 (Miss. 1938)).

When a tax sale occurs prior to the filing of a bankruptcy petition, any statutory right to redeem the property becomes part of the bankruptcy estate. 5 COLLIER ON BANKRUPTCY ¶ 541.04[2] (16th ed. 2015). The real property, however, is not an asset of the debtor, and accordingly, is not included as part of the estate. (*Id.*). In the event that the right of redemption has not yet expired as of the date of filing the petition, § 108 guarantees the debtor a redemption period of either the remainder of the statutory period or sixty (60) days after the order for relief, whichever is later. 11 U.S.C. § 108(b). Although some courts have ruled that the redemption

¹ Hereinafter, all code sections refer to the Bankruptcy Code found at title 11 of the U.S. Code unless otherwise noted.

period is tolled by the filing of the petition, the majority of courts have held that “the automatic stay does not prevent the running of the tax sale redemption period.” *Greenpoint Credit, LLC v. Isom (In re Isom)*, 342 B.R. 743, 746 (Bank. N.D. Miss. 2006).

20/20 purchased the Property at the tax sale in August 2010, more than five (5) years before the Debtor filed the Petition. Because the tax sale occurred pre-petition, the Property itself did not become part of the bankruptcy estate. More relevant to the decision of whether to confirm the Plan, the two (2)-year statutory redemption period expired in August 2012, a full three (3) years before the Debtor filed the Petition. As a result, the Debtor’s right of redemption was extinguished. The maturity of the pre-petition tax sale divested the Debtor of any ownership interest in the Property, and nothing in the record suggests any reason why that interest would have revested. Based upon the foregoing facts, which are undisputed, the Court finds that the Property is not an asset of the Debtor’s bankruptcy estate. Therefore, the Court finds that the Objection should be sustained.

Although the Debtor has no ownership interest in the Property, to the extent that the Debtor’s possessory interest in the Property invokes the protection of the automatic stay, the Court also finds that the Motion should be granted.

IT IS, THEREFORE, ORDERED that the Objection is hereby sustained.

IT IS FURTHER ORDERED that the Motion is hereby granted.

##END OF ORDER##