
SO ORDERED,



A handwritten signature in black ink, reading "Selene D. Maddox".

Judge Selene D. Maddox

United States Bankruptcy Judge

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

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

IN RE: KENNETH BROWN HOOD

CASE NO.: 16-14511-SDM

DEBTOR

CHAPTER 12

HELENA CHEMICAL COMPANY

PLAINTIFF

v.

ADVERSARY PRO. NO.: 19-01065-SDM

HOOD et al

DEFENDANT

ORDER DENYING PLAINTIFF'S MOTION TO AMEND

This adversary proceeding comes before the Court on Helena Chemical Company's ("Helena" or the "Plaintiff") *Motion to Amend Memorandum Opinion and Order* (the "Motion to Amend") (Dkt. #163). Helena is seeking to amend the Court's *Memorandum Opinion and Order Denying as Moot Defendants' Motion for Summary Judgment (DKT. #45) and Granting in Part and Denying in Part Plaintiff's Motion for Summary Judgment (DKT. #141)* (the "Opinion and Order") (Dkt. #159), arguing that the Court failed to provide the proper remedy for the Defendants' intentional violation of the automatic stay. After review of the Motion to Amend, the Court finds that it is not well taken and should be denied.

While Helena admits the Court correctly found that the Debtor's vested remainder interest in the Home Place was property of the bankruptcy estate, and that the Defendants violated the automatic stay when Dilworth, acting as power of attorney for Odelle, executed and enrolled the quitclaim deed transferring the Home Place to Hood Family Farm, Helena disagrees with the Court's finding as to the legal effect of and remedy for such a finding. Specifically, Helena asserts that because an automatic stay violation occurred, the Court should find that the transfer or conveyance was invalid and of no legal effect, which would result (absent no other conveyances) in the Debtor owning a three percent fee simple interest in the Home Place. The Court believes that Helena misses the mark on several propositions asserted in its Motion to Amend, and as such, will separately address each argument below.

Federal Rules of Bankruptcy Procedure Rule 7052 states that Federal Rules of Civil Procedure Rule 52¹ applies to adversary proceedings with one caveat: the rule for amended or additional filings under subdivision (b) cannot be filed later than 14 days after entry of the judgment in which the moving party is seeking to amend.² Fed. R. Bankr. P. 7052. Rule 52(b) states, in relevant part, that once a party moves to amend a judgment, the court may either amend its findings or make additional findings and amend the judgment according to the additional findings. Fed. R. Civ. P. 52. The Fifth Circuit has established the criteria for courts considering motions to amend under Rule 52(b):

The purpose of motions to amend is to correct manifest errors of law or fact or, in some limited situations, to present newly discovered evidence. Under the better view, a party may move to amend the findings of fact even if the modified or

¹ When referring to a rule under the Federal Rules of Bankruptcy Procedure, the Court will preface such rule with "Bankruptcy Rule __", whereas a reference to the Federal Rules of Civil Procedure will begin with "Rule __".

² The Court recognizes that Helena did file its Motion to Amend no later than 14 days after the entry of the Court's Opinion and Order. The Court's Opinion and Order was entered on June 1, 2022, and Helena filed its Motion to Amend on June 15, 2022.

additional findings in effect reverse the judgment. If the trial court has entered an erroneous judgment, it should correct it.

Fontento v. Mesa Petroleum Co., 791 F.2d 1207, 1219 (5th Cir. 1986). A party should not, however, move to amend a judgment for the purposes of introducing evidence available at trial but not offered, relitigating issues, advancing new theories, or securing a rehearing on the merits. *In re Salter*, 1994 WL 513282, at *4 (Bankr. S.D. Miss. June 16, 1994), *aff'd*, 1995 WL 723178 (S.D. Miss. Sept. 26, 1995), *aff'd*, 96 F.3d 1444 (5th Cir. 1996). Clarifying essential findings or conclusions is one of the main purposes³ of a motion to amend under Rule 52. 10 COLLIER ON BANKRUPTCY ¶ 7052.03 (16th ed. 2022). Under Bankruptcy Rule 7052, the moving party has the burden of proving a manifest error of fact, manifest error of law, or newly discovered evidence. *In re McCutcheon*, 629 B.R. 311, 316 (Bankr. M.D. Ga. 2021).

Lifting of the Automatic Stay Prior to the Transfer

To clarify its Opinion and Order, the Court will attempt to discuss its findings in a linear fashion. Therefore, the Court will begin by addressing its footnote concerning the Defendants' failure to seek relief from the automatic stay before transferring the Home Place to Hood Family Farm. Specifically, the Court stated:

The Court notes that this adversary proceeding could have been avoided had the Defendants sought relief from the automatic stay before executing and recording the quitclaim deed. At the least, the Defendants could have requested a comfort order to determine the applicability of the automatic stay as to the Debtor's remainder interest. If the Defendants are correct in that the value of the Debtor's vested remainder interest is nominal at best in relation to value or benefit to the

³ The Court is also aware that another purpose of Rule 52(b) is to help appellate courts obtain the necessary understanding of the issues which may need to be determined on appeal. See *In re St. Marie Development Corp. of Montana, Inc.*, 334 B.R. 663, 675 n.3 (Bankr. D. Mont. 2005) (citing 9C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2582 (3d ed. 2015)). For appellate purposes, courts have held that the standard of review for a lower court's ruling on a Rule 52(b) motion is abuse of discretion. 10 COLLIER ON BANKRUPTCY ¶ 7052.03 (16th ed. 2022) (citing *Bush v. Hancock (In re Busch)*, 369 B.R. 614, 620-21 (B.A.P. 10th Cir. 2007) (internal citations omitted)).

bankruptcy estate, especially with the life tenant still living at the time of the transfer, the parties would likely not be litigating over these issues.

Opinion and Order, p. 19, n. 17 (Dkt. #159). In its Motion to Amend and in response to the Court's footnote, Helena states that the proof offered before the Court is that the Debtor, including his two debtor brothers, are still farming the Home Place, which would have made moving to lift the automatic stay problematic. Without delving into the "what if" scenario in detail, the Court understands that it would have considered the Debtor's potential loss of income if the Debtor failed to continue farming the Home Place post-transfer. But apparent from the facts before this Court, regardless of who or what "owns" the Home Place, at least regarding any person or entity of the Hood family at large, the Debtor appears to be able to continue farming and bring in revenue to help fund a chapter 12 plan. As made clear by Helena in all its pleadings, Hood Family Farm is an LLC wholly owned by Dilworth, the Debtor's sister, and a non-debtor brother. In any event, the main issue relevant to whether the Court would have lifted the automatic stay to "allow" the divestment of the vested remainder interest is what monetary loss, if any, the bankruptcy estate would have suffered losing such a remainder interest. That question is, of course, one of the key issues remaining to be decided at trial in this adversary proceeding.

Distinction Between "Void" and "Voidable"

Helena asserts in its Motion to Amend that under the circumstances of this adversary proceeding, the distinction between void and voidable is "without a difference". The Court somewhat disagrees. To begin, the Fifth Circuit has made it clear there is a distinction between the legal effect or relief provided for transfers in violation of the automatic stay and whether such transfers are void or whether the effect of the automatic stay is voidable, and, as a result, the transfer is invalid. Because Helena argued that the Court should "void" either the quitclaim deed or the transfer because of the automatic stay violation, which is not the controlling law in the Fifth

Circuit, the Court believed it was necessary to explain the remedy if such a remedy was appropriate in this adversary proceeding. As provided in the Opinion and Order, the acts in violation of the automatic stay—here the execution and recording of the quitclaim deed which transferred the Home Place—would not be deemed void as if this Court can somehow undo the acts which violated the automatic stay. Rather, if the Court had found differently, Fifth Circuit precedent holds that the effect of the automatic stay would be voidable, and the acts in violation of the automatic stay would be deemed invalid—unless the Court validates the act through its discretion under § 362 to annul the automatic stay.

The Court’s Exception to the “General Rule” for Transfers in Violation of the Automatic Stay

The legal issue presented to this Court is novel. While not explicitly stated in the Court’s Opinion and Order, this is an issue of first impression in the Fifth Circuit. The Court found no authority directly on point which states that acts or transfers to divest a bankruptcy estate of a future possessory interest in property should be found invalid either as an operation of law or as a remedy. As stated in the Opinion and Order, the general rule that the acts or transfers in violation of the automatic stay are invalid simply does not apply based on the facts presented to this Court. Helena misinterprets the Court’s analysis concerning the validity of acts or transfers in violation of the automatic stay. The Court never held that the acts in question here are invalid. Just the opposite: the Court held that despite the automatic stay violation, there is no basis in law or fact to conclude that the act of executing and recording the quitclaim deed, which transferred the Home Place, should be deemed invalid either by operation of law or as a remedy.

Further, the Court’s reason for finding the general rule inapplicable was not solely because Helena failed to cite any legal authority to support its position.⁴ The Court reasoned that the only case law where a transfer was found to be invalid and of no legal effect is where bankruptcy estate property, itself, was transferred in violation of the automatic stay. Here, the Home Place was not property of the bankruptcy estate. The Court cited a hypothetical which explained a set of circumstances where the rule would apply: if the Home Place itself had been property of the bankruptcy estate, and the Debtor (or a third party) transferred the Home Place in violation of the automatic stay, the Court would find the transfer invalid as a matter of law based on the automatic stay violation. That is simply not the case here.

The Court also explained that the transfer cannot be deemed invalid as a matter of law or as a remedy because the automatic stay violation did not *transfer*⁵ bankruptcy estate property. In other words, the execution and recording of the quitclaim deed did not transfer the Debtor’s vested

⁴ Similarly, the Court is not bound to determine a legal issue based solely on the Defendants’ failure to produce any relevant or otherwise applicable law. Contrary to Helena’s position in its Motion to Amend, the Court did not unfairly shift the burden to Helena, and the Defendants did not fail to meet a certain burden either. Based on the procedural posture of Helena’s summary judgment motion, Helena bore the burden of establishing no genuine issues of material fact existed which entitled them to summary judgment as a matter of law. The Court found that no genuine issues of material fact existed as to whether the Defendants committed an automatic stay violation. The mere fact that Helena does not agree with the Court’s ruling as to the legal effect or remedy of such a finding is not a sufficient basis to amend the Court’s Opinion and Order.

⁵ Black’s Law Dictionary provides several definitions for “transfer”: **transfer** *n.* (14c) **1.** Any mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance. • The term embraces every method — direct or indirect, absolute or conditional, voluntary or involuntary — of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption. **2.** Negotiation of an instrument according to the forms of law. • The four methods of transfer are by indorsement, by delivery, by assignment, and by operation of law. **3.** A conveyance of property or title from one person to another. TRANSFER, Black’s Law Dictionary (11th ed. 2019), Westlaw.

remainder interests to Hood Family Farm. The acts in question here divested⁶ the Debtor of his remainder interest and, therefore, stripped the bankruptcy estate of that vested remainder interest. No “transfer” of bankruptcy estate property ever took place.

As noted above in its footnote above, the Court is aware there are several definitions to the word “transfer”. To be clear, after review of all relevant case law on transfers of bankruptcy estate property found to be in violation of the stay, the Court found that the cases almost exclusively concerned transfers under the definition of “conveyance of property or title” from one person or entity to another person or entity. No such transfer occurred under the undisputed facts of this adversary proceeding, and as such, the Court found those cases inapplicable as to the voidability of the automatic stay and the resulting invalidity of the acts which violated the automatic stay.

Helena argues in its Motion to Amend that the Court’s position that no transfer took place is inconsistent with the rest of the Court’s Opinion and Order. The Court does not follow that logic. If Helena is referring to a more general or expansive definition of “transfer”, in that somehow the divestment of the Debtor’s vested remainder interest which stripped the bankruptcy estate of that interest is somehow a transfer, the Court duly notes that argument. Nevertheless, the Court rejects it. Simply because the Court found that the Debtor’s vested remainder interest was bankruptcy estate property does not mean those vested remainder interests were transferred to Hood Family Farm when the Home Place was transferred in fee simple to Hood Family Farm.

Put simply, the Court can clarify its exception in the form of a rule: Where an act or transfer in violation of the automatic stay divests the Debtor of a future possessory interest in property, thereby stripping the bankruptcy estate of that future possessory property interest, the effect of the

⁶ Again, Black’s Law Dictionary defining “divestment”: **divestment** *n.* (1844) **1. Property.** The cutting short of an interest in property before its normal termination. **DIVESTMENT**, Black’s Law Dictionary (11th ed. 2019), Westlaw.

automatic stay is not deemed voidable, and the act or transfer is not deemed invalid as a matter of law based on the automatic stay violation. The Court adopts this rule based on the fact specific nature of the automatic stay violation, which is wholly distinct from any previous findings of invalidating a “transfer” based on an automatic stay violation in the Fifth Circuit. Consequently, the Court believes that Helena did not meet its burden to show a manifest error of law based on the undisputed facts presented to it.

Annulment of the Automatic Stay

Helena states in its Motion to Amend that if the Court found the transfer invalid, and the Defendants or some party moved to annul the automatic stay, the Court would decline to do so. The Court never made such a finding. The Court explained in its Opinion and Order that Fifth Circuit precedent stands for the proposition that bankruptcy courts have considerable discretion under 11 U.S.C. § 362 to annul the automatic stay. The Court was simply making the point that, even if the Court were to find the transfer at issue here invalid and were a party to move for annulment of the automatic stay, such a result may not be appropriate given that an intentional automatic stay violation occurred. The Court did not state that it would decline to annul the automatic stay. While the Court understands that Helena would like for it to find the transfer invalid, the Court’s point was that the result, i.e., a potential annulment of the automatic stay, could ultimately not be favorable to Helena.

Helena’s Failure to Plead State Law Claims and Conflicting Arguments

Helena admits that it is proper for this Court not to adjudicate state law claims that are not properly pled. The Court agrees. In the Opinion and Order, the Court makes clear that Helena did not plead any causes of action in its amended complaint that were being asserted at the summary judgment phase. That is just one of the reasons the Court did not address the state law causes of

action attacking the validity of the transfer at issue here. As evident from the amended complaint, Helena pled a cause of action related only to whether an automatic stay violation occurred. The Court found that, indeed, there are no genuine issues of material fact that the Defendants committed such a violation. No further clarification is needed on this point.

The Court will briefly address why it referred to Helena's arguments at one point as "problematic". The Court simply found the arguments conflicting, not that Helena should not make reasonable arguments necessary to advance its position. On the one hand, Helena argued that the Court need not address whether Odelle validly exercised her rights under the terms of the will of her deceased husband or whether Dilworth properly exercised her rights as Odelle's power of attorney to determine whether an automatic stay violation occurred. On the other hand, Helena argued that to determine whether executing and recording the quitclaim deed violated the automatic stay, the Court should first determine whether there was a valid transfer under state law. The Court understands that Helena is likely attempting to make an alternative argument, but the Court will call a spade a spade. The arguments as presented in the summary judgment motion and supporting brief were contradictory, even if the Court could find the transfer at issue here invalid under more than one legal theory.⁷

Equitable Remedy

Finally, Helena argues in its Motion to Amend that an equitable argument remains: the Court is rewarding, or at least preferring, bad actors, empowering the Defendants to retain "fruits of their bad acts". Helena further argues that finding in the Defendants favor, at least in terms of not invalidating the transfer, deprives the bankruptcy estate of an asset and fails to benefit all

⁷ The Court notes that it equally dismissed and found immaterial the Defendants' arguments that a state law right to transfer the Home Place was somehow justification or an excuse for violating the automatic stay.

Creditors. While the Court did not perform its analysis with an “outcome based” approach, the Court recognizes the likely result of its ruling: that the Home Place, or at least a certain percentage of the Home Place, will not be property of the bankruptcy estate. Unfortunately, at no point did Helena raise any equitable arguments in its summary judgment motion or supporting brief. As noted above, the Fifth Circuit has clearly held that a party should not move to amend a judgment for the purposes of advancing new theories. Because Helena did not raise any equitable arguments, and this Court did not address any in its Opinion and Order, the Court finds that Helena’s equitable arguments are not sufficient justification to amend its Opinion and Order under Rule 52(b).

In conclusion, the Court finds that Helena has not met its burden to show manifest error of either fact or law. Nor has Helena presented any newly discovered evidence to amend the Court’s Opinion and Order. The Court hopes that this Order does clarify its Opinion and Order to the extent necessary for the parties and any potential appellate court. Accordingly, it is **ORDERED** that the Plaintiff’s *Motion to Amend Memorandum Opinion and Order* (Dkt. #163) is **DENIED**.

##END OF ORDER##