UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
	:	
JOHN W. HOWARD,	:	**Bankruptcy No. 08-22224JAD**
	:	
Debtor.	:	**Chapter 7**
_____	:	
	:	
CARLOTA M. BOHM, (Trustee for the Bankruptcy Estate of JOHN W. HOWARD)	:	**Adversary No. 09-02127JAD**
	:	
Plaintiff,	:	**Doc. Nos. 26, 30, & 48**
v.	:	
	:	
VICTORIA M. HOWARD,	:	
	:	
Defendant.	:	
_____	:	

MEMORANDUM OPINION

This Adversary Proceeding concerns the competing rights of the Plaintiff, the Chapter 7 Trustee for the bankruptcy estate of John W. Howard, and the Defendant, Victoria M. Howard, with respect to certain mineral rights, including oil, gas and coal, underlying that certain tract of land situate in Whitley Township, Greene County, Pennsylvania and described more fully in that certain Quit Claim Deed annexed to this Memorandum Opinion at Appendix A (collectively, the "Mineral Rights").

By this Adversary Proceeding, the Trustee contends that due to her "strong arm" powers found at 11 U.S.C. § 544, the Trustee's interest in the Mineral Rights is superior to any interest claimed by Victoria M. Howard in such property. As

such, the Trustee is requesting that the Mineral Rights, and any proceeds relating to the same, be turned over to the Trustee pursuant to 11 U.S.C. §§ 542(a) and 550(a).

Because the Defendant Victoria Howard caused the Mineral Rights to be quit claimed to herself after the filing of this bankruptcy case, the Trustee further requests that the Court declare the conveyance evidenced by the quit claim deed void pursuant to 11 U.S.C. §§ 362(a) and 549. In support of this request, the Trustee contends that the transfer violated the automatic stay and constitutes an unauthorized post-petition transfer because no prior bankruptcy court approval was sought or obtained in connection with the execution and recording of the quit claim deed. The Trustee also seeks compensatory and punitive damages pursuant to 11 U.S.C. § 362(k) as a result of the Defendant's willful violation of the automatic stay.

After the Adversary Proceeding was filed, and the pleadings closed, the Defendant filed a *Motion for Summary Judgment* requesting that the Adversary Proceeding be dismissed. The Chapter 7 Trustee objected to the Defendant's motion, and the Chapter 7 Trustee filed her own *Cross-Motion for Summary Judgment*.

After due consideration of the dueling motions and related submissions filed by the parties, along with the record made in these proceedings, it appears that there is no genuine issue of material fact and that the Trustee is entitled to a judgment as a matter of law with respect to (a) the Trustee's superior interest in

the subject Mineral Rights and the proceeds associated with the same; (b) the Trustee's right to compel turnover of the subject Mineral Rights and its proceeds; (c) the voidability of the Defendant's claimed interest in the Mineral Rights and the voidability of the Defendant's attempt to improperly convey the Mineral Rights to or for the benefit of herself; (d) the liability of the Defendant with respect to her dissipation of proceeds of property of the estate; and (e) the liability of the Defendant's willful violation of the automatic stay.

The Court, however, also finds that the record of these proceedings is not currently developed enough to make any findings with respect to whether Ms. Howard should be required to pay the Chapter 7 Trustee any additional compensatory or punitive damages (above and beyond the turnover of the Mineral Rights and its proceeds) under the facts of this case. Given these circumstances, and for the reasons set forth herein, the Court will enter an order which (a) denies the Defendant's *Motion for Summary Judgment*, and (b) grants, in part, the Chapter 7 Trustee's *Cross-Motion for Summary Judgment*.

I.

On April 4, 2008, John W. Howard, ("Debtor"), filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. (See Dkt. #1, Case No. 08-22224JAD). When he commenced this bankruptcy case, the Debtor was the sole shareholder of two closely held corporations, John Howard Chrysler Jeep Dodge, Inc. and John Howard Pontiac Buick-GMC, Inc. (collectively, the "Dealerships"). The Dealerships are also debtors in bankruptcy before this Court– with John

Howard Chrysler Jeep Dodge, Inc. having filed for bankruptcy relief on February 7, 2008 at Case No. 08-20777-JAD and John Howard Pontiac Buick-GMC, Inc. having filed for bankruptcy relief on April 4, 2008 at Case No. 08-22223-JAD.

Shortly after the filing of John W. Howard's individual bankruptcy case, and upon motion of the Debtor's major creditor (United Bank), this Court ordered the appointment of a Chapter 11 Trustee on April 29, 2008. (See Dkt. #26, Case No. 08-22224-JAD).

The Court had ordered the appointment of a Chapter 11 Trustee because the Debtor had demonstrated a consistent pattern of either dishonesty and incompetence with respect to the management of his and his corporations' affairs, both before the filing of the instant case and thereafter.

Examples of the Debtor's dishonesty or incompetence included: the Debtor's failure to file an accurate list of all of his creditors when he commenced this bankruptcy case; the Debtor causing his business entities to sell of vehicles "out of trust" to the detriment of United Bank; the Debtor's improper removal and transfer of records in the Dealership cases; and the transfer (or attempted transfer) of certain assets of this estate and/or the Dealership estates to friends and family of the Debtor. (See Audio Recording of Hearing, Courtroom D, 04/29/2009 from 1:28:00 PM - 1:35:02, Case No. 08-22224-JAD).[1]

[1]The United States Bankruptcy Court for the Western District of Pennsylvania keeps an audio record of all court proceedings. A copy of the audio file, and a transcript of the same, may be obtained by any litigant upon the submission of a written request and remittance of the requisite fee to the Clerk of the United States Bankruptcy Court. Guidance as to how a litigant may obtain a transcript, or copy of a recording, is also readily available in the

(continued...)

The Debtor's personal chapter 11 filing was converted to a liquidation under chapter 7 on July 14, 2008, and Carlota M. Bohm, who previously served as Chapter 11 Trustee for the bankruptcy estate of John W. Howard, was appointed as the Chapter 7 Trustee. (See Dkt. #s 162 and 191, Case No. 08-22224JAD). Ms. Bohm is the plaintiff in this action.

Defendant, Victoria M. Howard, is the Debtor's ex-spouse. The Debtor and Defendant were married on December 25, 1987 and divorced September 28, 1998. (See Dkt. # 27, pp. 3-4).[2] The Defendant is also a creditor of the Debtor, having filed a proof of claim with this Court on May 27, 2008. (Claim #5, Claims Register, Case No. 08-22228-JAD). The claim is signed by Ms. Howard, and avers that it is in the amount of "$6,000 per month" and the basis of the claim is alleged to be "permanent alimony."

It is undisputed that prior to their marriage, the Mineral Rights were owned by the Debtor. (See Dkt. #31, Appendix 1 to the *Trustee's Memorandum of Law in Response to Defendant's Motion for Summary Judgment or Partial Summary Judgment and in Support of Trustee's Cross Motion for Summary Judgment*). In fact, no party has suggested otherwise in their submissions. Copies of the deeds submitted by the parties in connection with these proceedings reflect that John Howard and his prior wife, Peggy J. Howard acquired the Mineral Rights in 1984

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[1](...continued)
"Frequently Asked Questions" section of the Court's website found at www.pawb.uscourts.gov.

[2] Unless otherwise noted in the citation, all references in this Memorandum Opinion to "Dkt. #__" refers to the document(s) filed of record in this Adversary Proceeding at Adv. No. 09-02127-JAD.

as tenants-by-entireties. (See Dkt. #31, Exhibit C). When that marriage ended in divorce, the Mineral Rights were essentially re-deeded by John W. Howard and Peggy J. Howard to John W. Howard only. (See Dkt. #31, Exhibit E).[3]

The issues that permeate this case center solely on whether such Mineral Rights were in-fact ever conveyed to the Defendant Victoria M. Howard at any time prior to the commencement of the instant bankruptcy case, and whether Ms. Howard ever had adequately recorded her putative interest. No instrument in favor of the Defendant (reflecting that such alleged interest was duly recorded prior to the commencement of the Debtor's bankruptcy case) has been produced or filed with the Court in connection with these proceedings, and the Trustee's lien search yields none. (See Dkt. #31, Appendix 1 to the *Trustee's Memorandum of Law in Response to Defendant's Motion for Summary Judgment or Partial Summary Judgment and in Support of Trustee's Cross Motion for Summary Judgment*).

When the Debtor and the Defendant Victoria Howard divorced in 1998, they executed a *Property and Settlement Agreement*, which was filed with and approved by the Circuit Court of Monogalia County, West Virginia. (See Dkt. # 31, Exhibit K).

A provision of the *Property and Settlement Agreement* states that "[a]ll of Victoria Marie Howard's interest in real estate holdings," were to be conveyed to

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[3] The actual chain of title is more complicated. (See Dkt. #31, Appendix 1 to the *Trustee's Memorandum of Law in Response to Defendant's Motion for Summary Judgment or Partial Summary Judgment and in Support of Trustee's Cross Motion for Summary Judgment*). But, the transfers germane to the resolution of the dueling summary judgment motions are the ones set forth in the body of this Memorandum Opinion.

the Debtor, excluding her interest in "the Florida home in Boca Raton, Florida . . ." (See Dkt. #31, Exhibit K, ¶ TWELFTH). The *Property and Settlement Agreement* further provided that the Debtor and Victoria Howard mutually remised, released and forever discharged each other from "any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law or in equity, . . . it being the intention of the parties . . . that there shall be, as between them, only such rights and obligations as are specifically provided in this agreement." (Id. at ¶ EIGHTEENTH). In connection with the execution and approval of the *Property and Settlement Agreement* by and between the Debtor and Ms. Victoria Howard, Ms. Howard also deeded her Greene County real estate interests, if any, to John W. Howard and that deed was recorded in Greene County, Pennsylvania on September 23, 1998. (See Dkt. #31, Exhibit G).

Subsequent to the filing of the instant bankruptcy case and the appointment of the bankruptcy Trustee, the Defendant exercised control of the Mineral Rights on August 12, 2008 by executing a "Paid Up Oil and Gas Lease," (the "Oil & Gas Lease"), and she did so without the consent of the Trustee and without first obtaining approval of this Court. The Oil & Gas Lease entered into by the Defendant granted the right to explore and develop the Mineral Rights to an entity known as J. J. Oil & Gas Incorporated in exchange for various payments and other consideration. (See Dkt. # 52, Exhibit E). The Oil & Gas Lease was then recorded in Greene County, Pennsylvania, on October 2, 2008. Id.

After the execution of the Oil & Gas Lease, the Debtor and Defendant also recorded a Quit Claim Deed concerning the Mineral Rights in Greene County, Pennsylvania on August 25, 2008. (Dkt. # 31, Exhibit A). Again, this transaction was done subsequent to the commencement of this bankruptcy case, in-fact approximately four months thereafter, and was effectuated without the consent of the Trustee and without prior approval of this Court.

This Quit Claim Deed purported to transfer all "title and interest in the mineral rights, oil and gas and coal underlying that certain tract of land situate in Whitley Township, Greene County, Pennsylvania..." from the Debtor to the Defendant. See Id. Attached to the Deed was a handwritten agreement allegedly executed by the Debtor and Victoria Howard on December 20, 1990, (the "1990 Agreement"), which states in pertinent part the Defendant "will retain all coal, gas and oil rights, even if the farm is sold or the marriage ends in divorce." (See Dkt. # 27, Exhibit A).[4]

On March 5, 2009, after learning what had transpired, the Trustee initiated this Adversary Proceeding by filing a *Complaint to Recover Fraudulent Transfer* against the Defendant pursuant to 11 U.S.C. §§ 362, 542, 544, 549 and 550 of Bankruptcy Code, Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure, and the Pennsylvania Uniform Fraudulent Transfer Act of 12 Pa. C.S.A. §§ 5101-5110. (See Dkt. # 1, ¶ 5).

[4] The original "1990 Agreement" has yet to be produced to the Trustee and the Court. The Trustee has questioned its authenticity and effectiveness. Nevertheless, for purposes of this Memorandum Opinion only, the Court has assumed for argument sake that the "1990 Agreement" is authentic.

In response, the Defendant filed an *Answer* and an *Amended Answer* to the Complaint as well as a *Motion for Summary Judgment*. (See Dkt. #s 10, 22, 26). The Trustee countered by filing a *Response to the Defendant's Motion for Summary Judgment or Partial Summary Judgment and Cross-Motion for Summary Judgment*. (See Dkt. #30).

A hearing was held October 27, 2009 and, following the hearing, two Orders were entered. (Dkt. #s 33, 35). The first Order required the Defendant to file, "a complete and accurate accounting . . . with respect to the receipt and disposition of any and all proceeds" received in exchange for any of the Mineral Rights. See (Dkt. # 35). The second Order required the Defendant to file a response to the Trustee's *Cross-Motion for Summary Judgment* and advised the parties the Court may decide the matter without further hearing. (See Dkt. # 33).

After complying with the first Order by filing several Preliminary and Amended "Accounting" items, (see Dkt. #s 34, 42 and 46), the Defendant filed a Response to the Trustee's *Cross-Motion* and a *Brief In Support of Defendant's Motion for Summary Judgment and in Opposition to Trustee's Cross-Motion for Summary Judgment* on November 17, 2009. (Dkt. # 52). Pursuant to its second Order of October 27, 2009 this Court took the matter under advisement.

After the Court took this matter under advisement, the Trustee filed an expedited *Motion for Order Requiring Defendant to Escrow Disputed Funds*. (Dkt. #48). Pursuant to the *Motion for Order Requiring Defendant to Escrow Disputed Funds*, the Trustee requested that the Oil & Gas Lease proceeds that are in the

possession of the Defendant, which now exceed $471,000,[5] be placed into immediate escrow as a result of Victoria Howard's continued dissipation of such funds. The Defendant opposed the *Motion for Order Requiring Defendant to Escrow Disputed Funds*, and a hearing was held on the motion on December 1, 2009.

After considering arguments of counsel and the record made in these proceedings, the Court issued a bench order at the December 1, 2009 hearing, which directed that all of the proceeds of the Oil & Gas Lease be immediately turned over to the Trustee pursuant to 11 U.S.C. § § 362(a) and 542. The Court's bench order also granted, in part, the Trustee's *Cross Motion for Summary Judgment* and denied the Defendant's *Motion for Summary Judgment*. While the Court set forth in detail its findings and conclusions supporting its two bench orders at the December 1, 2009 hearing, the Court also advised the parties that this Memorandum Opinion would follow. This Memorandum Opinion therefore supplements the findings and conclusions stated by the Court on the record at the December 1, 2009 hearing.

II.

This Adversary Proceeding is a "core" proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A),(E),(H), and (O). This Court has jurisdiction over this Adversary proceeding pursuant to 28 U.S.C. § 1334(b).

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[5] Ms. Howard had received in excess of $600,000 on account of the Oil & Gas Lease; but she dissipated at least approximately $129,000 of those proceeds according to the accounting she filed with the Court. (Dkt. ##'s 46 and 47).

III.

The grant of summary judgment in adversary proceedings is controlled by Federal Rule of Bankruptcy Procedure 7056, which incorporates Rule 56 of the Federal Rules of Civil Procedure. Fed.R.Bankr.P. 7056. When faced with cross-motions for summary judgment, a court may not grant either motion, "unless one of the moving parties is entitled to judgment as a matter of law upon facts that are not genuinely disputed." Manetas v. International Petroleum Carriers, Inc., 541 F.2d 408, 413 (3d Cir. 1976) (citing Rains v. Cascade Industries, Inc., 402 F.2d 241, 245 (3d Cir. 1968)). Additionally, the party proffering the motion under consideration bears "the burden of demonstrating that there is no genuine issue of fact." Id. (citing Kress, Dunlap & Lane, Ltd. v. Downing, 286 F.2d 212, 215 (3d Cir. 1960)).

In considering a motion for summary judgment, the Court may rely upon the contents of the pleadings, the discovery and disclosure materials on file, and any affidavits. See Fed.R.Bankr.P. 7056(c). In so doing, courts are required to "resolv[e] all reasonable inferences against the party whose motion is under consideration." Gart v. Logitech, Inc., 254 F.3d 1334, 1339 (Fed. Cir. 2001) (citing McKay v. United States, 199 F.3d 1376, 1380 (Fed. Cir.1999)). "Where the record taken as a whole could not lead a reasonable trier of fact to find for the non-moving party" a grant of summary judgment will be appropriate. Huston v. Procter & Gamble Paper Products Corp., 568 F.3d 100, 104 (3d Cir. 2009)

(quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)).

With these standards in mind, the Court concludes that there is no material issue of fact with respect to the facts identified in Part I of this Memorandum Opinion. With these facts not being subject to material dispute, it appears that the Trustee is entitled to summary judgment which (a) declares by operation of 11 U.S.C.§ 544 that the Trustee's interest in the Mineral Rights, including any proceeds of the same, is superior than any interest claimed by the Defendant; (b) determines that the interest claimed by the Defendant, Victoria M. Howard, in the Mineral Rights or its proceeds is void under applicable non-bankruptcy law; (c) determines that Ms. Howard's "acquisition" of an alleged interest in the Mineral Rights by way of quit claim deed filed subsequent to the commencement of this bankruptcy case is void as being a willful violation of the automatic stay (11 U.S.C.§ 362(a)) and as being an unauthorized post-petition transfer (11 U.S.C. § 549); and (d) directs that the Defendant turnover to the Chapter 7 Trustee all proceeds the Defendant received with respect to the Mineral Rights pursuant to 11 U.S.C.§§ 541, 542 and 550; (e) determines that the Defendant is liable for all proceeds of the Mineral Rights that she dissipated; and (f) denies the *Motion for Summary Judgment* filed by the Defendant.

A.

Section 544 of the Bankruptcy Code states, in pertinent part, as follows:

> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights

> and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by...
>
> (3) a bona fide purchaser of real property. . . from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case.

11 U.S.C. § 544(a)(3).

By standing in the position of a hypothetical bona fide purchaser, the Trustee is "deemed to have conducted a title search of the property, paid value for the property, and perfected his/her interest as of the date of commencement of the case." In re Speer, 328 B.R. 699, 703 (Bankr. W.D. Pa. 2005) (citing In re Sosnowski, 314 B.R. 23 (Bankr. D. Del. 2004)).

Under these provisions of 11 U.S.C. § 544, a trustee is empowered to avoid any transfer, lien or encumbrance over which a bona fide purchaser would prevail. Midatlantic Nat'l Bank v. Bridge (In re Bridge), 18 F.3d 195, 199-200 (3d Cir. 1994).

Courts within the Third Circuit have consistently held that the scope of this "strong arm" power under § 544 is "governed entirely by the substantive law of the state in which the property in question is located as of the bankruptcy petition's filing." Id. at 200 (citing McCannon v. Marston, 679 F.2d 13, 16-17 (3d Cir. 1982); see also Deutsche Bank Nat'l Trust Co. v. Evans, 2:09cv11, 2009 U.S. Dist. LEXIS 71555, *19 (W.D. Pa. Aug. 13, 2009); In re Aulicino, 400 B.R. 175, 181 (Bankr. E.D. Pa. 2008). From the record in this case, it is clear that all of the Mineral

Rights at issue in this instance are located in Greene County, Pennsylvania. Therefore, this Court must look to Pennsylvania law.

Pennsylvania courts have consistently held transfers in mineral, oil and gas rights are considered transfers of real property. Duquesne Natural Gas Co. v. Fefolt, 198 A.2d 608, 610 (Pa. Super. Ct. 1964) (citing 24 P.L.E. Mining; Oil and Gas § 11, page 144). As such, any mineral, oil or gas rights, such as those under consideration in the case at bar, are "statutorily required to be recorded." Lesnick v. Chartiers Natural Gas Co., 889 A.2d 1282, 1284-85 (Pa. Super. Ct. 2005) (citing In re Correction of Official Records with Civil Action. Appeal of Energy Explorations, 404 A.2d 741, 742 (Pa. Commw. 1979)).

Under Pennsylvania law, for a person to attain the status of a bona fide purchaser of real property, the person must have acquired the property "without actual or constructive notice of a prior interest in the property." Wagner v. Christiana Bank & Trust Co. (In re Wagner), 353 B.R. 106, 115 (Bankr. W.D. Pa. 2006) (citing 21 P.S. §§ 351, 357; 16 P.S. § 9853).

Applying these provisions to the facts of record, this Court concludes that the Trustee may only avoid a transfer in the Mineral Rights if she did not have actual or constructive notice of the Defendant's alleged interest prior to the "time of the commencement of the case." 11 U.S.C. § 544.

By admitting that the "1990 Agreement" was not recorded until August 25, 2008, the Defendant apparently concedes that any subsequent purchaser of the Mineral Rights could not have had notice of Victoria Howard's purported interest

in the Mineral Rights as of the commencement of this bankruptcy case. Indeed, the Defendant has not alleged, let alone cited any evidence pointing to, any fact or instance that would place the Trustee as of the petition date on inquiry notice of any alleged interest by the Defendant in the Mineral Rights. As such, it is indisputable that the Trustee occupies the position of a bona fide purchaser and may exercise the "strong arm" powers set forth in 11 U.S.C. § 544. See In re Capital Center Equities, 137 B.R. 600, 610 (Bankr. E.D. Pa. 1992)(collecting cases addressing the strong arm powers of bankruptcy trustee and the trustee's right to avoid unrecorded interests when the trustee is not on inquiry notice of the claimed inchoate interest); see also In re Brown, 37 B.R. 516 (Bankr. E.D. Mo. 1984)(trustee may avoid under "strong arm" powers of Section 544(a)(3) interest in property that was unrecorded as of the commencement of the bankruptcy case) and In re Fisher, 320 B.R. 52 (E.D. Pa. 2005)(discussing avoidance powers in the context of an unrecorded mortgage).

In her brief, the Trustee lists two additional reasons as to why she maintains a superior interest in the Mineral Rights vis-a-vis the Defendant. First, the Trustee asserts she may disregard the "1990 Agreement" cited by the Defendant as being void because (a) the alleged agreement was not recorded as required by Pennsylvania law pursuant to 21 P.S. §§ 351 and 356, and (b) the document at issue was allegedly executed outside the state of Pennsylvania and was not recorded within six months from the date of execution as required by 21 P.S. § 445. (See Dkt. #30, ¶¶ 11-12). Second, the Trustee points to the 1998

Property and Settlement Agreement, which divests the Defendant of "all her interests in the property. . . " (See Dkt. #30, ¶ 13). The Court finds the Trustee's arguments to be persuasive.

In defense to the Trustee's assertion that the "1990 Agreement" is void, the Defendant attacks the Trustee's reliance on 21 P.S. § 356, which requires the recording of "[a]ll agreements in writing relating to real property situate in this Commonwealth". 21 P.S. § 356. In this regard, the Defendant avers that the Trustee is incorrect in assuming the recording statute of § 356 "renders unrecorded actions void." (See Dkt. # 52, p. 6).

The Defendant, however, ignores the legal effect of 21 P.S. § 351, which provides any unrecorded writing concerning a conveyance of an interest in land, "shall be adjudged fraudulent and void as to any subsequent bona fide purchaser." 21 P.S. § 351.

Further, the Court notes that, pursuant to 21 P.S. § 445 all deeds and conveyances made and/or executed outside the Commonwealth with respect to Pennsylvania real property must be recorded in Pennsylvania "within the space of six months from the execution thereof." 21 P.S. § 445. Pennsylvania law further provides that any such deeds or conveyances not timely recorded "shall be adjudged fraudulent and void against any subsequent purchaser. . ." Id. The Defendant nonetheless ignores the undisputed fact that the "1990 Agreement" was executed in Florida and was not recorded until August 25, 2008, which was well

after the bankruptcy petition date and approximately eighteen (18) years from its alleged execution. (See Dkt. #52, Exhibit G at p. 11, and Dkt. # 52, Exhibit F).

Thus, it appears that the "1990 Agreement" is void by operation of both 21 P.S. § 351 and 21 P.S. § 445. With the "1990 Agreement" being void as a matter of law, the Trustee (and the bankruptcy estate which she represents) is simply not subject to its terms by operation of these statutes and 11 U.S.C. § 544(a)(3).

The Court also notes that the plain language of 21 P.S. § 445 voids a conveyance not timely recorded as to any "subsequent purchaser . . . for valuable consideration." Because the transaction embodied by the "1990 Agreement" does not meet the recording requirements of Section 445, it appears that any purchaser for valuable consideration is protected, not just a bona fide purchaser. This statute further states that the failure to timely record the conveyance also renders the transaction void as to creditors of the grantor. Because the plain language of the Bankruptcy Code– found at 11 U.S.C. §§ 544(a)(1) and (a)(2)– empowers the Trustee with the powers of a hypothetical judicial lien creditor and/or execution creditor as of the commencement of the case, this Court concludes that the "1990 Agreement" is voidable pursuant to Sections 544(a)(1) and (a)(2) as well. The alleged agreement is further avoidable pursuant to 11 U.S.C. § 544(b)(1), which states that the "trustee may avoid any transfer of an interest of the debtor . . . that is voidable under applicable law by a creditor holding an unsecured claim . . ."[6]

[6] The claims docket and/or register reflects that at least 41 claims have been filed by creditors against the bankruptcy estate of John W. Howard at Case No. 08-22224-JAD. Those claims aggregate in excess of $12.7 million.

B.

Given the clear application of 11 U.S.C. § 544, Ms. Victoria Howard alleges that she maintains an undivided one-half interest in the Mineral Rights even if the Trustee is a hypothetical bona fide purchaser.[7]

The argument of the Defendant not entirely clear in this regard. But, a fair reading of the Defendant's pleadings reveals that the Defendant is contending that because the Mineral Rights were re-deeded to the Debtor after Ms. Howard's marriage to the Debtor, Ms. Howard now allegedly holds (as of the bankruptcy petition date) an interest in the Mineral Rights as tenants in common with the Debtor. Ms. Howard's argument is without merit.

As an initial matter, the suggestion that Victoria Howard obtained a marital interest in the Mineral Rights is suspect on its face. The concept of marital property under Pennsylvania law expressly excludes property acquired prior to marriage, see 23 Pa.C.S. A. § 3501(a), and the undisputed record in this case is that John W. Howard owned the Mineral Rights prior to his marriage to Defendant.[8] Nothing in the record reflects that by re-deeding the Mineral Rights

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[7] The Defendant contends that she had an entireties interest in the Mineral Rights; but nothing has been filed by the Defendant reflecting that the Mineral Rights were conveyed to her and Mr. Howard as husband and wife. As such, Ms. Howard cannot be said to have an entireties interest in any of the real property interests at issue.

[8] It is of no moment that John W. Howard previously owned the Mineral Rights as tenants-by-entireties with his prior wife, Peggy Howard. The fact remains that he always owned a 100% interest in the Mineral Rights. See In re Brannon, 476 F.3d 170 (3d Cir. 2007)(discussing entireties property, and the fact that each spouse is deemed to own the whole, or entire estate). The Court would also note that the Defendant has not alleged that the Mineral Rights constitute marital property as a result of any increase in value during her marriage with John W. Howard. See 23 Pa.C.S. A. § 3501(a). In any event, any such claims by

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to himself that John W. Howard gifted the Mineral Rights to his marital estate with Victoria Howard in 1989. Had he wanted to donate the property to his marital estate, Mr. Howard should have identified Victoria Howard as a grantee. See e.g. Brown v. Brown, 507 A.2d 1223 (Pa. Super. 1986). The record, however, reflects otherwise because the 1989 deed identifies John W. Howard as the only grantee.

Even if the Mineral Rights constituted some sort of marital property by operation of the 1989 re-deeding to John W. Howard, this result would not change or diminish the Trustee's strong arm powers. The Court reaches this conclusion because the fact that an asset constitutes marital property does not necessarily mean that a spouse's claim for equitable distribution trumps the interest of a bankruptcy trustee under the unique facts and circumstances of this case.[9]

The Court reaches this conclusion because the *Property and Settlement Agreement* entered into by and between the Debtor and Ms. Howard in 1998 unequivocally provided that Ms. Howard agreed to convey to the Debtor "all of her

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[8](...continued)
Defendant were waived as a part of the *Property and Settlement Agreement*. (See *Property and Settlement Agreement* at ¶¶ TWELFTH and EIGHTEENTH).

[9] As of the commencement of the Debtor's bankruptcy case, the Defendant had no judgment for equitable distribution of the Mineral Rights. Some courts hold that the failure of the non-debtor spouse to obtain a judgment for equitable distribution renders that spouse's claim as being a purely unsecured claim against the bankruptcy estate. See Polliard v. Polliard (In re Polliard), 152 B.R. 51 (Bankr. W.D. Pa. 1992)(Bentz, J.). Other courts have reached the opposite conclusion, holding that the non-debtor spouse holds some sort of interest in the subject property if it constitutes "marital property" under applicable non-bankruptcy law. In re Bennett, 175 B.R. 181 (Bankr. E.D. Pa. 1994)(Sigmund, J.). This Court, however, need not address this thorny issue because the *Property and Settlement Agreement*, which was approved by the West Virginia state court, provides that the real property is the Debtor's.

right, title and interest in . . . [a]ll of Victoria Maria Howard's interest in real estate holdings, . . ." As the phrase "all . . . interest in real estate holdings" is clear and unambiguous, the Court sees no reason to resort to extrinsic evidence to interpret the *Property and Settlement Agreement*. McMahon v. McMahon, 612 A.2d 1360, 1364 (Pa. Super. Ct. 1992) ("The Court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation.") (citing Trumpp v. Trumpp, 505 A.2d 601 (Pa. Super. Ct. 1985); Bohler-Uddeholm America, Inc. v. Ellwood Group, Inc., 247 F.3d 79, 93 (3d Cir. 2001) ("A party may use extrinsic evidence to support its claim of latent ambiguity, but this evidence must show that some specific term or terms in the contract are ambiguous; it cannot simply show that the parties intended something different that was not incorporated into the contract."); see also Perry v. Sonic Graphic Systems, Inc., 94 F.Supp.2d 616, 620 (E.D. Pa. 2000) ("Under Pennsylvania law, when a party argues that a contract contains an ambiguity, that party must be able to point to a reasonable alternative interpretation for the ambiguity") (citing Mellon Bank, N.A. v. Aetna Bus. Credit, Inc., 619 F.2d 1001, 1012 n.13 (3d Cir.1980)).[10]

[10] The Court rejects the notion that somehow the deed referenced in the *Property and Settlement Agreement* constitutes evidence that the Mineral Rights were reserved for Victoria Howard. Had Ms. Howard desired to retain whatever she interest she had in the Mineral Rights (if any), she would have (and should have) clearly delineated such retained property in the same fashion as she did with respect to the "Florida home" as set forth in the Twelfth Paragraph of the *Property and Settlement Agreement*, and expressly provided for an exception and reservation set forth in the deed. See (Dkt. #31, Exhibit G, pp. "186-87"). See Delaware & H. Canal Co. v. Hughes, 38 A. 568, 569 (Pa. 1897) (Under Pennsylvania law, "[s]o long as mineral deposits remain in place they are part of the freehold, and pass with it by deed, gift or other form of conveyance..."); see Moreland v. H. C. Frick Coke Co., 32 A. 634, 635 (Pa.

(continued...)

By her pleadings and briefs, it also appears that Victoria Howard is attempting to somehow re-visit her alleged claim of equitable distribution of the Mineral Rights. Any such effort is barred because The *Property and Settlement Agreement* further provides that the Debtor and Victoria Howard mutually remised, released and forever discharged each other from "any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law or in equity, . . . it being the intention of the parties . . . that there shall be, as between them, only such rights and obligations as are specifically provided in this agreement." (Id. at ¶ EIGHTEENTH).

Confining the Court's analysis to the express language within the four corners of the *Property and Settlement Agreement*, this Court finds that the Defendant ceded *all* marital interests the Defendant may have acquired in the Mineral Rights back to the Debtor in 1998.[11]

C.

In granting the Trustee summary judgment, this Court recognizes that a Quit Claim Deed was ultimately executed and recorded in August of 2008 in favor

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[10](...continued)
1895)(pursuant to Pennsylvania law, title to the surface of the land will include the mineral rights beneath it, unless those rights have been severed). Victoria Howard, however, did neither in this case.

[11] The record in this bankruptcy case is consistent with the fact that the Defendant ceded all of her alleged interests in the Mineral Rights to the Debtor. For instance, the bankruptcy case record reflects that Debtor John W. Howard entered into an Oil and Gas Lease with Atlas America, LLC on February 23, 2007, and he identified this lease at Schedule G which was filed under penalty of perjury. (See Dkt. #75, *Schedule G (and related attachments)*, Case No. 08-22224-JAD).

of Victoria Howard. However, this conveyance may be voided by the Trustee under applicable law as being an *ultra vires* act that violated the automatic stay.

The facts set forth above, and which are not subject to reasonable dispute, reveal that the Mineral Rights are property of the estate. See 11 U.S.C. § 541. The execution, acceptance of delivery, and recording of the Quit Claim Deed are acts to effectuate the transfer of property of the estate and constitute acts "to obtain possession of property of the estate" or to "exercise control over property of the estate" proscribed by 11 U.S.C. § 362(a)(3). Because these acts violate the automatic stay, the purported transaction upon which the Defendant Victoria Howard relies may be invalidated by the Trustee. In re Oxford Royal Mushroom Products, Inc., 39 B.R. 948, 949 (Bankr. E.D. Pa. 1984) (citing Kalb v. Feuerstein, 308 U.S. 433, 60 S.Ct. 343, 84 L.Ed. 370 (1940)).

D.

There exists another reason why the Quit Claim Deed is of no effect in this bankruptcy case. The execution, delivery and recording of the Quit Claim Deed is a post-petition transaction which is voidable by the Trustee pursuant to 11 U.S.C. § 549. The transfer is void because it occurred after the commencement of the case and was not authorized under title 11 of the United States Code or by an order of this Court. See 11 U.S.C. § 549.

E.

Section 550(a) of the Bankruptcy Code provides that the "trustee may recover, for the benefit of the estate, the property transferred or, if the court so orders, the value of such property" from the initial transferee. 11 U.S.C. § 550(a)(1). It appears appropriate that pursuant to this section of the Bankruptcy Code that the Mineral Rights be returned to the Trustee as the representative of the bankruptcy estate. Consequently, a judgment will be entered that voids the purported transfer of the Mineral Rights to the Defendant and returns them to the Trustee.

In addition, the Bankruptcy Code expressly provides that any property obtained by the Trustee pursuant to 11 U.S.C. § 550 "becomes part of the estate." 11 U.S.C. § 541(a)(3); see also In re Elin, 20 B.R. 1012, 1017 (D. N.J. 1982) (citing Weintraub and Resnick, Bankruptcy Law Manual pp. 4-11 (Warren, Gorham & Lamont 1980)). With the Mineral Rights constituting property of the estate, 11 U.S.C. § 541(a)(6) also provides that "property of the estate" explicitly includes "[p]roceeds, product, offspring, rents or profits of or from property of the estate." 11 U.S.C. § 541(a)(6). By operation of this statute, it is apparent that the Oil & Gas Lease, and any payments received or to be received thereon, constitutes property of the estate. As such, pursuant to 11 U.S.C. § 542, an order shall be entered which directs that the Defendant "shall deliver to the trustee, and account for, such property...." See 11 U.S.C. § 542(a).

Not to be forgotten, the Court would also note that Victoria Howard has already expended approximately at least $129,000 of the Oil & Gas Lease monies.

Ms. Howard will be liable for her dissipation of such funds, and further proceedings will be scheduled to establish exactly the amount of her liability in this regard.

F.

11 U.S.C. § 362(k) provides that an individual injured by any willful violation of a stay is entitled to recover actual damages, which include costs and attorney's fees, and may recover punitive damages. 11 U.S.C. § 362(k).[12] The Trustee asserts she is entitled to actual and punitive damages, including attorney's fees, because the Defendant's conduct violated the automatic stay. See (Dkt. #31 at p. 16). The Trustee's rationale posits that because the Defendant did not maintain any interests in the Mineral Rights, the Defendant "knowingly obtained property rightfully belonging to (the Debtor's) bankruptcy estate." Id.

It is undisputed that the Defendant knew of the Debtor's bankruptcy filing when all of the post-petition stay violations occurred because she filed a proof of claim in the Debtor's main case on May 27, 2008. See (Claim #5, Case No. 08-22224JAD). This Court has previously held that to satisfy the willfulness requirement for purposes of Section 362(k), the plaintiff does not have to prove that the defendant intended his or her conduct to violate the automatic stay. But rather all that the plaintiff must prove is that the act which violates the stay was

[12] See also Cuffee v. Atlantic Business and Comm. Dev. Corp. (In re Atlantic Business), 901 F.2d 325, 329 (3d Cir. 1990)(where chapter 11 bankruptcy trustee successfully obtained money damages against defendant for a willful violation of the automatic stay).

intentional. In re Wingard, 382 B.R. 892, 901 (Bankr. W.D. Pa. 2008) (citing In re Lansdale Family Restaurants, Inc., 977 F.2d 826, 829 (3d Cir. 1992)).

Courts have also consistently held, "[w]hether the party believes in good faith that it had a right to the property is not relevant to whether the act was willful or whether compensation must be awarded." Weisberger v. United States, IRS (In re Weisberger), 205 B.R. 727, 731 (Bankr. M.D. Pa. 1997) (citing In re University Medical Center, 973 F.2d 1065, 1088 (3d Cir. 1992)).

In the case before this Court, there is no dispute that the Defendant (by exercising control over the Mineral Rights by entering the into the Oil & Gas Lease, and by attempting to obtain an interest in the Mineral Rights by recording the Quit Claim Deed) has committed a willful violation of the stay. Application of 11 U.S.C. § 362(k) to this case is therefore appropriate.

However, the record is not established enough at this time to establish the amount of Section 362(k) damages to be assessed in this case against Victoria Howard. Specifically, the Trustee has not specified either the attorneys' fees or costs she has incurred or the nature or amount of any actual damages that should be awarded (above and beyond any shortfall with respect to the return of the Mineral Rights proceeds); nor is the record adequately developed at this time for the Court to determine the amount of punitive damages, if any, that should be awarded in this case.

Under these circumstances, the Court will grant summary judgment to the extent of finding the Defendant committed a willful violation of the automatic stay,

but will not yet address the amount of damages to be assessed against the Defendant, Victoria Howard. A trial on this limited issue will be set.

V.

For all of the reasons set forth above, the Court concludes that there is no material issue of fact with respect to the facts identified in Part I of this Memorandum Opinion. With these facts not being subject to material dispute, the Court concludes that the Trustee is entitled to summary judgment which (a) declares that the Trustee's interest in the Mineral Rights, including any proceeds of the same, is superior to any interest claimed by the Defendant; (b) determines that the interest claimed by the Defendant, Victoria M. Howard, in the Mineral Rights or its proceeds is void under applicable non-bankruptcy law; (c) determines that Ms. Howard's "acquisition" of an alleged interest in the Mineral Rights by way of quit claim deed filed subsequent to the commencement of this bankruptcy case is void as being a willful violation of the automatic stay (11 U.S.C.§ 362(a)) and as being an unauthorized post-petition transfer (11 U.S.C. § 549); (d) directs that the Defendant turnover to the Chapter 7 Trustee all proceeds the Defendant received with respect to the Mineral Rights pursuant to 11 U.S.C. §§ 541, 542 and 550; (e) determines that the Defendant is liable for her willful violation of the automatic stay and is liable for all proceeds of the Mineral Rights that she dissipated; and (f) denies the *Motion for Summary Judgment* filed by the Defendant. The Court also concludes that the Trustee is not entitled to summary judgment as to the precise amount of further damages for which Defendant Victoria is liable, as the record

in this area is not developed enough to warrant the entry of summary judgment in this regard. A trial will be scheduled on this limited issue. An appropriate Order will be entered.

Date: December 10, 2009 /S/ Jeffery A. Deller
Jeffery A. Deller
United States Bankruptcy Judge

cc: Office of the U.S. Trustee
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