

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Northern Division

In re:) Bankr. No. 99-10142
)
RONALD M. STASKO) Chapter 7
Soc. Sec. No. [REDACTED]-8013)
)
and)
) DECISION RE: TRUSTEE'S
JENNIFER L. STASKO) FINAL REPORT AND ACCOUNT
Soc. Sec. No. [REDACTED]-7534,)
)
Debtors.)

The matter before the Court is the Final Report and Proposed Distribution filed by Trustee William J. Pfeiffer and the objection to the Report filed by Mike and Linda Lesselyoung. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Decision and subsequent order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that the Trustee's Final Report and Proposed Distribution must be approved as filed.

SUMMARY OF FACTS. A Chapter 7 petition was filed by Ronald M. and Jennifer L. Stasko ("Debtors"). On their schedule of real property, Debtors included a 6,000 square foot bed and breakfast in Redfield, South Dakota. Debtors valued the property at \$156,000 and they declared \$30,000 of it exempt as their homestead.

William J. Pfeiffer was appointed to serve as the case trustee. With court approval, he sold the bed and breakfast and much of its contents for \$136,000. The sale order listed the several secured claims and taxes that would be paid from the proceeds. Debtors' claim of a homestead exemption in the property was denied.

Trustee Pfeiffer had the clerk give notice to creditors that

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they should file a proof of their claim. Mike and Linda Lesselyoung filed a proof of claim for \$4,000. They stated that it was for five real property lots in Redfield, the lots where the bed and breakfast is located. They stated on the proof that the claim was an "Unsecured Priority Claim" and that the priority was based on a "SECOND MORTGAGE." They attached to their proof an AGREEMENT AND QUITCLAIM DEED dated September 23, 1998. The agreement reflected a sale of the real property from the Lesselyoungs to Debtors for \$4,000. The Agreement also provided that

[Debtors] shall execute a Note and Mortgage as security for said consideration.... Lesselyoungs hereby agree to subordinate its Mortgage to that of [Debtors'] primary lender and expressly understands that its Mortgage will be a second mortgage on said property.

On July 21, 2000, Trustee Pfeiffer filed his Final Report and Proposed Distribution. Therein, he set forth the non exempt assets he had received and liquidated. He also stated how he intended to distribute those funds. Trustee Pfeiffer did not include Mike and Linda Lesselyoung as creditors to be paid from the proceeds from the sale of the Arctic Swan property. He did not propose to pay unsecured creditors any funds.

On August 11, 2000, the Lesselyoungs objected to Trustee Pfeiffer's proposed distribution. They argued they should be paid first from the bed and breakfast sale proceeds since the land on which the building sat was sold by them to Debtors and they had not yet been paid for it. They indicated that a third party involved with the sale had promised, but apparently failed, to "take care of any paper filing needed at court house. . . ."

The Court requested and received from Trustee Pfeiffer a reply

to the Lesselyoungs' objection. He said he had concluded, based on a title search, that the Lesselyoungs had never received and recorded a mortgage on the lots. Therefore, the Trustee said he had to treat the Lesselyoungs as unsecured claim holders. He further stated that he did not have sufficient assets to pay any of the unsecured claim holders.

DISCUSSION. When the trustee of a Chapter 7 bankruptcy case sells property, he must first pay creditors that hold a recorded lien on the property and certain administrative costs (sale costs, fees, etc.). 11 U.S.C. § 724(b). These recorded liens may include mortgages, tax liens, judgment liens, statutory liens, and the like. If the trustee has money left over after paying the recorded liens and certain administrative expenses, then § 726 directs how he is to disburse the remaining funds. Section 726(a)(1) says certain remaining administrative expenses and priority unsecured creditors should be paid next. Section 507(a) establishes which administrative and unsecured claims receive this priority treatment and in what order. The unsecured claims that receive priority treatment generally include certain taxes not secured by a lien, back wages owed to employees of the debtor, and child support or alimony. 11 U.S.C. § 507(a). Only if the trustee has money left over after paying priority expenses and unsecured claim holders is he then permitted by the Bankruptcy Code to pay general unsecured claim holders. 11 U.S.C. § 726(a)(2).

In this case, the Lesselyoungs did not have a lien or mortgage recorded on the real property when Debtors filed bankruptcy. They also did not hold a priority unsecured claim as defined by


§ 507(a). Instead, the Lesselyongs are general unsecured claim holders. Because the Lesselyongs are general unsecured claim holders, Trustee Pfeiffer could pay them only if he had enough money in the estate to first pay in full the liens and mortgages, administrative expenses, and priority unsecured claims, as the Bankruptcy Code directs. There was not enough money in the bankruptcy estate for him to pay these other claims in full. Thus, Trustee Pfeiffer could not pay anything to the Lesselyongs and the other general unsecured creditors. His proposed distribution correctly follows the Code.

In their objection to the Trustee's final report and proposed distribution, the Lessleyongs indicated that a third-party had assumed the responsibility for taking "care of any paper filing needed at the court house." If that responsibility included a mortgage to be promptly recorded on the Lesselyong's behalf, they may have to investigate whether any recourse lies against that third party.

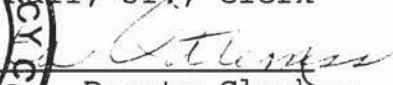
Trustee Pfeiffer shall prepare an order approving his Final Report and Account as originally proposed.

So ordered this 31 day of August, 2000.

BY THE COURT:



Irvin N. Hoyt
Bankruptcy Judge



Charles L. Nail, Jr., Clerk

Deputy Clerk

I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

AUG 31 2000

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By 

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

AUG 31 2000

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Case: 99-10142 Form id: 122 Ntc Date: 08/31/2000 Off: 3 Page : 1

Total notices mailed: 8

Debtor Stasko, Ronald M. 1300 Summit Blvd., Broadview Heights, OH 44147
Debtor Stasko, Jennifer L. 1300 Summit Blvd, Broadview Heights, OH 44147
Aty Turner, Randall B. 202 South Main Street, #600, Aberdeen, SD 57401
Trustee Pfeiffer, William J. PO Box 1585, Aberdeen, SD 57402-1585
Aty Cain, Jessica S. 517 North Main Street, Redfield, SD 57469
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321
Creditor Lesselyoung, Mike and Linda, 302 E. 1st St., Redfield, SD 57469
Aty Sauck, William K., Jr. PO Box 1030, Aberdeen, SD 57401-1030