

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-32040

JUDITHANN B. LOVELY

Debtor

**MEMORANDUM ON MOTION TO SELL
AND APPLICATION TO EMPLOY**

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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

Before the court are the Motion for Authority to Sell Property (Motion) and the Application of Party in Interest to Employ Auctioneer/Developer/Broker (Application) filed by Ralph Lovely (Movant) on July 9, 2001. By Order dated July 16, 2001, the court on its own motion directed that the Movant file a brief in support of his standing to file the Motion and Application. In response to the court's Order, a Brief in Support of Motion for Authority to Sell Property and Application of Party in Interest to Employ Auctioneer/Developer/Broker (Brief) was filed on July 26, 2001. A hearing on the Motion is not necessary.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (N), (O) (West 1993).

I

The Debtor and the Movant were formerly married. According to the Movant, he and the Debtor still jointly own their former marital residence (the Residence), which they were in the process of selling when the Debtor filed her Chapter 7 Petition. The Residence is subject to an approximately \$134,000.00 secured claim of Wells Fargo Financial.

The Movant contends that his and the Debtor's Divorce Decree mandates the sale of the Residence. Wanting the sale to occur as soon as possible due to the "substantial" monthly mortgage payments, he now seeks permission both to sell the Residence and to hire Steve Oliveira and Oliveira Development & Auction Co. (Oliveira) to assist with the sale.¹

¹ Pursuant to a Real Estate Auction Agreement dated January 27, 2001, Oliveira has already begun preparing the Residence for auction. Both the Movant and the Debtor purportedly signed the Auction Agreement. However, the copy submitted with the Movant's Application is unsigned. An Account QuickReport also filed with the Application states that Oliveira is owed at least \$13,309.41 for work done thus far.

II

The Bankruptcy Code vests significant rights and duties in the Chapter 7 trustee, including the power to sell property of the estate. See 11 U.S.C.A. § 704(1) (West 1993) (directing that it is the trustee's responsibility to "collect and reduce to money the property of the estate"). In Chapter 7 cases, the Bankruptcy Code extends this power solely to the trustee.² See *id.*; see also *In re Perkins*, 902 F.2d 1254, 1257 (7th Cir. 1990) (Section 704(1) powers are vested exclusively in the trustee.); *Samson v. Prokopf (In re Smith)*, 185 B.R. 285, 292 (Bankr. S.D. Ill. 1995) (In § 704(1) matters, the trustee is the sole representative of the Chapter 7 estate.). Section 363 further affirms the Chapter 7 trustee's exclusive rights by empowering only the trustee to sell estate property. See, e.g., 11 U.S.C.A. § 363(b), (f), (h) (West 1993 & Supp. 2001).

Similarly, § 327, which governs the employment of professional persons, grants hiring authority only to the trustee. See 11 U.S.C.A. § 327(a) (West 1993).³ Rule 2014 of the Federal Rules of Bankruptcy Procedure further provides that "[a]n order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327 . . . of the Code shall be made only on application of the trustee" FED. R. BANKR. P.

² The court's discussion is limited solely to the duties of a Chapter 7 trustee. That 11 U.S.C.A. § 1107(a) (West 1993) grants a debtor in possession under Chapter 11 certain rights of a trustee is not material to the issue presently before the court.

³ Section 327(a) provides:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C.A. § 327(a) (West 1993).

2014(a). This exclusivity satisfies the obvious need for a single managing authority and allows the trustee to hire professionals without interference from interested parties. See *In re Federated Dep't Stores, Inc.*, 114 B.R. 501, 504 (Bankr. S.D. Ohio 1990); *In re Microwave Prods. of Am., Inc.*, 104 B.R. 900, 903 (Bankr. W.D. Tenn. 1989). Were the authority to employ professional persons not vested solely in the trustee:

there would be no limit to the burden which might be placed upon an estate if [professionals hired by] the bankrupt or individual creditors could, by doing work which it is not their duty to do, . . . burden the estate with the added cost of performing work which it is the duty of others to perform.

Farinash v. Vergos (In re Aultman Enters.), No. 99-13563, 2001 WL 845135, at *3 (E.D. Tenn. July 20, 2001) (quoting *In re Owl Drug Co.*, 16 F. Supp. 139, 148 (D. Nev. 1936)).

The Movant's Brief, which is devoid of citation to any supporting authority, does not persuade the court to depart from the plain language of the Bankruptcy Code and Rules. See *United States v. Ron Pair Enters., Inc.*, 109 S. Ct. 1026, 1030-31 (1989) (Unambiguous statutes must be enforced according to their plain terms). The trustee is the sole entity authorized to sell estate property and hire professionals. The Motion and Application must therefore be denied for lack of standing.

An appropriate order will be entered.

FILED: August 1, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons set forth in the Memorandum on Motion to Sell and Application to Employ filed this date, the court directs that the Motion for Authority to Sell Property and Application of Party in Interest to Employ Auctioneer/Developer/Broker filed by Ralph Lovely on July 9, 2001, are DENIED.

SO ORDERED.

ENTER: August 1, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE