

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 HOTEL & MOTEL HOLDINGS,)
 LLC,)
)
 Plaintiff,)
)
 vs.)
)
 HENRY C. COAN, III,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2009-CP-26-05548

RECEIVED
 SEP 15 2014
 SC Court of Appeals
 HELANIE HUGGINS-WARD
 CLERK OF COURT
 2014 JUN -9 AM 9:35
 Horry COUNTY

ORDER

(Ending Supplemental Proceedings)

This matter came before me pursuant to the Petition for Supplemental Proceedings filed by the Plaintiff, Hotel & Motel Holdings, LLC, against the Defendant, Henry C. Coan, III. Appearing on behalf of the Plaintiff were Johnny Gardner and James Feldman of the Johnny Gardner Law Firm. Appearing on behalf of the Defendant was Daniel J. MacDonald.

Findings and Conclusions

Supplementary proceedings are equitable in nature. See, Ag-chem Equipment Company v. Daggerheart, 281 S. C. 380, 315 S. E. 2nd 379 (Ct. App. 1984). Foreclosure being an equitable claim, the decision to grant or deny foreclosure is equitable. See, Kriti Ripley, LLC v. Emerald Invs., LLC, 404 S. C. 367, 746 S. E.2d 26 (2013). Being equitable in nature, it is my duty to determine if there are assets available for sale to satisfy the debt of the Defendant.

At the hearing, the Plaintiff presented evidence of the Defendant's ownership interests in various entities, namely: Airport Properties, Inc., Cherokee Motels, Inc., Arrowhead Country Club Limited Partnership, SOCO Holdings, LLC, SOCO Investments, LLC, and Sand Castle South Beach, LLC.

The Assets owned by the Defendant appear to be as follows:

Arrowhead Country Club Ltd Partnership	4.8% interest
SOCO Holdings, LLC	50% interest
SOCO Investments, LLC	50% interest
Sand Castle South Beach, LLC	33.3333% interest
Airport Properties, Inc.	52.13% Interest ¹
CoJack Investments, LLC	25% interest
Cherokee Motels, Inc.	33.33% interest
1910 Arundel Road, MB, SC	50% interest

Entered into the record were various notes, mortgages, security agreements, and UCC-1 Financing Statements, which all indicate that the Defendant, during his mother's lifetime, borrowed significant money from her. These loans were secured by liens on the Defendant's interests in the entities listed above. These security interests have been perfected, and are superior to the judgment of the Plaintiff. These loans, which are now assets of the Estate of Thomasine Coan (hereinafter the Estate), are in the following amounts²:

¹ 33.33% of Coan's 52.13% interest in Airport Properties, Inc. is subject to a repurchase agreement with Ralph C. Jones pursuant to Corrected and Restated Sale and Purchase Agreement dated November 1, 2012.

² Mr. Coan is not a beneficiary of his mother's estate.

<u>Notes:</u>	
1/13/2005	\$750,000.00
1/17/2009	\$67,040.48
1/22/2009	\$500,000.00
2/8/2012	\$55,000.00
3/5/2012	\$169,000.00
11/1/2012	\$300,000.00
<u>Total</u>	\$1,780,704.48

Additionally, it appears that the Defendant's residence located at 1910 Arundel Road, Myrtle Beach, South Carolina, is subject to a mortgage securing the \$750,000.00 note to the Estate, and that this mortgage has been subordinated to a conventional mortgage.

At the hearing, the Plaintiff presented little evidence of the value of the interests owned by the Defendant in any of the entities. There was admitted into evidence a portion of the deposition of Edward Farmer, CPA, in which he gives testimony of the possible value of Airport Properties, Inc. However, the value testified to is for the assets of the entity and not of the Defendant's interest. It also appears that Mr. Farmer's testimony is based upon a statement of another shareholder and not of any appropriate valuation.


Additionally, Airport Properties, Inc. is a statutory closed corporation. The interest in this entity may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except as permitted by the articles of incorporation. S.C. Code Ann. § 33-18-110. The bylaws of Airport Properties, Inc. do not permit involuntary transfers. Therefore, I conclude that the Defendant's stock and interest in Airport Properties, Inc. is not subject to involuntary transfer by judicial sale.

With regard to the Defendant's interests in the other entities, the Plaintiff has provided not evidence of value to determine if the Defendant has any equity in excess of the debts which the assets secure, and which have priority over the Plaintiff's judgment. From the evidence and testimony presented by the parties, it is clear that the

Defendant does not have sufficient, if any, equity in the assets sought to be sold by the Plaintiff.

Given the fact that the Defendant does not have any equity in the assets sought to be sold by the Plaintiff, I deny the Plaintiffs request for an order selling the Defendant's interests in the above entities at this time. I also dissolve all Orders in this supplemental proceeding, including the Order and Rule to Show Cause signed by me and filed in the Office of the Clerk of Court for Horry County on March 3, 2014.

AND IT IS SO ORDERED.



Honorable Ralph Stroman
Special Referee for Horry County

Conway, South Carolina

6/5, 2014

STATE OF SOUTH CAROLINA)
)
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IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2009-CP-26-05548

HORRY COUNTY
 14 AUG - 8 AM 10:31
 MELANIE HUGGINS - WARD
 CLERK OF COURT

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION
 OF MASTER'S ORDER BY SPECIAL REFEREE**

This matter came before me pursuant to the Plaintiff's Notice and Motion for Reconsideration of Master's Order by Special Referee dated June 20, 2014, and filed in the Office of the Clerk of Court for Horry County on June 20, 2014. Appearing on the half of the Plaintiff was James Feldman and Johnny Gardner, both of the Johnny Gardner Law, PA. Appearing on behalf of the Defendant was Daniel J. MacDonald of Rice, MacDonald & Hicks, PA.

In its Motion, the Plaintiff requested that I alter or amend my Order dated June 5, 2014, which was filed in the Office of the Clerk of Court for Horry County on June 9, 2014 and mailed to the Plaintiff on June 10, 2014. The Plaintiff sets out two grounds for its Motion. First, the Plaintiff asked me to review my finding that there was little evidence of the value of the interest owned by the Defendant in the various entities. Second, the Plaintiff asked me to review my Order as it relates to the involuntary transfer of a shareholder's interest in a statutory closed corporation.

As to the evidence of value, I affirm my previous ruling. The portion of the deposition of Edward Farmer entered into the record does not provide any testimony by Mr. Farmer as to the valuation of the Defendant's interest in the specific entities. In fact, a review of the deposition transcript in the record indicates that Mr. Farmer did not


testify as to the value, but that Mr. Gardner merely stated his calculation of the value of one of the entities with no response by Mr. Farmer. Additionally, it is clear that Exhibit #2 (Personal Financial Statement of Defendant of July 1, 2013) is inaccurate, and does not indicate all of the indebtedness of the Defendant. Therefore, I deny the Plaintiff's Motion to alter, amend or reconsider my finding on this issue.

As to the finding related to the statutory closed corporation, I disagree with the Plaintiff's argument that the case of Kriti Ripley, LLC v. Emerald Invs., LLC, 404 S.C. 367, 746 S.E.2d 26 (2013) is applicable to statutory close corporations. It is evident to me that Kriti only deals with the statutory procedures for sales of a member's interest in limited liability companies under the South Carolina Uniform Limited Liability Company Act, specifically S.C. Code Ann. §§ 33-44-101 and 33-44-1208 (2006). These specific statutory provisions do not apply to the sale of a statutory closed corporation. Therefore, I deny the Plaintiff's Motion to alter, amend or reconsider my finding on this issue.

The remainder of the requests contained in the Plaintiff's Motion are denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff's Motion for Reconsideration of Master's Order by Special Referee is denied.

AND IT IS SO ORDERED.


Honorable Ralph Stroman
Special Referee for Horry County

Conway, South Carolina

_____ 8/7, 2014