



Dated: June 26, 2014
The following is ORDERED:

Jennie D. Latta

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
DAVID KEMP,
Debtor.

Case No. 12-25993-L
Chapter 7

David Kemp,
Plaintiff
v.
Shelby County Trustee,
City of Memphis, and
Chapter 7 Trustee,
Defendants.

Adv. Proc. No. 14-00007

ORDER DENYING DEBTOR'S MOTION
FOR PERMISSION TO FILE PROPOSED PLEADINGS

BEFORE THE COURT is the "Motion for Permission to File Proposed Pleading" (Bankr. Dkt. No. 260), filed by David Kemp, Debtor, through attorney Paul A. Robinson, Jr., on April 20, 2014. The Debtor was previously ordered not to file any new pleadings in his bankruptcy case or in the related adversary proceeding without express permission (Adv. Dkt. No. 31). The Debtor

seeks permission to file a Motion to Alter or Amend Judgment with respect to “the Order entered by the court on February 13, 2014.” The Motion for Permission to File Proposed Pleading is opposed by the Chapter 7 Trustee, Lynda F. Teems, and by Elijah Noel, Jr., the attorney for the City of Memphis and the Shelby County Trustee. For the reasons set forth below, the motion will be denied.

JURISDICTION

Jurisdiction over contested matters and adversary proceedings arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). Underlying the pending Motion to Alter or Amend are a contested matter and an adversary proceeding in which the Debtor attempted to set aside a sale of property of the estate by the Chapter 7 Trustee. The determination of matters concerning the administration of the bankruptcy estate are core proceedings arising under the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(A). The bankruptcy court has authority to entertain a motion seeking to alter or amend its prior order denying the debtor’s requested relief. The bankruptcy court also has authority to enter orders necessary or appropriate to carry out the provisions of title 11 of the United States Code. 11 U.S.C. § 105(a). The order directing the Debtor not to file additional pleadings without permission was entered pursuant to this provision of the Bankruptcy Code in order to prevent the Debtor from filing pleadings seeking to relitigate issues already decided by the court.

FACTS

The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on June 7, 2012 (Bankr. Dkt. No. 1). The primary reason for the filing of the bankruptcy case was a dispute between the Debtor and the City of Memphis and the Shelby County Trustee over unpaid property taxes. The Debtor filed objections to the claims of the city and county in November 2012, but after protracted proceedings, was never able to produce documents supporting his assertion that the claim amounts were incorrect. The Debtor's attorney, Paul A. Robinson, Jr., filed a motion to withdraw as counsel on April 23, 2013. After a number of continuances, Michael Don Harrell was substituted as counsel for the Debtor on June 26, 2013. After further extensions of the period for discovery, trial on the merits of Debtor's objections to the claims of the city and county was set for November 20, 2013. At the scheduled hearing, Mr. Harrell announced that the Debtor wished to withdraw his objections to claims. Mr. Harrell admitted that the Debtor failed to timely deliver trial exhibits to the court as ordered.

In the meantime, on August 30, 2013, the bankruptcy case was converted to Chapter 7 upon motion of the Chapter 13 trustee for cause including the failure of the Debtor to obtain confirmation of a Chapter 13 plan (Bankr. Dkt. No. 106). The Debtor filed a motion to vacate the order of conversion on September 13, 2013 (Bankr. Dkt. No. 115), which was denied after a hearing by order entered November 1, 2013 (Bankr. Dkt. No. 170).

Lynda F. Teems was appointed Chapter 7 Trustee and, on September 20, 2013, filed a motion for approval of sale of real property located at 672 Florida Street, Memphis, TN (the "Florida Street Property") to Henry Turley Company for \$311,914 (Bankr. Dkt. No. 132). The Debtor filed an untimely objection to the motion by his attorney, Mr. Harrell, which stated that the Debtor had

a contract pending with a Mr. Kuykendall, for the Florida Street Property in the amount of \$750,000 and that a group from Atlanta had expressed interest with a tentative offer of \$975,000 (Bankr. Dkt. No. 157). Filed with the motion was a copy of an undated Commercial and Sale Agreement purportedly signed by Kenneth C. Kuykendall as Buyer, not signed as accepted by the Debtor or the Trustee, and calling for a closing on or before April 17, 2013, with the possibility of three 90-day extensions, but conditioned upon “the approval and zoning to build apartments (mid/high rise) or condo’s” (the “First Kuykendall Contract”) (Bankr. Dkt. No. 158).

At the hearing on October 23, 2013, neither of the Debtor’s proposed purchasers appeared, and the Trustee indicated that in her opinion, sale of the Florida Street Property to the Henry Turley Company was in the best interest of the estate. The motion was granted by order entered November 11, 2013, which approved the sale of the Florida Street Property and authorized the Trustee to execute any and all documents necessary to consummate the sale. The order specifically waived the stay of Federal Rule of Bankruptcy Procedure 6004(h), meaning that the Trustee was authorized to immediately proceed with closing (Bankr. Dkt. No. 175). At the same hearing on October 23, 2013, the court denied the Debtor’s motion to vacate the order converting his case to Chapter 7 (Bankr. Dkt. No. 170).

Even though the Debtor was represented by Mr. Harrell, and before the written order denying the motion to vacate the order of conversion was entered, a Mr. M.L. Williams, a non-attorney advisor to the Debtor, filed an “EXPEDITED MOTION TO (RECONSIDER) ORDER CONVERTING CHAPTER 13 CASE TO CHAPTER 7” (Bankr. Dkt. No. 166), which alleged, among other things, that the Debtor had a contract for sale of the Florida Street Property for \$895,000 and that “BIDDERS HAS BEEN HARRASSING MR. DAVID KEMP AND

GRANDDAUGHTER FOR 2 YRS ABOUT PROPETIES” [sic]. Attached to the motion was a copy of a contract virtually identical in all respects to the First Kuykendall Contract except that the purchase price was changed to \$895,000, the condition concerning zoning was amended to add the proviso that the approval be for apartments or condominiums four stories high, and the specification of three extensions of the contract was amended to add the proviso that the buyer would forfeit \$10,000 earnest money for each extension request (the “Second Kuykendall Contract”). The court ordered this motion to be stricken from the docket because it was filed by a non-attorney representative of the Debtor (Bankr. Dkt. No. 190). Mr. Harrell then filed an “Expedited Motion to Dismiss Chapter 7 Case” on December 6, 2013 (Bankr. Dkt. No. 201), and an “Amended Emergency Motion to Dismiss Chapter 7 Case” on December 12, 2013 (Bankr. Dkt. No. 207). The amended motion expressed concern that the proposed sale of the Florida Street Property was for a price below the value of the property. The motion indicated that there was an offer to purchase the property for an amount substantially in excess of the Turley offer. The Debtor also filed a Motion to Reduce the Time to Hear the Amended Emergency Motion to Dismiss Chapter 7 Case, which was denied because at the hearing on the motion to reduce time, the court learned that the Florida Street Property had already been sold by the Trustee.¹ The court also denied the Expedited Motion to Dismiss and the Emergency Motion to Dismiss for cause (Bankr. Dkt. No. 224).

On January 6, 2014, the Debtor filed his complaint commencing adversary proceeding number 14-00007 seeking to “1. To Set Aside Sale Property at 672 Florida; 2. To Dismiss Chapter 7 Case #25993 JDL and Revert Back to Chapter 13; 3. Emergency Relief and Money Damages”

¹ The Trustee later filed her written Report of Sale indicating that the Florida Street property had been sold to Henry Turley Company for \$311,914 (Bankr. Dkt. No. 240).

(Adv. Proc. Dkt. No. 1). The adversary proceeding complaint was signed by “M.L. Williams power of attorney for David Kemp” and by the Debtor individually.² The adversary complaint alleges, among other things, “Have sale for \$815,000 with \$20,000 deposit (See Attachment B1).” Attached to the complaint was another copy of the Second Kuykendall Contract with a purchase price in the amount of \$895,000.³ The complaint asked, among other things, that the court “issue a temporary restraining order, restraining and enjoining Defendants from foreclosing on real property known as 3230 Commercial Parkway Memphis TN 38116.” This request was denied, *sua sponte*, because the complaint failed to allege that there was a foreclosure pending with respect to that property (Adv. Proc. Dkt No. 2). The Debtor then filed a “MOTION TO SET A HEARING FOR ADVERSARY CASE 14-00007 (INJUNCTIVE RELIEF-OTHER)): COMPLAINT BY DAVID KEMP AGAINST CITY OF MEMPHIS (TN), SHELBY COUNTY, (slv) (ENTERED: 01/06/2014) MOTION TO REHEAR OR DENY ORDER DENYING REQUEST FOR TEMPORARY RESTRAINING ORDER (RELATED DOCUMENT (1): 1 ADVERSARY CASE 14-00007.(72 (INJUNCTIVE RELIEF-OTHER)): COMPLAINT BY DAVID KEMP AGAINST CITY OF MEMPHIS (TN), SHELBY COUNTY.(SLV)(ANA)(ENTERED 01/06/2014) EXPEDITED MOTION TO (RECONSIDER) ORDER CONVERTING CHAPTER 13 CASE TO CHAPTER 7.” This motion was set for hearing on February 5, 2014.

² Perhaps as a result of this filing, on January 14, 2014, Mr. Harrell filed an “Expedited Motion to Withdraw as Attorney” in the bankruptcy case (Bankr. Dkt. No. 231). That motion was granted on February 12, 2014 (Bankr. Dkt. No. 243).

³ The court notes that even when three possible extensions are considered, proof of which was never provided, the last possible date for closing of the Second Kuykendall Contract was January 12, 2014.

The Trustee responded by filing a motion to dismiss the complaint for failure to state a claim and an objection to the motion to reconsider (Adv. Proc. Dkt. Nos. 14 and 15). The city and county joined in the motion to dismiss (Adv. Proc. Dkt. No. 16). The Debtor failed to respond to the Trustee's motion to dismiss. Hearings on the Debtor's motion and the Trustee's motion were set for February 12, 2014. At the hearing, the Debtor/Plaintiff made the same arguments that he had made before concerning the Florida Street Property. At this hearing, in addition to asking that the complaint be dismissed, the Trustee orally asked that the Debtor be enjoined from filing other pleadings in the adversary proceeding or the bankruptcy case without permission of the court because, she asserted, the Debtor had filed multiple pleadings seeking essentially the same relief, all of which had been denied. The Trustee argued that the Florida Street Property had been sold and was no longer property of the estate, that there was no foreclosure pending with respect to any property of the Debtor, and thus that the complaint failed to state a cause of action against the Trustee or the other defendants. The court sustained the Trustee's objection to the "Motion to Set Hearing for Adversary Case," granted the motion to dismiss, and granted the oral motion for injunction as the result of the Debtor's continued attempts to bring the same arguments before the court (Adv. Proc. Dkt. Nos. 31 and 32). The Debtor and Mr. Williams were enjoined from filing any further pleadings in the underlying bankruptcy case and the adversary proceeding (Adv. Proc. Dkt. No. 31). No appeal was taken from this order.

On two occasions the Debtor attempted to file pleadings in the adversary proceeding, but the clerk was directed not to docket the proposed pleadings (Adv. Proc. Dkt. Nos. 37 and 42). Finally, the Debtor, by his attorney Paul A. Robinson (the Debtor's original attorney), filed the present Motion for Permission to File Proposed Pleading, which was docketed in the bankruptcy case

(Bankr. Dkt. No. 260) and in the adversary proceeding (Adv. Proc. Dkt. No. 44). The Trustee filed a timely objection to the motion and the court conducted a hearing on April 30, 2014. At the hearing, Mr. Robinson asked that he be allowed to file a post-hearing brief in support of the motion and the court set a briefing schedule. The Debtor timely filed his brief on May 15, 2014 (Bankr. Dkt. No. 275), and the Trustee timely filed her brief in response on May 30, 2014 (Bankr. Dkt. No. 277). The matter is thus ready for decision.

The Debtor seeks permission to file a Motion to Alter or Amend Judgment. The order that the Debtor seeks to alter or amend is “the order of February 13, 2014,” which the Debtor identifies as the order dismissing the adversary proceeding complaint. The Debtor asks that he be allowed to file an amended complaint. Even though the clerk was directed not to docket the proposed pleading, the Motion to Alter or Amend and its exhibits, including the proposed amended complaint, appear on the adversary proceeding docket at number 41. The proposed amended complaint names the City of Memphis, Shelby County, and “Chapter 7 Trustee” as defendants. It recites that the Debtor is the owner of property at 672 Florida and that the Debtor has an offer to purchase the property for \$815,000. A copy of a Contract for Sale of Real Estate is attached to the proposed amended complaint, which is dated December 18, 2013, and names Verlyn Britton as buyer. The purchase price is listed at \$815,000. The contract is signed by David K. Kemp and Verlyn Britton. Also appended to the proposed amended complaint are descriptions of a number of land sales. The complaint states that the court approved the sale of the Florida Street Property without knowledge of a competing offer of \$815,000 and an appraisal of \$540,000. The proposed amended complaint asserts that the sale to the Henry Turley Company should be set aside because it was for an inadequate price. Mr. Robinson was given permission to brief the question of whether inadequate

price alone would support the setting aside of a sale of real estate. Mr. Robinson argues that the motion to alter or amend is appropriate and permission to file it should be granted because “the Amended Complaint attached hereto as Exhibit A sets forth the grounds of the adversary proceeding which have not previously been before the court.”

The Trustee responds with five arguments:

- A. The Debtor does not have standing to file the proposed pleadings because he is not the owner of the Florida Street Property, he did not obtain a stay of the sale pending his “appeal,” and the sale has been consummated.
- B. The purchaser is a bona fide purchaser for value.
- C. The motion to alter or amend was not timely filed.
- D. There is no provision in the Federal Rules of Civil Procedure that permits the filing of an amended complaint after judgment has been rendered.
- E. The proposed pleading fails to state a claim upon which relief can be granted.
- F. The allegation of “inadequate price” is not sufficient to allow the filing of the proposed pleading seeking to set aside the sale.

Because the court believes that two of these arguments are more than adequate in explaining why the motion should not be granted, only these two will be addressed.

ANALYSIS

The court enjoined the Debtor from filing any other pleadings in this adversary proceeding or in the bankruptcy case precisely because the Debtor has raised his objection to the Trustee’s sale of the Florida Street Property to the Henry Turley Company at least three times previously. The case was converted to Chapter 7 after more than one year had elapsed since the filing of the Debtor’s

Chapter 13 petition with no plan being confirmed. Once appointed, the Trustee immediately moved to liquidate assets of the estate in an amount sufficient to pay the claims of creditors, primarily the City of Memphis and Shelby County. The Debtor objected to the Trustee's original motion to approve the sale asserting that there were two interested purchasers, Kuykendall and another unnamed group from Atlanta, who would pay more than the Henry Turley Company had offered. Neither of these proposed purchasers attended the hearing on the motion to sell, leaving the court no opportunity to evaluate whether either of them represented a bona fide offer. At the hearing, the court expressed concern about why these parties had not presented their offers to the Trustee, the only person with authority to sell property of the estate. No satisfactory explanation was given. Ultimately, the court was convinced by the Trustee's statements that the offer of the Henry Turley Company was in the best interest of the estate and approved the sale.

The written order granting the motion to sell property was entered November 11, 2013. It specifically waived the stay provided by Federal Rule of Bankruptcy Procedure 6004(h). The order included the finding that the purchaser would be deemed a good faith purchaser for purposes of 11 U.S.C. § 363(m). That section provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Mr. Harrell, attorney for the Debtor, approved the order for entry.

Ignoring the stricken pleading filed by Mr. Williams, the Debtor next raised his objection to the sale of the Florida Street Property in the Expedited Motion to Dismiss Chapter 7 Case filed December 6, 2013, and again in the Amended Emergency Motion to Dismiss Case filed

December 17, 2013. At no time, however, did the Debtor file a motion for new trial under Federal Rule of Bankruptcy Procedure 9023, or a notice of appeal under Federal Rule of Bankruptcy Procedure 8001, nor did the Debtor ever seek a stay of the sale pending appeal under Federal Rule of Bankruptcy Procedure 8005. As a result, the Trustee proceeded according to the authority provided to her by the order authorizing the sale of the Florida Street Property to the Henry Turley Company. The Trustee's Deed, dated December 11, 2013, was recorded on December 13, 2013 (Exhibit A to Brief in Support of Chapter 7 Trustee's Objection to Debtor's Motion for Permission to File Proposed Pleading).

The Debtor raised his objections to the sale yet a fourth time when he filed the complaint which commenced the adversary proceeding. The Debtor's repeated raising of objections to the sale after the court ruled upon the Debtor's objections in connection with the Trustee's motion to sell real property was precisely the justification relied upon by the court for the injunction preventing the Debtor from filing further pleadings without the permission of the court.

The Debtor now says that he should be permitted to file an amended complaint after the adversary proceeding has been dismissed because "the Amended Complaint attached hereto as Exhibit A sets forth the grounds of the adversary proceeding which have not previously been before the court." That is simply false. The only thing new about the proposed amended complaint is that it is now couched as a complaint to set aside the sale that was explicitly approved by the court and consummated by the Trustee. The reason given in support of the complaint is – as it was in opposition to the original motion – inadequacy of price. The complaint does not even address the failure of the Debtor to perfect an appeal from the order authorizing the Trustee's sale.

A. Inadequacy of Price

Inadequacy of price alone is not grounds for setting aside a confirmed bankruptcy sale. “After confirmation [of a sale,] the offer of a substantially higher sale price alone is insufficient to set aside a confirmed sale unless the initial sale price is so grossly inadequate as to shock the conscience of the court.” *Matter of Chung King, Inc.*, 753 F.2d 547, 550 (7th Cir. 1985), citing *Smith v. Juhan*, 311 F.2d 670, 672 (10th Cir. 1962) (“[A] judicial sale regularly made with notice and in the manner prescribed by law will not be denied confirmation or be set aside for mere inadequacy of price unless the price is so grossly inadequate as to shock the conscience of the court and is coupled with slight additional circumstances indicating unfairness such as chilled bidding.”); and *In re Burr Manufacturing and Supply Co.*, 217 F. 16, 21 (2d Cir. 1914) (“The rule is that inadequacy of price, standing alone, is not sufficient ground for setting aside a sale, unless the inadequacy is so great as in itself to raise a presumption of fraud or to shock the conscience of the court.”). The law in the Sixth Circuit appears to be consistent with these decisions. The court of appeals has said: “The fact alone that property sold at public sale brings an inadequate price does not constitute a sufficient reason to impeach the genuineness or validity of the sale unless inadequacy is such as to shock the conscience or raise a presumption of fraud or unfairness, nor does the fact of depression in value furnish ground in itself for not upholding a sale under a trust deed, or a subsequent rise in value a ground for setting it aside.” *Equitable Life Assurance Soc. v. Vaughn*, 82 F.2d 978 (6th Cir. 1936). The Tennessee Supreme Court has gone even further. It abandoned inadequacy of price alone as a ground for setting aside a foreclosure sale in 1984, saying that, “there must be some evidence of irregularity, misconduct, fraud, or unfairness on the part of the trustee or the mortgagee that caused or contributed to an inadequate price, for a court of equity to set aside the

sale.” *Holt v. Citizens Central Bank*, 688 S.W.2d 414, 416 (Tenn. 1984), *reh’g denied* 688 S.W.2d 414 (Tenn. April 22, 1985).

The evidence before the court at the hearing on the Trustee’s motion to sell the Florida Street Property to the Henry Turley Company included the schedules filed by the Debtor in his bankruptcy case. The original Schedule A filed by the Debtor listed the Florida Street Property with a value of \$60,000 with no outstanding lien (Bankr. Dkt. No. 1). The amended Schedule A filed by the Debtor after conversion of the case to Chapter 7 listed the Florida Street Property with a value of \$267,800 subject to liens in the amount of \$114,620.05. The liens were those held by the City of Memphis and the County of Shelby (Bankr. Dkt. No. 116). The sale approved by the court was for \$311,914 “as is, where is,” subject only to obtaining title insurance and an environmental “Phase I” survey. According to the Trustee, this amount was sufficient to discharge the liens against the property and net approximately \$170,000 for the bankruptcy estate. It was more than \$44,000 over the value placed on the property by the Debtor in his amended Schedule A.

The Debtor’s objection to the motion to sell asserted that there was a contract pending (with him, not the Trustee), for \$750,000. Filed with the motion was a copy of the First Kuykendall Contract, which had expired at the time of the hearing and was contingent upon obtaining zoning to build apartments. No representative of Kuykendall was present on the date of the hearing, October 23, 2013, to indicate whether the contract had been extended or that its contingency had been satisfied. On this record, the court was compelled to disregard the First Kuykendall Contract and approve the sale proposed by the Trustee because it was well supported by the evidence before the court, which included a sworn statement by the Debtor indicating that the value of the property was \$267,800.

The proposed amended complaint adds nothing that should alter the outcome of the first hearing or cause the court to set aside the sale. The appraisal that is appended to the Debtor's proposed amended complaint is dated January 28, 2014, with an effective date of January 24, 2014, 90 days after the October 23 hearing. It is difficult to draw conclusions about the value of the property on the date of the hearing based on this document. Moreover, the report plainly states that it is a restricted report, intended only for the use of the client (Verlyn Britton) to make an internal business decision. It further states that the proposed buyer, Verlyn Britton, stated that the proposed purchase price – offered by him or her – was above market value (Appraisal Report, p. 18).

The appraisal places the value of the Florida Street Property at \$540,000. Even if, for the sake of argument, this were taken as the value of the property on October 23, 2013, the price received by the Trustee is 58% of this appraised value, a price that is not so low as to shock the conscience. Moreover, there is no indication that the price resulted from anything other than an arms length negotiation by and between the Trustee and the Henry Turley Company. Inadequacy of price does not provide a basis for permitting the Debtor to proceed with filing his amended complaint because it is an argument that has been made and rejected numerous times before.

B. Validity of Sale

Section 363(m) conclusively protects the validity of the sale of the Florida Street Property. That section provides: “The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.” 11 U.S.C. § 363(m). The Florida Street Property was sold by

the Trustee pursuant to section 363(b) which permits a trustee, after notice and a hearing, to sell property of the estate. After notice and a contested hearing, the Trustee was authorized to sell the property. The Henry Turley Company was specifically found to be a good faith purchaser for purposes of section 363(m) (Bankr. Dkt. No. 175). The Debtor did not obtain a stay of the order authorizing the sale to the Henry Turley Company and the sale was closed pursuant to that authorization. Thus, the Debtor is precluded by section 363(m) from attacking the validity of the sale, which is his only stated purpose in seeking to file the amended complaint. His proposed amended complaint specifically asks that the court “set aside the sale of the Property to the Henry Turley Company” and “approve the sale of the Property to Verlyn Briton” (Adv. Proc. Dkt. No. 41, Exhibit 1).

Section 363(m) safeguards the finality of bankruptcy sales and protects the reasonable expectations of good faith third party purchasers. *Made in Detroit, Inc. v. Official Committee of Unsecured Creditors of Made in Detroit, Inc. (In re Made in Detroit, Inc.)*, 414 F.3d 576, 581 (6th Cir. 2005). While that statute refers only to modification of a sale on appeal, its spirit also binds the bankruptcy court faced with a motion to modify or set aside an order approving a sale. *In re Pine Coast Enterprises, Ltd.*, 147 B.R. 30, 33 (Bankr. N.D. Ill. 1992). Once a sale to a good faith purchaser is complete, any attack upon its validity is simply moot.

In some circuits, it is possible to revisit the appropriateness of the *authorization* of a sale even when the *validity* of the sale cannot be attacked. The Third Circuit, for example, holds that an appeal is only moot under section 363(m) when there was no attempt to obtain a stay of the sale *and* no effective relief can be granted without effecting the validity of the sale. *Krebs Chrysler-Plymouth, Inc. v. Valley Motors, Inc.*, 141 F.3d 490 (3d Cir. 1997). The Tenth Circuit also permits

an appeal when a sale cannot be set aside if monetary damages may be available. *In the Matter of C.W. Mining Co.*, 641 F.3d 1235, 1239 (10th Cir. 2011). The Sixth Circuit has neither accepted nor rejected this alternative approach. *Parker v. Goodman (In re Parker)*, 499 F.3d 616, 621 (6th Cir. 2007).

The Debtor's proposed amended complaint does not allege facts supporting the award of monetary relief against any of the defendants. The named defendants are the Trustee, the City of Memphis, and Shelby County. No facts are alleged with respect to any of them. Instead, the proposed amended complaint describes the sale which the complaint erroneously alleges was "conducted pursuant to a previously confirmed plan," and an offer and appraisal not previously presented to the court. The proposed amended complaint alleges no facts that would entitle the Debtor to alternative relief.

Since it was the Trustee who sold the property, one might think that the Trustee would be the proper target of the Debtor's complaint. In general, however, a trustee in bankruptcy enjoys quasi-judicial immunity from suit for actions taken in his or her official capacity. The Sixth Circuit has said that a bankruptcy trustee can be liable in his official capacity for acts of negligence and in his personal capacity only for acts willfully and deliberately in violation of his fiduciary duties. *Ford Motor Credit Co. v. Weaver*, 680 F.2d 451, 462 (6th Cir. 1982). The proposed amended complaint raises no allegation of negligence or willful dereliction of duty on the part of the Trustee, and likewise raises no theory upon which relief could be had from the other Defendants, which enjoy sovereign immunity. Thus, even if the Sixth Circuit were to adopt the alternative approach to the bankruptcy mootness question, the Debtor seeks no alternative relief. For this additional reason, his

motion for permission to file his proposed motion to alter or amend and proposed amended complaint should be denied.

CONCLUSION

The court enjoined the Debtor from filing additional pleadings in his bankruptcy case and the related adversary proceeding for the reason that the Debtor has proved unable to accept the rulings of the court in the past and has vexatiously multiplied the proceedings by continuing to raise issues already ruled on by the bankruptcy court. The Debtor now proposes to file a Motion to Alter or Amend the court's prior order dismissing the adversary proceeding in order to allow the Debtor to file an amended complaint. The proposed amended complaint raises no issues that have not already been considered by the court. The Debtor is dissatisfied with the sale of the Florida Street Property to the Henry Turley Company and believes that he could sell the property for more than the Trustee received. This was his position when the original motion for authority to sell was filed. The court found at the hearing on the motion that there simply was no proof of a viable alternative offer.

The Debtor continued to maintain his position that the sale price was inadequate when he sought relief from the order of sale, and when he sought to set aside the sale. He did not, however, obtain a stay of the sale so that he is precluded from attacking the validity of the sale. The proposed amended complaint contains no allegation upon which the court could entertain a request for alternative relief even if one were made. Therefore, the court concludes that permitting the Debtor to file the proposed Motion to Alter or Amend would serve no purpose other than to further prolong these proceedings.

Accordingly, the motion is **DENIED**.

cc: Debtor/Plaintiff
Attorney for Debtor/Plaintiff
Defendants
Attorneys for Defendants