

Dated: April 10, 2018
The following is ORDERED:





Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:
EARL BENARD BLASINGAME and
MARGARET GOOCH BLASINGAME,
Debtors.

Case No. 08-28289-L
Chapter 7

**ORDER GRANTING TRUSTEE'S MOTION TO ABANDON
AND DENYING CHURCH JOINT VENTURE'S MOTION
FOR PERMISSION TO FILE A SURREPLY**

THE MOTION OF EDWARD L. MONTEDONICO, CHAPTER 7 TRUSTEE, to allow him to abandon any of the Bankruptcy Estate's claims to the Debtors' personal property set forth in *Church Joint Venture, A Limited Partnership, on Behalf of Edward L. Montedonico, Chapter 7 Trustee v. Blasingame, et al*, Adv. Proc. No. 15-00021 (the "Adversary Proceeding"), came on for hearing on March 22, 2018. Dkt. No. 678. Earl Benard Blasingame and Margaret Gooch Blasingame (the "Debtors"), Katherine B. Blasingame, and the Blasingame Family Development Generation Skipping Trust ("Adv. Proc. Defendants") joined in the motion. Dkt. No. 680. Church

Joint Venture, a Limited Partnership (“Church JV”) objected to the motion and the joinder. Dkt. No. 682. The Debtors filed a reply to the response of Church JV (Dkt. No. 685), and Church JV sought permission to file a surreply. Dkt. No. 689. The Court has carefully considered the motions, exhibits, and arguments of counsel, and makes the following findings of fact and conclusions of law.

FACTUAL AND PROCEDURAL BACKGROUND

The Debtors commenced their bankruptcy case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code on August 15, 2008. The Debtors live in a residence in Adamsville, Tennessee. The Debtors have taken the position since the filing of their petition that the residence and its contents are owned by one of several trusts established by Mavoureen Blasingame, deceased, the mother of Earl Benard Blasingame.

Church JV is the largest and most active creditor in this bankruptcy case. It filed the Adversary Proceeding on January 22, 2015, seeking a declaration that the personal property at and around the residence and elsewhere is property of the bankruptcy estate. The original Complaint in the Adversary Proceeding alleges that there may be as much as \$1,194,200.00 in personal property not listed in the Debtors’ bankruptcy schedules. In the face of a motion to dismiss the complaint, Church JV was given permission to pursue the complaint derivatively on behalf of the Trustee. An Amended Complaint was filed on September 29, 2015. Discovery has been taken and mediation has been attempted, but the issues raised in the Amended Complaint have not been resolved. As the result of a pretrial scheduling conference held January 25, 2018, the Court issued its Order Setting Deadline to File Motion to Abandon or Motion to Compel Trustee to Abandon. Adv. Proc. Dkt. No. 152.

The Trustee timely filed his Motion to Abandon on February 20, 2018. In the motion, the Trustee recites the following facts which are supported by the record:

- a. The Internal Revenue Service has filed a proof of claim, No. 5-5, in the amount of \$293,570.42, plus interest, which is secured by tax liens of record in the Debtors' home county. With interest, the amount of the claim is now \$404,616.01.
- b. The estimate of the value of the personal property contained in the complaints filed in the Adversary Proceeding result from the Debtors' homeowners' insurance policy together with a \$72,652.00 rider for jewelry.
- c. The Trustee and other plaintiffs in related Adversary Proceeding No. 09-00482 obtained an inspection and appraisal of the personal property performed by appraiser Greer Simonton, which valued the personal property at the residence at \$194,470.00 as of December 11, 2008.
- d. The Simonton Appraisal was updated during discovery in the Adversary Proceeding. The updated opinion of the appraiser is that the personal property is worth \$199,705.00 as of August 7, 2017.

Based upon these facts, the Trustee is of the opinion that even if the plaintiff in the Adversary Proceeding was successful in obtaining a declaration that the personal property not listed in the schedules does in fact constitute property of the bankruptcy estate, there would be no recovery for the unsecured creditors of the bankruptcy estate. Instead, the entire sales proceeds would be used to pay professionals and the lien of the Internal Revenue Service. The Trustee further notes that he has received no compensation of any kind for his work in this case, which has now extended almost ten years. The Trustee concludes that in his business judgment, the Adversary Proceeding

is of inconsequential value and benefit to the estate and should be abandoned pursuant to 11 U.S.C. § 554(a).

CONCLUSIONS OF LAW

Section 544(a) of the Bankruptcy Code permits the trustee, after notice and a hearing, to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate. The decision whether to abandon property of the estate is left to the trustee rather than the court in the first instance. *In re Meyers*, 139 B.R. 858, 862 (Bankr. N.D. Ohio 1992). When considering opposition to a trustee's proposed abandonment, the burden is upon "the party opposing abandonment to prove a benefit to the estate and an abuse of the trustee's discretion." *In re Slack*, 290 B.R. 282, 284 (Bankr. D. N.J. 2003). The party opposing abandonment "must show some likely benefit to the estate; mere speculation about possible scenarios in which there might be a benefit is not sufficient." *In re East*, No. 3:12-bk-33145-SHB, 2016 WL 6952471, at *6 (Bankr. E.D. Tenn. November 23, 2016) quoting *Rajala v. Liberty Bank (In re Buerge)*, No. 11-20325; Adv. No. 13-6015, 2013 WL 5656204, at *2 (Bankr. D. Kan. Oct. 15, 2013). Conversely, abandonment should only be compelled by the court "in order to help the creditors by assuring them of some benefit in the administration of each asset ... and [a]bandonment should not be ordered where the benefit of administering the asset exceeds the cost of doing so." *Morgan v. K.C. Machine & Tool Co. (In re K.C. Machine & Tool Co.)*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating whether to permit or deny abandonment, "[t]he court only needs find that the trustee made: 1) a business judgment; 2) in good faith; 3) upon some reasonable basis; and 4) within the trustee's scope of authority." *In re Slack*, 290 B.R. at 284, citing *In re Fulton*, 162 B.R. 539, 540 (Bankr. W.D. Mo. 1993).

The Trustee has more than adequately satisfied the Court on each of the required points. He has shown that there is no likely value or benefit to the estate in continuing the Adversary Proceeding. He has exercised sound business judgment; he has acted in good faith and with the benefit of more than thirty years of experience as a trustee in bankruptcy; he has reasonably relied upon the expert opinions made available to him and his knowledge of the parties and circumstances of the case; and he has acted within the scope of his authority which was specifically reserved in the Court's order permitting Church JV to proceed on behalf of the estate. *See* Dkt. No. 633.

Church JV argues that the motion is premature. It says that the Court should wait to determine whether the cause of action should be abandoned until the personal property is declared property of the estate. Only then, it says, should the Court consider the potential value to the estate. Church is mistaken. Trustees in bankruptcy and the courts routinely consider the potential benefit of litigation to a bankruptcy estate in evaluating whether a cause of action should be abandoned or retained.

Second, Church JV argues that since it is prosecuting the Adversary Proceeding at its own expense, the Court should not consider the cost of litigation in its evaluation of the motion to abandon. Again, Church JV is mistaken. There are more costs to litigation than can be measured in dollars and cents. Church JV has pursued the Adversary Proceeding for three years now. Time has been taken by attorneys, the Trustee, and the Debtors in responding to its requests and preparing for and participating in depositions. While not the only concern of the Court, the emotional toll on the Debtors has been very high. After three years, Church JV was not even able to suggest to the Court that the recovery, if it is successful, would exceed the Internal Revenue Service lien and costs of administration.

Third, Church JV argues that the Adv. Proc. Defendants lack standing and that their joinder is self-serving. The Adv. Proc. Defendants are without doubt parties in interest, and as such, have the right to be heard on the question of abandonment. “Party in interest” is not a defined term in the Bankruptcy Code, but in the context of a Chapter 11 case includes, by way of illustration, “the debtor, the trustee, ... [and] a creditor.” 11 U.S.C. § 1109(b). The Bankruptcy Appellate Panel has interpreted the term to include any “party [that] has a ‘sufficient stake’ in the outcome of that proceeding, which can include having a pecuniary interest directly affected by the bankruptcy proceeding.” *In re Pertuset*, 485 B.R. 478 (Table), 2012 WL 6598444 at *10 (B.A.P. 6th Cir. 2012), quoting *Church Mut. Ins. Co. v. Am. Home Assurance Co. (In re Heating Oil Partners, LP)*, 422 F. App’x 15, 17 (2d Cir. 2011). The Adv. Proc. Defendants are no doubt interested in the outcome of the motion, and they represent their own interests, but this does not mean that they should not be heard. They do not ignore the interests of the creditors as a whole. They have joined in the Trustee’s observation that no creditors other than the Internal Revenue Service will benefit from the prosecution of the Adversary Proceeding. They note that to the extent that any funds might be available after the liens of the Internal Revenue Service are satisfied, those funds would be used to pay administrative expenses of the estate, which would include the attorney fees incurred by Church JV on behalf of the Trustee. They conclude that under no scenario suggested by the Trustee or Church JV will there be excess funds available for distribution to general unsecured creditors. These observations are helpful to the Court and will be heard.

Fourth, Church JV argues that the mere successful prosecution of the Adversary Proceeding constitutes a “benefit” to the estate. It argues that even if the Internal Revenue

Service receives the lion's share of the funds, that is a benefit to the bankruptcy estate. The Court is satisfied that the Internal Revenue Service has more than adequate remedies available to it to enforce its liens upon abandonment of the Adversary Proceeding by the Trustee. It is not in need of the Trustee's or this Court's protection, and recovery on its behalf is not a benefit to the estate.

Fifth, Church JV argues that granting the motion would be tantamount to the issuance of an advisory opinion by the Court on the issue of ownership of the property. To the contrary, the Court need only assume for the benefit of argument that Church JV will ultimately prevail to evaluate whether the Adversary Proceeding is of value or benefit to the estate. Church JV has held the uncertainty of the outcome of litigation over the heads of the Adv. Proc. Defendants for three years now and has apparently not obtained an offer of settlement to its liking. The Court cannot imagine that continuing the litigation for any additional period of time will change that outcome. Thus, assuming that Church JV will prevail completely in its efforts if it is permitted to bring its case to trial is the best way for the Court to evaluate the value and benefit of the Adversary Proceeding to the estate. The Court agrees with the Trustee's business judgment that it has none.

Church JV asked that it be given permission to file a surreply to the Debtors' Reply to its Response. Having read the pleadings and heard the oral arguments, the Court does not believe that any additional briefing would benefit it in reaching its decision.

CONCLUSION

For the foregoing reasons, the Trustee's Motion to Abandon is **GRANTED**. Church JV's Motion for Leave to File Response/Surreply is **DENIED**.

cc: Debtors
Attorneys for Debtors
Church Joint Venture, L.P.
Attorney for Church Joint Venture, L.P.
Chapter 7 Trustee
Attorney for Chapter 7 Trustee (if any)
Katherine B. Blasingame
Attorney for Katherine B. Blasingame
Blasingame Family Development Generation Skipping Trust
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