Dated: April 26, 2010
The following is ORDERED:

Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re	FELLOWSHIP OF BELIEVERS IN CHRIST CHURCH d/b/a NEW ANTIOCH M.B. CHURCH,	Case No. 09-32779-L Chapter 11
	Debtor.	

OPINION ON MOTION OF FIRST TENNESSEE BANK NATIONAL ASSOCIATION FOR RELIEF FROM THE AUTOMATIC STAY OR, IN THE ALTERNATIVE, FOR ADEQUATE PROTECTION

BEFORE THE COURT is the motion of First Tennessee Bank National Association ("First Tennessee") seeking relief from the automatic stay or in the alternative, adequate protection. The court conducted an evidentiary hearing on February 17, 2010, at which Rev. Joseph Jackson, pastor of Fellowship of Believers in Christ Church, gave testimony. The parties stipulated to the authenticity and admissibility of certain documents attached to the motion filed by First Tennessee including a promissory note and deed of trust, copies of records of the Tennessee Secretary of State and the Monthly Operating Reports filed by the Debtor for the months of November and December

2009. Following the hearing, the court issued its sua sponte order directing additional briefing as the result of its discovery of a quit claim deed purporting to transfer title to certain real property from New Antioch Missionary Baptist Church to Fellowship of Believers in Christ Church, Inc. Both First Tennessee and the Debtor timely filed additional briefs.

First Tennessee seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d) for cause on the basis that the Debtor maintains merely a possessory interest in the real property that is subject to First Tennessee's lien and on the basis that its interest is not adequately protected. In the alternative, First Tennessee argues that the Debtor has no equity in the real property and that it is not necessary to an effective reorganization. Based upon the testimony of the witness, the exhibits, and arguments of counsel, the court makes the following findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052. Jurisdiction and venue were admitted. This is a core proceeding. 28 U.S.C. 157(b)(2)(G).

FACTS

According to the records of the Secretary of State of Tennessee, New Antioch Missionary Baptist Church was initially incorporated on June 30, 1993. Rev. Joseph Jackson stated that he was elected pastor of the church in November of 2005. Rev. Jackson testified that when he became pastor, the church had been dwindling and that he thought that the church needed a fresh start, including a new name. The corporation began to use the name "The Fellowship of Believers in Christ Church" sometime during 2006. In that year, the corporation was administratively dissolved. On March 2, 2007, a quit claim deed was recorded with the Shelby County Register of Deeds whereby New Antioch Missionary Baptist Church purported to transfer a portion of the property subject to the lien of First Tennessee to "The Fellowship of Believers in Christ Church, Inc." At that

time, there was no legal entity by that name. The quit claim deed was prepared by the attorney Cedric D. Wooten, who is the attorney for the Debtor in this case. On October 15, 2008, the corporation was reinstated and its name officially changed to "The Fellowship of Believers in Christ Church." On August 17, 2009, the corporation was again administratively dissolved. It was reinstated September 10, 2009, and the name was changed back to New Antioch Missionary Baptist Church. Rev. Jackson testified that he initiated the reinstatements and name changes. He said that the church is known as New Antioch Missionary Baptist Church. On the same day that the corporation initially named New Antioch Missionary Baptist Church was reinstated, the records of the Secretary of State reflect that a new corporation was formed named, "The Fellowship of Believers in Christ Church." This is an active corporation with the same address as New Antioch Missionary Baptist Church.

New Antioch is indebted to First Tennessee pursuant a promissory note dated September 8, 2004, in the original principal amount of $733,260.00. The note calls for 59 regular payments of $6,715.32 per month, and a final payment estimated to be $577,394.32 due on September 9, 2009. The note is secured by a deed of trust encumbering the church property located at 3475-3485 Rhodes Avenue in Memphis Tennessee. New Antioch was unable to make the balloon payment. First Tennessee made demand on August 11, 2009, and subsequently initiated foreclosure proceedings with respect to the real property. A foreclosure sale was scheduled for November 13, 2009, but the sale was stayed when a Chapter 11 bankruptcy petition was filed in the name of "The Fellowship of Believers in Christ Church d/b/a New Antioch M.B. Church."

The employer identification number used by the Debtor in filing its bankruptcy petition is different from the taxpayer identification number used by First Tennessee's borrower. First Tennessee argues that the quit claim deed, which was given before the second corporation came into

existence, was ineffective to transfer title. Thus, First Tennessee argues that the Debtor has no interest in the real property securing its debt, and that it is entitled to relief from the automatic stay. Rev. Jackson and counsel for the Debtor, however, treat the two corporate entities as if they were the same.

ANALYSIS

First Tennessee seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (2), which provide:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as be terminating, annulling, modifying, or conditioning such stay –
>
> (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
>
> (2) with respect to a stay of an act against property under subsection (a) of this section, if–
>
> (A) the debtor does not have a equity in such property; and
>
> (B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362(d). Pursuant to section 362(g)(1), First Tennessee bears the burden of proof on the issue of the Debtor's equity in the property, and the Debtor bears the burden of proof on all other issues. First Tennessee did not present proof concerning the amount of its debt or the value of the real property securing its debt. The Debtor's Schedule A indicates that the value of the real property is $955,000, and the amount of the indebtedness is $600,000, indicating a substantial equity. First Tennessee takes the position that the property is not owned by the Debtor, however. By implication, First Tennessee asserts that the Debtor has no equity in the property and that cause exists for granting relief from the automatic stay. Indeed, First Tennessee asserts that the Debtor has no interest in the property other than a bare possessory interest.

First Tennessee appears to be correct. As noted above, the records of the Tennessee Secretary of State reflect the formation of two distinct corporate entities, the first in 1993 named "New Antioch Missionary Baptist Church," which for purposes of this opinion will be identified as New Antioch, and the second in 2009 named The Fellowship of Believers in Christ Church, which will be identified as Fellowship. It is true that New Antioch at one point changed its name to "The Fellowship of Believers in Christ Church," but then changed it back in 2009. According to the Tennessee Secretary of State, New Antioch and Fellowship are distinct legal entities, and were distinct legal entities when the bankruptcy petition was filed on November 13, 2009. The name selected for the Debtor entity in filing the petition is the name of the second entity to be formed, Fellowship. There is no indication that Fellowship is indebted to First Tennessee or is the owner of the real property that secures the loan to First Tennessee.

Further, First Tennessee's borrower is identified by a taxpayer identification number that differs from the employer identification number provided by the Debtor in filing its voluntary petition. Federal Rule of Bankruptcy Procedure 1005 specifies that, "The title of the case shall include the following information about the debtor: name, employer identification number, last four digits of the social security number or individual debtor's taxpayer identification number, any other federal taxpayer-identification number, and all other names used within eight years before the filing of the petition." The petition filed in this case, signed by Brother Thomas White as Trustee, indicates an employer identification number for the Debtor that must be taken as correct. Faced with First Tennessee's motion, the Debtor offered no explanation for the difference in identifying numbers.

Although Mr. Wooten listed both Fellowship of Believers in Christ Church and New Antioch M.B. Church as names of the Debtor on the petition as if they were two names for the same entity.

Mr. Wooten seemed at one point to argue that the title chosen for the Debtor in the petition should be read to encompass both entities. The filing of a joint bankruptcy petition is permitted only by married couples, however. *See* 11 U.S.C. § 302. Therefore, it is not possible for the petition filed in this case to include both New Antioch and Fellowship. Based upon the first name that appears upon the petition and the employer identification number used in filing the petition, which differs from that of New Antioch Missionary Baptist Church, the court finds that the new entity, Fellowship, is the Debtor, which filed the instant bankruptcy petition.

Upon the filing of the bankruptcy petition, an estate was created consisting of all the legal or equitable interests of the Debtor as of the commencement of the case. 11 U.S.C. § 541(a). Although Schedule A filed by the Debtor lists the property at 3485 Rhodes Avenue, the nature of the Debtor's interest is not specified. The parties stipulated to the authenticity of the Deed of Trust attached to the motion filed by First Tennessee, in which New Antioch, as Grantor, warrants its fee simple title to the real property. Nothing in the record indicates that the new entity, Fellowship, ever acquired an interest in the property, however. In the face of First Tennessee's motion, it was incumbent upon the Debtor to come forward with some evidence of its interest, but it failed to do so. The court's own research discovered the quit claim deed dated March 2, 2007, whereby New Antioch Missionary Baptist Church purported to transfer a portion of the property subject to the lien of First Tennessee to "The Fellowship of Believers in Christ Church, Inc." There is not now and apparently has never been a legal entity by that name. A conveyance to a fictitious person is simply void. *See Wiehl v. Robertson*, 37 S.W. 274, 276 (Tenn. 1896), where the Tennessee Supreme Court said:

> The definition of a deed that it "is a writing sealed and delivered by the parties" (Co. Litt. 171; 2 Bl. Comm. 295) makes it essential, for an instrument to operate as such, that there should be both a grantor

> and a grantee; so that a conveyance uncertain as to the person intended as grantee, as, for instance, where a grant is made to a neighborhood" (Thomas v. Inhabitants of Marshfield, 10 Pick. 364), or to one who is dead at the time of its execution (Hunter v. Watson, 12 Cal. 363), or to a person purely fictitious (David v. Insurance Co., 83 N. Y. 265), is inoperative and void.

Id. at 276. While there appears to be an exception for conveyances made to an entity's trade name, this does not help the Debtor in this case, for it is clear that the Debtor entity, Fellowship, did not exist at the time of the attempted conveyance. *See Lees v. Hickory Pointe Ltd. P'ship,* No. 01A01-9507-CH-00305, 1996 WL 82682 (Tenn. Ct. App. Feb. 28, 1996)(in contrast to facts in *Wiehl*, transfer to grantee under his trade name was upheld). At the time of the attempted conveyance, "The Fellowship of Believers in Christ Church, Inc." was at best a trade name for New Antioch, the first corporate entity to be formed. There was no conveyance of legal title to Fellowship. At most, Fellowship holds a bare possessory interest in the real property that is used for the operation of its ministries.

Although First Tennessee concedes that even a possessory interest is enough to bring an interest in real property into a bankruptcy estate, it also asserts that such an interest "does not warrant the continued protection of the automatic stay," citing *In re Haynes*, 283 B.R. 147, 156 (S.D.N.Y. 2002). In *Haynes* the bankruptcy court found that a debtor whose right of redemption following a tax foreclosure sale had expired prior to the filing of her bankruptcy petition retained merely a possessory interest that did not entitle her to the continued protection of the automatic stay. 283 B.R. at 156. *Haynes* relies in turn on the decision *In re Liggett,* 118 B.R. 213, 218 (Bankr. S.D.N.Y. 1990), which states, "a possessory interest alone is 'so tenuous as to represent merely a scintilla of an interest insufficient to warrant the continued protection of the automatic stay.'" The Debtor attempts to distinguish *Haynes* on the basis of the facts leading to the debtor being left with

a mere possessory interest. There is no doubt that the position of the Debtor vis a vis the real property at issue in this case is different from that of the debtor in *Haynes* (a hold-over tenant), but those facts do not enhance the Debtor's interest. The Debtor also relies upon *In re Dominquez*, 312 B.R. 499 (Bankr. S.D.N.Y. 2004), which is described as "declining to extend" *Haynes*, but in fact stands for the proposition that even if the debtor retained only a possessory interest in her property, it was incumbent upon the taxing authority to obtain relief from the automatic stay before proceeding with a tax foreclosure in state court. 312 B.R. at 505. In contrast to *Dominquez*, First Tennessee has not resorted to self help in this case, but has sought relief from the automatic stay.

CONCLUSION

The Court cannot understand why Fellowship is the subject of this bankruptcy filing rather than New Antioch. Neither Rev. Jackson nor counsel for the Debtor provided an explanation. The court knows of no impediment to New Antioch filing its own petition. The automatic stay applies to the debtor, property of the estate and property of the debtor, but not to property in which the debtor has neither a legal nor an equitable interest. 11 U.S.C. § 362(a)(3). The court need not address the Debtor's argument that it can provide adequate protection to First Tennessee, because the court concludes that the Debtor holds no interest in the real property that secures First Tennessee's lien that should be protected by the automatic stay. Accordingly, the motion of First Tennessee will be GRANTED. First Tennessee is directed to prepare an order incorporating the court's findings and conclusions in the form best suited to its needs. Because of the delay required for additional briefing in this case, the stay of the effectiveness of that order provided at Federal Rule of Bankruptcy Procedure 4001(a)(3) shall not apply.