


Dated: May 04, 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-JDL
Chapter 7

Church Joint Venture, a Limited Partnership,
on behalf of Edward L. Montedonico, Chapter 7 Trustee,
Plaintiff,

v.
Earl Benard Blasingame,
Margaret Gooch Blasingame,
Blasingame Family Development Generation Skipping Trust,
Blasingame Family Residence Generation Skipping Trust,
Blasingame Family Business Investment Trust,
Katherine Blasingame Church, and
Earl Benard Blasingame, Jr.,
Defendants.

Adv. Proc. No. 15-00021

ORDER GRANTING MOTION TO DISMISS

BEFORE THE COURT is the Motion to Dismiss Adversary Proceeding filed by the Defendants on April 19, 2018. Adv. Proc. Dkt. No. 158. The Motion grows out of this court's

Order Granting Trustee's Motion to Abandon and Denying Church Joint Venture's Motion for Permission to File a Surreply, entered in the underlying bankruptcy case on April 10, 2018. Bankr. Dkt. No. 692 (the "Abandonment Order"). Plaintiff Church Joint Venture, a Limited Partnership ("Church JV"), filed a Response to the Motion to Dismiss in which it requested a suspension of the adversary proceeding. Adv. Proc. Dkt. 162. Church JV also filed a Motion for Stay of Effectiveness of Abandonment Order in the bankruptcy case. Bankr. Dkt. No. 708. The court has carefully considered the arguments raised by Church JV and is of the opinion that this adversary proceeding should be dismissed.

The factual and procedural background to this case is set out in the Abandonment Order. The bankruptcy case is nearing its tenth anniversary, having been filed on August 15, 2008. This adversary proceeding has been pending more than three years, having been filed on January 22, 2015.

As set forth in the Abandonment Order, the business judgment of the Chapter 7 Trustee, Edward L. Montedonico, that any claim of the estate to the personal property in and around the residence of the Debtors is of inconsequential value and benefit to the estate is amply supported by the record. *See* 11 U.S.C. § 554(a). In connection with the Motion to Abandon, Church JV was given adequate opportunity to demonstrate a potential benefit to the estate and failed to do so. *See In re East*, 2016 WL 6952471, *6 (Bankr. E.D. Tenn. 2016) (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.). The pending adversary proceeding seeks only a declaration that personal property in the possession, control and/or use of the Debtors when their bankruptcy petition was filed belongs to the bankruptcy estate. *See* First Amended Original Complaint, Adv. Proc. Dkt. No. 44.

The Defendants assert that as the result of the Abandonment Order the bankruptcy estate, and thus Church JV, which is pursuing this adversary proceeding on behalf of the estate, lack standing to pursue it. The Defendants point out that since the underlying claims have been abandoned by the Trustee, “continued litigation will not redress any alleged harm to the estate, an essential element of standing,” citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992). Since there is no present controversy, they say, the court lacks subject matter jurisdiction and the Complaint must be dismissed. Fed. R. Civ. Proc. 12(h)(3) (“If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.”).

Church JV has filed a notice of appeal from the Abandonment Order. It argues that despite the abandonment of the estate’s interest in the personal property which is the subject of this adversary proceeding, Church JV somehow retains standing to pursue it because the court has not specifically revoked its derivative standing. Church JV candidly admits that it can find no authority for its position. It is little wonder. Once a trustee in bankruptcy abandons the estate’s interest in property, the trustee loses standing to pursue recovery of that property because upon abandonment, ownership of the property reverts to its prior owner. *Jahn v. Burke (In re Burke)*, 863 F.3d 521, 526 (6th Cir. 2017). The standing that Church JV enjoyed to pursue this adversary proceeding was derivative of the standing of the Trustee. The Trustee no longer has standing to pursue this adversary proceeding, and thus, Church JV no longer has standing to pursue it on his behalf.

The remainder of Church JV’s arguments in opposition to the Motion to Dismiss are concerned with orders *compelling* abandonment. The court’s order did not compel abandonment. Instead, it granted the Trustee permission to abandon, which is the rule, not the exception. *See*

11 U.S.C. §554(a); *In re Burke* at 525; *Morgan v. K.C. Machine & Tool Co.* (*In re K.C. Machine & Tool Co.*), 816 F.2d 238, 246 (6th Cir. 1987) (The trustee need not take property that is burdensome to the estate because the unsecured creditors would not benefit. In its discretion, the trustee may abandon property to the debtor where administration thereof would not benefit the creditors.). The bankruptcy courts do not interfere in the administration of a bankruptcy case except in very unusual circumstances. *In re Trim-X, Inc.*, 695 F.2d 296, 300 (7th Cir. 1982) (Under Code section 554(a), the trustee may abandon property without involving the court if no party in interest objects.). *See also In re Lancer Ins. Co. v. Guru Global Logistic, LLC* (*In re Guru Global Logistic, LLC*), 557 B.R. 842, 845 (Bankr. W.D. Penn. 2016). In the exercise of his sound business judgment, the Trustee has determined that there would be no potential benefit to the estate in pursuing this adversary proceeding. Church JV offered no proof that the Trustee is mistaken. The Trustee and the court assumed, for purposes of considering whether to abandon this cause of action, that Church JV would prevail in establishing that all of the personal property in the possession, control and/or use of the Debtors when their bankruptcy petition was filed belongs to the bankruptcy estate. Even so, there appears to be no possible benefit to the bankruptcy estate. The court has entered its order permitting the Trustee to abandon this action. The adversary proceeding should be and is **DISMISSED**.

Given the lengthy history of this case and the failure of Church JV to show potential benefit to the estate after ample opportunity to do so, the court sees no reason to further delay dismissal, and thus declines to grant Church JV's request for suspension of this adversary proceeding pending appeal. By separate order, the court has denied Church JV's Motion for Stay of Effectiveness of Abandonment Order.

cc: Bruce W. Akerly, Attorney for the Plaintiff
Bettye S. Bedwell, Chapter 7 Trustee
Edward L. Montedonico, (terminated Chapter 7 Trustee)
Paul G. Jennings, Attorney for Katherine Blasingame Church
Gene L. Humphreys, Attorney for Katherine Blasingame Church
Michael P. Coury, Attorney for Defendants other than Katherine Blasingame Church