

1 WRITTEN DECISION - NOT FOR PUBLICATION

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AUG 18 2005
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

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SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) CASE NO. 04-05619-H7
DONALD A. YATES,)
Debtor.) ADVERSARY CASE NO. 04-90530-H7
ORDER RE TRUSTEE'S REQUEST FOR
ORDER AUTHORIZING EVICTION OF
DEBTOR
GREGORY A. AKERS, Chapter 7)
Trustee,)
Plaintiff,)
v.)
DAVID WILLIAMS, an individual;)
THOMAS G. DURISOE, an)
individual; JIM BABLER, an)
individual; and DONALD A.)
YATES, the debtor,)
Defendants.)

Gregory A. Akers, Chapter 7 trustee (the "trustee"), moved for summary judgment on his complaint to avoid post-petition transfers and to recover and sell property of the estate pursuant to 11 U.S.C. §§ 549(a), 550, 363(b) and (h) and 105(a). Upon recovery of the property, the trustee also sought to remove and evict the debtor, Donald A. Yates (the "debtor"), from the premises and submitted the declaration of the trustee in support. The

1 trustee testified that debtor's unauthorized post-petition transfer
2 of his real property has raised concerns that the debtor may take
3 steps to decrease the marketability or value of the property,
4 cancel insurance, or fail to make homeowners fees and mortgage
5 payments, if the debtor remains in possession.

6 The trustee's motion for summary judgment came on for hearing
7 on August 16, 2005. After considering the pleadings and hearing
8 oral argument, the Court authorized the debtor to submit a
9 declaration against the eviction. The trustee filed his response.

10 After reviewing the declarations of Craig E. Dwyer, Esq.,
11 Brian M. Mahoney, Esq., and the debtor, the court finds that the
12 trustee's requested eviction of the debtor from the premises at
13 5885 El Cajon Blvd., #107, San Diego, CA 92115, Assessor Parcel
14 No. 466-750-36-07 (the "property"), is a proper exercise of the
15 trustee's business judgment. Specifically, the trustee is
16 concerned that the debtor will interfere with the trustee's
17 marketing and sale of the property and perhaps commit waste against
18 the property.

19 Since December 2004, when the trustee discovered that the
20 debtor had sold the residence without notice or court approval, the
21 case has been marked by a complete lack of cooperation by the
22 debtor to assist the trustee in setting aside the unauthorized sale
23 as well as assisting the trustee in determining whether two secured
24 liens against the property are in fact bona fide loans. The most
25 recent example of the lack of cooperation occurred at a hearing
26 before this court on August 16, 2005, when the debtor opposed the
27 transfer of the subject property back to the trustee by the current
28 owner of the property, even though the purported owner consented to

1 transfer the property to the trustee as requested.

2 Further, as of August 17, 2005, despite the debtor's
3 assertions that he would maintain the property expenses and
4 adequately insure the property, the trustee still had not received
5 a copy of the insurance policy nor proof of payment of real
6 property taxes. Given the history in this matter, there is no
7 reason to conclude, that the debtor will cooperate with the trustee
8 and his broker in attempting to show the property to prospective
9 purchasers.

10 The debtor asserts that permitting the trustee to sell the
11 property would cause him irreparable harm if he would prevail on
12 the issues in the adversary proceedings. The court has already
13 ruled on this issue. The court gave the debtor additional time to
14 file a declaration to support his contention that he would be
15 harmed if he would be removed or evicted from the subject property.
16 The debtor's declaration of August 16, 2005, (¶ 22), does not
17 address the issue of eviction, but addresses the issue of the
18 trustee's sale of the subject property. Accordingly, the trustee's
19 request to remove or evict the debtor from the subject property is
20 granted.

21 IT IS SO ORDERED.

22
23 Dated: August 18, 2005

24 
25 JOHN J. HARGROVE
26 UNITED STATES BANKRUPTCY JUDGE
27

28 S:\Yates Order.wpd