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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

In re:

LAWRENCE PAUL FEDERICO, fdba
Fargo Construction, fdba
Construction Offices, fdba
Specialty Equipment, fdba D & L
Fargo,

Debtor.

No. 2:08-cv-2182-JAM

Bankruptcy No. 07-21245-B-7
ORDER AFFIRMING DECISION OF
BANKRUPTCY COURT

BRIAN FEDERICO, WILLIAM
FEDERICO, DOUGLAS BROWN, and
TERRI BROWN,

Appellants,

v.

MICHAEL D. MCGRANAHAN,

Appellee.

Brian Federico, William Federico, Douglas Brown, and Terri
Brown (collectively, "Appellants") appeal the Bankruptcy Court's
September 5, 2008 Order Denying Appellants' Motion to Set Aside
Order and Judgment as Void pursuant to 28 U.S.C. § 158(a).

1 Michael D. McGranahan ("Appellee") opposes. For the reasons
2 stated below, the decision of the Bankruptcy Court is AFFIRMED.

3
4 BACKGROUND

5 Appellee, as Chapter 7 trustee of Lawrence Paul Federico's
6 ("Debtor's") bankruptcy estate, filed a motion in the Bankruptcy
7 Court to sell certain property that was housed in a storage yard
8 leased to Debtor (the "Property") free and clear of liens on
9 October 1, 2007. On October 16, 2007, Brian Federico filed a
10 written opposition, arguing that the Bankruptcy Court needed to
11 have an adversary proceeding to first determine whether the
12 Property belonged to the bankruptcy estate. In a supporting
13 declaration, Brian Federico stated, "I am the owner of most of
14 the personal property which is the subject of the [motion]...I
15 have certificates of ownership ("pink slips") for most of the
16 vehicles which are the subject of the Motion and many of the
17 certificates show me as the registered owner." He stated that
18 in 2002, Debtor owed him \$200,000 and gave him most of the
19 Property to satisfy the debt. He stated that the Debtor did not
20 have any ownership interest in the Property. Besides Brian
21 Federico's declaration, no other evidence or opposition was
22 filed. A hearing was set for October 30, 2007.

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24 On October 29, 2007, the Bankruptcy Court issued a
25 tentative ruling denying the motion to sell because Appellee had
26 failed to establish that the Property belonged to the bankruptcy
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1 estate. Later that day, Appellee and Brian Federico stipulated
2 to continue the motion until November 14, 2007. Both Appellee
3 and Brian Federico appeared at the hearing scheduled for October
4 30, 2007. The Bankruptcy Court ordered that the motion be
5 continued until November 14, 2007. Supplemental evidence was to
6 be filed no later than November 7, 2007.
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8 On November 7, 2007, Appellee filed supplemental evidence,
9 including 106 pages of vehicle registration inquiry reports.
10 Brian Federico did not file any supplemental evidence. On
11 November 14, 2007, after a hearing at which both Appellee and
12 Brian Federico appeared, the Bankruptcy Court granted Appellee's
13 Motion to sell the Property with the exception of three vehicles
14 that Appellee had determined did not belong to the Debtor's
15 bankruptcy estate. Furthermore, Appellee noted that the Debtor
16 had not disclosed that he was holding any property for others in
17 his bankruptcy schedule. Appellee was permitted to sell the
18 Property free and clear of the interest, if any, of Brian
19 Federico. However, his interest would attach to the proceeds of
20 the sale.
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23 The Bankruptcy Court's order approving the sale was entered
24 on November 26, 2007. The order was not appealed and became
25 final on December 6, 2007. A sale of some or all of the
26 Property occurred on or around January 19, 2008.
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1 interest in property, other than a proceeding under Rule
2 4003(d)..." However, 11 U.S.C. § 363(f)(4) states that the
3 "trustee may sell property under subsection (b) or (c) of this
4 section free and clear of any interest in such property of an
5 entity other than the estate, only if: ... (4) such interest is in
6 bona fide dispute,..." "The purpose of § 363(f)(4) is to permit
7 property of the estate to be sold free and clear of interests
8 that are disputed by the representative of the estate so that
9 liquidation of the estate's assets need not be delayed while
10 such disputes are being litigated." Moldo v. Clark (In re
11 Clark), 266 B.R. 163, 171 (9th Cir. BAP 2001). "Typically, the
12 proceeds of sale are held subject to the disputed interest and
13 then distributed as dictated by the resolution of the dispute;
14 such procedure preserves all parties' rights by simply
15 transferring interests from property to dollars that represent
16 its value." Id.

20 Appellants argue that their interest in the Property was
21 not in bona fide dispute, which would allow the trustee to sell
22 the Property and divide the proceeds amongst the claimants
23 later. Rather, they argue that they owned the Property outright
24 and that Debtor had no interest in any of it. Therefore,
25 Appellants argue, Appellee had no authority to sell the Property
26 under 11 U.S.C. § 363(f)(4). Selling the Property without an
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1 adversary process violated their due process rights, rendering
2 the sale order void.

3 The statement that Debtor had no interest in the Property
4 lacks sufficient evidentiary support. The Property was on a
5 storage lot leased by Debtor. A title search showed that the
6 majority of the Property was registered to debtor. Appellants
7 only produced a self-serving declaration to support the claim
8 that Debtor had no interest in the Property and that it in fact
9 belonged to them. Similarly, Appellants claim that they were
10 denied due process is not borne out by the facts. The
11 Bankruptcy Court allowed Appellants time to produce supplemental
12 evidence establishing ownership. Furthermore, Appellants were
13 afforded the opportunity to appeal the Sale Order of which they
14 did not avail themselves.

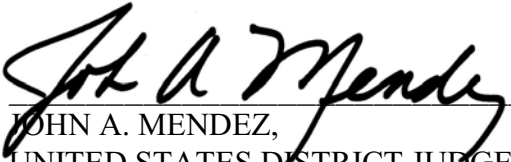
15 Appellants mistakenly rely on Fed. R. Bankr. P. 7001 in
16 stating that an adversary proceeding was required. In
17 authorizing the sale, the Bankruptcy Court was not determining
18 the issue of Appellants interest in the Property. The Court
19 left that issue for the date on which the proceeds from the sale
20 would be determined. Rather, the Bankruptcy Court, based on
21 substantial evidence, found that the Debtor shared an interest
22 in the Property with his creditors, including Appellants.
23 Accordingly, the Court finds that Appellants' Due Process Rights
24 were not violated.

ORDER

For the reasons stated above, the order of the Bankruptcy Court is AFFIRMED. Any request for attorneys' fees may be filed as a separate motion.

IT IS SO ORDERED.

Dated: September 4, 2009



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE