

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 13
)	
Jerome Sims, Jr.)	Case No. 16 B 004589
)	
Debtor.)	Judge Jacqueline P. Cox

Order on Motion to Lift Stay (Dkt. No. 31)

In this matter tax sale purchaser GAN B, LLC (“Gan”) asks to have the automatic stay lifted so that it can seek a tax deed on a parcel of real estate that it alleges the Debtor did not own at the relevant time. Gan also complains that it is not adequately protected.

I. Facts and Background

The property in issue is a residence at 8738 S. Bennett Avenue, Chicago, Cook County, Illinois (the “property”). On August 7, 2013, the Cook County Treasurer sold the property’s unpaid 2011 real estate taxes to Gan. Since that time it has paid real estate taxes on the property for the years 2011 through 2015, apparently including taxes that became due after the filing of the petition for bankruptcy relief herein, amounting to \$11,515, bearing interest at 12% per annum.

On January 19, 2016, pursuant to the Illinois Property Act, Gan filed a Petition for Tax Deed, noting that the redemption period would expire on July 11, 2016.

The Debtor’s wife, Tammy Sims, was the sole owner of the property when she died intestate on October 27, 2014. A probate case was opened in the Circuit Court of Cook County, Illinois, Case Number 15-02544. Debtor, Jerome Sims, Jr., was appointed the Independent Administrator of that probate estate. In August, 2016 the Debtor filed a motion to extinguish the interests of their minor children. On August 30, 2016, an agreed order was entered transferring 100% of the interest in the property to the Debtor; a deed reflecting this was filed with the Cook County Recorder of Deeds on September 8, 2016.

II. The Bankruptcy Case

This bankruptcy case was filed under Chapter 13 of the Bankruptcy Code on February

15, 2016. Gan was not scheduled as a creditor, nor was it disclosed in the Statement of Financial Affairs in response to Question 9 which seeks information about litigation the Debtor was involved in one year before filing for bankruptcy relief. However, the Cook County Treasurer was scheduled as a secured creditor for the back taxes. On April 29, 2016, an Amended Schedule D was filed which gave notice to Gan of this case as another entity to be notified for a debt already listed. On May 2, 2016, the Debtor's attorney filed a Certificate of Service, noting that the Amended Schedule D was sent to Gan. *See* Case 16-004589, Docket Number 24.

III. Plan Validity

The Debtor's Amended Plan, filed on April 29, 2016, included the Cook County Treasurer as a secured creditor, to be paid \$9080.31 for tax years 2012 through 2014 and \$936.38 for tax year 2015. *See* Case 16-004589, Docket Number 21, Section E, p. 2. That Plan was confirmed on May 16, 2016. Docket Number 26.

The Plan should not been confirmed so hastily. Federal Rule of Bankruptcy Procedure 2002(b) requires 28 days notice to all creditors of deadlines to file objections and the hearing to consider confirmation of a Chapter 13 Plan. The Modified Plan was confirmed a mere fourteen days after it was sent to Gan. However, Gan does not complain about this, nor does it seek leave to file a proof of claim, which, to date, it has not done. Gan has not asked to revoke the Confirmed Plan pursuant to 11 U.S.C. § 1330.

IV. Property of the Bankruptcy Estate

Section 541 of the Bankruptcy Code defines property of the estate broadly. It consists of property as of the petition date, not property acquired afterwards. It includes all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541(a)(1). It includes every conceivable interest of the debtor, future, non-possessory, contingent, speculative and derivative. “[t]he term property has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed.” *Matter of Yonikus*, 996 F.2d 866, 869 (7th Cir. 1993) (citation and internal quotation marks omitted).

The Illinois Probate Act of 1975 provides that “[i]f there is a surviving spouse and also a descendant of the decedent: ½ of the entire estate to the surviving spouse and ½ to the decedent's descendants per stirpes.” 755 ILCS 5/2-1(a). This makes one an heir and gives rise to an

inheritance. *Dillman v. Dillman*, 409 Ill. 494, 501-2, 100 N.E. 2d 557 (1951). The Debtor was entitled to his inheritance on October 27, 2014, the date of his wife's death. For that reason he held an interest in the property when he filed for bankruptcy relief on February 15, 2016 when it became property of his bankruptcy estate. In *In re Chenoweth*, 3 F.3d 1111, 1113 (7th Cir. 1993) the Seventh Circuit held that a provision in a will becomes operative on the death of the testator, not when the will is later admitted to probate. In *Elliott v. Farmers & Merchants Bank (In re Elliott)*, 81 B.R. 460, 462 (Bankr. N.D. Ill. 1987) the bankruptcy court noted that "title to real estate passes upon the death of the testatrix." Seeing no reason to distinguish between a testator/testatrix who leaves a will and an intestate whose property passes according to the laws of intestacy, this court finds that title to real estate passes upon the death of the intestate decedent. See *In re Johnsson*, 551 B.R. 384, 405 (Bankr. N.D. Ill. 2016).

The property was not owned by the Debtor at the commencement of this case, however, he had an interest in it as Tammy Sims' spouse and decedent.

V. Treatment of Tax Sale Purchaser's Claim in Chapter 13 Plan

May a debtor use a Chapter 13 Plan to extend the redemption date? Yes. See *In re LaMont*, 740 F.3d 397, 409-10 (7th Cir. 2014). In *LaMont* the Seventh Circuit noted that an interest represented by a certificate of purchase under Illinois law is a tax lien, a species of personal property with some statutory rights regarding that real property and for that reason debtors' legal or equitable title in their home was not affected by a tax sale and upon filing a bankruptcy petition, that interest became property of the bankruptcy estate. See *In re Bates*, 270 B.R. 455 (Bankr. N.D. Ill. 2001).

The certificate of purchase did not transfer the debtor's interest to Gan.

Because the Debtor filed for bankruptcy relief before the July 11, 2016 redemption date, he can treat the tax sale purchaser's claim in his Chapter 13 Plan.

VI. Insurance and Adequate Protection

The Seventh Circuit noted in *LaMont* that tax sale purchasers may ask the state court for a declaration that the tax sale was a "sale in error" because of the bankruptcy case pursuant to 35

ILCS 200/21-310(b)(1)¹. In so doing, a tax sale purchaser will be reimbursed by the county for funds it paid, plus interest. 35 ILCS 200/21-315(b)². This provides the tax sale purchaser with adequate protection. *In re Romious*, 487 B.R. 883, 886 (Bankr. N.D. Ill. 2013).

Gan reported and the Debtor agreed, however, at the hearing held herein on December 19, 2016 that the property is not insured. Gan argued that for that reason it was not adequately protected. The Debtor argued that he is not obligated to insure the property because there is no contract requiring such. As noted above, in *LaMont*, the Seventh Circuit characterized tax sale purchasers' rights as personal property interests. 11 U.S.C. § 1326(a)(4) requires Chapter 13 debtors to maintain insurance on personal property under certain circumstances: when the personal property is subject to a lease and where a claim is attributable to the purchase price of such property. Gan is not entitled to insurance pursuant to section 1326; it is not the Debtor's lessor and it did not provide the Debtor with funds to obtain the property.

11 U.S. C. § 361 states that when adequate protection is required under sections 362, 363 or 364 of the Bankruptcy Code it may be provided by cash payments, an additional or replacement lien or such other relief as will result in the realization of the indubitable equivalent of the entity's interest in such property. If Gan files a proof of claim or asks to be substituted as the appropriate party in lieu of the Cook County Treasurer, Plan payments to it would represent cash payments recognized as adequate protection under section 361. The tax sale purchaser's

¹ (a) When, upon application of the county collector, the owner of the certificate of purchase, or a municipality which owns or has owned the property ordered sold, it appears to the satisfaction of the court which ordered the property sold that any of the following subsections are applicable, the court shall declare the sale to be a sale in error:

...

(6) prior to the tax sale a voluntary or involuntary petition has been filed by or against the legal or beneficial owner of the property requesting relief under the provisions of 11 U.S.C. Chapter 7, 11, 12, or 13.

35 ILCS 200/21-310(a)(6).

² (b) In those cases which arise solely under grounds set forth in Section 21-310, the amount refunded shall also include interest on the refund of the amount paid for the certificate of purchase, except as otherwise provided in this Section.

35 ILCS 200/21-315(b).

rights are adequately protected because its lien is provided for in the Chapter 13 Plan.
In re Romious, 487 B.R. 883, 886 (Bankr. N.D. Ill 2013).

VII. Conclusion

The court finds that Gan B, LLC has not shown cause or the lack of adequate protection to lift the automatic stay.

Nor has Gan B, LLC shown that the Debtor lacks equity in the property and that it is not necessary to an effective reorganization.

The “sale in error” program provides adequate protection. The court also finds that Gan could be adequately protected if it files a proof of claim or seeks substitution as the appropriate party to receive Plan payments in place of the Cook County Treasurer.

The Motion to Lift Stay is **DENIED**.

Dated: January 10, 2017

ENTERED:

Jacqueline P. Cox
United States Bankruptcy Judge