UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	**Case No. 98-50517**
	Chapter 7
JOHN ROBERT MULLINS,	
Debtor.	
BARRETT L. CRAWFORD, Trustee	**Adversary Proceeding No. 00-5013**
Plaintiff,	
v.	
JOHN ROBERT MULLINS, et al.,	
Defendants.	

JUDGEMENT ENTERED ON MAY 22 2001

ORDER DENYING MOTION TO QUASH MEMORANDA OF LIS PENDENS

This matter comes before the Court upon Motion of Vero Investments, L.L.C.("Vero"), a defendant in this adversary proceeding, seeking to Quash four memoranda of Lis Pendens which have been filed against its properties (in Kentucky, North Carolina, South Carolina and Virginia) by Plaintiff Barrett Crawford, Chapter 7 Trustee for John Robert Mullins ("Trustee"). A hearing was conducted on May 10, 2001. Having considered the matter, the Court believes that Vero's Motion should be DENIED.

Vero says that the lis pendens notices should be quashed for three reasons. First, it says lis pendens is available only in an action involving title to real property, and that this is not such an action. Second, the lis pendens notice equates to an injunction, which unfairly restrains it from transferring or encumbering its assets, without the procedural prerequisites of an

injunction having first been met. Third, Vero alleges that these lis pendens notices are impairing its ability to manage its assets and to make necessary repairs to the properties.

The Trustee disagrees, arguing that this action does affect title to real estate and that the lis pendens is necessary to ensure that these properties are still around when this action is complete.

The Court agrees that this is an action involving title to real property. In this proceeding, the Trustee has sued the Debtor John Robert Mullins ("Mullins"), the Chapter 7 Debtor, his relatives, attorney, family trusts and several corporations (including Vero) owned by Mullins or his family members. If the Trustee is correct, Mullins, when faced with a crumbling business empire and large debts, conspired with the other defendants to defraud his creditors. The Complaint describes a pattern of transfers of Mullins assets to straw men, who have in turn further reconveyed these properties between them. Among the assets in question is the real estate currently owned by Vero to which these notices relate.

The Trustee has brought this action in an effort to avoid these transfers under Virginia's debtor-creditor law and Chapter 5 of the Bankruptcy Code. His suit also seeks to prove that the defendants, including Vero, are but alter egos of Mullins and that their property really belongs to this bankruptcy estate.

Viewed from this perspective, it is clear that this suit does involve title to real property. This action contests the validity of transfers of real property. It asks whether the assets presently titled in the name of Vero are avoidable fraudulent conveyances, recoverable by Mullins bankruptcy estate. And it poses the question of whether Mullins, and therefore his bankruptcy estate, actually is the owner of these properties. Title to real estate is certainly in issue.

Vero has suggested no legal authority which would support its position. And while it is true that most states limit the use of lis pendens to actions affecting an interest in real estate, the law is well-settled that these include actions to set aside fraudulent conveyances. See e.g., *North Carolina National Bank v. Evans*, 296 N.C. 374, 250 S.E.2d 231, 235(1979); *Doby v. Lowder*, 72 N.C.App. 22, 29, 324 S.E.2d 26(N.C.App.,1984.); *Lebovitz v. Mudd*, 293 S.C. 49, 358 S.E.2d 698(1987).

There appear to be no published cases addressing whether an alter ego cause of action affects an interest in real estate for lis pendens purposes. However, the same logic applies. In an alter ego action, a plaintiff contends that equitable ownership to an asset lies with him, not the legal titleholder. He seeks to have the court to conform legal title to reflect this. Again, title is in issue.

As to Vero's suggestion that this is tantamount to an injunction, the undersigned disagrees. A lis pendens notice is not an injunction. It does not, in and of itself, enjoin transfers. Rather, it simply puts third parties on notice of the pendency of a legal action affecting a particular real property. It informs them that if they acquire an interest in the real property, they will be subject to the result of that action.

Being a notice procedure established by state statutes, to employ a lis pendens procedure, one need only meet the statutory requirements. A showing of a right to injunctive relief under Rule 65 of the Federal Rules of Civil Procedure is not necessary.

Finally, this Court cannot honor Vero's predictions of disaster by quashing the Notices. Vero contends that it cannot obtain lending against these properties, given the pendency of this lawsuit and that the assets are endangered thereby. The Court has no way of knowing whether this is true, because no evidence was presented to support this assertion.

However, even if it were, the alternative scenario is just as bad. The Trustee believes that lifting the lis pendens will result in these properties being reconveyed or lienned up. Given the subject matter of this action, with the numerous transfers of these properties by Mullins and those around him, made at times when Mullins was facing substantial unpaid debts, the Court cannot

discount the Trustee's fears. If the notices are quashed, the properties may be conveyed once again.

One purpose of a lis pendens notice is to "keep the subject property within the power of the court until final decree, and to make it possible for the courts to execute their judgments, and to give notice of a claim of which otherwise a prospective purchaser would be ignorant, and all property which is the subject of suit under the doctrine of lis pendens is res litigiosae and is in custodia legis." *Massachusetts Bonding & Ins. Co. v. Knox*, 220 N.C. 725, 18 S.E.2d 436 (1942). If an avoidance action is to mean anything, the equity in the property must be preserved until the suit is over.

In fact, lienning these assets is exactly what Vero proposes to do. It says it needs to borrow money to make repairs and the lis pendens notices may stop this financing. This may be true, but that doesn't mean it is wrong.

Still another function of a lis pendens is to give record notice to third parties of the pendency of actions affecting real property so that these parties may not be induced to rely on these properties without cognizance of the pending action. Why should this Court quash the notices and thereby possibly induce an innocent lender into advancing money on these properties without his being made aware that the Trustee claims the collateral?

Giving notice to such prospective lenders of the dispute is precisely what a lis pendens notice is intended to achieve.

If Vero cannot carry these assets, there are other ways to deal with the problem. Several were suggested in court, including agreeing on necessary repairs and consensual borrowing, or even selling the assets. Both sides have an incentive to see that the value of these assets is preserved, and the Court would encourage them to negotiate an acceptable solution. However, quashing the notice puts both the Trustee and third parties at risk. The Court therefore denies Vero's Motion to Quash.

SO ORDERED.

This the 22nd day of May, 2001.

United States Bankruptcy Judge