

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
(PENSACOLA DIVISION)

IN RE:

PERDIDO BAY PARTNERSHIP,  
A Louisiana Limited Partnership,

CASE NO. 99-40369-PNS

Debtor.

Chapter 11

---

PERDIDO BAY PARTNERSHIP,

Plaintiff/Debtor,

v.

ADV. PROC. NO. 99-80072

ESCAMBIA COUNTY, FLORIDA,  
a political division of the State of Florida;  
ERNIE LEE MAGAHA, Clerk of Court, Escambia  
County, Florida; JANET HOLLEY, Escambia  
County Tax Collector; BOBBY WARNER;  
10 CORPORATION OF PENSACOLA;  
LACOUR INVESTMENTS, INC., and  
JAMES WHIGHAM,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter came on for hearing on the Plaintiff's motion for summary judgment.

Appearances were as noted in the record. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Prior to the hearing on this matter, the Court granted James Whigham's motion to replace 10 Corporation with James Whigham as the owner of the disputed lots. After due consideration of the pleadings, evidence, testimony, briefs and arguments, the Court makes the following findings of fact and conclusions of law:

## **FINDINGS OF FACT**

The Plaintiff, Perdido Bay Partnership (hereinafter “Perdido Bay”), obtained the real property at issue by warranty deed executed on November 9, 1982. The deed was recorded in Official Record Book 1700, page 600 of the Public Records of Escambia County, Florida. The real property at issue is comprised of several individual lots. After acquiring the property, Perdido Bay did not pay *ad valorem* taxes on it for the tax year 1984 to the present.

Perdido failed to pay property taxes on 141 of the lots since 1985, on one lot since 1988, and on three other lots since 1989. Tax certificates on all of the lots were issued and struck off by the Defendant, Escambia County. After two years, Escambia County applied for tax deeds in accordance with Florida Statute § 197.502(3). The lots were offered for sale by the Clerk on February 24, 1992, March 23, 1992, April 20, 1992 and May 18, 1992. Other lots were offered for sale on August 23, 1993 and May 15, 1995. The public sales were conducted and no private bids were received. As a result, all of the lots were placed on a list entitled “Lands Available for Taxes” pursuant Florida Statute § 197.502(7). Under Florida Statute § 197.472(1), the owner of property on the List loses the right to redeem the property once it is placed on the list. The county has the right to purchase the property for the first 90 days, and after that period, any person, including the non-paying owner, may purchase the property from the clerk, without further notice or advertisement. Florida Statute §197.502(7). Taxes are not charged against property on the List, but in each year that taxes would have been due, the taxes are treated as omitted and added to the minimum bid. Florida Statute §197.502(8). After seven years from the day that the property was offered for public sale, the lands escheat to the county in which it is located, all tax certificates and liens against the property shall be canceled, and the clerk shall

execute a deed vesting title in the board of commissioners of the county in which the property is located. Florida Statute §197.502(8). As of the date of the filing of Perdido Bay's bankruptcy petition, 39 of the lots at issue had passed the seven year mark. In 1999, the total for taxes, fees, and expenses for all of the lots at issue was approximately \$97,000.00.

Perdido Bay filed the present Chapter 11 petition on February 26, 1999. Perdido recorded a Notice of Commencement in the county records<sup>1</sup> on March 19, 1999. After the filing of Perdido's petition, Ernie Lee Magaha, in his capacity as Clerk of Court for Escambia County, Florida, (hereinafter referred to as "the Clerk of Court") issued tax deeds for 145 of the lots. The Clerk of Court did not obtain approval of the Bankruptcy Court before issuing the tax deeds.

Charles Lacour, a general partner of Perdido and an officer of Lacour Investments<sup>2</sup>, purchased 40 of the lots at issue on behalf of Lacour Investments on April 13, 1999. Judy Leatherwood (hereinafter "Leatherwood"), an employee of the Escambia County Clerk of Court, testified by affidavit that a person identifying herself as Cynthia Lacour (hereinafter "Mrs. Lacour") contacted the Escambia County Clerk of Court's office on March 15, 1999 on behalf of Perdido Bay Partnership. She asked about property taxes that might be owed on certain real property owned by Perdido Bay, and was concerned that Perdido Bay had not received tax bills for the property. Mrs. Lacour gave Leatherwood the account numbers for the properties, and Leatherwood looked them up on the office computer system. Leatherwood told Mrs. Lacour that the properties were on the Land Available for Taxes List, and explained the status of properties

---

<sup>1</sup>Official Records Book 4385, at Page 1387 of the Public Records of Escambia County, Florida.

<sup>2</sup>Lacour Investments also owns an equity interest in Perdido Bay.

on the list. Mrs. Lacour asked how the properties came to be on the list and claimed that she had not received notice of the public sale. She then asked Leatherwood to calculate the total amount of the taxes due for the properties. After receiving a faxed list from Mrs. Lacour, Leatherwood compiled a list of the properties and their taxes. On March 19, 1999, Leatherwood contacted the Department of Revenue to ascertain whether Perdido Bay, as the record owner, could purchase the property by paying the minimum bid or whether the County had to issue tax deeds. She was told that Perdido Bay should be treated like any other purchaser, and therefore a tax deed would have to be issued and recording fees collected.

On March 24, 1999, the Clerk's Office faxed a list of the properties and the total amount required to purchase all of Perdido Bay's properties to Mrs. Lacour. The amount was \$97,973.63. On March 25, 1999, Mrs. Lacour went to the Clerk's Office and showed Leatherwood the properties that she wanted to purchase from the list. Mrs. Lacour brought a cashier's check in the amount of \$31,981.64 to the Clerk's Office to purchase the properties. Leatherwood marked the properties that Mrs. Lacour wished to purchase, and asked in what name the tax deeds should be issued. Mrs. Lacour said that Lacour Investments was purchasing the properties. A total of forty tax deeds were issued to Lacour Investments. The deeds were dated April 13, 1999, and recorded on April 14, 1999. Leatherwood stated that throughout the process of identifying and purchasing the tax deeds, Mrs. Lacour did not inform or even mention that Perdido Bay had filed a bankruptcy petition. The Escambia County Tax Collector's Office also did not inform the Clerk's Office that Perdido Bay was in bankruptcy. Leatherwood stated that if she had known that Perdido Bay was in bankruptcy, she would not have completed the transaction without direction from her superiors. According to Leatherwood, the Clerk's Office

policy is not to issue tax deeds when the record title holder is in bankruptcy. Further, Leatherwood said that the Clerk's Office did not check to see if Perdido Bay was in bankruptcy. It is not their policy to check public records before issuing tax deeds as it was not required by statute. Leatherwood did not know of Perdido Bay's bankruptcy filing until August 1999, when Perdido Bay's counsel contacted Magaha of the Clerk's Office. Mrs. Lacour stated in her affidavit that she did inform Leatherwood that Perdido Bay was in bankruptcy.

James Whigham purchased some of the disputed 145 parcels on June 24, 1999, and Bobby Warner purchased 91 of the parcels on July 8, 1999.<sup>3</sup> As in the case of the Lacour parcels, the Clerk of Court did not get approval of the bankruptcy court before issuing the tax deeds.

The Clerk of Court was not listed on Perdido's Chapter 11 petition as a creditor, and was not sent a notice of commencement for the Chapter 11 petition. However, the Escambia County Tax Collector did receive written notice of the filing.<sup>4</sup> The property at issue was not listed as an asset in Perdido's schedule of assets and Perdido Bay's disclosure statement did not contain adequate information on these properties. Perdido Bay's plan of reorganization does not deal with the property, nor provide for how the delinquent taxes would be paid. The Court was informed for the first time by Counsel for Perdido Bay during the confirmation hearing on the

---

<sup>3</sup>Bobby Warner also acquired 22 parcels of the property described in Perdido Bay's complaint in 1997. These parcels are not at issue in this proceeding as the transaction took place prior to the Chapter 11 petition.

<sup>4</sup>The Tax Collector for Escambia County was listed as a creditor in Perdido Bay's bankruptcy petition and received written notice of the commencement of the case. However, the taxes included in Perdido Bay's petition were not connected to the lots at issue in this proceeding. Perdido Bay set the amount of its debt to the Tax Collector as \$40,000.00. The Tax Collector filed a claim for approximately \$34,500.00 in unpaid *ad valorem* taxes.

plan that there were unresolved issues concerning the lots which were not dealt with in the plan, and that this adversary complaint would be filed.

### **CONCLUSIONS OF LAW**

Perdido Bay moved for summary judgment under Bankruptcy Rule 7056, which incorporates Federal Rule of Civil Procedure 56. Subsection (c) of Federal Rule of Civil Procedure 56 provides: “The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” If there is a material issue of fact in dispute, summary judgment must be denied. Warrior Tombigbee Transp. Co. v. M/V Nan Fung, 695 F.2d 1294, 1296 (11th Cir. 1983). The party moving for summary judgment has the initial burden of proving that there is no genuine issue of material fact. The burden then shifts to the defending party to prove that genuine issues of material fact do exist.

The parties do not dispute the basic facts outlined above. They do disagree as to the legal significance of the disputed lots being placed on the “Lands Available for Taxes” list. In the underlying complaint, Perdido Bay alleges that the Defendants violated the automatic stay imposed by 11 U.S.C. §362 by transferring and purchasing the lots at issue, and that the transfers should be void. The Defendants counter that because the lots were placed on the “Lands Available for Taxes” list, and the required statutory time period had passed for at least 39 of the disputed parcels to escheat to the county, Perdido Bay no longer had an interest in the lots. Therefore, the automatic stay was not violated when the Clerk of Court issued the tax deeds for

the lots because the lots were not property of the bankruptcy estate as defined by 11 U.S.C. §541. Further, the Clerk of the Court maintains that he did not receive notice of the bankruptcy filing. The parties agree that Perdido Bay at a minimum holds record title to the lots.

The initial question before the Court is whether the 145 lots at issue were property of the estate at the time of the transfer. Under section 541(a)(1), property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.”

Courts interpreting §541(a) have found that Congress intended § 541 to be expansive:

The scope of [§541] is broad. It includes all kinds of property, causes of action (see Bankruptcy Act section 70a(6)), and all other forms of property currently specified in section 70a of the Bankruptcy Act section 70a (sic), as well as property recovered by the trustee under section 542 of proposed title 11, if the property recovered was merely out of the possession of the debtor, yet remained “property of the debtor.” The debtor’s interest in property also includes “title” to property, which is an interest, just as are possessory interest, or leasehold interest, for example.

H.R. No. 595, 95th Cong., 1st Sess. 367-68 (1977); S.R. No. 989, 95th Cong. 2d Sess. 82-83 (1978), U.S. Code Cong. & Admin. News 1978, 5787, 5868, 5869, 6322-6324. (Emphasis added.)

“Legal title” is defined as “a title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest.” Black’s Law Dictionary 1493 (7th Ed. 1999). An argument can be made that bare legal title is such an insignificant or valueless interest that it no longer exists as a property interest to be included as property of the estate. However, even a property interest as minimal as bare legal title may included as a property interest under §541(a)(1). See In re Zachman Homes, Inc., 83 B.R. 633, 637-38 (Bankr. D. Minn. 1985); In re Alpha Corp., 11 B.R. 281, 287-88 (Bankr. D. Utah 1981).

Defendants Escambia County and the Clerk of Court maintain that Perdido Bay lost any

equitable or legal interest in the parcels when it allowed the redemption period to expire. The right of redemption continues only until the property is placed on the “Lands Available” list under Florida law. After property is placed on the list, the Clerk of the Court can sell it to any interested buyer, without further notice to the record titleholder. The Defendants argue that if the record title holder had any remaining interest in the property, due process principles would not allow the property to be sold without further notice. They cite Ridgeway v. Peacock, 100 Fla. 1297, 131 So. 140 (1930), which held that title would vest in the state where the state was the holder of a tax certificate on property at the time that the redemption period expired. Perdido Bay responds that Ridgeway v. Peacock is inapposite to the present case because it applied a 1930 Florida statute with a provision that specifically stated that the title to property would vest in the state if the right of redemption expired while the state held a tax certificate on the property. However, the State could sell the certificate and issue a deed to the property, after giving notice to the property owner, or it could foreclose on the certificate, which acted a lien on the property, and end the title holder’s rights. As Perdido Bay points out, the present statute does not have such a provision, and the former statute’s requirement that the title holder be given notice and that a foreclosure take place to terminate the title holder’s property rights indicates that the title holder still held some interest in the property even after the tax certificate was issued. This Court agrees that the Ridgeway decision is not pertinent to the present case; however, its implications lend support to both sides’ arguments.

As record titleholder, Perdido Bay had at least an implied and constructive right to possession of the property, giving it at least a legal interest in the property within the meaning of 11 U.S.C. §541. Thirty-nine of the lots had passed the seven year period for escheatment to the



county prior to the filing of Perdido Bay's bankruptcy petition. However, as of the date of the filing of Perdido Bay's chapter 11 petition, the Clerk of Court for Escambia County had not issued tax deeds vesting title in the lots to the board of county commissioners as required by Florida Statute § 197.502(8).<sup>5</sup> Therefore, all the steps necessary for the lots to escheat had not been completed pursuant to the statute. The remaining 106 lots had not reached the statutory period for escheatment, and therefore had not escheated to the county as of the date of the filing of the petition. The statute specifically states seven years must pass before the property becomes property of the county, which indicates that Perdido Bay retained at least an interest in the property for the seven year period. Section 197.502(8) also requires the clerk to issue a tax deed to the board of county commissioners before title vests in the county. The clear language of the statute must be followed. The Florida legislature could have allowed the property to escheat to the county after the seven year period without the execution of a deed as it did in 1937. However, the legislature intentionally modified the statute to include the requirement for the clerk to execute a deed before the property vested with the county. Since the Clerk has not executed deeds for the parcels at issue, Perdido Bay remained as record owner of the parcels even after the seven year period.

Section 541 clearly states that all legal or equitable interest of the debtor in property

---

<sup>5</sup>Florida Statute § 197.502(8) provides: Taxes shall not be extended against parcels listed as lands available for taxes, but in each year the taxes that would have been due shall be treated as omitted years and added to the required minimum bid. Seven years from the day the land was offered for public sale, the land shall escheat to the county in which it is located, all tax certificates and liens against the property shall be canceled, and the clerk shall execute a tax deed vesting title in the board of county commissioners of the county in which it is located. This section was amended in 1999 to substitute the seven year period for a three year period for the land to escheat to the county. The effective date of the amendment was May 26, 1999.

become property of the estate. The legislative history for §541 indicates that title to property is considered an interest in property. Under Florida law, a person whose name appears on legal title is presumed to be the owner of the property in question. Hagopian v. Zimmer, 653 So.2d 474, 475 (3rd. Fla. Dist. Ct. of App. 1995), citing Cannova v. Carran 92 So.2d 614, 619 (Fla. 1957). As Perdido Bay points out in its supplemental brief, bankruptcy courts have recognized mere possessory interests by tenants to be property of the estate under §541. See In re Sudler, 71 B.R. 780 (Bankr. E.D. Pa. 1987); In re Kilby, 100 B.R. 579 (Bankr. M.D. Fla. 1989). It follows that a record titleholder with an apparent right of possession would have an interest, even though minimal, which would be included as property of the estate. Based on the foregoing, the Court finds that there is no genuine issue of material fact, and Perdido Bay is entitled to judgement as a matter of law. Perdido Bay's record title and bare legal title to the parcels is an interest which became property of the estate as of the date of filing of Perdido Bay's chapter 11 petition. The Clerk of Court's issuance of tax deeds after the filing of the petition constituted a violation of the automatic stay. Actions taken in violation of the automatic stay are void. Borg-Warner Acceptance Corp. v. Hall, 685 F.2d 1306, 1308 (11th Cir. 1982). Therefore, the deeds issued to Bobby Warner, James Whigham, and Lacour Investments, Inc. are void.

Perdido Bay is apparently of the opinion that by setting aside and voiding the tax deeds, it would be in a position to sell the parcels free and clear and use the proceeds to satisfy any *ad valorem* tax liens. This is not the case. To do so, the Court would have to ignore the State of Florida's legal process by which the parcels came to be placed on the "Lands Available for Taxes" list which has been previously discussed. The effect of confirmation pursuant to 11 U.S.C. §1141(c) does not apply to these properties because the Court has found that these

properties were not contained in the disclosure statement and were not dealt with under the plan.

Whatever interest that Perdido Bay had in the parcels of property was fixed as of the date of the bankruptcy-- nothing more and nothing less. See Dickerson v. Central Florida Radiation Oncology Group, 225 B.R. 241, 244 (M.D. Fla. 1998); In re N.S. Garrott & Sons, 772 F.2d 462, 465, 466 (“The legislative history makes note of the broad scope of the definition [of property under 11 U.S.C. §541(a)], but also makes clear that the definition was not designed to enlarge the debtor’s rights against others beyond those existing at the commencement of the case.”). This theme is continued in § 541(d): “Subsection (d) [of §541] re-emphasizes the provision of section 541(a)(1) that the estate is to be comprised of all legal or equitable interests of the debtor in property as of commencement of the case. It also reiterates the general principle that an interest that is limited in the hands of the debtor is equally limited in the hands of the estate, and therefore, where the debtor holds bare legal title without any equitable interest, the estate acquires bare legal title without any equitable interest in the property.” 5 Collier on Bankruptcy (15th rev. ed.) (Lawrence P. King, ed. 2000) at ¶541.27, p. 541-103. Once the conveyances to the Defendants are set aside, Perdido Bay is placed in the same position it held prior to the tax deeds being issued. At the time of the filing, the parcels of property were on the “Lands Available for Taxes” list. Perdido Bay had previously lost the right to redeem the properties once they were placed on the list. Any person had the right to purchase the parcels from the Clerk, including Perdido Bay. See § 197.472(1) (“Any person may redeem a tax certificate or purchase a county-held certificate at any time after the certificate is issued and before a tax deed is issued or the property is placed on the list of lands available for sale. . . .”); §197.502(7) (“If there are no bidders at the public sale, the clerk shall enter the land on a list entitled “lands

available for taxes” and shall immediately notify the county commission and all other persons holding certificates against the land that the land is available. During the first 90 days after the land is placed on the list of lands available for taxes, the county may purchase the land for the opening bid. Thereafter, any person, the county, or any other governmental unit may purchase the land from the clerk, without further notice or advertising, for the opening bid, except that when the county or other governmental unit is the purchaser for its own use, the board of commissioners of the county may cancel omitted years’ taxes, as provided under s. 197.447.”). Therefore, because the tax deeds are void, the parcels are still considered to be on the “Land Available” list, and may be purchased under the statutory provisions. Any parties who were issued deeds may file any such proceedings or documents as required by Florida law to obtain refunds. Any further action regarding the properties are not subject to the automatic stay since the plan in this case has been confirmed. Any further sales of the property by the Clerk pursuant to § 197.502(7) are not subject to the automatic stay and may be conducted according to the laws of Florida.

As the Clerk of Court points out in his brief, he did not have direct notice that Perdido Bay had filed its bankruptcy petition. Providing such notice would not have placed an inordinate burden on Perdido Bay, and might have prevented this adversary proceeding. Ms. Leatherwood, the Clerk’s employee, testified that she would not have issued the deeds to Lacour Investments if she had known that Perdido Bay had filed a bankruptcy petition. The Court’s ruling should also not be read to condone the self-serving actions of Lacour Investments, and its owner, Charles Lacour. As a general partner and equity partner of Perdido Bay, Charles Lacour was well aware of the company’s bankruptcy filing and the existence of the automatic stay. The fact that Lacour

Investments purchased 40 lots several months prior to the filing of the disclosure statement and the plan is particularly disturbing, since neither document dealt with the property at issue in this case. Lacour's actions were unconscionable in light of his relationship with Perdido Bay. Perdido Bay has made no showing of damage as a result of the deeds being issued. Therefore, this Court finds that Perdido Bay is entitled to no damages due to the violation of the automatic stay. It is hereby

**ORDERED** that the Plaintiff's motion for summary judgment is **GRANTED**; and it is further

**ORDERED** that the deeds held by the Defendants, Bobby Warner, James Whigham, and Lacour Investments, Inc. are **VOID**; and it is further

**ORDERED** that the Court makes no award of damages to the Plaintiff; and it is further

**ORDERED** that any further action relating to the properties are not subject to the automatic stay; and it is further

**ORDERED** that any further sales of the parcels of property by the Clerk of the Court of Escambia County, Florida may be conducted according to the laws of the State of Florida, and are not subject to the automatic stay.

DATED: September \_\_\_\_, 2000

---

WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ALABAMA  
(PENSACOLA DIVISION)

IN RE:

PERDIDO BAY PARTNERSHIP,  
A Louisiana Limited Partnership,

CASE NO. 99-40369-PNS

Debtor.

Chapter 11

---

PERDIDO BAY PARTNERSHIP,

Plaintiff/Debtor,

v.

ADV. PROC. NO. 99-80072

ESCAMBIA COUNTY, FLORIDA,  
a political division of the State of Florida;  
ERNIE LEE MAGAHA, Clerk of Court, Escambia  
County, Florida; JANET HOLLEY, Escambia  
County Tax Collector; BOBBY WARNER;  
10 CORPORATION OF PENSACOLA;  
LACOUR INVESTMENTS, INC., and  
JAMES WHIGHAM,

Defendants.

**JUDGMENT**

These proceedings having come on for hearing before the Court and a decision having been duly rendered; it is

**ORDERED AND ADJUDGED** that pursuant to Rule 58 of the Federal Rules of Civil Procedure and Bankruptcy Rule 9021, a **JUDGMENT** is entered in favor of the Plaintiff, Perdido Bay Partnership, and against the Defendants, Escambia County Florida (a political division of the State of Florida), Ernie Lee Magaha (Clerk of Court, Escambia County, Florida), Janet Holley (Escambia County Tax Collector), Bobby Warner, James Whigham, and Lacour Investments, Inc.; and it is further

**ORDERED AND ADJUDGED** that the deeds held by the Defendants, Bobby Warner, James Whigham, and Lacour Investments, Inc. are **VOID**; and it is further

**ORDERED AND ADJUDGED** that the Court makes no award of damages to the Plaintiff; and it is further

**ORDERED AND ADJUDGED** that the automatic stay has been terminated.

DATED: September \_\_\_\_, 2000

---

WILLIAM S. SHULMAN  
U.S. BANKRUPTCY JUDGE