

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re:)
)
Millie Shakina Mitchell,) Case No. 17-4324
)
Debtor.)

ORDER DENYING MOTION FOR TURNOVER

The court denies the motion for turnover (doc. 119) filed by the chapter 7 trustee. The chapter 7 trustee asks the court to order the debtor to turn over postpetition rental proceeds from rental property in South Carolina. However, in 2008, the debtor assigned the rental proceeds to mortgagee SC State Housing Finance & Development Authority. (See proof of claim no. 3). The mortgage attached to the proof of claim states in pertinent part: “Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender’s agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender’s agents.” The creditor was not served with a copy of the motion for turnover.

The court denies the motion because either (1) the creditor has an absolute right to the rental proceeds and the bankruptcy estate has no interest in them, *see generally In re McCombs*, No. 11-01293-MAM-11, 2011 WL 4458893 (Bankr. S.D. Ala. Sept. 23, 2011); *but see In re Vista Bella, Inc.*, No. 12-00060-MAM, 2013 WL 4051031 (Bankr. S.D. Ala. Aug. 9, 2013); or (2) the mortgagee has a perfected security interest in the rents with no equity for the bankruptcy estate. *See, e.g., In re Iuliano*, 457 B.R. 124, 130 (Bankr. M.D. Fla. 2010); *In re Christensen*, 561 B.R. 195, 203-05 (Bankr. D. Utah 2016).

Dated: November 18, 2021


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE