

#389

MEMORANDUM OPINION

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re)	Bankruptcy Case No. 93C-23107
)	
CCI, INC.,)	Chapter 11
)	
Debtor.)	
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UTAH OUTDOOR ADVERTISING)	Adversary Proceeding No. 96PC-2044
INC., a Utah corporation,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CCI, INC., a California Corporation)	
aka THE CHRISTENSEN)	
COMPANY, STEVEN R. BAILEY,)	
trustee of the Estate of CCI, INC.)	
aka THE CHRISTENSEN COMPANY,)	
Bankrupt under Case No. 93-23107)	
in the United States Bankruptcy Court)	
for the State of Utah, MICHAEL J.)	
TODD, Individually, and also)	
sometimes known as MJT Properties,)	
Desert Star Theatrics, a Utah)	
Corporation, HILLSIDE LAKESHORE)	
CORP., a Nevada Corporation,)	
and JOHN AND JANE DOES 1-100)	
consisting of all other persons claiming)	
title to the real property described)	MEMORANDUM OPINION AND
herein,)	ORDER OF DISMISSAL
)	
Defendants.)	

FINDINGS OF FACT

1. CCI Resource ("CCI")¹ filed for protection in the United States Bankruptcy Court for the District of Utah on June 7, 1993.
2. At the time of filing, the real property which is the subject matter of this controversy (subject property) was property of the bankruptcy estate of CCI.
3. An order confirming the chapter 11 plan of reorganization filed by Brazos Partners, L.P. was entered on November 22, 1994.
4. The plan names Steven R. Bailey as the liquidating agent of the estate and vests the liquidating agent with the power to sell, or otherwise dispose of assets of the estate in accordance with Title 11 of the United States Code including the authority to sell free and clear of liens.
5. The plan also vests the liquidating agent with the power to abandon property pursuant to Section 554 of the Bankruptcy Code.
6. The plan vests exclusive control of all property of the debtor and the estate in the liquidating agent.
7. Throughout the plan, the plan reference is made to the "estate" and the administration of property of the "estate" post-confirmation.

¹The debtor, CCI Resource, lists on its amended petition Christensen Co., Inc. and CCI, Inc. as other names used by the debtor.

8. The plan provides that neither the confirmation of the plan nor the implementation of the plan shall for any purpose create a new, separate entity.

9. The plan provides that none of the property of the estate will vest in the debtor upon confirmation, but rather, the property is to remain in the estate to be administered by the liquidating agent under the supervision of the bankruptcy court.

10. The plan provides that the CCI estate shall be closed upon liquidation of all property of the estate, distribution to creditors, and the filing of a final report with the court.

11. The CCI estate has not been closed.

12. The subject property has never been abandoned by the liquidating agent.

13. On or around October 11, 1995, the liquidating agent conducted an auction in the United States courthouse for the sale of the real property which is the subject matter of this adversary proceeding.

14. The plaintiff, Utah Outdoor Advertising, Inc., ("UOA") participated in the auction as an unsuccessful bidder.

15. At the conclusion of the auction, the liquidating agent reported to the court that Michael Todd ("Todd") was the successful bidder.

16. On December 29, 1995, UOA acquired by special warranty deed, a claim to the subject property from LaMar Walton, John C. Crosby and Lois R. Crosby. John C. Crosby and Lois R. Crosby are husband and wife. LaMar Walton is Lois Crosby's father.

17. As consideration for the special warranty deed, it was agreed that in the event UOA was successful in obtaining title to the subject property, UOA would take one-half of the value of the property, the Crosbys and LaMar Walton would take one-half of the value.

18. UOA's adversary proceeding was filed February 21, 1996, and alleges five causes of action: Boundary Line By Acquiescence, Right-of-way By Prescription, Right-of-way By Necessity, Adverse Possession, and Injunctive Relief. The amended complaint was verified by Edward B. Rogers, President of UOA, and Ronald S. Howell, Secretary/Treasurer of UOA.

19. Paragraph #34 of the plaintiff's amended complaint states that:

Plaintiff has been, by Plaintiff and Plaintiff's predecessors in interest, in the actual, exclusive, and adverse possession of the property above-described continuously for more than 25 years prior to the filing of this complaint, claiming to own the same in fee against the whole world, and has paid real property taxes levied or assessed against the property as indicated by Exhibit

20. John Crosby has never claimed to own the subject property, has never represented to the public that the property was his and he has never paid taxes on the property.

21. Lois Crosby has never claimed to own the subject property, has never represented to the public that the property was hers and she has never paid taxes on the property.

22. At the time the special warranty deed was signed, Lois Crosby told Edward Rogers, the president of UOA, that she didn't own the subject property.

23. Two or three weeks after the special warranty deed was signed, Lois Crosby told Edward Rogers that she couldn't figure out why she and her husband should have to sign something to give away something that they didn't own.

24. A couple of weeks after signing the special warranty deed, John Crosby advised UOA that he couldn't honestly say that the subject property was his and that he laid no claim to own the subject property.

25. According to the testimony of John Crosby, any boundary dispute involving the subject property concerned only a small sliver of the property.

26. Neither John nor Lois Crosby have ever heard LaMar Walton claim to own the subject property.

27. On January 4, 1996, UOA paid seven years of property taxes owed on the subject property to the Salt Lake County Treasurer.

28. There was no evidence of any other property tax payments being made by UOA, Walton or the Crosbys on the subject property.

29. On January 4, 1996, UOA knew that the subject property was held in the bankruptcy estate of CCI.

30. On March 12, 1996, Todd's designee, Desert Star Theatrics, purchased the subject property from the estate in order to relocate a business to that location.

31. The lease on Todd's existing facility will expire soon.

32. Without the new building, Desert Star Theatrics will be out of business.

33. UOA's adversary has cost Todd a significant amount of money and has caused Todd's development efforts to be completely stopped.

JURISDICTION

This matter involves a dispute concerning property of the estate of a confirmed chapter 11 plan. Jurisdiction is found pursuant to 11 U.S.C. § 1142 which provides that (a) any entity organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court; and (b) the court may direct the debtor and any other necessary party to execute, or deliver or join in the execution or delivery of any

instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan. Jurisdiction is also found pursuant to the express terms of the confirmed plan, which retains jurisdiction for this court to resolve all adversary proceedings and make determinations of all questions and disputes regarding title to the assets of the estate². In addition, because UOA filed its verified complaint with this court, even in the absence of subject matter jurisdiction, this court has jurisdiction to assess rule 9011 sanctions. *Olcott v. Delaware Flood Co.*, 76 F.3rd 1538 (10th Cir. 1996).

Because this is a matter concerning the administration of a bankruptcy estate, because this matter seeks a determination of the claimed interests in an asset of the

²The fact pattern in this matter is substantially different from the fact patterns seen in three adversary proceedings styled as LaMar Walton, John Crosby and Lois Crosby, plaintiffs, v. CCI Inc., et al., 96PC-2095, 96PC-2096 and 96PC-2097. The three adversaries originated in state court involving questions of state law. Although the matters were filed in state court prior to the sale of the subject property by the liquidating agent to Desert Star Theatrics, the matters were promptly removed for consideration by this court. By the time the matters were placed before this court, the trustee's sale had been completed and title transferred to Desert Star Theatrics. It appeared from the record that each of the three state court actions were filed in good faith in an effort to resolve legitimate disputes involving state law issues and possibly the interpretation of an order of this court approving the sale of the subject property which order is presently under appeal. Because the court's order is presently under appeal, this court has no jurisdiction to interpret or modify that order. It does not appear to this court that any effort was made with regard to the three state court actions to defeat the efforts of this court or to interfere with the orderly administration of this debtor's confirmed plan of reorganization. Unlike the three state court matters which seek to establish easements or the declaration of a public road, the matter presently before the court seeks, among other things, a determination that the subject property belonged to UOA in fee prior to the liquidating agent's sale.

bankruptcy estate, and because this matter concerns a violation of the automatic stay, this is a core matter within the meaning of 28 U.S.C. § 157(b). *In re Branding Iron Motel, Inc.*, 798 F.2d 396 (10th Cir. 1986).

CONCLUSIONS OF LAW - SANCTIONS

UOA's first cause of action, Boundary Line by Acquiescence, requires that the plaintiff establish four elements in order to prevail: (1) occupation up to a visible line marked by monuments, fences, or buildings, (2) mutual acquiescence in the line as a boundary, (3) for a long period of time, (4) by adjoining landowners. *Goodman v. Wilkinson*, 629 P.2d 447, 448 (Utah 1981). From the evidence presented, neither John nor Lois Crosby ever claimed to own the subject property, and UOA was advised by both John and Lois Crosby prior to the date that this adversary proceeding was filed that they have never claimed to own the subject property and that they did not want to go through with the scheme to claim ownership of the subject land.

UOA's first cause of action of Boundary Line By Acquiescence was filed with full knowledge that the Crosbys made no claim to own the subject property. It appears from the evidence that the adversary proceeding was filed only to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

UOA's fourth cause of action, Adverse Possession, alleges that plaintiff and plaintiff's predecessors in interest, for more than 25 years prior to the filing of the complaint, have claimed to own the subject property in fee against the whole world. From the evidence presented, neither John nor Lois Crosby ever claimed to own the subject property, and neither John nor Lois Crosby have ever heard LaMar Walton claim to own the property. UOA was advised by both John and Lois Crosby prior to the date that this adversary proceeding was filed that they have never claimed to own the subject property and that they did not want to go through with the scheme to claim ownership of the subject land.

UOA's fourth cause of action of Adverse Possession was filed with full knowledge that the Crosbys made no claim to own the subject property. It appears from the evidence that the adversary proceeding was filed only to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

CONCLUSIONS OF LAW - DISMISSAL

1. The subject property was property of the estate of CCI on the date that CCI's bankruptcy petition was filed.
2. The confirmed plan of CCI vests all property of the CCI bankruptcy estate in the liquidating agent.

3. The confirmed plan contemplates that the liquidating agent shall have exclusive control of and administer all assets of the estate under the supervision of the bankruptcy court.

4. As a result of the express terms of the plan, none of the property of the estate revested in the debtor pursuant to 11 U.S.C. § 1141(b).

5. Because the subject property of the estate did not revest in the debtor upon confirmation, was not abandoned and was not fully administered by the liquidating agent until March 12, 1996, the date the property was sold by the liquidating agent, it remained property of the bankruptcy estate of CCI until March 12, 1996. 11 U.S.C. § 554(d). *See U.S. v. Unger*, 949 F.2d 231 (8th Cir. 1991) (Assets that remain effectively unadministered are in *custodia legis* of the bankruptcy court and property of the estate.)

6. Because the subject property was still property of the estate until March 12, 1996, it remained under the protection of the automatic stay. 11 U.S.C. § 362(c)(1). *See Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581 (9th Cir. 1993). (Property that continues as property of the estate remains under the protection of the automatic stay.)

7. Because the automatic stay remained in effect through March 12, 1996, the execution and the filing of the special warranty deed conveying title in the subject property

to UOA was void and without effect. *Franklin Sav. Ass'n v. Office of Thrift Supervision*, 31 F.3d 1020 (10th Cir. 1994).

8. The legal basis for each of UOA's five causes of action depends upon UOA having received a valid and enforceable deed to the subject property.

9. Because the execution and the filing of the special warranty deed was void and without effect, as a matter of law, UOA's complaint must fail.

IT IS HEREBY ORDERED that adversary proceeding no. 96PC-2044 is dismissed, and it is further

ORDERED that pursuant to Todd's motion for rule 9011 sanctions, UOA shall pay to Todd attorney's fees and damages as proven by Todd after notice and a hearing.

DATED this 24 day of June, 1996.

BY THE COURT:



**GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT**