

The relief described hereinbelow is **SO ORDERED**.

SIGNED this 25th day of February, 2022.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**MICHELLE LEIGH GIBLER, and
ROBERT MICHAEL GIBLER II,**

Case No. 18-22573

Debtors,

**MICHELLE LEIGH GIBLER,
ROBERT MICHAEL GIBLER II,**

Adv. Case No. 21-06016

Plaintiffs,

v.

**THE UNITED STATES OF AMERICA,
DOMINIE WRITT,
DONNA WRITT, and
JEFFREY GIBLER,**

Defendants.

ORDER GRANTING DEBTORS' MOTION FOR SUMMARY JUDGMENT

Michelle Gibler and Robert Gibler (“debtors”) filed this adversary proceeding to execute a sale under § 363(b)¹ and § 363(f).² Accompanying this proceeding, Debtors filed a Motion to Sell in the main bankruptcy case.³ That motion has been continued until the resolution of this matter.⁴ Debtors now move for summary judgment in the adversary proceeding.⁵ The issue facing the Court is whether debtors have the power to sell the property using a partition sale under K.S.A. 60-1003 via § 363(f)(1).

I. Jurisdiction and Constitutional Authority

The Court has jurisdiction to hear this adversary proceeding and to order a § 363 sale of the property. This matter is a core proceeding concerning administration of the estate and determinations of the validity, extent, or priority of liens.⁶ The United States has a perfected secured interest in the property through its Notice of Federal Tax Lien.⁷ The United States’ claim must be resolved prior to confirmation of the Chapter 13 plan, and a sale of the property is necessary to satisfy the United States’ claim.

¹ All statutory references in this order are to Title 11, United States Code (the “Bankruptcy Code”) unless otherwise provided.

² ECF 1.

³ Case 18-22573, ECF 75.

⁴ Case 18-22573, ECF 79, 80.

⁵ ECF 24.

⁶ 28 U.S.C. §§ 157(2)(b)(A), 157(2)(b)(K).

⁷ Case 18-22573, Proof of Claim 6 at 4.

Dominie Witt and Donna Witt assert that this Court does not have jurisdiction to order a § 363(f)(1) sale under *Stern* because such a sale requires the Court to apply state law. This assertion fails for two main reasons. First, *Stern* addressed constitutional authority, not jurisdiction. Second, a 363(f)(1) sale is within this Court's constitutional authority. In *Stern v. Marshall*, the Supreme Court determined that a bankruptcy court does not have constitutional authority to enter a final judgment on a state law probate counterclaim that could be resolved independently of the bankruptcy case.⁸ A bankruptcy court's constitutional authority to hear and decide a core proceeding is limited to actions that stem from the bankruptcy itself.⁹ This Court is within its constitutional limits to decide this matter as the Bankruptcy Code specifically permits a § 363 sale based on applicable nonbankruptcy law.¹⁰ In issuing its order, this Court may apply Kansas law, including K.S.A. 60-1003, for a partition sale. Applying *Stern* to suggest that the bankruptcy court does not have authority over a matter simply because it applies state law would create an absurd result, especially where the Bankruptcy Code explicitly permits such an application.

II. Findings of Fact

The material facts are not in dispute. Plaintiff Robert Gibler II and his brother, Jeffrey Gibler, are equal co-owners of the real property located at 547 Perry

⁸ 564 U.S. 462, 503 (2011).

⁹ *Id.* at 499.

¹⁰ § 363(f)(1).

Street, Lawrence, KS 66044 (the “property”).¹¹ The property has the following legal description:

Lot Forty Nine (49) in Addition # 6 in that part of the City
Of Lawrence as North Lawrence in Douglas County,
Kansas.¹²

The property is encumbered by a statutory lien for unpaid real property taxes owed to Douglas County, Kansas and by a United States’ federal tax lien.¹³ The unpaid real property taxes to Douglas County total \$3,058.74 for 2018 through 2020.¹⁴ The United States filed its proof of claim for \$30,280.44 as secured and \$6,964.18 as unsecured.¹⁵

The property is subject to a contract for deed.¹⁶ The original contract was executed on April 5, 2014, between sellers Robert and Jeffrey Gibler and buyers John and Donna Witt (the “Writts”).¹⁷ Under the original contract, the Writts made a down payment of \$450 and were to make monthly payments of \$250 over 120 months to be completed by April 2024.¹⁸ On December 6, 2014, the parties amended their contract.¹⁹ The new agreement was between seller Robert Gibler and

¹¹ ECF 24-2.

¹² ECF 24-1 ¶ 2.

¹³ ECF 24-2.

¹⁴ As of July 27, 2021, Douglas County Treasures shows unpaid taxes of \$748.7 for 2018, \$1,233.18 for 2019, and \$1,076.82 for 2020. ECF 24-2 ¶ 4.

¹⁵ Case 18-22573, Proof of Claim 6 at 4.

¹⁶ ECF 24-8.

¹⁷ ECF 24-4.

¹⁸ *Id.*

¹⁹ ECF 24-8.

buyer Dominie Witt, cosigned by Donna Witt.²⁰ Under the new agreement, \$1,370.17 had been applied to the principal with the balance to be paid at \$250 monthly to be completed within nine years and four months.²¹

Title to the property has not been conveyed to Dominie or Donna Witt.²² As such, Robert Gibler retains a one-half ownership interest in the property. Defendants do not contest that Robert and Jeffrey Gibler retain their interest in the property, nor do they contest that Robert's interest in the property is property of the bankruptcy estate.

Debtors seek to sell the property to pay the real estate taxes and federal tax lien.²³ The debtors have identified a buyer, BCC Investments, LLC, to purchase the property for \$42,000.²⁴ BCC Investments, LLC is unwilling to purchase less than the property in its entirety.²⁵ From the sale, the Witts will receive the \$1,370.17 they have contributed thus far towards the principal balance on the contract for deed, along with any monthly payments that have been made. After the Witts have received payment for their interest, the remaining sale proceeds will be split between Robert Gibler and Jeffrey Gibler. From the sale, debtors will pay the Douglas County Treasurer in full at the time of closing.²⁶ Additionally, the net

²⁰ ECF 24-8.

²¹ ECF 24-1 ¶ 10.

²² ECF 24-1 ¶ 11.

²³ ECF 1 ¶ 21.

²⁴ ECF 24-6.

²⁵ ECF 24-1 ¶ 24.

²⁶ Case 18-22573, ECF 75.

proceeds of debtors' one-half interest in the property will be paid to the Chapter 13 Trustee for the benefit of the United States.²⁷

The defendants argue that many of the facts are not in dispute but rather the case raises significant legal issues outside the Bankruptcy Court's authority.²⁸

III. Discussion

Debtors, Michelle and Robert Gibler, move for summary judgment to proceed in the bankruptcy case with a sale of the property under § 363(b) and § 363(f).

Debtors have the power to sell the property free and clear of an entity's under § 363(b) and §363(f).²⁹ Defendants do not contest that debtors have power to sell the property under § 363(b). The remaining issue then is whether debtors have the power to sell the property using a partition sale under K.S.A. 60-1003 through § 363(f).

Summary judgment is appropriate where the movant shows there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.³⁰ The movant bears the burden to demonstrate that there is no genuine dispute.³¹ In ruling on a motion for summary judgment, the court must draw all

²⁷ *Id.*

²⁸ ECF 26-2.

²⁹ Under § 363(b) and § 363(f), the trustee may sell property of the estate free and clear of any entities' interest in the property after notice and a hearing. Section 1303 provides that a Chapter 13 debtor has the same powers as a trustee under § 363(b) and § 363(f).

³⁰ FED. R. CIV. P. 56(a) applies to this adversary proceeding via FED. R. BANKR. P. 7056.

³¹ *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986).

reasonable inferences from the record in favor of the non-moving party.³² A genuine dispute of material fact exists if, based on the evidence, a reasonable jury could return a verdict for the non-moving party.³³ The non-moving party can avoid summary judgment if it identifies specific evidence that demonstrates there is a genuine issue of material fact for trial.³⁴

While defendants contest many proposed findings of fact, none are material to this case. The crucial facts that must be established for a sale under § 363(b) and § 363(f) are (1) the property is property of the estate and (2) there was sufficient notice and hearing. First, the Bankruptcy Code generally provides that when a debtor files for bankruptcy, the debtors legal and equitable interests in property become property of the estate.³⁵ It is uncontroverted that Robert Gibler has an interest in the property of the estate, and his one-half interest in the property is property of the estate. A plan has not been confirmed, and the debtors remain in possession of the property of the estate.³⁶ Second, sufficient notice and hearing will be met in the main case after the resolution of this adversary proceeding. FED. R. BANKR. P. 2002 provides that sufficient notice is met when 21 days' notice to parties in interest for the sale of property other than in the ordinary course of business. Debtors filed their Motion to Sell on July 30, 2021, and the matter has been continued until the resolution of this proceeding. Thus, debtors will meet the

³² *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

³³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

³⁴ *See Langley v. Adams Cty.*, 987 F.2d 1473, 1476 (10th Cir. 1993).

³⁵ § 541(a).

³⁶ § 1303(b).

requirement for sufficient notice and hearing. Since there are no genuine issues of material fact, summary judgment is appropriate in this case.

Turning to the key issue in this case, § 363(f) permits a debtor to sell property of the estate “free and clear of any interest” if one of five subsections is satisfied. While the Code does not define “any interest,” courts apply the term broadly³⁷ extending “interests” to include contractual rights.³⁸

Specifically, under § 363(f)(1), a debtor may sell property of the estate free and clear of any interest when applicable nonbankruptcy law permits such a sale. A court may authorize a sale under this subsection when the nonbankruptcy law relieves a successor from ongoing obligations associated with the property.³⁹ While there are relatively few reported decisions analyzing a § 363(f)(1) sale, *Rose v. Carlson* is an example of a successful § 363(f)(1) sale applying Missouri law.⁴⁰ In that case, the bankruptcy court held the trustee could sell the property free and clear of the grantor’s life estate when the grantee-debtor had the right of immediate use and enjoyment of the property under Missouri law, which permitted such a sale.⁴¹ Here, the applicable nonbankruptcy law to be applied is Kansas state law,

³⁷ See *Precision Industries, Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 545 (7th Cir. 2003).

³⁸ *In re Dynamic Tooling Systems, Inc.*, 349 B.R. 847, 854 (Bankr. D. Kan. 2006).

³⁹ 3 COLLIER ON BANKRUPTCY ¶ 363.06[2] (Richard Levin & Henry J. Sommer eds., 16th ed.).

⁴⁰ *Id.*

⁴¹ *Rose v. Carlson*, 113 B.R. 534 (W.D. Mo. 1990).

which will determine whether debtors may sell the property free and clear of any interest.

Kansas law permits a sale of property free and clear of interests through a court-ordered partition sale. K.S.A. 60-1003. Generally, property held by cotenants may be subject to partition by judicial proceedings.⁴² In fact, a tenant in common may obtain a partition as a matter of right.⁴³ In a partition action, the court has broad authority to make almost any order necessary to make a just and equitable partition to secure the parties' respective interests.⁴⁴ This power includes the ability to adjudicate every legal and equitable right of the parties and to determine whether a particular party has an ownership interest.⁴⁵ Under K.S.A. 60-1003, pursuant to § 363(f)(1), this Court may permit debtors to sell the property using partition sale powers. The Court finds that sale of the property is appropriate and will lead to confirmation of the plan.

A sale of the property under § 363 is appropriate in this case, even though defendants assert a § 363 sale amounts to an improper third-party release. Third-party releases typically arise in Chapter 11 to relieve non-debtor parties of liability for any claims or causes of actions that creditors may hold against them after the

⁴² *Gore v. Beren*, 254 Kan. 418, 423, 867 P.2d 330, 334 (1994).

⁴³ *See Holland v. Shaffer*, 162 Kan. 474, 479, 178 P.2d 235, 239 (1947).

⁴⁴ K.S.A. 60-1003(d) (“The court shall have full power to make any order not inconsistent with the provisions of this article that may be necessary to make a just and equitable partition.”); *Peterson v. Peterson*, 173 Kan. 636, 641, 254 P.2d 221 (1952).

⁴⁵ *See Jones v. Anderson*, 171 Kan. 430, 435, 233 P.2d 483 (1951); *Einsel v. Einsel*, 304 Kan. 567, 577, 374 P.3d 612, 618 (Kan. 2016).

debtor discharges its liability.⁴⁶ The Tenth Circuit prohibits such third-party releases.⁴⁷ However, a sale under § 363 does not amount to a third-party release. Such a sale does not relieve the debtor or any non-debtors of liability. In fact, the debtor will compensate the Writts for their respective interest in the property.⁴⁸ Thus, sale of the property under 363(f)(1) is appropriate.

The debtor-plaintiffs' motion for summary judgment is granted. Debtors' proposed sale of the property located at 547 Perry St., Lawrence, KS 66044 is approved under 11 U.S.C. § 363(b) and § 363(f). If necessary, Debtors are authorized to submit an order that approves the motion to sell real estate free and clear of liens.⁴⁹

IT IS SO ORDERED.

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⁴⁶ AM. BANKR. INST., COMM'N TO STUDY THE REFORM OF CHAPTER 11: FINAL REPORT AND RECOMMENDATIONS, 253 (2014).

⁴⁷ *In re Western Real Estate Fund, Inc.*, 922 F.2d 592 (10th Cir. 1991).

⁴⁸ Case 18-22573, ECF 75 ¶ 20.

⁴⁹ Case 18-22573, ECF 75.