

APPENDIX

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Case #18-1301

Order, 6th Circuit Court of Appeals, dated November 21, 2018

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-1301

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Nov 21, 2018

DEBORAH S. HUNT, Clerk

In re: MICHAEL B. WHITE; DARLA KAY
WHITE, Deceased,

Debtors.

MICHAEL B. WHITE,

Appellant,

v.

COLLENE K. CORCORAN, Trustee;
FRANKENMUTH CREDIT UNION,

Appellees.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
MICHIGAN

O R D E R

Before: MOORE and DONALD, Circuit Judges; BERTELSMAN, District Judge.*

Michael B. White, a Michigan resident proceeding pro se, appeals a district court judgment affirming the bankruptcy court's orders denying his motion to compel and his request for an evidentiary hearing. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In July 2013, White and his wife filed a petition for relief under Chapter 11 in the Bankruptcy Court for the Eastern District of Michigan. In August 2014, the bankruptcy court

*The Honorable William O. Bertelsman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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entered an order converting the case to a proceeding under Chapter 7. After the case was converted, the bankruptcy court entered an order to sell real and personal property and an order confirming the sale of real property located at 11085 Block Road. White appealed both orders, the district court dismissed the appeals as moot, and we affirmed. *White v. Corcoran*, No. 16-1426, 2017 WL 4804418 (6th Cir. Mar. 31, 2017), *cert. denied*, 138 S. Ct. 663 (2018). White then filed a motion to compel and a request for an evidentiary hearing regarding the estate's financial condition. In the motion to compel, White sought reimbursement in the amount of \$24,697 for costs and expenses resulting from the sale of the 11085 Block Road property pursuant to 11 U.S.C. § 506(c). The bankruptcy court denied the motion to compel and denied the request for an evidentiary hearing. *In re White*, No. 13-21977 (Bankr. E.D. Mich. July 11, 2017). White appealed, and the district court affirmed the orders of the bankruptcy court. *White v. Corcoran*, No. 1:17-cv-12394 (E.D. Mich. Jan. 22, 2018).

White now argues that the bankruptcy court erred in denying the motion to compel. To the extent that White argues that the trustee lacks standing to contest his appeal, this argument is not properly before the court because it was not raised before the bankruptcy court. *See United States v. Ellison*, 462 F.3d 557, 560 (6th Cir. 2006). Additionally, White has forfeited review of any arguments that he raised before the bankruptcy court but did not raise in his appellate brief. *See Agema v. City of Allegan*, 826 F.3d 326, 331 (6th Cir. 2016). Finally, to the extent that White challenges the sale of the 11085 Block Road property, we have previously dismissed his challenges as moot because he failed to show that the purchaser lacked good faith and he did not obtain a stay pending appeal. *White*, 2017 WL 4804418.

We review a bankruptcy court's decision directly, rather than reviewing the district court's review of the bankruptcy court's decision. *Mediofactoring v. McDermott (In re Connolly N. Am., LLC)*, 802 F.3d 810, 814 (6th Cir. 2015). The bankruptcy court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo. *Ellmann v. Baker (In re Baker)*, 791 F.3d 677, 680 (6th Cir. 2015).

Section 506 of the Bankruptcy Code provides that "[t]he trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of

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preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.” 11 U.S.C. § 506(c). However, because § 506(c) is exclusively enforceable by the bankruptcy trustee or a Chapter 11 debtor-in-possession, White lacks the authority to recover any expenses or costs relating to the preservation of secured property. *See Hartford Underwriters Ins. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). Additionally, even if White had sought permission to bring a derivative action under § 506(c), he has failed to show the existence of a colorable claim that would benefit the bankruptcy estate. *See In re Trailer Source, Inc.*, 555 F.3d 231, 245 (6th Cir. 2009). Finally, White cannot recover costs and expenses incurred prior to his case being converted from a Chapter 11 to a Chapter 7 case because his attempt to use § 506(c) came after his case was converted. *See Hartford Underwriters*, 530 U.S. at 8.

For the foregoing reasons, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX

App'x 2

Case #18-1301

Order Denying En banc Review, 6th Circuit Court of Appeals

Dated January 7, 2019

No. 18-1301

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jan 07, 2019

DEBORAH S. HUNT, Clerk

IN RE: MICHAEL B. WHITE; DARLA KAY WHITE DECEASED,

Debtors.

MICHAEL B. WHITE,

Appellant,

v.

COLLENE K. CORCORAN, TRUSTEE, FRANKENMUTH CREDIT UNION,

Appellees.

ORDER

BEFORE: MOORE and DONALD, Circuit Judges; and BERTELSMAN, District Judge.*

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Wm L. Hunt

Deborah S. Hunt, Clerk

*The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

APPENDIX

App'x

Case #18-1301

Mandate from 6th Circuit Court of Appeals

Dated January 15, 2019

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No: 18-1301

Filed: January 15, 2019

In re: MICHAEL B. WHITE; DARLA KAY WHITE, Deceased

Debtors

MICHAEL B. WHITE

Appellant

v.

COLLENE K. CORCORAN, Trustee; FRANKENMUTH CREDIT UNION

Appellees

MANDATE

Pursuant to the court's disposition that was filed 11/21/2018 the mandate for this case hereby issues today.

COSTS: None

APPENDIX

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U.S. District Court, case # 17-12394

Judgment and Order Affirming Bankruptcy Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

In re: Michael B. White and
Darla Kay White,

Debtors,

MICHAEL B. WHITE, and
DARLA KAY WHITE,

Appellants,

v.

Case No. 17-cv-12394
Honorable Thomas L. Ludington

COLLENE K. CORCORAN, United States Trustee,
Frankenmuth Credit Union

Bankruptcy Case No. 13-21977-dob

Appellees.

JUDGMENT

Pursuant to the Opinion and Order entered on this date,

It is **ORDERED AND ADJUDGED** that the July 11, 2017 orders of the Bankruptcy Court (Bkr. ECF Nos. 696, 697), are **AFFIRMED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: January 22, 2018

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 22, 2018.

s/Kelly Winslow
KELLY WINSLOW, Case Manager

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

In re: Michael B. White and
Darla Kay White,

Debtors,

MICHAEL B. WHITE, and
DARLA KAY WHITE,

Appellants,

v.

Case No. 17-cv-12394
Honorable Thomas L. Ludington

COLLENE K. CORCORAN, United States Trustee,
Frankenmuth Credit Union

Bankruptcy Case No. 13-21977-dob

Appellees.

/

ORDER AFFIRMING BANKRUPTCY COURT

On September 25, 2017, Debtor Michael B. White (White) initiated this appeal of the Bankruptcy Court's order denying debtor's corrected motion to compel trustee to pay debtor's costs of sale expenses from the sale proceeds of 11085 Block Road and denying recovery pursuant to 11 U.S. 506(c). Bkr. ECF No. 696. White also appeals the Bankruptcy Court's order denying his request for an evidentiary hearing concerning the bankruptcy estate's financial condition. Bkr. ECF No. 697. White filed his brief on October 10, 2017. ECF No. 5. Trustee Collene K Corcoran and creditor Frankenmuth Credit Union each filed briefs on November 27, 2017. ECF Nos. 7, 8. White filed a reply on December 15, 2017. ECF No. 9.

I.

A full factual summary of the Bankruptcy proceedings was set forth in the Court's November 29, 2016, order denying White's motion to strike and granting in part Attorney

Budzynski's motion to dismiss. ECF No. 14 (16-cv-11188) (the facts below relate only to the current appeal).

On March 6, 2017, White moved to compel the Trustee to pay debtor's costs of sale expenses from the sale proceeds of 11085 Block Road. Bkr. ECF No. 610. White sought reimbursement for \$24,697 allegedly incurred for "care, maintenance, and preservation," during the time he was living at the property. *Id.* at 2. White contended he was entitled to reimbursement because the "Trustee's attorney very specifically requested Michael White remain in the home and bear various costs as it would benefit the estate by bringing a higher sale price." *Id.* at 2. Specifically, White sought reimbursement for \$9,042 of adequate protection payments he was ordered to remit Frankenmuth Credit Union (\$822/month), \$3,500 in Homeowner's insurance, \$1,700 in Saginaw County Treasury Taxes, \$5,255 in Consumers Energy Bills, and \$5,200 in lawn care. *Id.* On May 10, 2017, White filed a corrected motion specifying that his request for relief was being made pursuant to 11 U.S.C. § 506(c). Bkr. ECF No. 669.

On April 20, 2017, White moved for an evidentiary hearing "to establish the true financial condition of the bankruptcy estate as to what assets, if any have a net material value to unsecured creditors." Bkr. ECF No. 665. A corrected motion was filed on May 11 correcting the notice, certificate of service, and proposed order. Bkr. ECF No. 668.

II.

The Bankruptcy Court held a hearing on the motions on June 8, 2017 and denied both motions. With respect to the motion to compel costs, the court found no basis to award costs under § 506(c). The court noted at the outset that § 506(c) expressly grants the right to recover preservation costs only to the Trustee. Hr'g Tr. at 16:13-22, Bkr. ECF No. 731. The court noted

that this right has been extended “to Chapter 11 debtors in possession because under Chapter 11 . . . debtors in possession are -- are basically given or burdened with the duties and obligations of a trustee, so therefore it makes perfect sense to the Court that the word trustee under 506, which applies to all chapters in the Bankruptcy Code, include debtors in possession.” *Id.* The court found, however, that adequate protection ordered to be paid to a creditor cannot be subject to reimbursement, as such funds would cease to be adequate protection if they were reimbursable. *Id.* at 16:23-17:13. With respect to the expenses Mr. White incurred, the court concluded that § 506(c) provides no such right to a Chapter 7 debtor. *Id.* at 17:14-24.

With respect to the motion for an evidentiary hearing, the court found that the trustee had filed complete annual reports, and that White had identified no issue to be explored at an evidentiary hearing. *Id.* at 33:19-34:5. The court found that White’s motion was really an attack on the court’s approval of the sale of the property. *Id.* at 33:6-11.

III.

Final orders of a bankruptcy court are appealable to a federal district court under 28 U.S.C. § 158(a). *In re Gourlay*, 496 B.R. 857, 859 (E.D. Mich. 2013). “Th[is] Court reviews a bankruptcy court’s findings of fact for clear error and its conclusions of law de novo.” *Id.* (citing *AMC Mortg. Co. v. Tenn. Dep’t of Revenue*, 213 F.3d 917, 920 (6th Cir.2000)).

A.

With respect to the motion to compel costs, only the Bankruptcy Court’s conclusions of law are at issue. The court made no finding as to whether the alleged costs were actually incurred, other than the adequate protection payment that the court had previously ordered.

11 U.S.C. § 506(c) provides: “The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such

property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.”

Other than Trustees, who are explicitly granted the right under the statute, the only other parties “empowered to invoke the provision” are Chapter 11 debtors-in-possession, “as they are expressly given the rights and powers of a trustee by 11 U.S.C. §1107.” *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000).

As White is a Chapter 7 debtor, he is not empowered to invoke the provision of 11 U.S.C. § 506(c). White notes that the case was converted from Chapter 11 to Chapter 7 on August 22, 2014, and seeks to recover the costs he incurred prior to that conversion. However, *Hartford* expressly precludes this: “[Chapter 11], is by its terms inapplicable here, since petitioner’s attempt to use § 506(c) came after the bankruptcy proceeding was converted from Chapter 11 to Chapter 7.” *Id.* at 8. Accordingly, the Bankruptcy Court’s denial of the motion will be affirmed.

With respect to the motion for an evidentiary hearing, the bankruptcy court found that White identified no material factual disputes. The court found that the Trustee had submitted complete annual reports. The court also found that White identified no omissions or misrepresentations in the reports. The court concluded that there were nothing further to be explored at an evidentiary hearing, but that White was merely re-litigating the court’s prior approval of the sale of the property. Indeed, after a lengthy dialogue with White, both the court and the Trustee were confused as to what the purpose of the requested evidentiary hearing was. White responded, in part: “My goal is that the property was improperly taken away from me. She had no right to – to request that the sale be approved. This court was wrong when it approved that sale.” Hr’g Tr. at 29: 4-7, Bkr. ECF No. 731. A review of the court’s factual findings reveals no clear error. Accordingly, the denial of the motion will be affirmed.

IV.

Accordingly, it is **ORDERED** that the Bankruptcy Court's orders denying debtor's corrected motion to compel trustee to pay debtor's costs of sale expenses from the sale proceeds of 11085 Block Road and denying recovery pursuant to 11 U.S. 506(c) (Bkr. ECF No. 696.), and denying debtor's request for evidentiary hearing on bankruptcy estate's financial condition. (Bkr. ECF No. 697) are **AFFIRMED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: January 22, 2018

<p style="text-align: center;">PROOF OF SERVICE</p> <p>The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 22, 2018.</p> <p style="text-align: right;"><u>s/Kelly Winslow</u> KELLY WINSLOW, Case Manager</p>
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APPENDIX

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U.S. Bankruptcy Court, case # 13-21977

Order Denying 506(c) Recovery Docket 696

Order Denying Evidentiary Hearing Docket 697

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION – BAY CITY

In re:

WHITE, MICHAEL B.,
WHITE, DARLA K.,

Chapter 7
Case No. 13-21977
Hon. Daniel S. Opperman

Debtors./

ORDER DENYING
DEBTORS' CORRECTED MOTION TO COMPEL TRUSTEE TO PAY DEBTOR'S
COST OF SALE EXPENSES FROM SALE PROCEEDS FROM 11085 BLOCK RD AND
DENYING DEBTOR'S RECOVERY PURSUANT TO 11 U.S.C. §506(C) [docket #669]

This matter having come before the Court on the Debtor's Corrected Motion to Compel Trustee to Pay Debtor's Cost of Sale Expenses from Sale Proceeds from 11085 Block Rd and for Debtor's Request for Recovery Pursuant to 11 U.S.C. §506(c) [docket #669], and the Court having conducted a hearing on June 8, 2017;

IT IS HEREBY ORDERED that the Debtor's Motion is Denied.

Signed on July 11, 2017



/s/ Daniel S. Opperman

Daniel S. Opperman
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION – BAY CITY

In re:

WHITE, MICHAEL B.,
WHITE, DARLA K.,

Chapter 7
Case No. 13-21977
Hon. Daniel S. Opperman

Debtors./

ORDER DENYING
DEBTOR'S CORRECTED REQUEST FOR EVIDENTIARY HEARING REGARDING
BANKRUPTCY ESTATE'S FINANCIAL CONDITION [docket #668]

This matter having come before the Court on the Debtor's Corrected Request for Evidentiary Hearing Regarding Bankruptcy Estate's Financial Condition [docket #668], and the Court having conducted a hearing on June 8, 2017;

IT IS HEREBY ORDERED that the Debtor's Motion is Denied.

Signed on July 11, 2017



/s/ Daniel S. Opperman

Daniel S. Opperman
United States Bankruptcy Judge