

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

In re

WAIEHU AINA, LLC,

Debtor.

Case No. 10-01188
Chapter 7

DANE S. FIELD,

Plaintiff,

vs.

ROBERT K. ARMITAGE, SR., et al.,

Defendants.

Adv. Pro. No. 11-90003

Re: Docket No. 4

**MEMORANDUM OF DECISION ON TRUSTEE'S
MOTION FOR SUMMARY JUDGMENT**

Waiehu Aina LLC (“Debtor”) filed a voluntary petition under chapter 7 of the Bankruptcy Code on April 21, 2010, and Dane S. Field (“Trustee”) was appointed trustee. Case No. 10-01188, Dkt. Nos. 1, 4. The Debtor’s primary asset is a 277-acre parcel of real property located in Waiehu, on the island of Maui (the “Property”). The defendants in this case occupy portions of the Property without authorization or consent from the Debtor or the Trustee. The Property has

significant value to the estate, but the presence of the defendants is making it difficult for Trustee to liquidate it. Accordingly, the Trustee seeks legal and equitable relief to remove all of the defendants from the Property.

The court has jurisdiction over this matter. 28 U.S.C. § 1334(a), (b); 157(a), (b); 11 U.S.C. § 151 (2009). This is a core proceeding in bankruptcy. 28 U.S.C. §§ 157(b)(2)(A), (E).

The Trustee seeks summary judgment on his claim for turnover under section 542 of the Bankruptcy Code.

Summary judgment is proper when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c), Fed. R. Bankr. P. 7056; see also Barboza v. New Form, Inc. (In re Barboza), 545 F.3d 702, 707 (9th Cir. 2008). In resolving a summary judgment motion, the court does not weigh evidence, but rather determines only whether a material factual dispute remains for trial. Covey v. Hollydale Mobilehome Estates, 116 F.3d 830, 834 (9th Cir. 1997). In making this determination, the court views the evidence in the light most favorable to the nonmoving party. McSherry v. City of Long Beach, 584 F.3d 1129, 1135 (9th Cir. 2009). Additionally, all justifiable inferences are to be drawn in favor of the

nonmoving party. Id.

Section 542 of the Bankruptcy Code provides:

[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). The term “entity” includes, among others, a person. 11

U.S.C. § 101(15). The property to be turned over must be property of the bankruptcy estate. 11 U.S.C. §§ 363, 542(a); see also In re White, 389 B.R. 693 (B.A.P. 9th Cir. 2008).

The Trustee has proved that the Property is part of Debtor’s bankruptcy estate. See Dkt. No. 12, Exhibit 2; Dkt. No. 5, Exhibit 1; Dkt. No. 12, Exhibit 3.

No defendant has objected to the admissibility of these documents.

The defendants argue¹ that the Property is not part of the bankruptcy estate

¹To be exact, these arguments are made by Akahi Nui, who is not a party to this adversary proceeding, in a response to the complaint in which Akahi Nui purported to “enter as INTERVENOR on behalf of the defendants” Dkt. No. 8. Akahi Nui claims that he is the King of Hawaii. Akahi Nui is not entitled to intervene as a party because he has not complied with Fed. R. Bankr. P. 7024 and Fed. R. Civ. P. 24. He cannot appear on behalf of the defendants because he is not a licensed attorney. Haw. Rev. Stat. §§ 605-2, 605-14 (2009); Oahu Plumbing & Sheet Metal, Ltd. v. Kona Construction, Inc., 60 Haw. 372, 377, 590 P.2d 570, 573 (1979). I will, however, exercise my discretion to treat these arguments as if the Defendants had made them themselves.

Defendant Zachary Kanoa filed an objection (dkt. no. 13) which contains no admissible evidence and no legal arguments and thus is insufficient to overcome the motion.

because it is included in the “crown lands” or the “government lands” that still belong to the Kingdom of Hawaii and are owned by its monarch. This court is bound by the law of the United States of America and the State of Hawaii.

American law does not recognize the continued existence of the former Kingdom of Hawaii. Under American law, all of the former “crown lands” and “government lands” are controlled by the State of Hawaii or the United States government.

Rice v. Cayetano, 528 U.S. 495, 505, 509 (2000) (internal citations omitted).


Further, the defendants offer no admissible evidence that the Property was ever part of the crown lands or the government lands of the Kingdom of Hawaii.

Finally, the defendants have changed their position. Until recently, the defendants admitted that the Debtor owned the Property. See, e.g., Dkt. No. 12, Exhibit 4. The defendants make no effort to explain their reversal of position.

Thus, there are no genuine issues of material fact, and it is clear as a matter of law that the Trustee is entitled to turnover of the Property from the defendants. The Trustee is entitled to summary judgment and an order compelling the defendants to turn over physical possession of the property to the Trustee. In re Berg, 387 B.R. 524 (Bankr. N.D. Ill. 2008); see also In re Jennings, 2001 WL 1806980 (Bankr. D. S.C. 2001) (noting majority rule that debtors are entitled to turnover of their property pursuant to section 542 simply by filing a bankruptcy

case).

The Trustee shall submit a proposed judgment and writ of possession.



/s/ Robert J. Faris
United States Bankruptcy Judge
Dated: 03/09/2011