

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**BERNADETTE M. COTA,
Debtor.**

**Chapter 7 Case
04-11665**

**BERNADETTE M. COTA,
Plaintiff/ Third Party Defendant,
v.
HOMEQ. SERVICING CORP.,
Defendant/ Third Party Defendant,
v.
DOUGLAS J. WOLINSKY, in his capacity
as Chapter 7 Trustee in the Bankruptcy Case
of Bernadette M. Cota,
Third Party Plaintiff.**

**Adversary Proceeding
05-1022**



ORDER TO SHOW CAUSE

WHEREAS on June 9, 2005, a hearing was held on the Trustee's motion to intervene in this adversary proceeding, and the Court granted that motion; and

WHEREAS at that hearing, the parties and the Trustee disclosed to the Court that the plaintiff and defendant had settled the instant adversary proceeding, and pursuant thereto had sold the subject property without court approval or notice to the Trustee; and

WHEREAS the Trustee objected to the transfer and demanded an opportunity to conduct an independent appraisal of the subject property to determine what interest the estate might have in the sale proceeds; and

WHEREAS the Court directed that the subject property be transferred back to the Debtor so that the case was returned to the status quo prior to implementation of the settlement, and directed that the parties proceed, as required by Bankruptcy Rule 9019, to seek court approval of the settlement on notice to the Trustee and all parties in interest; and

WHEREAS the Court further directed that the Trustee draft and file a proposed order requiring the return of the property to the Debtor, and upon request of the Trustee, agreed to consider a consensual order setting forth an alternative approach that would both allow the transfer of the property to remain intact and protect the estate's interest in the property, pending a determination of the rights of the parties to the transfer, the parties to this adversary proceeding and the Trustee; and

WHEREAS the Court further directed that the parties file a proposed scheduling order for the instant adversary proceeding to expedite resolution of the underlying issues; and

WHEREAS the Court specified that both orders were to be filed within ten days; and

WHEREAS on June 14, 2005, the Trustee filed a third party complaint herein asserting his rights to the value of the property in excess of the amount properly allowed to the mortgagee, under various theories of fraudulent conveyance law; and

WHEREAS the scheduling hearing, which had been set for June 21 by Scheduling Order entered on April 15, 2005 (doc. # 3), was cancelled in light of the direction that the parties file a new scheduling order by June 20, 2005; and

WHEREAS on June 21, 2005, the Trustee filed a proposed stipulated motion for entry of a consent judgment (doc. # 15) that seeks to allow the parties until July 27, 2005 to reach a consensual resolution of the instant dispute without need for transfer of the property back to the Debtor, however, the proposed order fails to provide any protection for the estate's interest or sanction for the failure of the parties to obtain approval of the Court or Trustee prior to effecting the transfer; and

WHEREAS on June 21, 2005, the Plaintiff, Trustee and Defendant filed identical proposed scheduling orders (doc. ## 16, 17, 18, respectively) that provide for discovery to be completed by September 15th and a final pre-trial conference to be held on November 15th; and

WHEREAS on July 14, 2005, the Defendant filed an answer to the Trustee's third party complaint (doc. # 20); and

WHEREAS the Plaintiff and Defendant filed a stipulation of facts with the complaint (doc. #1) to which the Trustee has not yet responded;

THE COURT FINDS that the issue presented in this adversary proceeding is a very narrow question, appears to be a pure question of law, should not require extensive discovery or trial preparation, and in light of the transfer that has already occurred and the non-complying procedure which brought the case to its current status, that it is important to expedite the litigation and settle title to the property;


THEREFORE, in consideration of all proceedings herein and the unique circumstances presented by both the factual and procedural aspects of this matter, IT IS HEREBY ORDERED that

1. the stipulated motion for entry of a consent judgment is GRANTED subject to the requirement that the parties establish either an escrow account or bond to protect the estate¹;
2. the parties' request to approve the proposed scheduling order they have filed is DENIED.

3. the parties shall appear at a scheduling conference on **August 11, 2005 at 11:00 a.m.** at the U.S. Bankruptcy Court in Burlington, Vt., to show cause why this matter should not proceed to disposition on a far more expedited schedule than the parties have set forth in their proposed scheduling order, and to address the adequacy and acceptability of any amended scheduling order that has been filed prior thereto; and
4. the Plaintiff, Defendant and Trustee each file a memorandum of law by **August 4, 2005**, and present their respective positions at the hearing on **August 11, 2005 at 11:00 a.m.**, as to why sanctions should not be imposed on the counsel for proceeding to act upon a settlement that did not have the approval of the Court or Trustee.

SO ORDERED.

July 18, 2005
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

ⁱ At the June 9th hearing the parties represented that the funds from the transfer of the property would be held in escrow, however, the motion and proposed order are silent on this point. Therefore, the Court has modified the proposed order the Trustee filed with the motion to include language that requires either an escrow account or bond to protect the estate, and, as modified, entered that Order today.