NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. PR 14-067

Bankruptcy Case No. 14-06449-BKT

CARLINA ORTEGA,
Debtor.

CARLINA ORTEGA,
Appellant,

v.

LSREF2 ISLAND HOLDINGS, LTD.,
Appellee.

Appeal from the United States Bankruptcy Court
for the District of Puerto Rico
(Hon. Brian K. Tester, U.S. Bankruptcy Judge)

Before
Feeney, Deasy, and Cary,
United States Bankruptcy Appellate Panel Judges.

Carlina Ortega, Pro Se, on brief for Appellant.

Javier Vilariño Santiago, Esq., and Iraida B. Rodriguez-Castro, Esq.,
on brief for Appellee.

December 4, 2015

Per Curiam.

Carlina Ortega (the "Debtor") appeals from the bankruptcy court's October 29, 2014 order denying the motion for relief from stay filed by LSREF2 Island Holdings, Ltd. ("Island Holdings"). Island Holdings sought relief from the automatic stay, to the extent it was applicable, in order to proceed with a foreclosure sale of certain real property (the "Property"). After conducting an evidentiary hearing, the bankruptcy court ruled that it lacked jurisdiction to adjudicate the merits of the motion because the Property was an asset of the undistributed probate estate of the Debtor's deceased parents and not the bankruptcy estate.[1]

After the docketing of the appeal, the parties filed their briefs and the Panel set the matter for oral argument on November 13, 2015, at 10:30 a.m. in San Juan, Puerto Rico, giving proper notice to both parties.[2] On the morning of the hearing, the clerk initially called the case prior to the start of oral argument and again at 11:17 a.m., 47 minutes after the appointed time. The Debtor failed to appear both times when the case was called. Counsel for Island Holdings confirmed that the Debtor was not present in the courtroom and proceeded to present a summary of his argument pursuant to Fed. R. Bankr. P. 8019(f). Thereafter, the Panel took the case under advisement. The Debtor has filed nothing further and has made no further contact with the Panel.

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[1] The record reflects that prior to their death, the Debtor's parents held title to the Property and obtained a loan from the predecessor of Island Holdings using the Property as collateral.

[2] When she filed the Notice of Appeal, the Debtor was represented by counsel. After they filed their briefs, counsel for the Debtor and Island Holdings filed motions to withdraw, both of which the Panel granted. Thereafter, substitute counsel filed an appearance for Island Holdings and the Debtor proceeded pro se.

We have jurisdiction over this final order, and review it de novo. See Mannucci v. Cabrini Med. Ctr. (In re Cabrini Med. Ctr.), 489 B.R. 7, 17 (S.D.N.Y. 2012) (reviewing de novo the bankruptcy court's determination that it lacked jurisdiction to lift the automatic stay). Given the ample record, the Debtor's seeming indifference to this appeal, and the comprehensive brief of Island Holdings, we need not tarry with this appeal.

The Debtor does not dispute that she does not hold title to the Property. Instead, she argues that the Property was subject to the automatic stay because she has a "legally recognizable interest" in the Property and because the bankruptcy estate's interest in the Property was inextricably intertwined with the probate estate's interest. Notably, however, the Debtor did not offer any evidence regarding her alleged right to possess or use the Property or any of its rental income. Instead, the record reflects that during the six months prior to the Debtor's bankruptcy filing, Island Holdings had control and possession of the Property and its rental income. On the petition date, the Debtor simply had an interest in the probate estate as a whole, but not in any of the individual assets of the probate estate. See, e.g., Wiscovitch Rentas v. Molina González (In re Morales García), 507 B.R. 32, 37 (B.A.P. 1st Cir. 2014). Because the Debtor had no right to use or possess the Property or its rental income, she also failed to establish that the bankruptcy estate's and hereditary community's economic interests in the Property are so interwoven as to implicate the protection of the automatic stay. See In re Cumberland Farms, Inc., 162 B.R. 62 (Bankr. D. Mass. 1993), and 48th St. Steakhouse, Inc. v. Rockefeller Grp., Inc. (In re 48th St. Steakhouse, Inc.), 835 F.2d 427 (2d Cir. 1987). As neither she nor the bankruptcy estate had any interest in the Property or its rental income, they were not subject to the automatic stay.

Moreover, given this conclusion, it is evident that the bankruptcy court lacked jurisdiction over the Property and its rental income. See 28 U.S.C. § 1334(e)(1) ("The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate . . . ."). "[A] bankruptcy court's jurisdiction does not extend to property that is not part of a debtor's estate." Rutherford Hosp., Inc. v. RNH P'ship, 168 F.3d 693, 699 (4th Cir. 1999); accord Black v. U.S. Postal Serv. (In re Heath), 115 F.3d 521, 524 (7th Cir. 1997) (because property was not part of bankruptcy estate, the bankruptcy court did not have "core" jurisdiction); Torkelsen v. Maggio (In re Guild and Gallery Plus, Inc.), 72 F.3d 1171, 1181 (3d Cir. 1996) (when action does not involve property of the estate, it is beyond the bankruptcy court's jurisdiction); see also Marshall v. Marshall, 547 U.S. 293, 308 (2006) (probate exception to federal jurisdiction "precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court.").

CONCLUSION

Based on the foregoing, we agree with the bankruptcy court that the Property was not property of the bankruptcy estate and, as such, was not protected by the automatic stay. Thus, we **AFFIRM** the bankruptcy court's ruling.