NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
JAMES ROBERT RADTKE	)	CASE NO. 14-12694
	)	
	)	
Debtor	)	

DECISION AND ORDER SUSTAINING TRUSTEE'S OBJECTION

On June 9, 2015

The debtor has claimed a $5,950 exemption, as non-residential real estate, for property located at 714 S. Briant Street, Huntington, Indiana. See, I.C. 34-55-10-2(c)(2). Because the property has been sold on a land contract, the trustee has objected, arguing that the debtor's interest is intangible – not real – property and may only be exempted pursuant to I.C. 34-55-10-2(c)(3), which is limited to $350. The matter is before the court on stipulations of fact and briefs of counsel.

The trustee's argument is clearly well-taken.

> [A] conditional land sales contract is in the nature of a secured transaction . . . The vendor, therefore, merely owns a lien. While a lien is property, it is not real estate, even if it is a lien on real estate. Rather, a lien is intangible personalty. Matter of Jones, 768 F.2d 923, 928 (7th Cir. 1985) (applying Indiana law). See also, Skendzel v. Marshall, 301 N.E.2d 641, 646 (Ind. 1973).

The debtor, however, argues that the land contract is unenforceable because important details have not been stated in the agreement; and so he remains the fee-simple owner of real property. Assuming the debtor's statute of frauds argument is correct, that does not mean the contract is void, that it does not exist or that it is a nullity. See, Marathon Oil Co. v. Collins, 744 N.E. 2d 474, 478 n.3 (Ind. Ct. App. 2001); Brown v. Branch, 758 N.E.2d 48, 51 (Ind. Ct. App. 2001); Perkins v. Owens, 721 N.E.2d 289, 292 (Ind. Ct. App. 1999); Dupont Feedmill Corp. v. Standard Supply Corp., 395 N.E.2d

808, 810-11 (Ind. Ct. App. 1979); Blake v. Hosford, 387 N.E. 2d 1335, 1340 (Ind. Ct. App. 1979). The statute of frauds would merely provide the owner with an affirmative defense, which it may or may not be able to successfully assert, see, Marathon Oil, 744 N.E.2d at 748; Brown, 758 N.E.2d at 51-52; Perkins, 721 N.E.2d at 292-93; Dupont Feedmill, 395 N.E.2d at 811; Blake, 387 N.E.2d at 1341; Hurd v. Ball, 143 N.E. 2d 458, 466 (Ind. Ct. App. 1957), should the buyer bring suit to enforce the contract. That is not what the present dispute is about.

The trustee's objection is SUSTAINED, and the claimed exemption for the real property located at 714 S. Briant Street, Huntington, Indiana is denied.

SO ORDERED.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court