UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:	)	
	)	
Daisy Quick Dye,	)	Case No. 03-12516C-13G
	)	
Debtor.	)	
	)	

MEMORANDUM OPINION

This case came before the court on July 20, 2004, for hearing upon motions for relief from stay which were filed on behalf of Lawrence T. Dye in which Mr. Dye seeks relief from the automatic stay in order to foreclose on a deed of trust from the Debtor and to enforce certain liens which he contends he was granted under a state court equitable distribution order. Also for hearing on July 20, 2004, was the Debtor's motion to avoid such liens pursuant to § 522(f)(1) of the Bankruptcy Code. Stephen D. Ling appeared on behalf of the Debtor, Henry T. Drake appeared on behalf of Lawrence T. Dye and Anita Jo Kinlaw Troxler appeared as Chapter 13 Trustee. Having considered the evidence offered by the parties, the arguments of counsel for the parties and the matters of record in this case, the court finds and concludes as follows:

FACTS

This Chapter 13 case was filed on July 25, 2003. The assets listed by the Debtor included residential real property located at 113 Wilderness Drive, Rockingham, North Carolina (the "Residence"). The Debtor listed the Residence as being subject to a first deed of trust in favor of Fairbanks Capital Corporation securing an

indebtedness of $67,023.00 and a second deed of trust in favor of Lawrence T. Dye ("Mr. Dye") securing an indebtedness of $48,724.00.

On August 22, 2003, Mr. Dye, the former husband of the Debtor, filed a proof of claim in the amount of $48,724.77 which stated that such indebtedness was secured by real estate with a value of $62,000.00. The documents attached to the proof of claim included a copy of a deed of trust from the Debtor purporting to secure the indebtedness referred to in the proof of claim. Also attached to the proof of claim was a copy of a court order that was entered in an equitable distribution proceeding involving the Debtor and Mr. Dye. The order contained a cash distributive award of $48,724.77 which the Debtor was ordered to pay to Lawrence T. Dye. The order also contained a provision that adjudged that the indebtedness represented by such award "shall be a lien against . . . [the Residence], the Defendant/Wife's Sara Lee 401K and Defendant/Wife's Sara Lee stock."

On or about October 23, 2003, a proposed plan of reorganization and notice of time for filing objections thereto were served upon creditors in this case, including Mr. Dye. The proposed plan which was served upon creditors recited that Fairbanks Capital Corporation had filed a claim in the amount of $67,673.28 indicating a first deed of trust on the Residence and proposed to treat Fairbanks Capital Corporation as a continuing long term secured debt claimant. The plan proposed to make the

regular monthly payment to Fairbanks along with a monthly payment on an arrearage claim in the amount of $6,701.80. The proposed plan further recited that Mr. Dye had filed a claim as secured in the amount of $48,724.77 indicating a deed of trust recorded on July 16, 2003. The Debtor proposed the following treatment for Mr. Dye:

> "The debtor's real property is found to have a value not to exceed $62,000.00. Lawrence Tyrone Dye is found to be a unsecured claimant due to no value in the real property for the second deed of trust held by Lawrence Tyrone Dye. Lawrence Tyrone Dye shall be paid on a pro-rata basis with other unsecured general claimants. Upon consummation of the Chapter 13 plan and discharge of the debtor, it is directed that Lawrence Tyrone Dye or its successor in interest, cancel the deed of trust of record against the debtor's real property . . . Any objection to valuation is required to be filed as a formal objection to valuation not later than 60 days from the date of confirmation. Upon timely filing of the objection to valuation, a valuation hearing shall be scheduled. Should no timely objection to valuation be filed, the value of the real property is found to be as indicated herein."

The notice which was served upon creditors provided that written objections to the proposed confirmation order were required to be filed within 35 days of the date of the notice which was October 20, 2003, and that if no objections were filed the plan would be confirmed on December 1, 2003. No objections were filed by Mr. Dye or any other creditor, and a confirmation order was entered on December 4, 2003, which included the above-quoted

language pertaining to Mr. Dye. Nor was any objection filed by Mr. Dye as to the $62,000.00 valuation contained in the confirmation order.

Motions for relief from automatic stay were filed by Mr. Dye on February 23, 2004 and June 22, 2004, respectively. In these motions, Mr. Dye asserts that the equitable distribution order created liens against Debtor's Residence and Debtor's 401(k) account at her employer, Sara Lee Corporation, and Debtor's interest in a pension and profit sharing plan at Sara Lee Corporation, and prays that the court modify the automatic stay in order to allow him to enforce such liens against the Residence, Debtor's 401(k) account and Debtor's interest in the pension and profit sharing plan. On July 8, 2004, Mr. Dye filed an amendment to his motions seeking additional relief involving a modification of the automatic stay which would permit him to return to the state court in order to seek a qualified domestic relations order transferring to him a share in Debtor's 401(k) account and pension and profit sharing plan equal to the $54,706.22 cash distributive award received under the state court equitable distribution orders.[1]

DISCUSSION

The court will first consider the rights of the parties with

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[1]The original equitable distribution order included a cash distributive award to Mr. Dye of $48,724.77. A subsequent order included an additional cash distributive award of $5,981.45.

respect to the Residence and will begin with a brief background regarding that property.

A. Relief as to the Residence.

The Residence was acquired by Mr. Dye and the Debtor as husband and wife and hence originally was held by them as tenants by the entirety. The parties separated on April 3, 1996, still owning the Residence as tenants by the entirety. On February 27, 1998, the Debtor forged the name of Mr. Dye on a deed which purported to convey the Residence to the Debtor and caused such deed to be recorded. Thereafter, on March 9, 1998, the Debtor obtained a $62,400.00 loan which was secured by a deed of trust on the Residence which thereafter was assigned to Fairbanks Capital Corporation. The Debtor used $34,105.26 of the loan proceeds to pay off the balance owed on a deed of trust that she and Mr. Dye earlier had placed on the Residence to secure a previous loan on which both were indebted. Approximately one month later, on April 24, 1998, the Debtor and Mr. Dye were divorced pursuant to a judgment that specifically provided that their claims for equitable distribution would survive the entry of the divorce judgment. At that point, the tenancy by the entirety was dissolved and the Debtor and Mr. Dye became tenants in common with a one half undivided interest in the Residence. However, nearly five years passed before a final order was entered regarding the equitable distribution claim, which finally occurred on March 19, 2003. In

the March 19, 2003, order the court found that Mr. Dye was entitled to 60% of the marital assets and that the Debtor was entitled to 40% of such assets. One of the grounds for the unequal division of marital assets was that "the Defendant/Wife transferred real property (i.e., the Residence) to herself that was titled in both names." The state court found that on the date of separation the marital estate had a value of $95,406.16 and included the Residence and the Debtor's interest in the 401(k) and pension and profit sharing plans at Sara Lee Corporation. The March 19, 2003 order divided the property included in the marital estate between the Debtor and Mr. Dye and, after taking into consideration the value of the property awarded and the debts that had been paid by the parties, adjudged that Mr. Dye was entitled to a cash distributive award of $48,724.77, in addition to a 1994 Toyota and one half of his Tier II Railroad Retirement benefits which were adjudged to be the property of Mr. Dye. The order adjudged that the remaining property in the marital estate, including the Residence and Debtor's interest in the 401(k) and retirement plans, was the "sole and separate property" of the Debtor. The order directed that the cash distributive award to Mr. Dye be paid by the Debtor at the rate of $676.74 per month for 72 months and that the Debtor execute a deed of trust on the Residence to secure the obligation to pay the cash distributive award. The order further adjudged that "Defendant/Wife's indebtedness shall be a lien against the marital

home and lot described at Deed Book 674, page 51 Richmond County Registry, the Defendant/Wife's Sara Lee 401K and Defendant/Wife's Sara Lee stock." When Debtor failed to make the payments required under the March 19 order or to execute a deed of trust as required under the order, Mr. Dye initiated contempt proceedings which resulted in Debtor executing a deed of trust securing her obligation to pay the cash distributive award to Mr. Dye. However, Debtor remained in default with respect to the monthly payments and filed this case after a contempt order was entered against her in the state court.

The first issue raised regarding the Residence regards the ownership of the Residence. Mr. Dye argues that the Debtor has only a one half interest in the Residence since the deed purporting to transfer his half to the Debtor was a forgery. This argument is not accepted because the equitable distribution order that was entered on March 19, 2003, established Debtor as the owner of the half interest formerly owned by the Debtor. The forgery of the deed was dealt with in the equitable distribution proceeding. In fact, the forgery was one of the circumstances considered by the court in making an unequal distribution in favor of Mr. Dye in which he received 60% of the marital estate involving a cash award of $48,724.77 which later was increased by $5,981.45. Under that order, one of the marital assets that was distributed to the Debtor was the Residence. After recognizing that the Debtor had forged a

deed to the Residence, the order distributes the Residence to the Debtor and provides that the Residence shall be the "sole and separate" property of the Debtor. At the same time, the order granted Mr. Dye a lien against the Residence to secure Debtor's obligation to pay Mr. Dye the $54,706.22 cash distributive award, and also directed that the Debtor execute a deed of trust on the Residence to secure such obligation. Neither party appealed from the entry of the March 19 order. Instead, Mr. Dye, in effect, ratified Debtor's ownership of the property when he sought and obtained enforcement of the provision requiring the Debtor, as owner of the property, to provide Mr. Dye with a deed of trust on the Residence securing her obligation to pay the cash distributive award. Given the provisions of the March 19 order which are binding on the Debtor as well as Mr. Dye, it is too late for Mr. Dye to now argue that the Debtor never acquired his half interest in the Residence because of the forged deed. Thus, when this case was filed the Debtor was the sole owner of the Residence and Mr. Dye's only interests in Residence were the judicial lien created by the March 19 order and the deed of trust which also encumbered the Residence.

The next issue to be addressed is whether Mr. Dye should be granted relief from the automatic stay in order to enforce either the deed of trust or the judicial lien. The Debtor argues that relief should be denied because neither the deed of trust nor the

judicial lien is enforceable. The Debtor relies upon the provisions of the confirmation order in arguing that the deed of trust no longer is enforceable. As to the judicial lien claimed by Mr. Dye, the Debtor contends that she is entitled to avoid the lien pursuant to § 522(f) of the Bankruptcy Code because it impairs her exemption of the Residence. The Debtor is correct regarding the status of the deed of trust, but falls short with respect to her lien avoidance argument.

Under the plan and confirmation order, Mr. Dye's deed of trust was "stripped away" based upon there being no equity in Debtor's real property over and above the indebtedness owed to the first lien holder. The proposed plan was served upon Mr. Dye and he was afforded an opportunity to object to the plan. No objection was filed and a confirmation order was entered confirming the plan. No appeal was taken from the confirmation order and the confirmation of the plan, therefore, became final. The effect of the confirmation of a Chapter 13 plan is clearly stated in § 1327. The provisions of a confirmed plan "bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." See In re Varat Enterprises, Inc., 81 F.3d 1310, 1315 (4th Cir. 1996), where the court stated:

> The doctrine of res judicata applies in the bankruptcy context. . . . A bankruptcy court's order of confirmation is treated as a final judgment with res judicata effect. . . .

> Pursuant to § 1141(a), all parties are bound by the terms of a confirmed plan of reorganization. . . . Consequently, parties may be precluded from raising claims or issues that they could have or should have raised before confirmation of a bankruptcy plan, but failed to do so. . . . More specifically, federal courts have consistently applied res judicata principles to bar a party from asserting a legal position after failing, without reason, to object to the relevant proposed plan of reorganization or to appeal the confirmation order.

Accord In re Tippins, 221 B.R. 11 (Bankr. N.D. Ala. 1998); In re Clark, 172 B.R. 701 (Bankr. S.D. Ga. 1994); In re Algee, 142 B.R. 576 (Bankr. D.C. 1992). It follows in this case that Mr. Dye is bound by the confirmation order which adjudged that there was "no value in the real property for the second deed of trust held by Lawrence Tyrone Dye" and that his indebtedness therefore is not secured by such deed of trust. Mr. Dye is precluded from now objecting to that portion of the plan and confirmation order and, pursuant thereto, is barred from seeking to foreclose such deed of trust and is not entitled to stay relief as to the deed of trust.

Neither the plan nor the confirmation order mentions the judicial lien created by the March 19 order and neither purports to deal with the judicial lien in any way. Hence, the judicial lien survived the entry of the confirmation order and was in place when Mr. Dye's motion for stay relief was filed. However, after the motion was filed, the Debtor filed a motion to avoid the judicial lien pursuant to § 522(f). Under § 522(f), a debtor may avoid the

fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled, if such lien is a judicial lien other than one securing an obligation for alimony or child support. In opposing the Debtor's § 522(f) motion, Mr. Dye argues that under the Supreme Court's decision in Farrey v. Sanderfoot, 500 U.S. 291, 111 S. Ct. 1825, 114 L. Ed. 2d 337 (1991), the Debtor may not utilize § 522(f) to avoid the judicial lien created by the March 19 order. Under the Sanderfoot decision, when one party to a divorce proceeding is granted the ownership of property free and clear of the other party's interest and the other party is granted a lien to replace the lost interest, the lien cannot be avoided under § 522(f). The reasoning underlying this result is that since the recipient of the property did not have the new property interest prior to the fixing of the lien, § 522(f) is not applicable and the lien cannot be avoided pursuant thereto. The Supreme Court explained this result as follows:

> The statute does not say that the debtor may undo a lien on an interest in property. Rather, the statute expressly states that the debtor may avoid "the fixing" of a lien on the debtor's interest in property. The gerund "fixing" refers to a temporal event. That event—the fastening of a liability—presupposes an object onto which the liability can fasten. The statute defines this pre-existing object as "an interest of the debtor in property." Therefore, unless the debtor had the property interest to which the lien attached at some point before the lien attached to that interest, he or she cannot avoid the fixing of

the lien under the terms of § 522(f)(1).

Sanderfoot, 500 U.S. at 296, 111 S. Ct. at 1829, 114 L. Ed. 2d at 344. The effect of this decision is that a lien may be avoided under § 522(f)(1) only when the lien attaches to a debtor's interest at some point after the debtor acquired the interest, i.e., the debtor must have owned the property prior to the lien affixing to the property.

As the Court noted in Sanderfoot, whether the debtor "ever possessed an interest to which the lien fixed, before it fixed, is a question of state law." 500 U.S. at 299, 111 S. Ct. at 1830, 114 L. Ed. 2d at 346. The state law applicable in the present case, of course, is North Carolina law. Prior to the entry of the March 19 order, under North Carolina law, the Debtor and Mr. Dye each owned an undivided half interest in the Residence as tenants in common, the parties having been divorced on April 24, 1998 (which terminated the tenancy by the entirety which existed prior to the divorce) and the forged deed having been ineffective to divest Mr. Dye of his half interest. The March 19 order adjudged that the Debtor was to become sole owner of the Residence. Under the state law involved in Sanderfoot, the effect of the equitable distribution order that awarded the home to the wife was to extinguish the previous interests of the parties and to create a new ownership in place of the old. Because the debtor in Sanderfoot thus owned a "new" interest which was acquired in the

same order that created the lien, he could not avoid the lien under § 522(f)(1) since he never possessed his new interest before the lien "fixed". Although not entirely clear, it appears that under North Carolina law and the terms of the March 19 order, that there was no extinguishment of the half interest which the Debtor owned prior to the entry of the order. Thus, prior to the entry of the March 19 order, the Debtor owned a one half interest in the Residence as a tenant in common which, under North Carolina law, was an interest to which a judgment lien could and would attach upon the docketing of the judgment.[2] It further appears that under the March 19 order, that half interest remained the property of the Debtor and, in addition, the Debtor acquired Mr. Dye's half interest in the Residence when the Residence was adjudged in the March 19 order to be the Debtor's sole and separate property. The half interest that the Debtor acquired under the order thus is a "new" interest and the lien imposed upon such interest by the March 19 order therefore may not be avoided pursuant to § 522(f)(1) as interpreted in the Sanderfoot decision. On the other hand, the judicial lien imposed upon the other half interest is subject to avoidance pursuant to § 522(f)(1) because it is an interest which was owned by the Debtor prior to the entry of the order creating

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[2]See N.C. Gen. Stat. § 1-234 which operates to create a lien against real property belonging to a judgment debtor upon the docketing of a judgment in the county where that real property is located.

the judicial lien and which she continued to own. Accordingly, the Debtor's motion to avoid Mr. Dye's judicial lien will be granted as to the half interest that the Debtor owned prior to the entry of the March 19 order but will be denied as to the half interest that the Debtor acquired under the March 19 order and, as to the latter half interest, Mr. Dye's motion for relief from the automatic stay will be granted and Mr. Dye will be permitted to seek enforcement of the March 19 order against such interest.

B. Relief as to the 401(k) and Pension Plan.

The court will next consider the rights of the parties with respect to Debtor's 401(k) account and her share in the Sara Lee pension and profit sharing plan. In his motions, Mr. Dye asserts that the March 19 order created a lien against these property interests and he has requested relief from the automatic stay in order to enforce the alleged lien. Because the March 19 order was ineffective in creating a lien against either the 401(k) account or the interest in the pension and profit sharing plan, Mr. Dye does not have a lien that can be enforced against those property interests and hence is not entitled to relief from the automatic stay.

It is undisputed that both the 401(k) plan and the pension and profit sharing plan at Sara Lee Corporation are retirement plans which meet all the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"). This means that both plans contain

the anti-alienation provision required by § 206(d)(1) of ERISA (29 U.S.C. § 1056(d)(1)). Under this provision, an ERISA-qualified plan must provide that "benefits provided under the plan may not be assigned or alienated." The effect of this anti-alienation provision is to protect an employee's accrued benefits under a qualified pension plan from third-party creditors such that the pension benefits may not be reached by judicial process in aid of a third-party creditor. See Guidry v. Sheet Metal Workers Pension Fund, 493 U.S. 365, 372, 110 S. Ct. 680, 685, 107 L. Ed. 2d 782, 792 (1980). In a bankruptcy context, the effect of the anti-alienation provision is that ERISA benefits do not become property of the bankruptcy estate when the employee files a bankruptcy case and hence are beyond the reach of the bankruptcy trustee. See Patterson v. Shumate, 504 U.S. 753, 112 S. Ct. 2242, 119 L. Ed. 2d 510 (1992), where the Court concluded that the anti-alienation provision required under federal law for ERISA qualification, when incorporated into an employee benefit plan, constitutes an enforceable transfer restriction for purposes of determining whether property is excluded from the bankruptcy estate pursuant to § 541(c)(2). Accordingly, the Court held that a Chapter 7 debtor's interest in an ERISA-qualified plan which provides that the debtor's interest may not be sold, transferred, assigned, encumbered, seized or attached does not constitute property of the estate. In 1984 Congress created a limited exception to ERISA

preemption with the enactment of 29 U.S.C. § 1144(b)(7), which allows pension plan benefits to be divided pursuant to state law where a valid "qualified domestic relations order" (QDRO) is entered by the state court.[3] In the present case there is no contention that the March 19 order meets the requirements of a qualified domestic relations order. In fact, the March 19 order does not purport to be a QDRO and contains none of the information required under 29 U.S.C. § 1056(d)(3)(C). Since the March 19 order does not qualify as a QDRO, it does not create a lien or other interest that can be enforced against Debtor's interests in the ERISA plans at Sara Lee Corporation. Since Mr. Dye has no enforceable lien against such interests, it follows that he is not entitled to relief from the automatic stay as to those interests. See In re Railroad Dynamics, Inc., 97 B.R. 239, 245 (Bankr. E.D. Pa. 1989) (movant seeking relief from stay who cannot establish a lien is an unsecured creditor and not entitled to relief from the stay).

C. Relief to Seek Additional Order in State Court.

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[3]The definition of a "qualified domestic relations order" is set forth in 29 U.S.C. § 1056(d)(3)(B)(I), which defines a QDRO as a domestic relations order "which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan" and which meets the requirements of subparagraphs (C) and (D) of the section. Subparagraphs (C) and (D), in turn, specify the details the order must include, such as the name and address of the participant and alternate payee, the amount of the benefits to be paid and the method of payment.

Mr. Dye also has requested that the automatic stay be modified to permit him to petition the state court for the issuance of a qualified domestic relations order. Paragraph 12 of the March 19 order deals with the issuance of a qualified domestic relations order and provides as follows:

> Plaintiff/Husband's Tier II Railroad Retirement benefits will be divided equally between the Parties. The Plaintiff/Husband and Defendant/Wife to facilitate the division and distribution of this marital asset shall enter into a Qualified Domestic Relations Order (QDRO). Plaintiff/Husband shall be responsible for seeing that the QDRO is properly drawn and completed within 6 months of the filing of this order.

The court will modify the automatic stay in order for this provision of the March 19 order to be implemented through the issuance of a QDRO which divides Mr. Dye's Tier II Railroad Retirement benefits between Mr. Dye and the Debtor. Moreover, rather than requiring that such division be an equal division between them, as originally contemplated by Paragraph 12, the court will further modify the automatic stay in order to permit the state court, at the election of Mr. Dye, to implement an appropriate setoff. The remedy of setoff is recognized under North Carolina law where there is mutuality of parties and of debts and, when applicable, operates to effect a credit or payment. See Dameron v. Carpenter, 190 N.C. 595, 130 S.E. 328 (1954). Section 553 of the Bankruptcy Code recognizes and preserves setoff rights that exist under state law if the conditions specified in § 553 are satisfied.

See generally 5 COLLIER ON BANKRUPTCY ¶ 553.01 (15th ed. rev. 2004). The conditions required under § 553 are: (1) the creditor must hold a claim against the debtor that arose before the commencement of the case; (2) the creditor must owe a debt to the debtor that also arose before the commencement of the case; (3) the claim and debt must be mutual; and (4) the claim and debt are each valid and enforceable. All of these requirements are satisfied in the present case which means that Mr. Dye has the right of setoff. As a party with the right of setoff, Mr. Dye is tantamount to a secured creditor and does not lose the right to exercise the setoff as a result of the bankruptcy filing. See In re Elcona Homes Corp., 863 F.2d 483, 485 (7th Cir. 1988)(rule of setoff "recognizes that the creditor who owes his debtor money is like a secured creditor; indeed, the mutual debts, to the extent equal, secure each party against the other's default"); Lee v. Schweiker, 739 F.2d 870, 875 (3d Cir. 1984)("[s]etoff, in effect, elevates an unsecured claim to secured status, to the extent that the debtor has a mutual, pre-petition claim against the creditor"). A creditor who has the right to setoff may obtain relief from the automatic stay in order to implement the setoff. See In re NTG Industries, Inc., 103 B.R. 195 (Bankr. N.D. Ill. 1989). Accordingly, the automatic stay will be modified in the present case to the extent of permitting Mr. Dye to offset his obligation to transfer one half of his Tier II Railroad Retirement benefits to the Debtor against

the Debtor's obligation to pay Mr. Dye the $54,706.22 cash distributive award received by Mr. Dye under the March 19 order and the June 16, 2004 amendment to the March 19 order so that the amount of benefits to be transferred to the Debtor pursuant to the QDRO called for under Paragraph 12 shall be equal to 50% of Mr. Dye's Tier II Railroad Retirement benefits less the sum of $54,706.22.

CONCLUSION

An order modifying the automatic stay in accordance with the foregoing findings and conclusions opinion shall be entered contemporaneously with the filing the filing of this memorandum opinion.

This 4th day of October, 2004.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:	)	
	)	
Daisy Quick Dye,	)	Case No. 03-12516C-13G
	)	
Debtor.	)	
	)	

ORDER

In accordance with the memorandum opinion filed contemporaneously with the entry of this order, it is ORDERED, ADJUDGED AND DECREED as follows:

(1) The automatic stay that is in effect pursuant to § 362 of the Bankruptcy Code as a result of the filing of this case is modified as follows:

(a) the automatic stay is modified to the extent of permitting Lawrence T. Dye to petition the District Court of Richmond County for the issuance of a qualified domestic relations order dividing the railroad retirement benefits of Lawrence T. Dye which are referred to in Paragraph 12 on Page 4 of the equitable distribution order that was entered on March 19, 2003 in Civil Action No. 96 CvD 452 between Lawrence T. Dye and Daisy Quick Dye in the manner hereinafter described;

(b) the automatic stay is modified to the extent of permitting Mr. Dye to setoff his

obligation to transfer one half of his railroad retirement benefits to Daisy Quick Dye against her obligation to pay Mr. Dye the $54,706.22 cash distributive award received by Mr. Dye under the March 19 order and the June 16, 2004 amendment to the March 19 order so that the amount of benefits to be transferred to Daisy Quick Dye pursuant to the qualified domestic relations order called for under Paragraph 12 of the March 19 order shall be equal to 50% of Mr. Dye's railroad retirement benefits less the sum of $54,706.22;

(c) the automatic stay is modified as to a 50% interest in the realty located at 113 Wilderness Drive, Rockingham, North Carolina which was transferred from Lawrence T. Dye to Daisy Quick Dye by the equitable distribution order that was entered on March 19, 2003, in Civil Action No. 96 CvD 452, such modification being effective only after the setoff authorized in the preceding paragraph has occurred and only to the extent that Mr. Dye's $54,706.22 award is not

satisfied by the setoff, in which event the automatic stay shall be lifted to the extent of permitting Lawrence T. Dye to initiate and pursue all proceedings available under the laws of the State of North Carolina to enforce against the aforesaid 50% interest in the Wilderness Drive property the judicial lien created in favor of Lawrence T. Dye by the March 19 equitable distribution order to the extent necessary in order to satisfy any portion of the $54,706.22 award that was not satisfied by the setoff; and

(2) Except as hereinbefore provided, the motions for relief from the automatic stay filed on behalf of Lawrence T. Dye are denied and the automatic stay remains in full force and effect except as hereinbefore provided in this order.

This 4th day of October, 2004.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge