

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

ENTERED

JUN 13 2000

U.S. Bankruptcy Court  
Greensboro, NC  
KWC

IN RE: )  
 )  
Melissa M. Staples, ) Case No. 00-10147C-7G  
 )  
Debtor. )  
 )

ORDER

This case is before the court for consideration of the Debtor's Motion to Avoid the Judicial Lien of Commercial Credit Financial Corporation. Having considered the Debtor's motion, amendment of motion and the other matters of record in this case, the court finds and concludes as follows:

1. This Chapter 7 case was filed on January 21, 2000.
2. On the petition date, the Debtor and her non-debtor spouse owned as tenants by the entirety a residence located at 703 Cornwallis Drive, Greensboro, North Carolina ("the Residence"), where the Debtor resided.
3. According to the Debtor's evidence, the fair market value of the Residence on the petition date was \$251,000.00.
4. On the petition date, the Residence was subject to the following encumbrances and liens:
  - (a) A first deed of trust securing indebtedness owed to First Union Mortgage Company in the amount of \$214,000.00;

(b) A second deed of trust securing indebtedness owed to HVM Management Company in the amount of \$25,000.00; and

(c) The Commercial Credit Financial Corporation judgment against Debtor and her non-debtor spouse in the amount of \$6,131.99, plus \$60.00 in court costs, and interest at the legal rate from and after October 9, 1999, for a total of \$6,331.35.

5. In Debtor's claim for property exemptions, Debtor claimed a \$10,000.00 homestead exemption with respect to the Residence pursuant to N.C.G.S. § 1C-1601(a)(1).

6. On March 9, 2000, Debtor filed a motion to avoid the judicial lien of Commercial Credit Financial Corporation pursuant to § 522(f) of the Bankruptcy Code.

7. Under Section 522(f) a debtor may avoid the fixing of a judicial 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. Under § 522(f)(2)(A) a lien must be considered to impair an exemption to the extent that the sum of (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens.

8. The particular facts of this case complicate somewhat the application of § 522(f). The complicating facts are that the Residence was entireties property on the petition date and the filing of this case did not include the Debtor's husband, the other tenant by the entirety.

9. Under North Carolina law, an estate by the entirety is a form of ownership that is applicable only to real property owned by a husband and wife. Each spouse is deemed to be seized of the entire estate and neither spouse has a separate or undivided interest in the property. See Boyce v. Boyce, 60 N.C. App. 685, 299 S.E.2d 805 (1983). Neither spouse may encumber property held as tenants by the entirety without the written joinder of the other spouse. N.C.G.S. § 39-13.6(a). A judgment against only one spouse does not attach to real property held as tenants by the entirety, and only a joint creditor may execute on entireties property. See In re Crouch, 33 B.R. 271, 274 (Bankr. E.D.N.C. 1983); In re Woolard, 13 B.R. 105, 107 (Bankr. E.D.N.C. 1981).

10. Despite the unusual characteristics of a tenancy by the entirety, a debtor's interest in the entireties property is property of the estate under the broad reach of § 541(a) of the Bankruptcy Code which extends to "all legal or equitable interests

of the debtor in property as of the commencement of the case." See In re Cordova, 73 F.3d 38, 40 (4<sup>th</sup> Cir. 1996) ("when Cordova filed her petition, the bankruptcy estate included her tenancy-by-the-entirety interest in the marital home"). The filing of the bankruptcy case by one of the spouses does not sever or terminate the tenancy by the entirety and the property remains tenancy by the entirety property following the bankruptcy filing. See Greenblatt v. Ford, 638 F.2d 14 (4<sup>th</sup> Cir. 1981). Even though only one of the spouses is in bankruptcy, the bankruptcy trustee nevertheless is entitled to sell the entireties property if there are joint creditors in the case, i.e., creditors to whom both the husband and wife are indebted. See In re Williams, 104 F.3d 688 (4<sup>th</sup> Cir. 1997); Sumy v. Schlossberg, 777 F.2d 921 (4<sup>th</sup> Cir. 1985). In such a case, the point at which the debtor's interest in the property is determined for purposes of administration in the bankruptcy case is after the property has been sold. The debtor's interest for purposes of administration in the bankruptcy case is one half of the net remaining after the costs of the sale and any consensual liens such as deeds of trust have been satisfied. It is the debtor's one half of the net proceeds that is subject to the bankruptcy process. Thus, after the debtor has received any properly claimed exemption from this portion of the proceeds, the

remaining proceeds are available to the bankruptcy trustee for payment of administrative costs and distribution to the creditors entitled to be paid from such proceeds. See In re Ginn, 186 B.R. 898 (Bankr. D. Md. 1995); In re Blair, 151 B.R. 849 (Bankr. S.D. Ohio 1992); In re Trickett, 14 B.R. 85 (Bankr. W.D. Mich. 1981).

11. Because of the anomaly presented by the tenancy by the entirety where only one spouse is a debtor, § 522(f) must be applied after the debtor's interest has been determined as herein described. In the present case this occurs as follows: the total of the two deeds of trust (\$239,000.00) is subtracted from the value of the property (\$251,000.00), which leaves \$12,000.00, which is divided in half to arrive at the value of debtor's interest in the property, which is \$6,000.00. Since the total of debtor's exemption (\$10,000.00) plus the amount of the judgment lien (\$6,331.35) exceeds the value of debtor's interest by more than \$6,331.35, debtor is entitled to avoid the entire judgment held by Commercial Credit.

It is therefore ORDERED, ADJUDGED AND DECREED that debtor's motion to avoid the judicial lien of Commercial Credit Financial Corporation, recorded in Book 409, Page 205, of the office of the Clerk of Superior Court of Guilford County, is granted and such

judicial lien is hereby avoided and cancelled as to Debtor's interest in the real property located at 703 Cornwallis Drive, Greensboro, North Carolina.

This 7<sup>th</sup> day of June, 2000.

William L. Stocks

WILLIAM L. STOCKS

United States Bankruptcy Judge