

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Hattie Elizabeth Myers,

Debtor.

Case No. 21-01046-DD

Chapter 7

ORDER

Before the Court is Debtor's motion to avoid a judicial lien held by Synovus Bank ("Synovus") filed on May 25, 2021. Synovus filed an objection on June 14, 2021. The Court held a hearing on July 22, 2021, at which both parties were represented by counsel. At the conclusion of the hearing, the Court took the matter under advisement. The Court now enters this order granting Debtor's motion in part.

The issue before the Court is the value of Debtor's real property. Debtor's schedules list an ownership interest in real property located at 2828 Old Barnwell Road, Lexington, SC ("Property"). The Property is a single-family residential home of approximately 2,130 square feet on 1.03 acres. An older part of the home was built in 1949; it has a concrete block exterior, asphalt shingle roof, and painted wood trim. An addition to the home was made later. Debtor's schedules list the value of the Property as \$150,000, and the parties stipulate that \$102,464 is owed on a mortgage. Debtor claims a homestead exemption of \$62,131.29, pursuant to 11 U.S.C. § 522(b) and S.C. Code Ann. § 15-41-30(A)(1)(a). There is no dispute that the Property is Debtor's residence and that she is entitled to the homestead exemption. Synovus holds a judgment lien in the amount of \$20,582.14. Debtor seeks to avoid Synovus' judgment lien pursuant to 11 U.S.C. § 522(f)(1)(A), asserting that the lien impairs an exemption to which Debtor is entitled. Synovus responds that the Property has a higher value than indicated by Debtor and therefore its judgment lien cannot not be avoided.

Pursuant to § 522(f)(1)(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. Section 522(f)(2)(A) provides that:

[A] lien shall 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.

Here, the senior mortgage lien on the Property is \$102,464, and the claimed homestead exemption is \$62,131.29, together totaling \$164,595.29. Synovus’ \$20,582.14 judicial lien may not be avoided to any degree if the value of the Property exceeds \$185,177.43. Debtor has the burden of proof regarding each element of § 522. *In re Shands*, 57 B.R. 49, 50 (Bankr. D.S.C. 1985); *see also Premier Capital, Inc. v. DeCarolis (In re DeCarolis)*, 259 B.R. 467, 471 (1st Cir. BAP 2001) (“Debtor has the burden of proof on all avoidance issues.”).

At the hearing on July 22, 2021, both parties presented evidence of the Property’s value through expert testimony of appraisers. The parties stipulated that the appraisers were qualified to render an opinion on the value of residential real estate. Both appraisers used a sales comparison approach to arrive at an opinion of value. Debtor’s appraiser indicated that the Property’s fair market value, as-is, is \$46,000. Of note, he testified that the ceiling height was low, ranging from 6.8’ to 7.0’, and that the three septic tanks on the Property were inoperable. Debtor’s appraiser used comparable sales from an estate sale, foreclosure sale, and a company’s bulk liquidation of multiple properties. Interestingly, Debtor’s expert suggested that spending \$93,000 for repairs would result in a value of only \$95,000, and that his opinion was the house should be demolished. Synovus’ appraiser valued the Property at \$185,000, but did not estimate

any costs for repairs. Synovus' appraiser used comparable sales from four arm's length transactions. Both appraisers testified that the current real estate market is strong. Debtor testified that her opinion on the value of the Property at the time she filed bankruptcy was \$150,000, based on a 2008 appraisal. Debtor testified that she tried to sell the Property in 2017 for \$177,000, again based on the 2008 appraisal. Debtor did not receive any offers when attempting to sell.

When the Court is presented with conflicting expert valuations, the "court must determine the value based on the credibility of the appraisers, the logic of their analyses and the persuasiveness of their subject reasoning." *In re Simmons*, C/A No. 20-03439-JW, slip op. (Bankr. D.S.C. Feb. 19, 2021) (quoting *In re Blackwell*, C/A No. 2:17-bk-20203, 2018 WL 1189257, at *2 (Bankr. S.D. W.Va. Mar. 5, 2018) (internal citations omitted)). "As finders of fact, bankruptcy courts should determine the best method of ascertaining value, based upon the evidence presented." *In re 3G Props., LLC*, C/A No. 10-04763-8-JRL, 2011 WL 5902504, at *8 (Bankr. E.D.N.C. July 12, 2011) (citing *Assocs. Commer. Corp. v. Rash*, 520 U.S. 953, 964, 117 S.Ct. 1879, 138 L.Ed.2d 148 (1997)). "[R]eal estate valuations 'are matters of art more than science.'" *In re Strever*, 468 B.R. 776, 782 (Bankr. D.S.C. 2012) (quoting *Whiteford v. Hildreth (In re Hildreth)*, No. 1:09-bk-09029 MDF, Adv. No. 1:10-ap-00158 MDF, 2011 WL 1332036, at *5 (Bankr. M.D. Pa. Apr. 7, 2011)). The Court also considers, though with different weight, Debtor's opinion as the Property owner.

Here, the Court is presented with two competing expert witnesses and their appraisals regarding the value of the Property. Based on a careful consideration of the evidence presented, the Court finds the value of the Property to be \$170,000. Neither appraiser is an expert regarding necessary repairs and structural issues. The opinion of Debtor's expert is based on a foreclosure

sale, estate sale, and a bulk liquidation, whereas the opinion of Synovus' expert is based on comparable sales that are traditional arm's length transactions. Nevertheless, Synovus' expert fails to note any reductions in value for repairs that are obviously necessary, and adds value for a swimming pool that is not characteristic for the neighborhood and is likely near the end of its useful life, absent repair. Debtor's expert fails to consider that the house is livable and appears, in part, to be an acceptable residence for Debtor and, perhaps, others. While Debtor failed in her effort to sell the Property in 2017, both appraisers testified that the Property would likely fare better due to the strength of the current housing market. The Court carefully considered the expert opinions, Debtor's opinion, the current housing market, photographs and descriptions of the Property, and the obvious deficiencies in the structure. The Court finds the value of the Property to be \$170,000. Accordingly, Synovus' judicial lien is avoided in part, with \$5,404.71 continuing as a lien upon the Property. A separate, short order shall also be entered.

AND IT IS SO ORDERED

**FILED BY THE COURT
08/11/2021**



Entered: 08/11/2021

A handwritten signature in black ink, appearing to read "D.R. Duncan", written over a horizontal line.

David R. Duncan
US Bankruptcy Judge
District of South Carolina