

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
AUG 9 2002
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (99)

IN RE:

Susan Kingsmore,

Debtor.

C/A No. 02-04789-W

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court concludes that Susan Kingsmore ("Debtor") may have possessed an equitable right of redemption associated with her two installment land sales contracts when she filed her bankruptcy petition. The Court orders a further hearing where the parties may present evidence on the issue of whether an equitable right of redemption should be recognized in this case. At the hearing, the parties may also present evidence relating to whether Special Referee James Spencer Verner considered Debtor's equitable right of redemption when he canceled the parties' contracts as well as any other issue that may affect confirmation. The hearing shall be held on August 27, 2002 at 10:30 a.m. at the J. Bratton Davis United States Bankruptcy Courthouse, 1100 Laurel Street, Columbia, South Carolina.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
August 9, 2002.

ENTERED

C.H.B.

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CERTIFICATE OF MAILING

The undersigned, a duly qualified official of the United States
Bankruptcy Court, hereby certifies that a copy of the foregoing
document has been mailed to the party named below and that a
true and correct copy of the same has been filed for the record.

FILED 10-1-2002

DEBTOR: CREDITORS ATTORNEY, TRUSTEE

WILLIAM H. BROOKS

Deputy Clerk

+ Atty for
Creditor,
Downey

ENTERED

C.R.B.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at O'clock & min. **PM**
AUG 9 2002
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina 29201

IN RE:

Susan Kingsmore,

Debtor.

C/A No. 02-04789-W

ORDER

Chapter 13

THIS MATTER comes before the Court to consider the confirmation of Susan Kingsmore's ("Debtor") Chapter 13 Plan. Joann D. Dehardt ("Creditor") filed a Response to Chapter 13 Plan wherein she objects to confirmation. According to Creditor, Debtor attempts to use her bankruptcy case to revive two installment land contracts that were canceled prepetition by a state court order entered on March 21, 2002 (the "Special Referee's Order"). Further, Creditor expresses concerns about Debtor's treating the properties subject to the installment land contracts in her Plan because (1) Debtor does not reside on the properties and (2) Debtor's inconsistent employment history suggests that her Plan is not feasible. Finally, Creditor argues that, pursuant to the Rooker-Feldman doctrine, it is inappropriate for this Court to review the Special Referee's Order. In response, Debtor acknowledges the Special Referee's Order canceled the installment land contracts prepetition; however, in spite of the cancellations, Debtor argues that she retains an equitable interest in the properties until Creditor forecloses against them and foreclosure sales are held. In addition, Debtor argues that she resides upon the properties and that they are necessary for her reorganization. Finally, Debtor asserts that she is currently employed and that her Plan is feasible.

At the hearing, both parties presented their arguments; however, there was limited evidence and no testimony. The only evidence admitted into the record is a copy of the Special

Referee's Order. The parties requested that the Court determine as a threshold issue whether Debtor retains an equitable interest in the properties despite the Special Referee's Order canceling the contracts and whether Debtor can treat the debts incurred under the contracts in her Chapter 13 Plan. Based upon the pleadings filed and the parties' arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.¹

FINDINGS OF FACT

1. On March 21, 2002, Special Referee James Spencer Verner entered an order resolving a complaint brought by Creditor against Debtor to terminate the parties' installment land contracts. In the Special Referee's Order, the court made the following determinations:

a. On October 6, 1998, Debtor and Creditor entered into two installment land contracts. Under one contract, Creditor agreed to sell Debtor a parcel, Lot 12. Under a separate contract, Creditor also agreed to sell Debtor another parcel, Lot 13. Each lot measures approximately one acre and is located in Newberry County, South Carolina.

b. For Lot 12, Debtor agreed to pay Creditor monthly installments of \$74.29 on the fifteenth day of each month beginning November 15, 1998 and continuing until paid in full. For Lot 13, Debtor agreed to pay Creditor monthly installments of \$156.40 on the first day of each month beginning November 1, 1998 and continuing until paid in full.

c. After Debtor failed to make payments for Lot 12 for November and December 2001 and for Lot 13 for November and December 2001 and January 2002, Creditor filed a lis

¹ The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

pendens, summons, and complaint on January 10, 2002 in the Court of Common Pleas.²

d. Subsequent to the initiation of the state court action, Debtor did not make payments for Lot 12 for January, February, or March 2002 or for Lot 13 for February and March 2002.

e. Debtor was provided with notices of a right to cure.

f. According to the contracts' terms, Creditor can cancel the contracts because Debtor failed to make payments.³

g. The total balance due and owing to Creditor on the contracts is \$6,674.00 (\$2,184.84 for Lot 12 and \$4,489.16 for Lot 13).⁴

h. On March 21, 2002, the Special Referee ordered the cancellation of the two *installment land contracts* and directed the Clerk of Court for Newberry County to enter these cancellations upon the contracts of record in the Clerk's Deed Book.

2. On April 19, 2002, Debtor filed her Chapter 13 case.

3. In her Schedules, Debtor lists her real property as two lots located in Prosperity, South Carolina. Debtor values these lots as worth \$10,000.00 and lists Creditor, her only secured

² The Special Referee's Order does not specifically address Debtor's payment history, but it appears she made payments under the contracts for three years.

³ The Special Referee cited language from the contracts that provides that Creditor may retain all amounts paid by Debtor as liquidated damages, re-enter the property, take *exclusive possession of it, evict Debtor, and be relieved of the duty to convey the property to Debtor* in the event Debtor fails to make payments after a period of thirty days since the payments are scheduled to be made.

⁴ The parties' contracts were not admitted into evidence, and the Court cannot discern from the Special Referee's Order the sales prices of the contracts or the total amount Debtor has paid under the contracts.

creditor, with a claim totaling \$6,886.32 secured by the lots.⁵

4. In her Chapter 13 Plan, Debtor proposes to pay Creditor \$146.00 monthly until the balance of Creditor's lien plus 8.5% interest has been paid in full.

CONCLUSIONS OF LAW

The Court must consider whether Debtor has an equitable interest in the properties subject to the installment land contracts as of the commencement of the case that constitutes property of the estate pursuant to 11 U.S.C. §541(a)(1) and that Debtor can treat in her Chapter 13 Plan or whether Debtor's interest was terminated by the Special Referee's Order. Debtor claims her equitable interest arises because the contracts are disguised mortgages, she has paid 80% of the amount owed under the contracts, she has paid taxes and insurance on the properties since entering into the contracts, and there is equity in the properties. According to Debtor, her equitable interest is not extinguished until Creditor brings foreclosure actions and the foreclosure sales are final. In essence, Debtor asserts her equitable interest exists separate and apart from the contract, and, although the contract may be terminated, the equitable interest remains effective.

South Carolina case law has previously recognized that purchasers under installment land contracts can have an equitable interest in the property they are purchasing.⁶ See Lewis v. Premium Inv. Corp., 535 S.E.2d 139, 142 (S.C. Ct. App. 2000), aff'd as modified No. 25510, 2002 WL 1787986 (S.C. Aug. 5, 2002) (holding that a purchaser under an installment land

⁵ In her Schedules, Debtor also claims a homestead exemption on these same lots pursuant to S.C. Code Ann. 15-41-30(1) in the amount of \$3,113.68.

⁶ Installment land contracts are those where, typically, the seller retains legal title to the property until all of the purchase price has been paid but the purchaser is entitled to immediate possession. See Lewis v. Premium Inv. Corp., No. 25510, 2002 WL 1787986, at *2 (S.C. Aug. 5, 2002) (citing 15 Richard R. Powell, Real Property, §84D.01 (2000)).

contract possessed an equitable interest in the property). For example, in Southern Pole Buildings, Inc. v. Williams, 347 S.E.2d 121 (S.C. Ct. App. 1986), the court examined the issue of whether mechanics' liens could attach to property that was the subject of an installment land contract when the seller had not consented to the work performed on the property. The court found that the purchaser in possession of land under an executory contract of sale had an equitable interest in the property; accordingly, mechanics' liens could attach to the property. See S. Pole, 347 S.E.2d at 122. Moreover, the Supreme Court of South Carolina considered a situation where a purchaser under an installment land contract brought an action seeking the return of her interest in real property that she had partially paid for under the contract. See Dempsey v. Huskey, 80 S.E.2d 119, 123 (S.C. 1954). Although the purchaser did not have a deed to the property, the court ordered that the purchaser receive the amount she invested in the property plus interest from the proceeds of a subsequent sale of the property.⁷

Seemingly as part of an equitable interest in property subject to an installment land contract, South Carolina law recognizes that purchasers may, in appropriate circumstances when equity demands it, have an equitable right of redemption. See Lewis v. Premium Inv. Corp., No. 25510, 2002 WL 1787986, at *3 (S.C. Aug. 5, 2002). This right allows purchasers an opportunity to redeem property subject to an installment land contract by paying the entire

⁷ The Dempsey Court analogized the relationship between the purchaser and seller in an agreement to buy and sell real estate to a mortgagor-mortgagee relationship and described the buyer as having equitable title and the seller as having legal title. See id. at 121. The court further noted that the seller under this contract, upon learning of the purchaser's default, could have brought an action and proceeded with a foreclosure as if the purchaser had executed a mortgage. See id. However, as was pointed out in In re Jones, the Dempsey Court did not classify an installment sales contract as an equitable mortgage or hold that sellers must institute foreclosure actions to terminate these contracts. See Jones, 118 B.R. 395, 396 (Bankr. D. S.C. 1989).

purchase price before the court would enforce the forfeiture provision of the contract. This right exists when it would be inequitable to enforce a forfeiture or cancellation provision in a contract because doing so would act like a penalty. See id. at *2-3. To determine whether a purchaser has an equitable right of redemption in an installment land contract, a number of factors should be considered, including the following: (1) the amount of the purchaser's equity, (2) the length of the default period, (3) the number of defaults, (4) the reason for the delay in payment, (5) the speed in which equity is sought, (6) the value of improvements to the property, (7) the amount of money forfeited compared to the purchase price, (8) the adequacy of the property's maintenance, and (9) the relationship of monthly payments to the fair rental value of the property. See id. at fn 5.

In the case before the Court, it does not appear that Debtor's equitable right of redemption for the properties subject to the installment land contracts has been previously addressed. The Special Referee's Order does not mention such a right of redemption, and no language in the Order leads this Court to conclude that the right has been extinguished, barred, or foreclosed. Consequently, regardless of the Special Referee canceling the contracts based upon their express terms, an equitable right of redemption may remain.

Because such a right of redemption may prohibit the forfeiture or cancellation of an installment land contract under state law and because the Special Referee's Order in this case does not address this right by its terms, Debtor may have possessed this right when she filed her bankruptcy petition. In such an instance, Debtor may have the opportunity to redeem her interest in the properties through payments under her Chapter 13 Plan. Currently, however, the Court cannot determine whether Debtor has this right as the record of the case contains no evidence

that sheds light upon the Lewis factors that indicate whether an equitable right of redemption should be found to exist in a particular case. Accordingly, the Court orders a further hearing where the parties may present evidence on the issue of whether an equitable right of redemption should be recognized in this case. At that hearing, the parties may also present evidence regarding whether the Special Referee considered Debtor's equitable right of redemption when he canceled the parties' contracts as well as any other issue that may affect confirmation. The hearing shall be held on **August 27, 2002 at 10:30 a.m. at the J. Bratton Davis United States Bankruptcy Courthouse, 1100 Laurel Street, Columbia, South Carolina.**

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
August 9, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the district of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

AUG 9 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE,

CONNIE H. BROOKS

Deputy Clerk

*Creditors atty-
Downey*