

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 13
)	
HARRY H. RADSICK AND)	CASE NO. 05-68990
BARBARA J. RADSICK,)	
Debtors.)	JUDGE RUSS KENDIG
)	
)	
)	MEMORANDUM OPINION
)	
)	

On May 31, 2006, the Court held a hearing on Debtors' motion to avoid Speedy Drilling Company's (hereafter "Speedy") mechanic's lien. Debtors filed their amended motion, brought pursuant to 11 U.S.C. §§ 522(f) and 1322 and Federal Rules of Bankruptcy Procedure 4003 and 9014, on April 5, 2006. Speedy filed an objection to the motion on April 24, 2006. John R. Bates, counsel for Debtors, and Debtors appeared at the hearing. Charles A. Johnston, counsel for Speedy, appeared at the hearing with representatives from Speedy.

JURISDICTION

The court has jurisdiction of this proceeding pursuant to 28 U.S.C. § 1334 and the general order of reference entered in this district on July 16, 1984. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(K).

FACTS

Debtors filed a Chapter 13 case on October 15, 2005. Debtors jointly own a 1999 Commodore 28' x 80' mobile home, and the land upon which it is situated, identified as 4350 Peach Road, Amsterdam, Ohio. On Schedule A, Debtors valued the property at \$70,000.00. The real estate includes two parcels of land totaling approximately 3.65 acres. Schedule A indicates the assessor's value of the real estate is \$16,150.00 and that mobile home is not taxed as real estate. The Chapter 13 appraiser valued the property as follows:

Real Estate:	\$16,700.00
Mobile Home:	\$52,984.00
Site Improvements:	\$10,000.00
TOTAL VALUE:	\$79,684.00
ROUNDED:	\$80,000.00

Debtors did not claim a homestead exemption.

On Schedule D, Debtors show the following interests against the mobile home

and real estate:

Carroll County Treasurer, 2005 property taxes, \$200.69
Carroll County Treasurer, 2004-2005 mobile home taxes, \$1,799.31
Greentree, 09/13/99 mortgage, \$71,547.40
Speedy Drilling Company, 2002 mechanic's lien, \$9,720.40

The following claims have been filed asserting an interest in either the real estate, the mobile home, or both:

Claim 1, Green Tree Servicing, L.L.C.	\$71,337.86
Claim 2, Carroll County Treasurer	200.69
Claim 5, Speedy Drilling Company	6,943.10
Claim 7, Carroll County Treasurer	1,803.39

Neither party provided a copy of the mechanic's lien.¹ Based on the undisputed facts, the mechanic's lien resulted from Debtors' failure to fully pay for drilling done by Speedy to provide water to their residence and it is a valid lien against Debtors' real estate. The lien, filed on May 24, 2002, is subordinate to taxes and the Green Tree mortgage.

ARGUMENTS

Debtors contend that the mechanic's lien attached only to the real estate. It is Debtors' position that the mobile home is personal property and is not affixed to the land, so the mechanic's lien could not have attached to it. According to Debtors, since the real estate is valued at \$16,700.00, and the real estate taxes and mortgage against the real estate total more than \$71,000.00, there is no equity to which the mechanic's lien can attach. As a wholly unsecured junior lien, Debtors argue that the lien is subject to avoidance pursuant to 11 U.S.C. §§ 1322 or 522(f).

Speedy counters and argues that the valuations provided by Debtors fail to account for the mobile home. At the hearing, Speedy pointed out that Debtors treated the land and mobile home as one unit when both were listed on Schedule A. At the hearing, Speedy argued that the mobile home is affixed as evidenced by the well and septic, and may further be established upon inspection to determine if the tongue has been removed.

LAW AND ANALYSIS

1. Avoidance under 11 U.S.C. § 522(f)

Debtors cite two bankruptcy code provisions in support of their motion. The first is 11 U.S.C. § 522(f) which allows certain judicial liens to be avoided if the liens impair exemptions to which Debtors would otherwise be entitled. Mechanics' liens are not judicial liens, but statutory liens, and therefore are not under the purview of the statute.

¹ A copy of the lien was attached to Speedy's proof of claim, however, and is part of the case record.

See In re Burnett, 2004 WL 1242508 *1 (Bankr. N.D. Ohio 2004); In re Ramsey, 89 B.R. 680 (S.D. Ohio 1988). Therefore, Debtors' reliance is misplaced.

2. *Avoidance under 11 U.S.C. § 1322(b)(2)*

Debtors also rely on 11 U.S.C. § 1322 in their motion to avoid the Speedy mechanic's lien. This section allows a plan to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence" It is Debtors' position that this provision allows them to "cram-down" the mechanic's lien held by Speedy upon a showing that there is no equity in the property to which the lien can attach or, stated another way, that the lien is wholly unsecured. Conversely, if there is any equity in the property, securing even the smallest portion of the lien, the lien would not be subject to cram-down. See Nobelman v. American Savings Bank, 508 U.S. 324, 328-32 (1993); In re Perry, 337 B.R. 649 (Bankr. N.D. Ohio 2005).

In order to succeed, Debtors must prove that the applicable property value is less than the total of the superior liens on the property. In that case, the property would be undersecured, the mechanic's lien would not attach to any equity, would be deemed to be unsecured, and thereby subject to cram-down.

Debtors own two parcels of land, upon which there are improvements, and a 1999 Commodore mobile home. Debtors contend that the mechanic's lien attaches only to the real estate, so the value of the real estate is the only value applicable in the analysis. In support of their argument, Debtors provided information showing that the mobile home is not affixed, has not been merged with the real estate, for county tax purposes, but is an item of personal property subject to personal property taxes. Speedy argues that the value of the mobile home should be factored into the analysis.

Under Debtors' arguments, based on the real estate alone, the following figures are applicable:

Value of real estate:² \$16,700.00

Superior liens: \$71,538.55 (Real estate taxes of \$200.69 and Green Tree mortgage of \$71,337.86)

Remaining equity: <\$54,838.55>

As this view reveals, there is no equity to secure any portion of the mechanic's lien and it is therefore subject to being "stripped off" through Debtors' Chapter 13 plan.

If the value of the mobile home is factored in, however, as Speedy urges, the following results:

Value of Real Estate: \$16,700.00
Value of Mobile Home: \$52,984.00

² Since neither party challenged the Chapter 13 appraisal, the Court will rely on it.

Total value: \$69,684.00³
Superior liens: \$73,341.94 (Real estate taxes of \$200.69 and Green Tree mortgage of \$71,337.86 and personal property taxes of \$1,803.39)
Remaining equity: <\$ 3,657.94>

Again, there is no equity to which the lien can attach. The result is that the lien is unsecured and subject to modification under 11 U.S.C. § 1322(b).

CONCLUSION

Debtors have demonstrated that, under either argument, the mechanic's lien held by Speedy does not attach to any equity in Debtors' property. As a result, the lien is wholly unsecured and subject to be "stripped off" in Debtors' Chapter 13 plan pursuant to 11 U.S.C. § 1322(b).

An order in accordance with this decision shall enter forthwith.

/s/ Russ Kendig

JUN 13 2006

Judge Russ Kendig
U.S. Bankruptcy Court

Service List:

Toby L. Rosen
Office of the Chapter 13 Trustee
400 W. Tuscarawas Ave., #400
Canton, OH 44702

Charles A. Johnston
10 Second St., N.E.
P.O. Box 335
Carrollton, OH 44615

John R. Bates
123 W. High Ave.
New Philadelphia, OH 44663

³ Although the Chapter 13 appraisal also includes "Improvements" valued at \$10,000.00, Speedy did not argue that the mechanic's lien attached to these improvements.