
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
) Chapter 7 Case
LARRY ALLEN DENNIS)
) Number 93-40713
)
Debtor)

**ORDER ON DEBTOR'S OBJECTION TO CLAIM OF
GEORGE AND MARY LOU BARNETT**

On February 21, 1997, an Order was entered allowing the claim of George and Mary Lou Barnett in the Debtor's case in the amount of \$58,790.00. On Debtor's Motion to Reconsider or Vacate that Order I ruled on March 10, 1997, that allowance of the Barnett claim would be conditional, subject to (1) evidence of a payment by Debtor to Mr. or Mrs. Barnett subsequent to July 20, 1994; and (2) evidence on the issue of whether Debtor was entitled to credit for crop proceeds paid to Mr. or Mrs. Barnett during calendar year 1988. Having taken the matter under consideration at a hearing on March 31, 1997, I enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

George and Mary Lou Barnett filed a petition for foreclosure against

Debtor on March 26, 1987. Default Judgment and an Order of Sale was entered on August 14, 1987. The farm was auctioned on September 26, 1987. A deed conveying the property was executed on October 8, 1987, and a Deficiency Judgment was rendered in the amount of \$35,321.21 on October 15, 1987. The parties have stipulated that on March 8, 1988, Donnie Myers, who had been engaged to plant tobacco under a sharecropping agreement with Mr. Barnett on the land which was the subject of the foreclosure, paid Mr. Barnett the sum of \$3,886.80 which represented the "owner's share" of the crop proceeds. Debtor personally has not made any post-judgment payments to George and Mary Lou Barnett.

Ordinarily tobacco is planted in Kentucky in the month of April and harvested in late fall. As a result, Debtor was vested with title to the real estate at the time the crop was planted. However, the crop was planted, nourished, harvested and sold through the efforts of others. Debtor continued to be vested to record title to the real estate until October 8, 1987.

Kentucky Revised Statutes Annotated Section 426.170 provides as follows:

No crop shall be levied on or sold under execution, attachment or any other legal or equitable proceeding, except an attachment for rent or to secure a mortgage or statutory lien, unless it has been severed from the ground, until after

October 1 in each year. But, if the estate of the defendant in the land is liable to be sold, and is levied on and sold, the title to the growing crop may pass by the sale.

While the parties concede that this statute is not squarely on point, I have been provided no other authorities from which I can glean the effect of a transaction such as the one under consideration.¹ The evidence reveals that on the date the deficiency judgment was entered against Mr. Dennis, the proceeds of the crop had not been remitted to Mr. Barnett. When they were received subsequently by Mr. Barnett post-judgment, I hold that Mr. Dennis was entitled to credit on the judgment. While title to the land passed to the Barnetts on October 8, 1987, the value of the crop was unknown and, as far as can be ascertained from the record, not contemplated as an element of the Barnett's credit bid at foreclosure. When the amount was later fixed and determined, upon Mr. Myers' payment, I hold that Debtor was entitled to credit and the claim shall be recomputed as follows:

Amount of Judgment	\$35,321.21
12% interest from 10/15/87 - 3/8/88 (143 days @ \$11.61/day)	1,660.23
Less Amount Paid by Donnie Myers	3,886.80
Net Amount of Judgment as of March 3, 1988	33,094.64
12% interest from 3/8/88 - 3/7/89	3,971.35
12% interest for 1989	3,971.35
12% interest for 1990	3,971.35
12% interest for 1991	3,971.35
12% interest for 1992	3,971.35
12% interest from 3/8/93 - 4/27/93 (49 days)	533.14
Net Adjusted Claim	\$53,484.53

¹ Although not controlling a Kentucky transaction, it appears that under Georgia law Debtor would have a claim to the crop proceeds. See O.C.G.A. § 44-6-85 (life tenant whose life estate is terminated entitled to profits of the crop sowed by him).

All other evidence offered by Debtor to negate the Barnett claim relates to matters which preceded entry of the deficiency judgment, and for reasons stated in previous orders the Court will not relitigate those issues at this late date. See Order Denying Defendant's and Debtor's Motion for Relief from Order Entered on October 4, 1994, Motion to Stay Sale of Farm (93-40713) and Motion to Stay Sale of Farm (93-4147), Ch. 7 Case No. 93-40713, Adv. Proc. 93-4147, Doc. No. 100, p. 17, Nov. 27, 1996. Based on the foregoing the allowed amount of the claim of George and Mary Lou Barnett for purposes of distribution by the Trustee is \$53,484.53.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of April, 1997.