
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 MOTION TO RECONSIDER OR VACATE

Debtor filed the above Motion setting forth numerous grounds on which the Court is being asked to reconsider or vacate its February 21, 1997, Order on the Debtor's Objection to the Claim of George and Mary Lou Barnett. Debtor's Motion to Vacate is denied and his Motion to Reconsider is granted in part.

FINDINGS OF FACT

The Debtor's obligation to George and Mary Lou Barnett arose out of a note and mortgage on farmland located in the State of Kentucky. George and Mary Lou Barnett filed a complaint and petition for foreclosure in the Circuit Court of Robertson County, Kentucky, on March 26, 1987. See Exhibit "Z". A default judgment and order of sale was

entered by that Court on August 14, 1987. *See* recitals in Exhibit “T”. Pursuant to the Order of Sale an auction occurred on September 26, 1987, the farm was sold, a report of said sale was confirmed by the Circuit Court of Robertson County, Kentucky, on October 8 and a deed conveying the property from Larry and Tammy Dennis (by John D. Sims, Commissioner) to George E. and Mary Lou Barnett was executed on October 8, 1987, and recorded in Deed Book 41, page 652, in the Office of the Clerk of Robertson County, Kentucky. *See* Exhibit “T”. Thereafter, that Court entered its deficiency judgment in the amount of \$35,321.21 on October 15, 1987.

Debtor asks this Court to consider Exhibit “R-2” which purports to be a notarized statement of Donnie Myers to the effect that in 1987 he raised certain tobacco crops on land which he believed belonged to George Barnett and shared the proceeds of the crop with Barnett in the amount of approximately \$4,400.00. Mr. Myers identifies the farm as being one on which Larry Dennis had purchased and raised crops prior to 1987. Myers states that he delivered the “owner’s share” of the crop in the amount of approximately \$4,400.00 to George Barnett in 1988. Based on this information the Debtor asked the Court to reconsider its previous order, apparently to allow a credit to the Debtor for the amount of \$4,400.00 plus interest which Debtor alleges should be reduced from the allowable claim of George and Mary Lou Barnett.

It is clear that while Donnie Myers delivered approximately \$4,400.00 to George Barnett, these crop proceeds were paid on account of a crop raised during the year in which the foreclosure by the Barnetts of the Dennis farm occurred. The crop proceeds were paid in 1988 after title had been conveyed from Larry and Tammy Dennis to the Barnetts. Thus they may have been entitled to the crop proceeds as a rent or profit from what was then their land. Mr. Dennis' obligation to the Barnetts had been partially satisfied by the conveyance of the real estate to the Barnetts, and from the date of that conveyance and forever until they part with title, George and Mary Lou Barnett are entitled to the rents and profits, including crops, from the land, which may have included this \$4,400.00 payment of Mr. Myers. The Barnetts were adjudicated to be entitled to a deficiency judgment of \$35,321.21 by the Circuit Court of Robertson County, Kentucky, and interest ran on that judgment at 12% per annum under Kentucky law and was calculated on the proof of claim signed by Mr. Barnett to total \$58,790.00 as of the date Mr. Dennis filed his case on April 27, 1993.

On the other hand, since the crops were presumably planted while Debtor owned the farm, and may have been harvested prior to the foreclosure, a remaining issue to be determined at the hearing on March 31 is whether Mr. Dennis is entitled to credit for crop proceeds received after the date that he was divested of ownership rights in and to the property. That credit, if allowable, is as follows:

AMOUNT OF JUDGMENT	\$35,321.21
less amount paid by Donnie Myers	4,400.00
Net principal amount of judgment	\$30,921.21
plus 12% interest for 1988	3,710.54
plus 12% interest for 1989	3,710.54
plus 12% interest for 1990	3,710.54
plus 12% interest for 1991	3,710.54
plus 12% interest for 1992	3,710.54
plus 12% interest for 1993 (192 days)	1,978.95
NET ADJUSTED CLAIM	\$51,452.86

Based on the foregoing the claim of George and Mary Lou Barnett would be reduced from \$58,790.00 to \$51,452.86. That reduction, however, is not yet fully supported by the record.

In order to insure a complete record on this issue I will expand the scope of allowable evidence to be considered on this issue. Accordingly, Debtor's Motion to Vacate is denied. His Motion to Reconsider is granted in order for the Court to entertain evidence or consider citations of legal authority on the following additional questions:

- 1) What was the exact amount and the nature of the payment by Donnie Myers to the Barnetts?

2) When, in relation to the foreclosure of Debtor's interest in the subject farm in Kentucky, did the right to receive crop proceeds arise?

3) If the right to receive proceeds arose after the date of the foreclosure, is Debtor entitled to any pro rata credit for the payment rendered to the Barnetts?

IT IS THEREFORE ORDERED that this Court's previous Order of February 21, 1997, be reconsidered to the extent necessary to modify the scope of the hearing to consider the above, and, as previously ordered, to permit evidence showing payment, if any, in cash or certified funds by Debtor to Mr. or Mrs. Barnett which payment has been accepted and negotiated by the Barnetts and which was made subsequent to the date of Mr. Dennis' trial testimony, that being July 20, 1994.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of March, 1997.