

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Dublin Division

IN RE:	)	Chapter 7 Case
	)	Number <u>96-30424</u>
STEVEN E. WILLITS	)	
	)	
Debtor	)	
_____	)	
SEARS, ROEBUCK AND COMPANY	)	FILED
	)	at 3 O'clock & 00 min. P.M.
Movant	)	Date: 1-28-97
	)	
vs.	)	
	)	
STEVEN E. WILLITS	)	
	)	
Respondent	)	

**ORDER**

Pursuant to notice hearing was held on the motion of Sears, Roebuck and Company ("Sears") to compel the debtor pursuant to 11 U.S.C. §521(2)(A) and (B) to enter a statement of intentions with respect to the security interest in collateral held by Sears within thirty (30) days of the filing of their Chapter 7 case and to perform pursuant to the notice of intention within 45 days after filing. The debtor filed a statement of intention as required under §521 but did not list Sears.

This motion requires that I revisit my ruling in Sears, Roebuck and Company vs. Robert Demello, Jr., Chapter 7 case No. 95-10587, adversary proceeding No. 95-01060 (Bankr. S.D. Ga. Feb. 12,

1996). In the Demello adversary Sears objected to the dischargeability of the debtor's obligation to Sears and to the debtor's discharge generally based upon the failure of the debtor to comply with §521(2)(A) and the failure of the debtor to either reaffirm the debt due Sears, redeem the collateral securing Sears' claim or to surrender the collateral pursuant to §521(2)(B). The February 12, 1996 order on cross motions for summary judgment assumed "that Sears [held] a valid security interest in the equipment and that the equipment [was] property of the debtor's estate. [I assumed] that the debtor improperly failed to file a statement of intentions required by §521(2)(A) and improperly failed to reaffirm the debt, redeem the equipment, or surrender the collateral as required by §521(2)(B)." Following an analysis of the grounds for an objection to dischargeability of a particular debt under §523 and the basis for denial of a discharge of the debtor under §727, I concluded that the failure of the debtor to comply with the provisions of §521 are not grounds for a denial of discharge of a debt or of a discharge generally, see Sears vs. Demello, supra at slip op. pp. 3-7. I found that the appropriate remedy for a debtor's failure to comply with §521 is for the creditor to seek relief from the stay of §362(a) to pursue its State law remedies against its collateral. Id. at slip op. p. 6 & 7-8.

In Demello, I assumed and here Sears' assumes the existence of a valid enforceable security interest, a matter not conceded here by the debtor's schedules. The appropriate remedy

remains a motion for relief from stay by Sears. Should the debtor dispute the motion and challenge the validity of the security interest, the motion would be treated as an adversary proceeding. See, Federal Rule of Bankruptcy Procedure 7001(2).

The requirements of §521(2)(A) are limited to cases where the "individual debtor's schedule of assets and liabilities include consumer debts which are secured by property of the estate." If the debtor does not schedule a creditor as the holder of a secured claim based upon a consumer debt, §521 does not apply. Section 521 does not require a debtor to file an adversary proceeding to determine the validity, extent or priority of an alleged security interest of a creditor. The creditor's remedy remains as set forth in Demello relief from the stay of §362(a) or an adversary proceeding to determine the extent, priority and validity of the claimed security interest but not a motion to compel compliance with §521.

It is therefore ORDERED that the motion of Sears, Roebuck and Company to compel the debtor to comply with the provisions of §521 is denied.

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JOHN S. DALIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 24th day of January, 1997.