

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 7 Case
	)	Number <u>93-11209</u>
WILLIAM ROLAND CHANCE, JR.	)	
RENEE HAMILTON CHANCE	)	
	)	
Debtors	)	
_____	)	
	)	
WILLIAM ROLAND CHANCE, JR.	)	
RENEE HAMILTON CHANCE	)	
	)	
Movants	)	
	)	
vs.	)	
	)	
VANDERBILT MORTGAGE & FINANCE,	)	
INC., ASSIGNEE of FIRST	)	
CAROLINA FINANCIAL CORP.	)	
	)	
Respondent	)	

**ORDER**

By motion filed postdischarge in this chapter 7 case, debtors William Roland Chance and Renee Hamilton Chance seek to redeem one 1987 Summit 27' x 64' mobile home, serial number H55173GL&R, together with furnishings and fixtures, in which respondent creditor Vanderbilt Mortgage and Finance, Inc. ("Vanderbilt") holds a security interest. Vanderbilt objects. Based upon the evidence presented at hearing and a consideration of

briefs submitted by counsel and the relevant legal authorities, I make the following decision overruling the remaining objections of Vanderbilt.

Debtors filed their chapter 7 petition on August 5, 1993. Vanderbilt, as assignee of First Carolina Financial Corporation, holds a perfected security interest in debtor's mobile home which was purchased and financed in March 1987. Debtors listed the mobile home as property to be retained by reaffirmation in their Individual Debtor's Statement of Intention filed pursuant to 11 U.S.C. § 521(2). Although negotiation occurred between the parties after the § 341 First Meeting of Creditors as to a possible reaffirmation of the debt, no agreement was reached. The mobile home was abandoned by the Chapter 7 trustee on October 15, 1993 after notice and failure of any party in interest to object. Debtors made no payments on the mobile home to Vanderbilt during the chapter 7 case and were approximately three months in arrears at time of filing. Subsequent to being granted a discharge by order dated December 3, 1993, debtors filed the present motion to redeem the mobile home for \$15,000.00 on December 22, 1993. At no time prior to debtor's discharge did Vanderbilt seek relief from the stay to realize on its collateral under state law remedies, nor has Vanderbilt sought to repossess the collateral postdischarge. Debtor's case has not yet been closed.

At hearing, Vanderbilt's objection to debtor's valuation of the mobile home for \$15,000.00 was resolved. After both parties presented appraisal testimony, I determined the fair market value of the mobile home for purpose of redemption, the amount of the allowed secured claim, to be \$24,200.00 as of the date of the bankruptcy filing. Two other objections to redemption presented by Vanderbilt were taken under advisement. Issues remaining for resolution are (1) whether debtors are entitled to file a motion to redeem after a discharge order has been entered in their chapter 7 case, and (2) whether debtors are required to be current with payments to the creditor in order to redeem the property.

The statute providing for a right of redemption to debtors in a chapter 7 case, 11 U.S.C. § 722, is silent as to when a motion under that section must be filed. Section 722 provides

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

When a debtor has listed secured consumer debts in his schedules, however, 11 U.S.C. § 521(2) provides that:

(A) within thirty days after the date of the filing of a petition under chapter 7 of this

title or on or before the date of the meeting of creditors, whichever is earlier, or with such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

(B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph: and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title.

Although § 521(2)(B) ostensibly requires the debtor perform his intention (e.g., § 722 redemption) with respect to his secured consumer property within forty-five days after filing the Statement of Intention, courts have not strictly enforced this section's time deadlines. See In re Eagle, 51 B.R. 959 (Bankr. N.D. Ohio 1985); In re Cassar, 139 B.R. 253, 254 (Bankr. D. Colo. 1992); Riggs National Bank of Washington, D.C. v. Perry, 729 F.2d 982 (4th Cir. 1984). This analysis is based on § 521(2)(C), supra, and accompanying legislative history which indicate that a debtor's substantive right of redemption is not to be abrogated by the notice and time limitations imposed by § 521(2)(A) and (B); therefore, such

limitations must be seen as simply procedural guidelines for facilitating speedy resolution of debt compromise and repayment. Eagle, at 961-62.

The time rules in § 521(2) may also conflict with other time limits imposed by the Bankruptcy Code and Rules. Redemption under § 722 is available only for property securing dischargeable debts and property exempted or abandoned. The deadline for filing exemption objections and dischargeability complaints is after the 75 day period for performance in § 521. Cassar, at 254. (§ 722 motion premature until deadline has passed for filing dischargeability complaints and/or objections to debtor's claimed exemptions or the property has been abandoned); see also Federal Rule of Bankruptcy Procedure 2003(a), 4004(a) and 4007(c). While these cases establish that a motion to redeem property can be made after the expiration of the time limits imposed by § 521(2), they do not address whether debtors can exercise their right post-discharge.

Two cases have allowed for a post-discharge redemption by a debtor. The court in In re Cassell, 41 B.R. 737, 739-40 (Bankr. E.D. Va. 1984) concluded that such a right to post-discharge redemption existed because the only conditions precedent to exercise of a § 722 redemption were met and because no other case precedent

existed contra to that effect.<sup>1</sup>

A different rationale was put forth by the court in In re Hawkins, 136 B.R. 649 (Bankr. W.D. Va. 1991), in which the debtors decided to redeem the property only after being informed of their redemptive right at a post-discharge hearing on a reaffirmation agreement pursuant to § 524(d). The Hawkins court reasoned that the time periods for debtor's exercise of the right of redemption and reaffirmation should be the same as both options were available to aid the debtor's fresh start. Id. at 651. Accordingly, as the Hawkins court found that a debtor could reaffirm a debt post-discharge under § 524(d), the debtor should also be able to redeem property post-discharge. Id. This analysis, misconstrues § 524. Section 524(d) relied upon in Hawkins, allows for a hearing on a reaffirmation agreement post-discharge, but the requirement found in § 524(c)(1) that the agreement be made pre-discharge remains.<sup>2</sup> See

---

<sup>1</sup>In Cassell the debtor was granted his discharge on July 26, 1983. The creditor then repossessed the property (an automobile) on August 8, 1983. Debtor's request to reopen the case filed August 26, 1983 to allow filing of a motion to redeem was granted by the court.

<sup>2</sup>11 U.S.C. § 524(d) provides:

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727 . . . of this title [11], the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of

---

the kind specified in subsection (c) of this section, the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall-

- (1) inform the debtor-
  - (A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and
  - (B) of the legal effect and consequences of-
    - (i) an agreement of the kind specified in subsection (c) of this section; and
    - (ii) a default under such an agreement;

- (2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

11 U.S.C. § 524(c) provides, in pertinent part:

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title [11] is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if-

- (1) such agreement was made before the granting of a discharge under section 727 . . . of this title;

- (2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

. . .

- (4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such

Cassell, 741.<sup>3</sup> Moreover, § 524 contains no requirement that a debtor be informed of his § 722 right of redemption in any reaffirmation hearing which might take place post-discharge.

Finally, two other courts have held that the rights of reaffirmation and redemption run concurrently with the automatic stay. Riggs National Bank, at 986 (citing In re Cruseturner, 8 B.R. 581, 592 (Bankr. D. Utah 1981)). This view notes that once property of the estate is abandoned or becomes exempt, it reverts in the debtor and the automatic stay preventing creditor actions against property of the estate is terminated under § 362(c)(1).<sup>4</sup> However,

---

agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and . . . .

<sup>3</sup>The court in Cassell allowed for a right of redemption post-discharge even though it did not find such a right existed for reaffirmation.

<sup>4</sup>11 U.S.C. § 362(c) provides:

(c) Except as otherwise provided in subsections (d), (e), and (f) of this section-

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and

(2) the stay of any other act under subsection (a) continues until the earliest of -

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title [11] concerning an individual . . . ,

Bankruptcy Code § 362(a)(5)<sup>5</sup> provides for a debtor's continued protection against creditor actions on a prepetition claim against property of the debtor and such protection continues until the earliest of the time the case is closed, dismissed or a discharge is entered. See 11 U.S.C. § 362(c)(2) at footnote 4. This separate and extended protection for property which has revested in the debtor (i.e., exempt or abandoned property) allows the debtor time "to exercise his right to redeem either by acquiring refinancing or by otherwise gathering the necessary funds, or to negotiate a reaffirmation." Cruseturner, at 592.

In attempting to determine the proper time frame in which a debtor can seek to redeem property under § 722, none of the courts addressing the issue have looked to the legislative history and purpose of redemption enunciated therein. That history establishes that under § 722,

. . . the debtor may redeem from a secured creditor property that would be exempt in the absence of the security interest, or property that the trustee abandons, if the debtor pays

---

the time a discharge is granted or denied.

<sup>5</sup>11 U.S.C. § 362(a)(5) provides, in pertinent part, that the filing of a voluntary petition acts as a stay, applicable to all entitles, of-

any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title[11.]

the secured creditor the allowed amount of the creditor's secured claim. This right amounts to a right of first refusal on a foreclosure sale of the property involved.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 127-28 (1977) (emphasis added). This history makes clear that the only requirement which a debtor must meet in order to redeem § 722 property is to pay the creditor the value of the collateral - the allowed amount of the creditor's secured claim. No time limit is placed upon the exercise of this right. Because the right of redemption is equivalent to a right of first refusal on a foreclosure sale of the property, the debtor must be deemed to be able to exercise that right at least until such a foreclosure sale of the property has occurred. Nevertheless, this right to redeem does not extend forever. In the Eleventh Circuit, pursuant to § 521, a debtor cannot seek to retain § 722 property simply by keeping current on the payment obligations; instead, the debtor must either reaffirm, redeem, or surrender the property. In re Taylor, 3 F.3d 1512 (11th Cir. 1993). This action (i.e. redemption) should be performed at the latest by the time the case is closed. Accordingly, I find that a debtor may exercise his right of redemption at any time before the case is closed or a foreclosure sale of the property has occurred. Because upon redemption a creditor will receive the full amount he would otherwise obtain from foreclosure of the property, the creditor will not be prejudiced by permitting the debtor to exercise that right

post-discharge.

In this case, the debtors and Vanderbilt, pursuant to the debtors' original statement of intentions, entered into negotiations for reaffirmation. The parties were unable to agree on terms. There is no evidence that either entered into the negotiation in bad faith. They simply could not agree. This, however, does not mean that the debtors forfeited their rights under the Bankruptcy Code to retain their homeplace. Reaffirmation is consensual; redemption is not. As the creditor could not come to terms with the debtors for reaffirmation, the creditor is entitled to receive either its collateral or the equivalent the value of the collateral, the amount of its allowed secured claim. This option rests with the debtors under §722. The result to the creditor is the same.

If a creditor wishes to realize upon his collateral sooner, the creditor must act. The creditor may move to have the property abandoned by the trustee and/or seek relief from stay pursuant to 11 U.S.C. § 362(d). In addition, as in Taylor the creditor may seek to compel the debtor to state and/or perform his intention with regard to the property. See also, In re Chavarria, 117 B.R. 582 (Bankr. D. Idaho 1990) (both creditor and trustee have power to compel debtor performance under § 521).

Vanderbilt's second contention is without merit. Vanderbilt has not proffered and there is no statutory or case authority establishing that a debtor must remain current in its payments to a secured creditor during the chapter 7 case in order to

exercise a right of redemption. Pursuant to my determination of the value of the collateral, Vanderbilt is receiving what it would receive from foreclosure and sale of the property on the date of debtor's bankruptcy filing. It is entitled to nothing further under §722.

It is therefore ORDERED that Vanderbilt's objections to debtors' motion to redeem are overruled. Debtors are authorized to redeem their 1987 Summit mobile home serial No. H55173GL&R from the lien of Vanderbilt Mortgage and Finance, Inc. by prompt payment of a total sum of \$24,200.00 whereupon the lien of this creditor is voided.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 3rd day of May, 1994.