

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

In the matter of:

WILLIAM E. JARRELL
JOYCE L. JARRELL

Debtors

) FILED
at 2 O'clock & 38 min. Chapter 7 Case
Date 6-27-97 Number 95-402026
MARY C. BOSTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

**ORDER ON DEBTORS' MOTION FOR ABANDONMENT
OF INTEREST IN REAL ESTATE**

Debtors' Chapter 7 case was filed on September 27, 1995. On December 31, 1996, Debtors filed a Motion asking the Court to order the Trustee to abandon the estate's interest in certain real estate known as Lot 34, Dutchmans Cove, Midway, Liberty County, Georgia. The Motion alleged that the property had been marketed by the Trustee for approximately one year, that there had been no contract offered, that the Debtors had an exemptible interest which they wished to assert in the real estate, and asked that the Court order abandonment under 11 U.S.C. Section 554(b). The Trustee opposed the Motion, asserted that the area, while not in active development, was still sufficiently desirable that the lot value should be approximately \$25,000.00 which would exceed the Debtors' exemptible interest and yield a potential benefit to unsecured creditors. The Court, based on the argument of counsel at that time, continued the Motion to the April term of Court to afford the Trustee additional time to market the property and to afford the

parties an opportunity to bring expert or other testimony in to support their respective positions.

At the hearing on April 24 the situation had essentially not changed in that Debtors were asking that the property be abandoned so that they could attempt to conclude their bankruptcy and obtain the fresh start envisioned by the Bankruptcy Code. The Trustee stated that he was not willing to voluntarily abandon because he believed the property still has a value of approximately \$25,000.00, it is subject to no debt, and that the property would yield approximately \$15,000.00 to distribute to unsecured creditors after allowance of Debtors' exemptions.

The evidence further revealed that the property is located in a fairly remote section of Liberty County known as Dutchmans Cove, the property is not directly on salt water creek or river, but it is situated near the water where a community dock is located for the benefit of owners of the subdivision. Approximately 15 homes have been built in the subdivision and there are numerous undeveloped lots, including the one which is the subject of this Motion. The Tax Commissioner of Liberty County has the property appraised at \$10,700.00, but based on comparable sales the realtor employed by the Trustee testified that she believes the property to be worth approximately \$25,000.00. The subdivision has easy access from Interstate 95 and the valuable amenity of the community

dock on the salt water river referred to above.

The property has been listed for sale since February 1996 and shown on four or five occasions by the listing agent and on other occasions by other realtors who practice in the area. The property has been actively advertised on an almost weekly basis by the firm, but no offers have been received. The realtor testified that the market in Liberty County has been slow during much of this time, but despite that the property is desirable and homes in the area that have been constructed, based on restrictive covenants, are worth in the range of \$150,000.00.

The Debtors testified that they are currently renting a place to live and ultimately would like to use this land to build their home, but they lack the financial wherewithal currently to do so based on their income. Accordingly, they have no immediate prospects for use of the property were it abandoned. Taxes and association fees have been accruing on the property and would constitute a lien on it, but are inconsequential in amount in relation to either the tax or estimated value of the property set forth above.

11 U.S.C. Section 554(b) provides as follows:

On request of a party in interest and after notice and a

hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

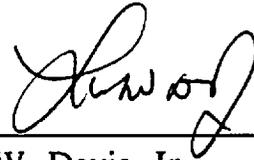
Based on the language of this section I conclude that Debtors' Motion should be denied. While the property has not been successfully marketed and a substantial period of time has elapsed, nevertheless I have the testimony of the realtor employed by the Trustee who believes that this is simply a function of a slow-moving real estate market. As presented at the hearing, the evidence supports a finding that the property is worth substantially in excess of the Debtors' exemptible interest and, therefore, is not of inconsequential value or burdensome to the estate at this time. See 11 U.S.C. 554(b). Courts interpreting Section 554(b) have held that the trustee is afforded a reasonable time to consider retaining or abandoning an encumbered asset. See *In re Paolella*, 79 B.R. 607, 610 (Bankr.E.D.Pa. 1987); see also L. King, *Collier on Bankruptcy*, ¶ 554.02[2] at 554-4 (15th ed. 1997):

[t]he term "reasonable" implies that the period of deliberation is adaptable to the circumstances. The trustee may wait until he or she is able to ascertain whether there is any profit to be expected for the estate. In fact, it may be the trustee's duty to wait. This is particularly true when the prospects depend on a fluctuating market.

Moreover, while the Debtors' need for the property and the realization on their claim of exemption might compel the Court to order otherwise in certain cases, here the Debtors have no current ability to do anything with the property in order to achieve their fresh start

given their lack of ability to finance the construction of a residence there. Accordingly, Debtor's Motion is denied on an interim basis.

The Clerk will assign this matter to consider additional evidence in six months, unless a party in interest seeks an earlier hearing.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 20th day of June, 1997.