

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

In the matter of:

JOSEPH JENKINS
(Chapter 13 Case 95-41474)

Debtor

JOSEPH JENKINS

Plaintiff

v.

HENRY SINGLETON

Defendant

Adversary Proceeding

Number 96-4017

FILED
at 4 O'clock & 00 min. P.M
Date 8-16-96

MARY C. SECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia



MEMORANDUM AND ORDER

In the above case, Joseph Jenkins, Plaintiff/Debtor (hereinafter "Plaintiff"), instituted an adversary proceeding to determine the extent, validity, and priority of a lien held by Defendant, Henry Singleton (hereinafter "Defendant"). Plaintiff prays for a determination avoiding Defendant's lien and disallowing his claim or, in the alternative, establishing the amount that Plaintiff owes to Defendant and

granting further relief as the Court deems equitable. Defendant requests that the Court deny Plaintiff's request, validate the lien, and allow the Defendant's claim in its entirety. On July 2, 1996, this Court held an adversary trial. Pursuant to 28 U.S.C. Section 157(b)(2)(F), this matter is a core proceeding. Based on the parties' briefs, the evidence submitted during the hearing, and applicable authorities, I make the following Findings of Fact and Conclusions of Law pursuant to Bankruptcy Rule 7052.

FINDINGS OF FACT

The pertinent facts of this case arose during the years 1984-1986. They are as follows. During the 1984 year, Plaintiff first filed for Chapter 13 protection. On April 11, 1985, Plaintiff's case was dismissed. Soon thereafter, Plaintiff refiled for Chapter 13 protection; on August 16, 1985, Plaintiff's case again was dismissed. As a consequence, one of Plaintiff's creditors, Dixon Concrete Products, instituted foreclosure proceedings. In order to prevent the foreclosure of his residence, Plaintiff granted a Deed to Secure Debt ("Security Deed") on November 22, 1985 to C. Grant Washington, attorney for Dixon Concrete Products, Inc., to secure an indebtedness in the amount of \$3,055.53, due and payable on February 1, 1987. The Security Deed conveyed 2.0 acres in Liberty County, Georgia, purportedly owned by the Plaintiff at the time of the conveyance.¹ C. Grant Washington properly recorded the security

¹ Plaintiff acquired the property by deed from Clary Way dated September 20, 1979, and recorded in the Clerk's Office of Liberty County in deed book 175, page 65.

deed in the Office of the Clerk of the Superior Court of Liberty County, Georgia, in deed book 366, folio 97.

Plaintiff soon defaulted on his obligation with Dixon Concrete Products, Inc. and, in order to prevent foreclosure for a second time, Plaintiff granted on February 4, 1986, an additional Deed to Secure Debt to C. Grant Washington which conveyed an undivided one-fifth interest in certain property consisting of 12 acres in Liberty County, Georgia, less and except the conveyance of 4 acres which had previously been conveyed out of the 12 acres. This Security Deed was recorded in the Clerk's Office in deed book 369, folio 003. There is no assignment of record of this Deed to Secure Debt. Additionally, Plaintiff executed a note (hereinafter "Note") to C. Grant Washington reflecting an indebtedness in the amount of \$2,886.09 on February 4, 1986, which had been reduced from the original amount of \$3,055.33 on November 22, 1985.

Plaintiff again defaulted on his obligation. On October 1, 1986, C. Grant Washington, attorney for Dixon Concrete Products, Inc., after receiving valuable consideration from Defendant, Henry Singleton, assigned the Security Deed to him. The assignment is recorded in the Clerk's Office in deed book 397, folio 31, although it does not reference the correct recording information of the Security Deed. At the time Plaintiff conveyed the property to C. Grant Washington, he held only a life estate

in the property, having conveyed the remainder interest to Rhasioan Ramar Smith and Josha Warren Jenkins by deed dated April 13, 1981, and recorded in the Clerk's Office in deed book 247, page 253.

Plaintiff has continued to occupy the property rent-free since the date of the above-described deed, although his life estate apparently was extinguished by a Quitclaim Deed to his son, Maurice Jenkins, dated October 12, 1992, and recorded in deed book 582, page 155, aforesaid records.²

At trial, Plaintiff testified that he paid all by \$429.00 of the indebtedness secured by the Security Deed. Defendant testified that he paid Washington full value for the assignment of the Security Deed, and disputes the payments by Plaintiff. Plaintiff filed a petition under Chapter 13 of the Bankruptcy Code on July 31, 1995. The amount of principal plus accrued interest due under the Note on the filing date is \$2,886.09. Defendant also has filed an unsecured claim in the amount of approximately \$39,000.

CONCLUSIONS OF LAW

On the date of filing of the Plaintiff's Chapter 13 case, Defendant was

² In addition to the Security Deed, there are several other encumbrances of record affecting the title which are not the subject of the adversary proceeding before this Court.

the holder of a Security Deed from Plaintiff to C. Grant Washington as attorney for Dixon Concrete Products, Inc., dated November 22, 1985. The Note reflected the proper amount of the debt secured by said deed and the value of Plaintiff's life estate equals or exceeds the amount of the obligation. As a result, the amount of Defendant's claim is determined to be \$2,886.09, secured.

While Plaintiff asserts partial payment, he has produced no evidence to support this contention and Defendant disputes that any payment occurred. Defendant's secured claim will be allowed. However, no evidence has been presented as to any unsecured indebtedness owed by Plaintiff to Defendant and this Court determines that the amount of unsecured indebtedness in Defendant's claim is zero.

ORDER

It is therefore the ORDER of this Court that Defendant is allowed a secured claim in the amount of \$2,886.09 and his unsecured claim is disallowed.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 15 day of August, 1996.