

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

FILED
at 8 O'clock & 25 min AM
Date 3/2/00

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia *MB*

In the matter of:)
)
DEBORAH COOPER)
)
Debtor)

Chapter 7 Case

Number 98-21222

**ORDER ON MOTION TO COMPROMISE
AND VACATE ORDER**

The Motion of Safeco Life Insurance Company ("Safeco") and Safeco Assigned Benefit Services Company ("Sabsco") filed on December 30, 1999, alleges in relevant part that on November 24, 1999, this Court entered an Order granting the Trustee in the above-captioned case the authority to transfer the future stream of income payments under an annuity payable to the Debtor Deborah Cooper. Movants filed a Motion for Leave to Appeal this interlocutory order on December 3, 1999. The Trustee had sought authority to sell this annuity, alleged to be an asset of the estate, to Singer Asset Management Company ("Singer") for the sum of \$215,000.00.

The Trustee is party to that appeal and is continuing to prosecute his motion for authority to sell the asset and apply some or all of the proceeds of the annuity

to payment of creditors in this case. There are remaining objections to the Trustee's sale including potential disputes over whether the Trustee is receiving the full fair market value for the asset and the extent to which the Debtor is entitled to exempt property for her benefit and that of her dependents. The Motion of Safeco and Sabsco states that they "now propose to discontinue their objection to the sale of the asset including, but not limited to, objections based on anti-alienation language, debtor's exemptions and valuation of the asset. Further Intervenors [Safeco and Sabsco] propose to discontinue their appeal of the Court's ruling in this matter . . . In return for withdrawing all opposition to the sale proposed by the Trustee, Intervenors would ask that the Court's November 24, 1999, Order be vacated."

The Motion came for hearing before the Court on February 10, 2000. Neither the Trustee nor the Debtor filed any responsive pleadings. However, Singer Asset Finance Company, LLC ("Singer") objected to the Motion to Compromise and Vacate and filed a Motion to Intervene. The Court, although not convinced that Singer established standing in reference to this issue sufficient to allow it to intervene, granted Singer the opportunity to be heard and to argue the points raised in its objection and

response in order to permit the hearing to go forward without further delay.¹ Safeco and Sabsco filed a responsive brief and the Court has fully considered the authorities set forth and argued at the hearing. It is clear that the right of parties to an action to require a court to vacate a previous order entered by that court is limited, and that the court has the discretion to refuse to vacate. The cases make it clear that the Court is to balance the social value of precedent which has been established, obviously at some cost to the public and other litigants, with the private interest of litigants who for some reason may wish to settle their dispute and have the order vacated. See In re Memorial Hospital of Iowa County, Inc., 862 F.2d 1299, 1302 (7th Cir. 1988) (Holding that lower court opinion would not be vacated but acknowledging routine granting of such request by other circuits).

Clearly the Court and the parties have invested substantial amounts of time and effort in litigating the issues ruled upon in this Court's November 24, 1999, Order. However, because that Order is interlocutory it has no precedential value unless and until affirmed by a higher Court. In exercising my discretion, therefore, I find that the factor of loss of precedent is absent in this case. In weighing the public and private

¹ This amounted to granting the Motion to Intervene as a practical matter and to complete the record. I therefore grant Singer's Motion to Intervene.

cost-benefit element of this decision to vacate, I am mindful of the effect of vacating the order in terms of case administration. If the order is not vacated and the appeal proceeds, it is virtually certain that the appeal will be prosecuted in the United States District Court for the Southern District of Georgia and thereafter by the aggrieved party to the Eleventh Circuit Court of Appeals. This process will likely take in excess of a year. Even if the ruling is affirmed, the Court will be required to try the remaining issues between the Movants, the Debtor, and the Trustee. Although assignment of an evidentiary hearing in those matters is imminent, it will likely be a matter of months before this Court can enter a ruling, and it is highly likely that an appellate process will result from any determination this Court may make on those as yet untried issues.

The Trustee has negotiated a settlement with the Debtor of all the remaining issues, should Movant's motion be granted, which would result in a dividend to unsecured creditors in this case of approximately 75 cents on the dollar and the amount of the Debtor's claim of exemption would be determined without further litigation. A comparison of cost and benefit between loss of the investment of the Court's time in these proceedings and the protracted litigation which lies ahead favors vacating the order. Likewise, in the event the motion is not granted, there is a very real possibility that creditors will receive far less after all litigation is concluded than if the Court grants the

motion of Safeco and Sabsco. Again, a cost-benefit analysis favors vacating the Order. This ultimate benefit to creditors, coupled with the likelihood of expedited case administration, leads me to conclude that the motion should be granted.

IT IS THEREFORE ORDERED that this Court's Order of November 24, 1999, on the Trustee's Motion for Private Sale of Property is vacated.²



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 1st day of March, 2000.

² Not only does the order which is interlocutory in nature not have, at this point, any precedential value, whatever precedential value it might have to other judges and litigants in future cases is not extinguished by an order vacating. Rather as the Memorial Hospital case supra recognized it "clouds and diminishes the significance of the holding." Id. at 1302.