

IN THE UNITED STATES BANKRUPTCY COURT

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FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 81C-01893
HELEN ANITA ANDERSON,)	
Debtor.)	Civil Proceeding No. 81PC-0674
HELEN ANITA ANDERSON,)	
Plaintiff.)	
-vs-)	
J. RON STACEY,)	
Defendant.)	MEMORANDUM OPINION

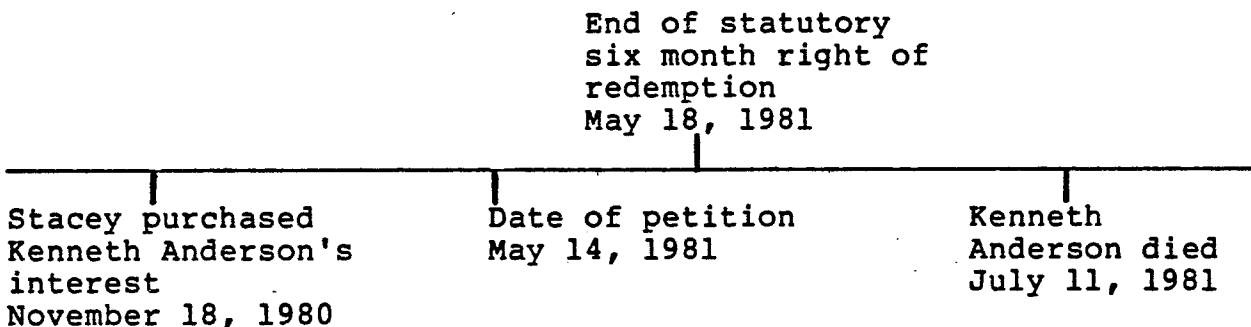
Appearances: J. Keith Henderson, Ogden, Utah, for J. Ron Stacey; Robert L. Neeley, Campbell & Neeley, Ogden, Utah, for Helen Anita Anderson.

This case asks whether the automatic stay tolls the running of the period for redemption from an execution sale in Utah, and, if so, to what extent a joint-tenant may avoid a lien impairing exemptions pursuant to Section 522(f).

FACTS

Helen and Kenneth Anderson filed a Chapter 7 case on May 14, 1981. Prior to their filing, the defendant, J. Ron Stacey, obtained a judgment against Kenneth Anderson, thereby obtaining a judicial lien against the Andersons' home. No judgment was obtained against Helen Anderson. On November 18, 1980 Kenneth Anderson's interest in his home was subjected to levy and

execution and was sold at a sheriff's sale. Defendant Stacey purchased Kenneth's interest with his judgment of \$42,496.25. This purchase was subject to Anderson's right of redemption provided in Rule 69(f) of the Utah Rules of Civil Procedure. Four days before the expiration date of this statutory redemption period, Helen and Kenneth Anderson filed a joint Chapter 7 case. The case was closed on August 4, 1981. Kenneth Anderson died on July 11, 1981. At the time of his death, and at the time the judgment lien attached, title to the home was held in joint tenancy among Kenneth Anderson, his wife Helen Anderson (plaintiff in this action) and his mother, Mrs. Enzenhower. The following chart depicts the relevant events:



ISSUES

(1) Does the automatic stay toll the running of the redemption period?

(2) Is a joint tenancy severed at the time of execution and sale or at the end of the redemption period?

(3) To what extent may a joint tenant avoid a lien under § 522(f)?

DISCUSSION

Issue 1: Does the automatic stay provision of Section 362(a) toll the running of the redemption period?

Defendant Stacey argues that the statutory redemption period is not tolled by the automatic stay. Thus, in his view, the right of redemption lapsed because neither the debtor nor the trustee redeemed the property within the time specified by statute. Therefore on April 18, 1981, four days after the Andersons filed, at the end of the redemption period, Stacey argues, he became a tenant-in-common of a one-third interest in the residence.

On April 7, 1983, Judge Ralph R. Mabey ruled that the automatic stay tolls the running of the redemption period. In re LaVon Dahl, Bkrtcy. No. 83M-00120 (transcript of hearing) (D. Utah, April 7, 1983). The reasons for that ruling are explained in the transcript just cited and need not be repeated here. Thus, the right of redemption continued, subject to Stacey's rights as a purchaser at an execution sale. This right has been characterized as "a lien, a somewhat inchoate right or an equitable estate in the land under a conditional sale." Local New World Realty Company v. Lindquist, 85 P. 2d 770 at 773 (1939). However characterized, it is clear that despite the extension of the redemption period, upon Kenneth Anderson's death his interest passed to the other two joint tenants subject to this lien.

Issue 2: Was the joint tenancy severed by the sheriff's sale or did it continue until the end of the redemption period?

In Local New World Realty Company v. Lindquist, 85 P. 2d 770, the Utah Supreme Court held that an execution sale is a continuing matter, not concluded until the expiration of the redemption period. The purchaser at the execution sale only acquires "all right, title and interest in claim of the judgment debtor, including right of possession [and] legal title" after the expiration of the redemption period and not before. Id. at 770. Thus the sale is not completed, and the new owner is not substituted, until consummated by a conveyance of title at the end of the statutory redemption period as provided in Rule 69(f)(5). As the court noted in Local Realty, "if the legal title had already passed there would be no necessity for a conveyance." Id. at 773. This is in accord with the common law theory of joint tenancy as stated in 4 Powell on Real Property, Section 618. "A judgment creditor must not only levy on the land, but sell it and have the redemption period expire, before the severance of a joint tenancy is complete." As noted by the United States Supreme Court in Mangus v. Miller, 317 U.S. 182 (1942), Utah follows the general common law rules relating to joint tenancy.

Because joint tenancy is not severed until the end of the redemption period, at Kenneth Anderson's death Stacey was not a tenant in common of the residence. Rather, his interest remained

that of a lien holder until the end of the redemption period on August 8, four days after the closing of the bankruptcy case.

Issue 3: May plaintiff avoid Stacey's lien under Section 522(f) to the extent it impairs state exemptions?

Section 522(f) permits the avoidance of a judicial lien to the extent it impairs an exemption. The plaintiff claims an exemption of \$15,000 "as provided by law." This amount is probably based on the federal exemptions listed in Section 522(d)(1) as applied separately to each debtor in a joint case pursuant to Section 522(m). However, Utah has exercised the option provided in Section 522(b) and prohibited Utah debtors from taking the federal list of exemptions. Thus the Andersons must utilize the Utah exemptions which became effective on May 12, 1981, two days before they filed. Utah's prohibition of the federal exemptions does not affect the powers given to debtors under Section 522(f). 3 COLLIER ON BANKRUPTCY ¶ 522.29, at 522-69 (15th ed. 1982).

Section 78-23-3, U.C.A., provides an \$8,000 exemption for a head of family and a \$2,000 exemption for a spouse, or, in this case, a total of \$10,000.

The general rule is that the value of property for purposes of determining exemptions is fixed as of the date of the petition. The value of the residence was listed on the date of the petition at \$72,000. This value has not been disputed.

Only the unencumbered portion of the property is to be counted in computing the debtor's interest in the property for the purpose of determining the exemptions. In re Asplund, 21 B.R. 139 (W.D. Wis. 1982). Additionally only Kenneth Anderson's share of the jointly held property should be considered because Stacey's judgment is against him alone. In re Suppa, 8 B.R. 720 (D. Rhode Island 1981). In a similar case, In re Jordan, 5 B.R. 59, at 61 (D. New Jersey 1981) the court stated the proper formula for determining a lien avoidance under Section 522(f). As applied to this case the formula is:

Fair market value of property		\$72,000.00
Amount due on mortgage		\$57,517.00
	Equity	<u>\$14,483.00</u>
Divide:	Number of joint tenants (3)	\$ 4,827.66
Less:	Lien avoidance pursuant to Section 522(f)	<u>\$10,000.00</u>
Net equity after exemption to which judicial lien can attach		00.00

Under Section 506 the allowed amount of secured claims cannot exceed the estate's interest in the property. The amount by which the debt exceeds the estate's interest becomes an unsecured claim. In this case, after the mortgage and allowed exemption are subtracted from the value of the residence, there is no equity in Anderson's residence to which a judgment lien

could attach. Therefore Stacey has an unsecured claim of \$42,496.

In fact, this was how Stacey's claim was treated in the Andersons' Chapter 7 case which was discharged on August 4, 1981. At that time Stacey was paid by the trustee as an unsecured creditor. He received \$1,158.68 in settlement of his claim.

CONCLUSION

The automatic stay provision of Section 363(a) tolls the running of the redemption period. The joint tenancy is not severed until the end of the redemption period. Under Section 522(f) Helen Anderson may avoid Stacey's lien in its entirety.

Counsel for Mrs. Anderson shall submit a conforming order.

DATED this 28 day of July, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE