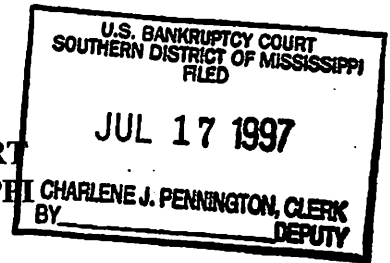


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN RE:

JAMES AND JETAUN SUMRALL

CHAPTER 13

CASE NO. 9701315JEE

MOTION NO. M970708

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Chapter 13 Trustee

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This case is before the Court on the *Motion to Abandon Collateral and Lift Stay and for Sanctions* filed by Green Tree Financial Servicing Corporation and on the *Answer and Cross-Motion for Sanctions* filed by the Debtors, James and Jetaun Sumrall. After considering the evidence presented to the Court along with the arguments of counsel, and being otherwise fully advised in the premises, the Court holds that Green Tree's motion is well taken and relief should be granted from

the automatic stay. The Court further holds that neither Green Tree nor the Debtors have shown that sanctions are appropriate and, therefore, both requests for sanctions should be denied. In so holding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On April 7, 1995, James and Jetaun Sumrall were married. On April 14, 1995, James Sumrall purchased a mobile home under a retail installment contract. The principal amount financed under the installment contract was \$42,787.13. In connection with the purchase of the mobile home, James Sumrall also executed a security agreement in favor of the seller and a U.C.C. financing statement. On April 26, 1995, the financing statement was filed in the Office of the Chancery Clerk of Copiah County, Mississippi. The installment contract and security agreement were assigned to Green Tree Financial Servicing Corporation, which presently owns the note and security agreement. Paragraph 7 of the contract provides, "I will ...not attach the Manufactured Home to any real estate and the Manufactured Home will always be treated as personal property unless you consent in writing and state law permits such contrary treatment"

The mobile home owned by James Sumrall was affixed to real property owned jointly by Jetaun Sumrall and her sister.

In January of 1996, James Sumrall filed a petition for relief under Chapter 13 of the United States Bankruptcy Code, Case No. 96-00115-JEE. During the pendency of that case, an order was entered on April 29, 1996, on Green Tree's *Objection to Confirmation*, which contained a provision lifting the automatic stay as to Green Tree in the event that the Debtor became sixty days delinquent

under the terms of his Chapter 13 plan. On May 15, 1996, an order dismissing the case was entered on the Chapter 13 Trustee's motion to dismiss.

In October of 1996, James Sumrall filed a second Chapter 13 case, Case No. 9604153JEE. Green Tree objected to the confirmation of the Debtor's plan. In February of 1997, the case was dismissed on the motion of the Debtor. On March 4, 1997, an order was entered sustaining the *Objection to Confirmation* filed by Green Tree in that case. The order finds that since the Debtor became more than 60 days delinquent in the required plan payments in his previous case the automatic stay lifted pursuant to the "drop dead" provision in the April 29, 1996 order entered in Mr. Sumrall's previous Chapter 13 case.

On March 10, 1997, James Sumrall filed the present Chapter 13 case. However, in this case, Mr. Sumrall filed jointly with his wife, Jetaun Sumrall.

On April 14, 1997, Green Tree filed the *Motion to Abandon Collateral and Lift Stay and for Sanctions* that is presently before the Court. In their response to Green Tree's motion, the Debtors admit the amount due Green Tree and that the mobile home is collateral for the indebtedness. They also admit that the automatic stay has been lifted as it pertains to James Sumrall. However, the Debtors contend that although Jetaun Sumrall does not hold title to the mobile home, the fact that she lives in the mobile home, that the mobile home is situated on real property that she owns, that she has made payments on the mobile home, and that she is married to James Sumrall all give her a property interest in the mobile home. The Debtors claim that since Jetaun Sumrall has a property interest in the mobile home by virtue of the foregoing, she is entitled to the benefit of the automatic stay so that the Debtors may attempt to satisfy Green Tree's claim through a Chapter 13 plan.

CONCLUSIONS OF LAW

Since the Debtors do not dispute the amount of Green Tree's claim, the validity of Green Tree's security interest, or the fact that the automatic stay has been lifted as to James Sumrall, the only remaining issue is whether Jetaun Sumrall has a property interest in the mobile home that would allow her to claim the benefit of the automatic stay.

The Debtors argue that since Jetaun Sumrall has made some of the payments on the mobile home that she has some type of equitable interest in it. The Court is not persuaded by this argument. Assuming *arguendo* that under Mississippi law an equitable lien may be imposed where one party has paid the debts of another¹, the Debtors did not present sufficient proof for this Court to find that an equitable lien should be imposed against the mobile home in favor of Jetaun Sumrall. The only proof offered at trial regarding payments made by Jetaun Sumrall was the general testimony of Ms. Sumrall that she made some payments on the mobile home. No specific testimony or documentary proof was offered to show the dates or amounts paid.

The Debtors also argue that Jetaun Sumrall has a property interest in the mobile home in the form of a homestead interest because the mobile home is affixed to real property owned by Jetaun Sumrall and because Jetaun Sumrall filed for and received a homestead exemption on the real property. The Court would note that Jetaun Sumrall filed a homestead exemption on the real property in February, 1994, a year before James Sumrall purchased the mobile home.

The Court is not persuaded by this argument either. Miss. Code Ann § 27-53-13 (1972) provides:

¹ See Lindsey v. Lindsey, 612 So.2d 376, 379 (Miss. 1993).

The mobile home owner who does not own the land on which his mobile home is located must declare his mobile home to be personal property at the time of registration and the county tax collector shall enter it on the mobile home rolls as personal property.

While Jetaun Sumrall owns the real property where the mobile home is situated, and may have a homestead interest in her real property, she does not have a homestead interest in the mobile home. In this case, James Sumrall holds title to the mobile home and Jetaun Sumrall holds title to the real property on which the mobile home is situated. Pursuant to Miss. Code Ann. § 27-53-13 (1972), the mobile home must be declared to be personal property.

Furthermore, the contract for sale of the mobile home executed by James Sumrall provides that the mobile home is not to be affixed to real property and is to remain personal property at all times. A similar case was decided by the Honorable David W. Houston, III, *Mid-America Credit Corp. v. Franklin (In re Franklin)*, Case No. 91-23339, Adv. No. 92-02054 (N. D. Miss. April 22, 1994). In *Franklin*, the Court found that where both the Debtor and his wife purchased a mobile home, affixed it to real property owned by both the Debtor and his wife, and elected to have the mobile home classified as real property in the office of the chancery clerk, the mobile home nevertheless remained personal property by virtue of the personal property designation in the contract for sale and also the intent of the parties at the time of purchase that the mobile home remain personal property.

Likewise, this Court finds that at the time Mr. Sumrall purchased his mobile home, the parties intended that the mobile home would remain personal property. The Court finds such intent from the language contained in the contract for sale. Since state law does not provide a homestead exemption where the mobile home owner does not own the land on which the mobile home is

located and since the contract provides that the mobile home will remain personal property, the Court finds that Jetaun does not have a homestead interest in the mobile home.

Since the Debtors have not shown that Jetaun Sumrall has an interest in the mobile home, Green Tree is entitled to an order lifting the automatic stay so that Green Tree may enforce its security interest in the mobile home. The mobile home will not be abandoned from the estate so that any equity that may exist after satisfaction of Green Tree's secured claim will remain for the benefit of the estate.

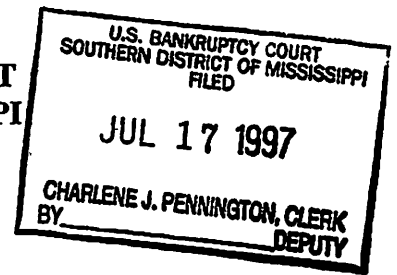
The Court finds that neither Green Tree nor the Debtors offered sufficient proof for the Court to award sanctions to either party.

A separate judgment will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 17th day of July, 1997.


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN RE:

CHAPTER 13

JAMES AND JETAUN SUMRALL

CASE NO. 9701315JEE

MOTION NO. M970708

FINAL JUDGMENT LIFTING AUTOMATIC STAY

Consistent with the Court's memorandum opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the automatic stay shall be, and hereby is, lifted as to Jetaun Sumrall so that Green Tree may enforce its security interest in the mobile home. By previous order of this Court the automatic stay has been terminated as to James Sumrall.

It is further ordered that both Green Tree's motion for sanctions and the Debtors' motion for sanctions shall be, and hereby are, denied.

SO ORDERED this the 17th day of July, 1997.


UNITED STATES BANKRUPTCY JUDGE