

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 03-13891-JMD
Chapter 13

Ronald C. Chappell and
Susan L. Chappell,
Debtors

Ronald C. Chappell and
Susan L. Chappell,
Plaintiffs

v.

Adv. No. 04-01151-JMD

United States of America
Department of Agriculture
Rural Housing Administration,
Defendant

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MEMORANDUM OPINION

I. INTRODUCTION

Ronald Chappell ("R. Chappell") and Susan Chappell ("S. Chappell") (collectively the "Debtors") commenced this adversary proceeding against the United States Department of Agriculture Rural Housing Administration (the "Department") seeking a determination that the

Department's abstract of judgment (the "Judgment") is an unsecured, nonpriority claim. On July 28, 2004, the Department filed its answer requesting a determination that it has a secured claim to the extent of the value of the Debtors' interest in real property located in Coos County, the county in which the Judgment was recorded.

On May 10, 2005, the Debtors filed Plaintiff's Verified Motion for Summary Judgment (Doc. No. 17) ("Debtors' MSJ") seeking a determination that the Judgment did not attach to the Debtors' homestead at 89 Crawford Road, Clarkesville, New Hampshire, because neither the Debtors nor the Marjorie E. Chappell Trust (the "Trust"), in which R. Chappell has a beneficial interest, owned the property on the day the Judgment was perfected or at any time thereafter, and that the Judgment did not attach to R. Chappell's beneficial interest in the Trust because his interest was protected by a spendthrift provision in the Trust. If the Court finds that the spendthrift provision did not apply to the Judgment, the Debtors alternatively ask the Court to determine that the Judgment only attached to their beneficial interest in the Trust. On June 8, 2005, the Department filed Defendant's Cross-Motion for Summary Judgment (Doc. No. 18) ("Department's MSJ")¹ seeking a denial of Debtors' MSJ and a determination that the Department's claim for \$147,304.70 is a secured claim to the extent of the Debtors' interest in real property located in Coos County, New Hampshire. The Debtors did not respond to the Department's MSJ. On June 16, 2005, after a hearing on the MSJ Motions, the Court took the matter under advisement.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.).

¹ The Debtor's MSJ and Department's MSJ shall be collectively referred to as the "MSJ Motions."

This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. FACTS

There are no material factual disputes in the summary judgment record. The Debtors' MSJ was verified so the exhibits are part of the summary judgment record. The Department's MSJ was not verified, but at the hearing the parties agreed that all exhibits to their respective motions were included in the summary judgment record.

On August 3, 1989, R. Chappell's mother, Marjorie Chappell ("M. Chappell"), executed a warranty deed transferring a fee simple interest in her homestead in Clarksville, New Hampshire (the "Homestead"), to the Town of Pittsburg, New Hampshire. The Debtors allege the conveyance was intended to be an easement to protect a public water supply well and not a conveyance of a fee simple interest in the Homestead. After the transfer was made, M. Chappell continued to occupy and insure the Homestead, pay property taxes to the Town of Clarksville, and otherwise behave as if she owned the property. On February 24, 1993, M. Chappell created the Trust and transferred several parcels of land, including the Homestead, to the Trust by quitclaim deed. On November 15, 2000 (the "Perfection Date"), the Department recorded a Judgment against the Debtors in the amount of \$147,304.70 in the Coos County Registry of Deeds.

Article Sixth of the Trust provided that, at M. Chappell's death, after two small cash distributions, the Trust be divided into equal shares for each of her surviving children. M. Chappell was survived by three children, R. Chappell, David Chappell, and Shelley Wing. Article Sixth C provided "with respect to a trust set apart for either Ronald C. Chappell or Shelley Wing, the trustee shall distribute such child's share to each child free of any further

trust” (emphasis added). Article Eighth of the Trust contained a general spendthrift trust provision (the “Spendthrift Provision”) restricting the alienation or assignment of any interest in the Trust by a beneficiary. R. Chappell and his sister, Shelley Wing, (the “Trustees”) are co-trustees of the Trust.

M. Chappell died in 1993, but the distribution to R. Chappell, called for in Article Sixth, was not made by the Trustees after her death. On April 8, 1999, in a state court action, the Coos County Superior Court ordered the Trustees to distribute the Trust property according to an agreement entered into by R. Chappell and his siblings (the “1999 Agreement”), but the distribution never took place. According to the Agreement, R. Chappell’s share of the Trust included three parcels of real property in Coos County, New Hampshire, one of which was the Homestead in which the Debtors reside.

R. Chappell and his wife S. Chappell filed for bankruptcy protection on November 13, 2003. The Debtors’ bankruptcy petition listed the Homestead as a joint asset and described their interest as “an equitable interest in home owned by Town of Pittsburg, New Hampshire” on schedule A. In schedule B, the Debtors listed as an asset a “50% beneficial interest in [the Trust] now irrevocable but a spendthrift trust in 2 parcels of real estate.” In schedule C, the Debtors each claimed a \$40,000.00 homestead exemption in the Homestead. On June 30, 2004, the Debtors filed a complaint seeking a determination that the Judgment is an unsecured, nonpriority claim based on the assertion that the Debtors did not own any property to which the Judgment could attach.

At the hearing, the parties agreed no facts are in dispute and that the Judgment attached to any interest the Debtors held in real property located in Coos County as of the Perfection Date. Accordingly, the issues before the Court are: (1) whether the Debtors held an interest in

real property on the Perfection Date to which the Judgment could attach and (2) if such an interest existed, whether the Spendthrift Provision prevented the Judgment from attaching.

III. DISCUSSION

A. The Summary Judgment Standard

An order granting summary judgment is proper if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c), made applicable to adversary proceedings by Fed. R. Bankr. P. 7056; see also Barbour v. Dynamics Research Corp., 63 F.3d 32, 36 (1st Cir. 1995). When considering summary judgment, the court should draw all reasonable inferences from the facts in the manner most favorable to the non-movant. See Desmond v. Varrasso (In re Varrasso), 37 F.3d 760, 763 (1st Cir. 1994).

The Court notes that although neither party disputes the documents included by the other party in the summary judgment record, this matter comes before the Court on cross motions for summary judgement, not on a stipulated factual record. Accordingly, the Court may only decide whether, on the summary judgment record, either of the parties deserves judgment as a matter of law. If the Court identifies any material factual disputes, it may not resolve the dispute. Boston Five Cents Sav. Bank v. Sec’y of the Dep’t of Hous. and Urban Dev., 768 F.2d 5, 11-12 (1st Cir. 1985).

B. The Debtors’ Summary Judgment Motion

The Debtors assert the Judgment did not attach to the Homestead because, on the Perfection Date the Town of Pittsburg, not the Trust, was the owner of the Homestead. They

also argue that the Judgment did not attach to R. Chappell's beneficial interest in the Trust because his interest was protected by the Spendthrift Provision. The Debtors alternatively argue that even if the Spendthrift Provision did prevent the Judgment from attaching, the Judgment only attached to the Debtors' beneficial interest in the Trust.

1. Did the Debtors Have Property the Judgment Could Reach?

The first issue for the Court is whether the Debtors possessed a property interest to which the Judgment could attach even though neither the Debtors nor the Trust held record title to the Homestead at the time the Judgment attached. It is unchallenged that the title of the Homestead is in dispute² and that the basis for the dispute—the inadvertent transfer of a fee simple interest in the Homestead in 1989 by warranty deed—predates the recording of the Judgment in 2000. Allegedly, the 1989 conveyance was intended to be only a protective easement for a public water supply well but through accident, mistake, or misfortune was a conveyance of the entire Homestead to the Town of Pittsburg. Since the 1989 conveyance, the Debtors allege the family has been clothed in the indicia of title by continuously occupying and maintaining the Homestead and paying the property taxes to the Town of Clarksville. Based on these circumstances, the Debtors claimed an equitable interest in the Homestead as an interest in real property and a homestead exemption in the Homestead under state law, N.H. Rev. Stat. Ann. 480:1 ("N.H. RSA"), in their bankruptcy schedules.³

² The Court notes that in 2004 the Chapter 13 Trustee (the "Trustee") brought an adversary action to compel turnover of the Homestead to the estate. Without reaching the merits on the Trustee's allegations regarding the transfer of the Homestead to the Town of Pittsburg, the Court dismissed the case without prejudice.

³ The issue of whether the entries in the bankruptcy schedules are an admission against interest by the Debtors has not been raised by the Department and is not before the Court in this proceeding.

It well settled that errors in the description of property in a deed can be resolved by a court in equity. Busby v. Littlefield, 31 N.H. 193, 199-200 (1855) (holding that equity will reform a mistake in a deed and may order a party holding land by a conveyance covering more than what was intended to be conveyed to release all claim to what is unjustly held). Furthermore, the parties in such a dispute—both the party holding legal title and the party holding equitable title—are considered to have an interest in the real property until the dispute is resolved. Haddock v. Wilmarth, 5 N.H. 181 (1830). Finally, under New Hampshire law, equitable interests in land can be attached. Johnson v. Bell, 58 N.H. 395 (1878) (holding that an interest in land that can be enforced in equity is subject to attachment); Hutchins v. Heywood, 50 N.H. 491, 499 (1871) (holding that the interest of the beneficiary of a trust in use and possession of trust property may be taken by attachment, writ of entry, levy of an execution, or any other appropriate legal proceeding).

Even if a beneficiary lacks a present possessory interest in a trust, the beneficiary's interest is vested when the interest is "certain to reach him upon the specified event spelled out in the trust." Flaherty v. Flaherty, 138 N.H. 337, 340 (1994) (although the beneficiary did not hold a present possessory interest in the trust, his interest was vested where he was an ascertained remainderman and his interest was certain to reach him upon the occurrence of a specified event). Accord Boston Reg'l Med. Ctr., Inc. v. Reynolds (In re Boston Reg'l Med Ctr., Inc.), 410 F.3d 100 (1st Cir. 2005) (holding that, under Massachusetts law, a debtor's beneficial interest in a trust vested on the date of death of the grantor even though distribution is not to occur until subsequent events have taken place).

The "time of division clause," in Article Sixth B of the Trust, mandated that upon the death of M. Chappell the Trustees were to collect certain assets, make two small specific

distributions, and then divide the corpus of the Trust equally among the grantor's then-living children. Nothing in the record suggests a delayed vesting date. M. Chappell died in 1993. Consequently, R. Chappell's interest in the Trust vested upon his mother's death in 1993. Accordingly, the Court finds that R. Chappell's interest in the Trust vested seven years prior to the Perfection Date.

On the date of death of the grantor, M. Chappell, the Trust held an equitable interest in the Homestead and legal title to other real property and perhaps personal property. On the Perfection Date, R. Chappell's interest in the Trust was vested and, therefore, was subject to attachment. The Trust's equitable interest in the Homestead and legal interest in other real estate constitute interests in real property. The recording of the Judgment created a lien on all vested interests of the Debtors in real property located in Coos County, New Hampshire. 28 U.S.C. § 3201. R. Chappell held a vested interest in the Homestead and perhaps other real property of the Trust under the terms of the 1999 Agreement. Accordingly, the Court finds that R. Chappell's lack of legal title to the Homestead did not stop the Judgment from attaching to R. Chappell's equitable interest in the Trust's interests in real property, including the Homestead, on the Perfection Date.

The summary judgment record does not reflect any interest in real property held by the Trust for the benefit of S. Chappell. Her interest appears to be limited to a homestead interest in the Trust's equitable interest in the Homestead, which was vested in her husband, R. Chappell, by virtue of her actual use of the Homestead as her principal residence. In re Marsico, 278 B.R. 1, 6 (Bankr. D.N.H. 2002). Accordingly, the Court finds that the Judgment attached to S. Chappell's interest in such real property by virtue of her status as a spouse of R. Chappell and

her use of all or a portion of such real property as her principal residence, subject to her claim of homestead

The Court notes that the MSJ Motions do not ask the Court to decide the extent or value of the Homestead or determine what real property interests of R. Chappell in Trust property are subject to his claim of homestead exemption. Accordingly, the decision on the MSJ Motions has no bearing on a determination as to which of the parcels held by the Trust, whether through equitable or legal title, R. Chappell has vested rights under the terms of the Trust and the 1999 Agreement and what portion of those parcels are protected by the Debtors' claimed homestead exemptions.

2. Did the Spendthrift Trust Provision Protect the Judgment from Attaching?

The Debtors argue that the Spendthrift Provision, arising under the Uniform Trust Code (the "Trust Code") of N.H. RSA 564-B:5-502, protected R. Chappell's interests in the Trust. The Trust Code became effective on October 1, 2004, and was made applicable to all trusts created before its effective date. N.H. RSA 564-B:11-1104(a)(1) (2004). However, the Trust Code provides that it does not apply to "an act done before the effective date of this chapter." N.H. RSA 564-B:11-1104(a)(5). The recording of the Judgment would be considered an "act" within the meaning of the Trust Code. Therefore, the Trust Code, which recognizes the validity of spendthrift trust provisions, N.H. RSA § 564-B:5-502, does not alter the Department's rights created by the act of recording the Judgment.

Prior to the adoption of the Trust Code, New Hampshire did not recognize true spendthrift trusts. Athorne v. Athorne, 100 N.H. 413, 416 (1957) (citations omitted). However, New Hampshire did restrict the power of creditors to subject a beneficiary's interest to payment

of claims if the beneficiary's power to alienate such interests was restricted under the terms of a trust. N.H. RSA 564:23(I) (repealed effective October 1, 2004). This provision of prior law became effective on June 3, 1996, and, therefore, was controlling law on the Perfection Date. Consequently, the effect of the Spendthrift Provision must be determined under that provision of prior law.

Article Sixth of the Trust mandated that upon the death of the grantor, R. Chappell's interest was to be distributed free of any further trust. Accordingly, his interest in the Trust vested upon his mother's death in 1993. R. Chappell, as one of the Trustees, was obligated to perform the collection and division but failed to do so. The fact that he did not choose to exercise his power to receive the corpus is immaterial to a determination of whether his creditors can reach it. The 1999 Agreement provided that R. Chappell's share of the Trust included three parcels of real estate located in Coos County, New Hampshire, one of which was the Homestead. Although R. Chappell did not have legal title to his share of the real property owned by the Trust on the Perfection Date, his vested interest could not be protected from his creditors through inaction by the Trustees. To hold otherwise would allow R. Chappell, as a co-trustee, to retain the benefit of his interests in the real property of the Trust while sheltering it from his creditors. Such a result is contrary to public policy and applicable state law on the Perfection Date. N.H. RSA 564:23(II) (repealed effective October 1, 2004). Therefore, the Spendthrift Provision was not effective to prevent the Judgment from attaching to R. Chappell's interests in real property held by the Trust.

C. The Department's Summary Judgment Motion

The Department's MSJ seeks a determination that its claim for \$147,304.70 is a secured claim to the extent of the Debtors' interest in real property located in Coos County. The

summary judgment record does not identify in what interests in real property the Trust has an interest either through legal or equitable title. Furthermore, the summary judgment record does not identify in which of those real property interests R. Chappell has a vested interest under the terms of the Trust and the 1999 Agreement. Finally, the summary judgment record is devoid of facts that would support a determination of the extent of the Debtors' homestead interests in any such real property or the value of any such property. Accordingly, the Department's MSJ shall be denied.

IV. CONCLUSION

For the reasons discussed in this opinion, the Court shall enter a separate order (1) granting the Debtors' MSJ in part to the extent that the Judgment attached to R. Chappell's vested interest in real property held for him by the Trust and any interest in such real property held by S. Chappell by virtue of her status as a spouse of R. Chappell and her use of all or a portion of such real property as her principal residence, subject to her claim of homestead; (2) denying the Debtors' MSJ, except as set forth above; and (3) denying the Department's MSJ. This opinion constitutes the Court's conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

ENTERED at Manchester, New Hampshire.

Date: January 4, 2006

/s/ J. Michael Deasy
J. Michael Deasy
Bankruptcy Judge