

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re

ROBERT E. WILLIAMS

Debtor

Case No. 93-13232

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APPEARANCES:

O'CONNOR, O'CONNOR, BRESEE & FIRST  
Attorneys for Debtor  
20 Corporate Woods Boulevard  
Albany, New York 12211

Michael Jude O'Connor, Esq.

BERGER & DUCHARME, LLP  
Attorneys for Creditor  
1023 Route 146  
Clifton Park, New York 12065

John B. DuCharme, Esq.

Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

The current matter before the court is the valuation of certain real property of Robert E. Williams ("Debtor") for purposes of avoiding the judgment lien of Acquisitions Plus, LLC ("Creditor") as impairing the Debtor's homestead exemption pursuant to 11 U.S.C. § 522(f). The court has jurisdiction under 28 U.S.C. §§ 157(a), (b)(1), (b)(2), (b)(2)(K) and 1334(b).

**FACTS**

The court issued a Memorandum-Decision and Order dated August 26, 2003 holding that the Creditor could not avail itself of a laches argument against this § 522(f) motion given the underlying facts. As part of its decision, the court directed that an evidentiary hearing be scheduled to determine to what extent, if any, the Creditor's judgment impairs the homestead

exemption of the Debtor. Familiarity with that decision and the extensive factual background is presumed.

## **DISCUSSION**

An evidentiary hearing was conducted on December 2, 2003 to determine the value of the Debtor's residence located at 3 Castillion Court, Clifton Park (the "Residence"); specifically, the court must determine whether the Residence was worth more than \$129,000<sup>1</sup> as of the date of filing.<sup>2</sup> Because the court finds that the value of the Residence did not rise to the \$129,000 level, the Creditor's lien shall be avoided.

The court bases its decision on the general credibility of the Debtor's expert who appraised the Residence in December 1993. He testified about the many structural problems with the roof, foundation, furnace, and flooring, the need for interior and exterior painting, and dampness in the basement.<sup>3</sup> He further testified that during that time period, it was a buyer's market; there were a glut of homes for sale. He concluded that the residence was worth \$116,500 at the time of the appraisal. His opinions were not shaken on cross-examination. The court does have some concern regarding the relevancy of the comparables utilized and will thus adjust his value upward by 10% for a final value of \$128,150.

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<sup>1</sup>Any value less than the balance of the first mortgage as relied upon by the Creditor in its pretrial statements (\$109,000) and the appropriate homestead exemption for a husband and wife pursuant to New York CPLR 5206 (\$20,000) would, as a matter of law, impair the exemption. *See* 11 U.S.C. § 522(f)(2)(A).

<sup>2</sup>For purposes of this § 522(f) motion, the Residence should be valued as of August 20, 1993, the date of filing. However, the Debtor's appraisal is dated December 17, 1993, and the effective date of the Creditor's appraisal is "early 1994." The court will thus calculate a value as of the approximate dates utilized by the parties.

<sup>3</sup>The testimony referenced in this decision is based on the court's recollection and the tape recording of the trial. Neither party obtained a trial transcript.

The court's decision that the judgment lien impairs the Debtor's homestead exemption is further bolstered by the problems incurred by the Creditor's expert during his testimony. He stated in his letter appraisal report dated November 10, 2003 that the Residence was worth "approximately \$155,000" in early 1994. He further stated, "It is difficult to estimate the value of any home without being able to complete an inspection.<sup>4</sup> You have asked me to estimate the value in early 1994, so it is not possible for me to know the condition at that time." Additionally, the Creditor's expert testified that he did not review pictures of the residence as it existed in late 1993 or early 1994 because none were available. It is difficult for the court to impart credibility to any appraisal testimony offered ten years after the fact where the property has never been visited personally or pictorially. This expert can not factor any unique characteristics, either positive or negative, of this home into his opinion on value. Any attempt to do that without some personal knowledge would be based on hearsay. Because of the testimonial infirmities suffered by this expert, the court will discount his testimony and opinion offered by a minimum of 20% resulting in a value of, at most, \$124,000.<sup>5</sup>

Based on the foregoing, it is

ORDERED, that the judicial lien of Acquisitions Plus, LLC against the Debtor's residence located at 3 Castillion Court, Clifton Park, New York is avoided pursuant to 11 U.S.C. §522(f) as impairing the homestead exemption of the Debtor and shall not survive this Bankruptcy Proceeding; and it is further

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<sup>4</sup>The court agrees that the Creditor has been placed in a difficult position and, but for the specific facts of this case, a compelling argument could be made that the Debtor's delay constitutes laches.

<sup>5</sup>A more precise number need not be ascertained, only that the value does not exceed \$129,000.

ORDERED, that the Saratoga County Clerk may indicate the foregoing on its records.

Dated: March 11, 2004

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Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Judge