

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

**NANCY HARALAMBOPOULOS and
CONSTANTINE HARALAMBOPOULOS,**

CASE NO. 96-21707

Debtor(s).

DECISION & ORDER

BACKGROUND

On June 12, 1996, Constantine and Nancy Haralambopoulos (the “Debtors”) filed a petition initiating a Chapter 7 case. On their schedules, the Debtors indicated that: (1) they were the owners of 709 English Road, Rochester, New York (“English Road”); (2) English Road had a current market value of \$82,000 and was subject to a mortgage (the “ES&L Mortgage”) in favor of Eastman Savings & Loan Association (“Eastman Savings”) in the amount of \$62,000; and (3) Rocco Pesce (“Pesce”) was an unsecured creditor who had two judgments against the Debtors, a February, 1996 judgment in the amount of \$18,600 and a March, 1996 judgment in the amount of \$55,500 (collectively the “Pesce Judgments”).

On September 25, 1996, the Debtors filed a motion (the “Avoidance Motion”) pursuant to Section 522(f) to avoid the lien of the Pesce Judgments on English Road. The Avoidance Motion indicated that: (1) English Road had a fair market value of \$84,000, based upon an attached appraisal prepared by Morton Segelin (the “Segelin Appraisal”); (2) the balance due on the ES&L Mortgage was \$60,393.52; and (3) there might be a federal tax lien filed against English Road in the approximate amount of \$800.00 (the “Tax Lien”).

Pesce opposed the Avoidance Motion and requested the opportunity to have English Road

appraised. Thereafter, the Court was provided with an October 29, 1996 appraisal prepared by Robert G. Pogel, SRPA (the “Pogel Appraisal”) which estimated the fair market value of English Road to be \$93,000. In December, 1996, the Court was also provided with a copy of a November 25, 1996 report concerning English Road prepared by George A. Scardetta, P.E. (the “Engineering Report”) as well as a revised Segelin Appraisal (the “Revised Segelin Appraisal”), which, as the result of the Engineering Report, now estimated the fair market value of English Road to be \$80,000.

The parties have requested that the Court not hold a hearing and have submitted the matter on papers for the Court to decide: (1) the fair market value of English Road for purposes of the Avoidance Motion; and (2) what if any portions of the Pesce Judgments are unavoidable pursuant to Section 522(f).

DISCUSSION

Generally, when conducting a hearing to determine the fair market value of residential real estate, where the Court is presented with the testimony of two appraisers, it: (1) allows the appraisers to critique each other’s estimate of the fair market value, in an attempt to better understand why they have come to a different conclusion with respect to value; and (2) questions each appraiser as to the valuation range he or she utilized, since the Court is aware from its many hearings involving appraisers of residential real estate that their determination of fair market value is always an estimate which falls within a reasonable range derived from an analysis of various comparables. In this case, because the parties understandably wished to avoid the additional expense of a hearing, the Court was not able to employ this standard methodology.

Also, in this case, the Court was presented with an Engineering Report which set forth a number of deficiencies at English Road, particularly with respect to the furnace and the roof. This is information that the Court does not usually have, and may, as in this case, present an opinion with respect to significant structural or maintenance deficiencies that is clearly more credible than the opinion of an appraiser. However, once again, since there was no hearing in this case, the Court was not able to question the engineer with respect to his Report in order to gain a more informed opinion with respect to the effect of some of the items set forth in the report on a prospective buyer, and thus on the fair market value of English Road.

After reviewing the Segelin Appraisal and the Pogel Appraisal, I found the Pogel Appraisal to be more persuasive in that: (1) the appraiser is a qualified and experienced appraiser rather than a real estate broker; and (2) the comparables used were more persuasive because they were on the same street and in close proximity to 709 English Road, notwithstanding the appraiser's dispute as to whether comparables should be colonials rather than split levels, and the difference in condition between the various comparables, as adjusted, used in the Pogel Appraisal. Nevertheless, I believe that the Pogel Appraisal, which is an estimate within a range of value, was somewhat on the high side of what I believe must have been Mr. Pogel's determined reasonable value range.

Beyond an evaluation of the competing appraisals, the Court cannot ignore the Engineering Report and what it believes are some items which would definitely impact on the fair market value of English Road, since they would clearly negatively affect the amount which an arms length buyer would pay for English Road. Assuming a prospective buyer of English Road would obtain a similar engineering report before entering into a final contract for its purchase, which is now a common

practice in this District, I believe that such a buyer would be looking for an adjustment on the purchase price because of the reported condition of the furnace and the roof. The Engineering Report indicates that the furnace and roof must be replaced, not that they are deteriorating or are reaching the end of their useful life, and that they are each causing damage to the structure or potentially to its inhabitants. I believe that any buyer reading this Engineering Report would negotiate for a significant reduction of the purchase price, probably after additional estimates were obtained of the potential replacement costs, since I believe the estimates I reviewed may be on the high side.

After reviewing all of the submissions, and taking into account the Court's belief as to: (1) the reasonable value range represented by the Pogel Appraisal; and (2) the impact on the fair market value of the furnace and roof problems detailed in the Engineering Report, I find the fair market value of English Road for purposes of the Avoidance Motion to be \$85,000.00.

Since the Debtors have not provided the Court with any evidence that there is a Tax Lien against English Road, I find the February, 1996 Pesce Judgment to be unavoidable in the amount of \$4,606.48 (the \$85,000.00 fair market value less the Eastman Savings mortgage balance of \$60,393.52 and a \$20,000.00 homestead exemptions = \$4,606.48), and that the balance of the February, 1996 Pesce Judgment and the March, 1996 Pesce Judgment are avoided pursuant to Section 522(f).

The unavoidable amount of the February, 1996 Pesce Judgment shall remain a valid lien on English Road in the amount of \$4,606.48 which lien shall accrue interest at the New York State judgment rate from the date of this Decision & Order until paid in full.

IT IS SO ORDERED.

**_____/s/_____
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE**

Dated: January 10, 1997