UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

LOREN D. HEBLER Case No. 01-17677 K

Debtor

The issue that brought this case to the attention of the Court is the value of the Debtor's home for purposes of the Debtor's Chapter 13 Plan. Now the Court has examined the file and concludes that much more than that must be examined by the Chapter 13 Trustee.

When the Petition, Schedules and Statements were filed on December 17, 2002, they were accompanied by a Chapter 13 Plan that would pay $.30 on the dollar to $26,500 of unsecured debt. The documents reflected no mortgage arrearage and no tax arrearage.

The Debtor's residence is a two-family home in which he and his wife had only a life estate (at some point in the past). His daughter owned the remainder interest. He scheduled the value of the life estate at $108,000, and reflected a mortgage on the property of $185,000. Thus, those documents would indicate no equity in the residence for purposes of the Chapter 7 test.

The Debtor is a self-employed contractor, but apparently is semi-retired because he collects Social Security. His Schedule J reflected total monthly projected expenses, both personal and business, of $2350, against a Schedule I average monthly income (including rental income on the rental unit at the principal residence) of $2555. Thus, of $205 "excess" income, he proposed $175 per month for sixty months, netting (after Trustee commissions) $7800 to the

$26,500 of unsecured debt, plus $1800 in interest.

At the § 341 meeting, the Trustee determined that certain cash and an annuity were not exempt, determined the Debtor's interest in them to be worth $8600, and determined that the required percentage to unsecured creditors should be 33%, but that at $175/month, the Plan would last only 4.6 years.

At the confirmation hearing, the Court was told that the § 341 meeting had also resulted in new information about the ownership of the dwelling. Despite the contrary information sworn to the Schedules and Statements, the Debtor actually owns a share of the fee interest, but now a fee interest in the dwelling is asserted by the Debtor to be worth only $182,000 against a $185,000 mortgage indebtedness. Because the mortgage indebtedness is a single loan, the Court inquired as to how the Debtor was able to obtain a mortgage loan in an amount in excess of the value of the home. When informed that the mortgage loan was a refinancing "a couple of years ago," the Court insisted that the appraisal used by the refinancing mortgagee be provided to the Court.

It was subsequently disclosed to the Court that counsel for the Debtor had learned, after the filing of the Petition, that although the Debtor had conveyed his interest[1] to his daughter, retaining only a life estate for himself and his wife, the refinancing mortgage-holder had insisted that title go to the Debtor and his wife.[2] Title, consequently, was supposedly reconveyed.

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[1] It is not clear whether he was the sole owner, or whether he and his wife together owned the property, before the conveyance to the daughter.

[2] It is not clear whether the initial conveyance to the daughter was an avoidable fraudulent transfer.

(Apparently, based on yet newer information obtained by Debtor's counsel, the reconveyance was to the Debtor, his non-debtor spouse, and his daughter in equal shares.)

It now has been reported to the Court that the refinancing institution - Aames Home Loan - appraised the property at $235,000 on January 31, 2001. That was less than one year before the filing here. If that value were employed here, and the various ownership transfers and re-transfers ignored so that the Debtor would be deemed to be the owner of the property in fee for Chapter 7 purposes, he would have $40,000 non-exempt equity, requiring a 100% plan rather than the 33% plan he proposes.

The Debtor contests that appraisal, asserting that the "comparables" that were used were in fact not "comparable," and asserting that the appraisal was probably intentionally and artificially high in order to help the lender "make" the deal. He provides an appraisal that he obtained after the Court raised this issue, valuing the home at $182,000, and he points out that the tax-assessed value is $169,400, supposedly at full fair market value. But the property was purchased as vacant land in 1992; consequently, the price at which the Debtor purchased the property is not relevant. Furthermore, he is a contractor; so his costs to build the dwelling are not probative of present market value. Thus the assessed value is not based on any market value sale, unlike the vast majority of Amherst dwellings that come before this writer.

The Court advised that it would reflect upon this matter and issue further instructions.

Now, having examined the Debtor's Schedules and Statements, the Court notices, for the first time, that the Debtor listed the mortgage company on Schedule D as having a

$185,000 claim and the property as having a value of $230,000. The Debtor used that number at the time that he was of the belief that his interest in the property for purposes of the Chapter 13 case was only a joint interest in a life estate.

Now that the Debtor learns that he cannot take advantage in this Court of the transfers and re-transfers of ownership, he challenges the value that he himself placed on the property when he thought that he would not be deemed to own the fee interest in the property.

The Court also notices that the Debtor purports to "net" only $315 per month from his business as a self-employed contractor. This, plus $525 net income from the rental unit, $750 per month in Social Security, and $100 per month in pension or retirement income, comprise his average monthly income of $1690. It is only by combining that with his wife's Social Security income of $340 per month and her 50% share of rental income, that the family unit is able to spare $175 per month towards payment of unsecured debt. Because all of the unsecured debts emanated from pre-refinancing credit cards, it is not clear to the Court how he and his wife qualified for the refinancing on such income. And the bizarre sequence of belated disclosures at odds with sworn Statements and Schedules also concerns the Court.

The Court directs that a further § 341 hearing be conducted and that the Trustee examine: the Debtor's tax returns for the past several years; a copy of the Debtor's loan application that resulted in the refinancing less than one year before the filing of this Petition; the circumstances surrounding the various transfers of ownership, and the circumstances that led the Debtor to the filing of a Petition for relief under the Bankruptcy Code less than a year after refinancing the mortgage on the home.

Such inquiry should include consideration of the amount of mortgage debt prior to the refinancing, the amount of other debt prior to the refinancing, and the disposition of the loan proceeds from the refinancing. This Debtor has less than $27,000 of unsecured debt, and should have either borrowed enough against the dwelling to pay that debt or budgeted sufficiently to pay it without resort to a Chapter 13 "composition." (Of course, intervening circumstances might be fully explanatory.)

In light of the fact that it is the size of the monthly mortgage payment that is the largest single determinant of what this Debtor can afford to pay to his unsecured creditors, it is important to find out how it came to pass that an arm-length lender was willing to lend so much money to someone who now shows so little income and who now claims that the house is worth less than the debt. The Trustee may also pursue his own lines of inquiry.

The further examination of the Debtor will go forward before the Chapter 13 Trustee at **June 26, 2002 at 3:00 p.m.** at the U.S. Bankruptcy Court, 300 Pearl Street, Suite 350, Buffalo, New York 14202. The Debtor shall appear with counsel and shall provide the materials and information recited above, and all documents related thereto.

This matter shall not be "settled" or "withdrawn" without provision of such materials and information, and the approval of the Court.

Dated: Buffalo, New York
June 12, 2002

/s/ Michael J. Kaplan

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U.S.B.J.