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JUDGE: M. A. Mahoney

PARTIES: John E. Harris, Springhill Lighting and Supply, Inc., Coastal Insulation of Alabama, Inc.

CHAPTER: 7

ATTORNEYS: S. K. Orso, R. S. Terry, G. B. McAtee

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In re

JOHN E. HARRIS

Case No. 00-12562-WSS-7

Debtor.

**ORDER GRANTING DEBTOR'S MOTION TO AVOID THE JUDGMENT  
OF SPRINGHILL LIGHTING AND SUPPLY, INC.  
TO THE EXTENT OF DEBTOR'S HOMESTEAD EXEMPTION**

Stephen K. Orso, Mobile, Alabama, Attorney for the Debtor  
Russell S. Terry, Alabama, Attorney for Springhill Lighting and Supply, Inc.  
Gregory B. McAtee, Mobile, Alabama, Attorney for Coastal Insulation of Alabama, Inc.

This matter is before the Court on the motion of the Debtor, John E. Harris, to avoid the judgment lien of Springhill Lighting and Supply, Inc. ("Springhill Lighting"). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the motion of the Debtor to avoid the judgment lien of Springhill Lighting is granted to the extent of Debtor's \$5,000 homestead exemption and is denied to the extent Debtor's joint interest in his homestead exceeds his \$5,000 exemption.

**FACTS**

Springhill Lighting obtained a judgment against Debtor on October 9, 1998 in the amount of \$27,317.26 plus costs of court. A certificate of judgment was recorded in the Probate Court of Mobile County, Alabama on November 13, 1998. Coastal Insulation of Alabama, Inc. also recorded a judgment in the Probate Court of Mobile County, Alabama on March 21, 1997. The Debtor filed for relief pursuant to chapter 7 of the Bankruptcy Code on June 30, 2000. Debtor listed in his schedules real property located in Irvington, Alabama with a value of \$90,000. The

parties have stipulated that for the purposes of this motion \$90,000 is the value of the property. The property is subject to a mortgage in the amount of \$68,000. The deed to the property indicates it is held jointly by Debtor and his ex-wife, Melissa A. Harris.

Debtor and Ms. Harris were divorced in November of 1999. Pursuant to their divorce, the house was to be sold and the proceeds were to be divided equally. However, they had problems selling the property because there were many liens on the property and the house was in need of some repairs. Ms. Harris agreed with Debtor to accept \$5,000 for her portion of the equity in the home. This amount was later reduced to \$4,900 to deduct \$100 for an unpaid phone bill owed by Ms. Harris which Debtor paid. The only writing evidencing the agreement is a document signed by Ms. Harris stating:

I MELISSA A. HARRIS, AGREE TO ACCEPT \$4,900.00 FOR MY PART IN THE EQUITY OF HOME LOCATED AT 9660 W. GINKLE RD. THE ORIGINAL AMOUNT WAS \$5,000.00 BUT DUE TO A \$100.00 UNPAID PHONE BILL, I AGREE TO DEDUCT THE \$100.00 FROM MY PART IN THE HOUSE.

Debtor paid Ms. Harris \$2,500 towards this agreement. Ms. Harris refused to sign over the deed to Debtor until the full amount was paid. The deed still remains in both of their names jointly. Debtor is currently living on the property and has claimed it as his homestead. Debtor claimed ownership of the entire parcel in his schedules.

#### LAW

Under Alabama law a judgment and recording of a judgment create a lien in the county where recorded on all property of the debtor which is subject to levy and sale under execution and the lien shall continue for ten years. ALA. CODE § 6-9-211(1975). Debtor seeks to avoid the creditor's judgment lien. Section 522(f)(1) provides:

[T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

(1) a judicial lien . . . .

11 U.S.C. § 522(f) (1988). Section 522(b) operates with ALA. CODE § 6-10-2 to provide debtors in Alabama a \$5,000 homestead exemption. The exempted property is free of the lien and remains so after bankruptcy. *In re Breaux*, 55 B.R. 613, 614 (Bankr. M.D. Ala.1985). The judicial lien may not be avoided to the extent it reaches nonexempt property of the estate. *Id.* Thus, the lien of Springhill Lighting may only be avoided with respect to Debtor's homestead to the extent of Debtor's \$5,000 exemption. Any equity Debtor has in the property over \$5,000 would be subject to the judgment lien of Springhill Lighting.

To determine the amount of equity Debtor has in the property the court must ascertain the status of ownership in the property. Did the title of the property pass to Debtor or is it still held jointly by Debtor and Ms. Harris? The issue is one of property and contract law and the property and contract law of Alabama is applicable. *Butner v. United States*, 440 U.S. 48 (1979). In Alabama the status of the title as indicated on the deed constitutes prima facie evidence of the ownership status of the real property. *Cooper v. Cooper*, 266 So.2d 871, 878 (Ala. 1972); *McGowin v. Robinson*, 39 So.2d 237, 251 (1949). To rebut that evidence, Springhill Lighting presented evidence that Debtor agreed with Ms. Harris to purchase her equity in the property for \$5,000 and that he made a down payment of \$2,500. Physical delivery of the deed from the grantor to the grantee is not necessary where the facts clearly indicate that the intention of the grantor, by words or acts or both, was to transfer title of the property to the grantee. *Evans v. Waddell*, 689 So.2d 23 (Ala. 1997). There is no particular word or act necessary for delivery of title but, there must be a clear manifestation of intent to deliver. *Boohaker v. Brashier*, 428 So.2d

627, 629 (Ala. 1983). Ms. Harris testified that she allowed Debtor to take possession of the property, because she could not afford to live there. Her intention was to convey the property to Debtor when he paid her the entire amount. Ms. Harris refused to sign over the deed to Debtor until he paid her the remaining \$2,400. That amount was never paid. It is clear from her testimony that Ms. Harris did not intend for title to pass to Debtor until she had been paid in full.

Did Debtor acquire any attachable interest in the property beyond his original joint interest? The purchaser in an installment land sale contract acquires an equitable interest in the property. *Shirley v. McNeal*, 145 So.2d 415 (1962); *Mid-State Homes, Inc. v. Moore*, 460 So.2d 172 (Ala. Civ. App. 1984). However, the obligation of Debtor to pay and the obligation of Ms. Harris to deliver title upon completion of payment are dependent and concurrent, so that default in the performance of one excuses the performance of the other. *In re Health Science Products, Inc.*, 183 B.R. 903, 936 (Bankr. N.D. Ala.1995). The lien possessed by a seller that retains title under an executory contract of sale, is to be distinguished from the technical vendor's lien or implied lien, wherein the vendor has no security other than the purchaser's personal obligation, for here Ms. Harris holds the legal title as security for deferred payments. *Qualls v. Union Cent. Life Ins. Co.*, 7 So.2d 558 (Ala. 1942). The respective remedies of the parties to the contract are different than those inherent in a nonexecutory mortgagor-mortgagee relationship. Upon breach by the Debtor, Ms. Harris need not sell her interest in the property, but may retain her interest in the property, declare the contract forfeited, and sue for damages for breach of the agreement. *In re Health Science Products, Inc.*, 183 B.R. 903 (Bankr. N.D. Ala. 1995); *Hicks v. Dunn*, 622 So.2d 914 (Ala. 1993); *Bell v. Coots*, 451 So.2d 268 (Ala. 1984). Debtor may rescind the contract and sue for a return of purchase money paid or sue for specific performance and

damages. *McAllister v. Altus Bank*, 578 So.2d 1266 (Ala. 1991); *Clark v. Wilson*, 380 So.2d 810 (Ala. 1980); *Tanner v. McClure*, 65 So.2d 709 (1952); *Rogers v. Gonzalez*, 40 So.2d 858 (1949); *Qualls v. Union Central Life Ins. Co.*, 7 So.2d 558 (1942). Therefore, Debtor's interest in the property above his original joint ownership consists of his rights under an executory contract and is not subject to Springhill Lighting's judgment lien.

If the property were sold and proceeds obtained in the amount of \$90,000 less the mortgage of \$68,000 the remaining total equity in the property is \$22,000. Debtor has a one-half interest in that equity and thus, has an equity of \$11,000. Debtor has claimed an exemption of \$5,000 in that equity, thus the remaining property subject to the liens of Springhill Lighting and Coastal Insulation of Alabama, Inc., as their interests may appear, is \$6,000.

THEREFORE, IT IS ORDERED AND ADJUDGED that the motion of the Debtor, John E. Harris, to avoid the judgment lien of Springhill Lighting and Supply, Inc. is GRANTED to the extent of Debtor's \$5,000 homestead exemption and DENIED to the extent of Springhill Lighting and Supply's interest in Debtor's remaining \$6,000 equity in the property.

Dated: October 31, 2000

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE