

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

In re:)
)
JACQUELINE LYNN WELDY,) Case No. 21-10325
)
Debtor(s).)

ORDER DENYING MOTION TO DETERMINE COLLATERAL VALUATION

The debtor filed this chapter 7 case on February 20, 2021 and listed in her schedules real property in Theodore, Alabama which is her homestead. The Theodore property is property of the bankruptcy estate, subject to the debtor’s available state law homestead exemption of \$15,500. *See* 11 U.S.C. § 541(a); *Harris v. Viegelahn*, 575 U.S. 510, 513 (2015).

The debtor is worried that the trustee will try to sell her home for the benefit of creditors and has filed a motion (doc. 14) asking the court to determine its value. Although the trustee has not filed a motion to sell, the debtor asks the court to determine that there is no equity for creditors above the roughly \$87,500 combination of her homestead exemption and the mortgage loan balance of around \$72,000. In essence, without expressly stating so, the debtor wants the court to stop the trustee from trying to market or sell the property.

In support of her motion, the debtor provided a 2017 appraisal of \$77,000, a 2020 tax appraisal of \$72,100, and her own testimony. The seller’s report on which the chapter 7 trustee relies estimates the value of the property at \$104,000. But for the reasons below, the court is not going to decide the property’s value.

“Chapter 7 allows a debtor to make a clean break from h[er] financial past, but at a steep price: prompt liquidation of the debtor’s assets.” *Harris v. Viegelahn*, 575 U.S. at 513. The chapter 7 trustee is responsible for liquidating estate property and distributing the proceeds to creditors. *See* 11 U.S.C. §§ 704(a)(1), 726. Bankruptcy Code § 363(b) authorizes the trustee to

sell estate property subject to court approval after notice and hearing. The court will approve a trustee's motion to sell property if the trustee "establish[es] sound business reasons for the terms of the proposed sale." See *In re Diplomat Constr., Inc.*, 481 B.R. 215, 218-19 (Bankr. N.D. Ga. 2012). "The [t]rustee is responsible for the administration of the estate and h[er] judgment on the sale and is entitled to respect and deference from the [c]ourt, so long as the burden of giving sound business reasons is met." *Id.* at 219; see also *In re Bryan*, No. 12-31486, 2013 WL 4716194, at *2 (Bankr. M.D. Ala. Sept. 13, 2013).

In exercising her responsibilities under the Bankruptcy Code, the trustee is entitled to market the Theodore property to see whether a buyer will pay a price that would result in a distribution to creditors. See, e.g., *In re Stuart*, No. 02-43724, 2003 WL 26099304, at *3 (Bankr. S.D. Ga. May 2, 2003) ("In any sale of real property, the market value is ultimately the price that an interested buyer in a competitive environment is willing to pay."); *In re Meill*, 441 B.R. 610, 615 (B.A.P. 8th Cir. Dec. 30, 2010) ("[T]he market value of the [p]roperty [i]s the price that the market w[ill] bear at the time."). The trustee can then file a motion to sell under Code § 363(b), the debtor can object if she wishes, and the court will rule on the motion. The Bankruptcy Code and Rules do not provide for the court to interfere with the chapter 7 liquidation process by determining a hypothetical value for estate property and then barring the trustee from testing the market.

Denial of the debtor's motion to value does not mean that she will lose her house or is without remedies. The debtor may very well be right that the property is not worth what the trustee thinks; if the trustee does not find a buyer for the Theodore property at a suitable price within a reasonable time, the debtor can move to compel abandonment under Code § 554(b) and the court may grant it or set a deadline. See generally, e.g., *In re Shaw*, No. 3:10-bk-7287-PMG,

2011 WL 13389589 (Bankr. M.D. Fla. July 1, 2011). As noted above, the debtor can object to the trustee's sale motion. The debtor can reach an agreement to purchase from the estate any potential non-exempt equity. The debtor can move to dismiss the chapter 7 case. Or the debtor can move to convert the case to chapter 13. But in the meantime, the chapter 7 trustee is charged with administering and liquidating assets of the estate, including the Theodore property. The court thus denies the debtor's motion to determine value.

Dated: May 20, 2021


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE