

JUL - 7 2006

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:

LEATTA CHARELLE PENNINGTON,

Debtor.

Case No. 05-96478

Chapter 7 – Judge Bonapfel

**ORDER**

The Debtor has unsecured debts of some \$13,000 and a residence with some apparent equity. She filed this case *pro se* under chapter 7 on September 28, 2005. It was converted to chapter 13 on January 20, 2006, but because she was not able to obtain confirmation of her plan, the Court converted it back to chapter 7 on April 27, 2006. [Docket No. 34].

Although the Debtor appears to be ineligible for a discharge in this case due to her chapter 7 discharge in an earlier case filed in 2004, the apparent equity in her home and the existence of unsecured debt made conversion, rather than dismissal, the appropriate choice for the Debtor as well as creditors. As the Court noted in its Order converting the case:

[I]t is in the best interests of creditors and the estate that this case be converted to chapter 7 so that a trustee may be appointed to determine whether the debtor's real estate should be administered for the benefit of creditors.

Evergreen Home Mortgage Company filed a motion for relief from the automatic stay to foreclose on the residence, which was scheduled for a hearing on June 28, 2006. In an Order entered on June 12, 2006 [Docket No. 49], in response to a paper filed by the Debtor [Docket No. 48], the Court repeated the statement quoted above and requested the Trustee, at the hearing,

to provide a "report and recommendation with regard to the value of the residence and the prospects and proposed method for its sale."

The Debtor and counsel for the lender appeared at the hearing; the Court effected the Trustee's appearance by telephone. From the hearing, it appears that the lender's current pay-off is about \$193,300, that the *per diem* interest is about \$30, that the debtor has listed the property with a real estate broker for \$225,000, and that the Debtor wants her creditors to be paid, so she is willing to amend her claim of exemptions to eliminate any claim of an exemption in the house. Because of the apparent equity in the house, the Court continued the hearing on the lender's motion until August 30, 2006, to provide the Trustee an opportunity to proceed to market and sell the property, if appropriate. After the hearing, the Trustee sent a letter, which the Court is directing the Clerk to docket in this case.

This Order summarizes the Court's directives with regard to administration of this case and explains the Court's rationale.

It appears that the Trustee and the United States Trustee may have thought that the Debtor's ineligibility for a discharge in this case would result in its dismissal and eliminate any need to sell the property or administer this case further. The Court repeats what it said in its June 12 Order:

The fact that the Debtor may not be entitled to a discharge has nothing to do with the administration of this case or the sale of her residence to pay her creditors and her exemption. If there is equity in the residence as asserted, it should be sold; otherwise, the stay should be lifted to permit foreclosure.

If a chapter 7 case is filed, even by a debtor who is ineligible for a discharge,

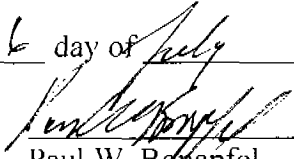
administration of the case ordinarily proceeds. Creditors are entitled to payment of their claims to the extent possible from a debtor's assets, and the debtor is entitled to a liquidation of assets, where feasible, to reduce her debt burden and to realize the value of her exemption.

This case presents the opportunity for a "win" for all parties in interest. With efficient administration of this case through the prompt, professional marketing and sale of the property, it appears that the lender can be paid in full (without the expense, uncertainties, and delay of foreclosure), unsecured creditors will be paid all or a significant part of their claims, and the Debtor's nondischargeable liabilities will be eliminated or reduced. On the other hand, failure to accomplish this will result in losses for all concerned: additional expenses and delays of foreclosure for the lender; nothing for unsecured creditors, who will have to pursue collection remedies with additional cost and uncertain prospects; and a debt burden for the Debtor that she may very well not be able to handle.

As the Court indicated at the hearing on June 28, it appears that the Trustee should take prompt action to market and sell the property. In this regard, the Court notes that a favorable outcome for creditors and the Debtor in this case depends on the Debtor's cooperation in marketing the property as well as the Trustee's diligent and professional performance of her duties. Thus, the Court expects the Debtor to cooperate fully with the Trustee.

The Clerk is directed to mail copies of this Order to the persons shown on the Distribution List below.

**IT IS SO ORDERED** this 6 day of July, 2005.

  
Paul W. Bonapfel  
U. S. Bankruptcy Judge

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