

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

In the Matter of : Chapter 13
WILLIAM E. BEACHAM and :
SANDY M. BEACHAM, :
Debtors : Case No. 05-51927 RFH
WILLIAM E. BEACHAM and :
SANDY M. BEACHAM, :
Plaintiffs :
vs. :
SOMMA INVESTMENTS, INC., :
Defendant : Adversary Proceeding
: No. 05-5109

BEFORE

ROBERT F. HERSHNER, JR.
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For William E. Beacham and Sandy Marie Beacham	Mr. Don E. Snow Post Office Box 12 Thomaston, Georgia 30286
For Somma Investments, Inc.	Ms. Molly L. McCollum 3370 Vineville Avenue, Suite 103 Macon, Georgia 31204

MEMORANDUM OPINION

Somma Investments, Inc., Defendant, filed on January 16, 2006, a motion for summary judgment. William E. Beacham and Sandy Marie Beacham, Plaintiffs, filed a response on February 3, 2006. The Court, having considered the record and the arguments of counsel, now publishes this memorandum opinion.

The material facts are not in dispute. Plaintiffs wanted to purchase certain unimproved real property (the “realty”). Plaintiffs and Defendant signed a Contract For Deed dated June 18, 2002. The Contract For Deed refers to Defendant as the “Seller” and to Plaintiffs as the “Buyer”. Defendant agreed to sell, and Plaintiffs agreed to purchase a 2.17 acre parcel of realty in the Rocky Bottom Subdivision. The purchase price was \$32,900. Plaintiffs made a down payment of \$1,500 and agreed to pay the balance by making 240 monthly payments of \$324.11. Plaintiffs signed a Deferred Payment Note dated June 18, 2002, memorializing their obligation. Defendant retained legal title to the realty. Defendant granted possession of the realty to Plaintiffs.

The Contract For Deed provides that Defendant would convey title by special warranty deed after Plaintiffs satisfied their obligation. The Contract For Deed provides in part:

11. Default. If Buyer fails to pay any one or more payments due under the Deferred Payment Note, or if Buyer fails to comply with any of the terms and conditions set forth herein, and such

nonpayment or failure to comply continues for a period of ten (10) days after written notice thereof to Buyer, Seller shall the right to declare Buyer in default hereunder, in which event the Deferred Payment Note shall, without further notice or demand, be immediately due and payable. Upon Buyer's failure to immediately pay Deferred Payment Note in full, Seller shall have all rights and remedies available at law or equity as the result of such default, including but not limited to the right to cancel Buyer's rights herein, in which event;

- a) Seller shall be released from obligations in law and equity to convey the Property to Buyer;
- b) Buyer shall forfeit all rights to the property and any improvements located thereon (including but not limited to utilities), and to the possession thereof;
- c) Seller shall have an immediate right to retake possession of the property; and
- d) All payments which have been made by buyer shall be credited by Seller to the reasonable rental value of the property during the period Buyer has had the right to use and occupy the same, and any excess of such payments shall be deemed liquidated damages, Seller and Buyer hereby agreeing and acknowledging that the actual measure of Seller's damages would be impossible to ascertain.

Plaintiffs purchased a mobile home from a third party. Plaintiffs placed the mobile home on the realty. Plaintiffs reside in the mobile home. Defendant does not assert any interest in the mobile home.

Plaintiffs failed to make their monthly payments. Defendant sent a Notice of Default dated April 11, 2005, stating that Plaintiffs were in default and that Defendant would terminate the Contract For Deed unless the default was cured within ten days.

Plaintiffs did not cure the default. Defendant sent a Notice of Termination Demand for Possession dated April 26, 2005, stating that Defendant had elected to cancel and terminate the Contract For Deed. Defendant demanded that Plaintiffs immediately surrender possession of the realty.

Plaintiffs filed a petition under Chapter 13 of the Bankruptcy Code on May 17, 2005. Plaintiffs continue to reside in the mobile home.

Plaintiffs filed on August 16, 2005, a Complaint to Determine Validity, Priority and Extend [sic] of a Lien. Defendant filed a response August 26, 2006.

Defendant filed a motion for summary judgment contending that Plaintiffs' interest in the realty was terminated prepetition.

In Southern Land & Cattle Co. v. Simmons,¹ the Court of Appeals of Georgia stated:

Though installment land contracts such as the one at issue have been commonly employed in other states (see 7 Powell On Real Property, Ch. 84D (1991)), they have never been widely used in Georgia, and have received little appellate consideration. See Pindar, Ga. Real Est. Sales Contracts, § 1-3.1 (3rd ed. 1987). We agree with the trial court that this installment contract was akin to the now largely abandoned bond for title in that it served as a contract for the sale and purchase of land; initially conveyed possession to the purchaser while legal title remained in the seller; and acted as a security instrument in the manner of a security deed while the payments were being made. See Pindar, Ga. Real Est. Law, § 20.70 (3rd ed. 1986).

¹ 202 Ga. App. 734, 415 S.E.2d 329 (1992).

415 S.E. 2d at 330.

In Watkins v. Maddox Medical Assoc. Inc.,² the Supreme Court of Georgia stated:

As noted in Pindar, Ga. Real Estate Law and Procedure, § 20-72 (4th ed. 1993), if the document constituting a bond for title contains no power of sale, “the equity of the purchaser must be foreclosed by some legal proceeding, unless barred by adverse possession or abandonment.” (Footnote omitted.) Id. at 287-288.

509 S.E.2d at 616

The facts in the case at bar are almost identical to the facts in Roberts v. Verdi, (In re Verdi), 244 B.R. 494 (Bankr. M.D. Ga. 2000). In In re Verdi, the debtor signed an installment land sales contract that required the debtor to make monthly payments for ten years. The debtor later placed a mobile home on the realty. The contract provided that the contract would be terminated if the debtor failed to make her payments. The debtor defaulted and the creditor demanded that the debtor vacate the realty. This Court stated in part as follows:

Turning to the case at bar, the Court is persuaded that Respondent’s interest in the realty was not terminated prepetition. The evidence shows that Movant delivered possession of the realty to Respondent. Respondent made a down payment. Respondent made improvements by placing a mobile home on the realty. Respondent resides on the realty. Respondent has not abandoned the realty, and Movant is not in adverse possession. Respondent’s interest in the realty has not been “foreclosed by

² 270 Ga. 404, 509 S.E.2d 614 (1998).

some legal proceeding.” The Court is persuaded that Respondent’s interest in the realty is property of her bankruptcy estate.

244 B.R at 497.

Turning to the case at bar, the Court is persuaded that Plaintiffs’ interest in the realty was not terminated prepetition. The Court is persuaded that Plaintiffs’ interest is property of their bankruptcy estates.

Defendant also contends that Plaintiffs cannot modify Defendant’s rights under the Contract For Deed because Defendant’s claim is “secured only by a security interest in real property that is the debtor’s principal residence. . . .” 11 U.S.C.A. § 1322(b)(2) (West 2004).

Defendant holds a security interest in the realty. Defendant does not assert any interest in the mobile home.

“The Court is not persuaded that raw land serves as the principal residence as that term is used in section 1322(b)(2). The Court is not persuaded that [the creditor’s] claim is secured by Debtor’s principal residence. Debtor resides in her mobile home, not in the lot which she purchased [from the creditor]. The Court is persuaded that Debtor can modify the rights of [the creditor].” In re Shelnutt, Ch. 13, Case No. 94-30602 (Bankr. M.D. Ga., May 12, 1995). See In re Johnson, 269 B.R. 246, 249 (Bankr. M.D. Ala. 2001) (land upon which mobile home sits is not debtor’s principal residence).

The Court is persuaded that Defendant’s motion for summary judgment must

be denied.

An order in accordance with this memorandum opinion shall be entered this date.

DATED this 17th day of February 2006.

/s/ Robert F. Hershner, Jr.
ROBERT F. HERSHNER, JR.
Chief Judge
United States Bankruptcy Court