

**APPEAL History**

(See Order Re Motion to Amend or Make Additional Findings 02-06-2001)

Appealed to B.A.P. on 02-16-2001

---

**In the United States Bankruptcy Court**  
**for the Northern District of Iowa**

---

CHARLES E. GLASER

Bankruptcy No. 00-01218-C

*Debtor(s).*

Chapter 7

PAUL G. SWANSON

Adversary No. 00-9113-C

Trustee Eastern Division of  
Wisconsin

*Plaintiff(s)*

vs.

CHARLES E. GLASER and RENEE  
HANRAHAN Trustee

*Defendant(s)*

---

**ORDER RE COMPLAINT TO DETERMINE INTEREST IN AND PARTITION  
REAL ESTATE**

---

The above-captioned matter came on for hearing on October 17, 2000 on Plaintiff's Complaint to determine interest in and partition real property. Plaintiff Paul J. Swanson appeared with attorney Kimberly A. Ashby. Renee K. Hanrahan appeared as the Chapter 7 Trustee. Defendant/Debtor Charles E. Glaser appeared with attorney Joseph A. Peiffer. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

**STATEMENT OF THE CASE**

Plaintiff seeks to partition and sell Debtor's homestead to satisfy a judgment entered by the U.S. Bankruptcy Court of the Eastern District of Wisconsin. Debtor resists claiming a homestead exemption, and questioning the basis for the ruling from the Wisconsin Bankruptcy Court.

**FINDINGS OF FACT**

Charles and Margaret Glaser purchased a home located at 5014 Richmar Lane N.W., Cedar Rapids, Iowa, in October, 1974. On January 5, 1998, Debtor and Mrs. Glaser entered into a stipulation

detailing the terms of their dissolution of marriage. This stipulation was approved by the District Court in Linn County, Iowa, on January 6, 1998. The dissolution settlement gave Debtor all of Mrs. Glaser's interest in the home. Mrs. Glaser was not represented by counsel during the dissolution proceeding.

Approximately nine months later, on September 14, 1998, Mrs. Glaser filed for protection under Chapter 7 in the United States Bankruptcy Court for the Eastern District of Wisconsin. The Chapter 7 Trustee, Paul J. Swanson, challenged the disposition of the home in the dissolution settlement as a fraudulent transfer by filing an adversary proceeding. Debtor was properly served with the adversary complaint, but did not appear or file an answer. On July 14, 1999, the Wisconsin Bankruptcy Court entered a default judgment voiding the transfer and finding that Debtor owes \$40,000 plus costs to Trustee Swanson as Mrs. Glaser's interest in the house.

On May 15, 2000, Debtor filed for Chapter 7 protection in the Northern District of Iowa. Plaintiff Paul J. Swanson, the Chapter 7 Trustee in Mrs. Glaser's Wisconsin bankruptcy case, initiated the pending adversary proceeding. Swanson seeks to partition and sell the house to satisfy the Wisconsin Bankruptcy Court's judgment.

Debtor argues that his homestead exemption prevents the sale of this property. He also asserts that Mrs. Glaser's interest in the property is less than \$40,000. This Court is asked to determine whether Swanson holds an ownership interest in the homestead, and whether the homestead is exempt from execution. Swanson also filed a motion for relief from the automatic stay seeking authority to sell the property in the chapter 7 case.

### **WISCONSIN BANKRUPTCY COURT'S JUDGMENT**

This Court initially notes that this is not the proper place for litigating an appeal from the Wisconsin Bankruptcy Court's ruling. Fed. R. Bankr. P. 8001-8003. "An appeal shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving." 28 U.S.C. § 158(a). The appropriate court to consider an appeal of this ruling is the District Court of the Eastern District of Wisconsin. As such, this Court need not, nor should it, rule on the merits of the Wisconsin Bankruptcy Court's decision.

### **SWANSON'S INTEREST IN DEBTOR'S HOMESTEAD**

Swanson's interest in the property arises out of the Eastern District of Wisconsin Bankruptcy Court's Judgment which holds that there was a fraudulent conveyance under § 548(a)(1)(B). Section 550(a) enables a court to award the value of the property from a voided transfer instead of undoing the transfer and returning the parties to their pre-transfer positions. 11 U.S.C. § 550(a). This section provides: "the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property." 11 U.S.C. § 550(a)(1). The Wisconsin Bankruptcy Court elected to utilize the value option in its ruling which states:

It is hereby ordered, that the fraudulent conveyance of [Mrs. Glaser's] interest in her former homestead located at 5014 Richmar Lane N.W. in Cedar Rapids, Iowa, to [Mr. Glaser], for no consideration, in one year prior to the bankruptcy filing, which resulted in [Mr. Glaser] receiving approximately \$40,000.00 from the plaintiff, is hereby voided and [Mr. Glaser] is ordered to pay the \$40,000.00 to the plaintiff, together with plaintiff's costs in the action.

Order for a Judgment to Recover Fraudulent Conveyance, Adv. No. 99-2086 (Bankr. E.D. Wis. July 14, 1999) (§ 548(a)(1)(B) Ruling).

It is clear and this Court so finds that the order entered by the Wisconsin Bankruptcy Court allowed the Trustee to recover the value of the property, or \$40,000.00, rather than the property itself.

Swanson derives his authority to sue to collect debts owed Mrs. Glaser's Chapter 7 estate from § 704. This section outlines the duties of the Trustee in Chapter 7, and provides in relevant part:

The trustee shall -

(1) collect and reduce to money the property of the estate for which such trustee serves, . .

11 U.S.C. § 704. The Trustee attempts to seek recovery under § 550(a)(1) may be from "the initial transferee of such transfer." 11 U.S.C. § 550(a)(1). Under the dissolution settlement, Debtor is the initial transferee of Mrs. Glaser's interest in the marital home. However, the interest that Swanson may recover is not the real property but a \$40,000 judgment based on the Wisconsin Bankruptcy Court's ruling which awards Mrs. Glaser's estate only the value of the property. Swanson may recover the value of the property from Debtor, but the ruling does not recreate a property interest in the real estate for the benefit of the bankruptcy estate. Thus, Swanson is a judgment creditor of Debtor's estate, not a co-owner of Debtor's real estate and accordingly, his rights to collect are based on those of a judgment creditor and not a co-owner.

Properly categorized as a judgment creditor, the Trustee must domesticate the judgment in the county in which the property is located to obtain a judgment lien. Iowa Code § 624.24; Crawford v. Hall, 464 N.W.2d 464, 465-66 (Iowa App. 1990). To obtain a judgment lien in Iowa based upon a judgment entered by a federal court, the judgment must be registered according to the requirements of Iowa Law. 28 U.S.C. § 1962. The state of Iowa requires registration of a judgment in the county where the property is located unless the court that rendered the judgment is located in the same county as the property. Iowa Code §§ 624.23-24; Crawford, 464 N.W.2d at 465-66. This record is devoid of any indication that the Wisconsin Bankruptcy Court's judgment has been domesticated in Linn County, Iowa.

A judgment lien creates security for the judgment creditor in the real property of the debtor. 11 U.S.C. §§ 101 (37), (51). A debt alone does not operate as security for the creditor. 11 U.S.C. § 101(49)(B) (vii). Without a security interest in property, such as a judgment lien, the judgment creditor is unsecured. The Trustee, without a lien on Debtor's property, may not execute on that property because he has no security in the property.

The registration of the Wisconsin Bankruptcy Court's judgment in Linn County would be a act to create a lien against property of the estate. An attempt now to perfect a lien on a claim that arose before the commencement of Debtor's case is prohibited by the automatic stay. 11 U.S.C. § 362(a)(5).

### **EXEMPTION**

If the judgment was domesticated in Linn County, Iowa, prior to the filing of Debtor's chapter 7 case, then the nature of the homestead exemption would become relevant. The homestead exemption protects the homestead from judicial sale to satisfy the debts of the owner. Iowa Code § 561.16. The Court may only order the sale of the homestead if allowed by a special statutory provision to the

contrary, or the debt is of the sort that is excepted from the homestead exemption. Iowa Code §§ 561.16, 561.21. However, as there exists no showing that Swanson holds a security interest in Debtor's homestead, any exemption issue is moot.

### **MOTION TO LIFT AUTOMATIC STAY**

Swanson has no security interest in the property without a lien. As an unsecured creditor, Swanson cannot obtain relief from the automatic stay based on inadequate protection under § 362(d).

The general rule is that claims that are not viewed as secured in the context of § 362(d)(1) should not be granted relief from the stay unless extraordinary circumstances are established to justify such relief. [citations omitted] Generally, unsecured claims should not be granted relief from the stay because to do so would result in a violation of one of the fundamental concepts of bankruptcy law; that there should be an equality of distribution among creditors. An unsecured claimant should not be entitled to obtain a distributive advantage over other unsecured claimants who are similarly enjoined from seeking distribution by any method other than in accordance with the distributive scheme under the Bankruptcy Code.

In re Leibowitz, 147 B.R. 341, 345 (Bankr. S.D.N.Y. 1992); see also Epstein, Nickles & White, Bankruptcy Vol. 1, 284 (1992) ("relief is impossible under (d)(1) for lack of adequate protection . . . for any unsecured creditor."). Without a security interest in the property, Swanson may not sell the property to satisfy the judgment against Debtor. Because Plaintiff can not sell the property, relief from the stay is not proper.

### **CONCLUSION**

The Eastern District of Wisconsin Bankruptcy Court Judgment is for the value of the transferred interest and does not recreate an interest in property. Swanson is a judgment creditor in Debtor's estate. A judgment creditor cannot levy execution against real estate in Iowa unless that creditor has a security interest in the property. There is no evidence that Swanson has a security interest in Debtor's homestead. As an unsecured creditor, there are no grounds for lifting the stay for a lack of adequate protection under § 362(d).

**WHEREFORE**, Swanson's motion to partition and sell Debtor's homestead is DENIED.

**FURTHER**, Swanson's motion to lift the automatic stay to sell Debtor's homestead is DENIED.

**SO ORDERED** this 27th day of November, 2000

Paul J. Kilburg  
Chief Bankruptcy Judge