

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

**Patricia Hayes,
Debtor.**

Case No. 00-12364

Chapter 7

**Community South Bank,
Plaintiff,**

v.

Adv. Pro. No. 01-5058

**Patricia Hayes and
Daryl Novak,
Defendants.**

**Daryl Novak,
Plaintiff,**

v.

**Patricia Hayes,
Defendant.**

**MEMORANDUM OPINION AND ORDER RE
(1) COMMUNITY SOUTH BANK'S MOTION FOR SUMMARY JUDGMENT and
(2) PATRICIA HAYES' MOTION FOR SUMMARY JUDGMENT**

The Court conducted a hearing in this matter on December 5, 2001. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

The motions for summary judgment in this matter involve transactions between (1) Patricia Hayes, ("Hayes"), (2) Daryl Novak, ("Novak"), a seller of mobile homes from Illinois,

and (3) Community South Bank, ("Bank"), formerly known as Bank of Adamsville. In 1994,

Hayes entered into a contractual arrangement with Novak, a former business associate of hers from Illinois, to purchase mobile homes from Novak to sell at her business, Centennial Mobile Homes Sales in Adamsville, Tennessee. According to Novak's deposition testimony, the parties did not memorialize this arrangement in writing.

Novak owned and operated a mobile home lot in Illinois and would either buy, take as a trade in on a new mobile home purchase or otherwise obtain, without cost, used mobile homes which he was not able to adequately dispose of on his lots in Illinois. As a result, he agreed to transfer possession of some of these mobile homes to Hayes which Hayes believed she could sell in Tennessee. The basis of Novak's and Hayes' arrangement was threefold: first, Novak would transfer the mobile homes to Hayes by means of an invoice; secondly, Novak would give Hayes the title to the mobile homes; and, lastly, when she would sell the mobile home, Hayes would pay Novak an agreed upon amount for each mobile home.

Novak testified that the mobile homes he conveyed to Hayes were never in his or his business's name and that he would convey them to Hayes on an open title. Novak conveyed the trailers to Hayes by means of an invoice which to him indicated that he had sold them to her. According to Hayes, she would pay Novak a certain amount of money once she sold the mobile homes. Novak admitted that he had no security agreement on the mobile homes, made no U.C.C. filings nor took any other efforts to perfect any type of lien in the mobile homes he had sold to Hayes.

In the latter part of 1996, sales of the mobile homes slacked off and Hayes made the decision to borrow money from the Bank to finance the refurbishing and repairing of the mobile homes. Per her understanding of her agreement with Novak and the fact that she had an invoice for the purchase of the trailer and titles to the trailers, Hayes granted the Bank a written security interest in the mobile homes and surrendered and delivered the certificates of title to the Bank for purposes of perfecting the security interest. All of this was done without any assertion or allegation by Novak that he had any claim or interest in the mobile homes.

Novak testified that by 1999, Hayes' sales had fallen off and he decided that he wanted to get the mobile homes back from her and find someone else to sell them. Novak learned of the Bank's interest in the trailers after he attempted to take possession of them. Novak filed a Petition for Equitable Lien and Attachment of Property in the Chancery Court of Hardin County against the Bank and Hayes, seeking possession of the trailers. Hayes subsequently filed for chapter 7 relief and the instant Adversary Proceeding ensued.

II. CONCLUSIONS OF LAW

Summary Judgment under FED. R. CIV. P. 56(c), made applicable to bankruptcy contested matters and adversary proceedings by FED. R. BANKR. P. 7056, is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A. Patricia Hayes' Motion for Summary Judgment Against Daryl Novak

Novak has filed his objection to the dischargeability of his debt claiming that the indebtedness owed to Hayes is non-dischargeable pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), and 523(a)(6). Hayes asserts that the evidence adduced in discovery in this matter clearly indicates that there is no genuine issue of fact that Novak can prove the debt owed to him by Hayes is non-dischargeable under any of these provisions.

Novak admitted in his deposition that pursuant to an invoice he sold the mobile homes at issue to Hayes when he conveyed them to her. Novak further admits that he never took any type of security interest in the mobile homes nor was there any written agreement between the parties which would indicate that he had any interest in the mobile homes after they were put in Hayes' possession. Most telling of all on the issue of Novak's interest in these mobile homes is the fact that they were never titled to him at any time. It is clear from Novak's own testimony that he took no steps to perfect any type of interest in these mobile homes. Novak simply conveyed the mobile homes, along with their titles, to Hayes with the agreement that the debt she owed on each mobile home would come due upon the sale of that mobile home.

The statutory provisions that Novak claims entitle him to a ruling of non-dischargeability are limited. They relate only to obtaining money or property by false pretenses, false representations, or actual fraud, (11 U.S.C. § 523(a)(2)(A)), using a statement that is materially false regarding the debtor's financial condition, (11 U.S.C. § 523(a)(2)(B)), embezzling, (11 U.S.C. § 523(a)(4)), or for a willful or malicious injury by the debtor to an entity or the property

of another entity. It is clear that Novak has no evidence which would establish non-dischargeability under any of the provisions cited. Hayes pledged the collateral to the bank not with a fraudulent intent, but based upon her understanding of her agreement with Novak and on the fact that she had the titles to the mobile homes in her possession. Hayes never made any representations concerning her financial condition either in writing or orally to Novak. There was no proof that Hayes embezzled the titles or the mobile homes from Novak. The two parties had an agreement that Novak would transfer the mobile homes and their titles, without any notation of a lien by Novak, to Hayes. Hayes in turn would sell the mobile homes and when she did, she would remit the money to Novak. Finally, there was no evidence that Hayes caused any willful or malicious injury to Novak's property. Novak is simply an unsecured non-priority creditor of Hayes and his indebtedness is dischargeable under the bankruptcy code. There are certainly steps Novak could have taken to preserve his interest in the mobile homes under either the Tennessee consignment laws or secured transaction law, but his failure to do so renders his debt unsecured and dischargeable.

B. Community South Bank's Motion for Summary Judgment Against Daryl Novak

As mentioned above, Novak took no steps to preserve his interest in the mobile homes he transferred to Hayes. As a result, he is an unsecured non-priority creditor of Hayes. As such, he has no priority over the Bank, who is a properly perfected secured creditor of the debtor.

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Adversary Pro. No. 01-5058

"Memorandum Opinion and Order re (1) Community South Bank's Motion for Summary Judgment and (2) Patricia Hayes' Motion for Summary Judgment"

III. ORDER

It is therefore **ORDERED** that:

1. Community South Bank's Motion for Summary Judgment as to Daryl Novak is **GRANTED**;
2. Patricia Hayes' Motion for Summary Judgment as to Daryl Novak is **GRANTED**.

IT IS SO ORDERED.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: January 11, 2002