

UNITED STATES BANKRUPTCY COURT
for the
DISTRICT OF NEW HAMPSHIRE

In re:

Bk. No. 98-14145-MWV
Chapter 7

Leonard A. Borchers and
Kimberlie J. Borchers,
Debtors

MEMORANDUM OPINION AND ORDER

The Court has before it the motion of the Debtors, Leonard A. Borchers and Kimberlie J. Borchers, to avoid the lien of Nina Bergmann. The Court, after a hearing held on March 3, 1999, ruled that each of the Debtors was entitled to a homestead exemption in the premises owned by Mrs. Borchers in which they now reside. The Court also ruled, based on the evidence at trial, that the value of the subject premises is \$220,000.

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

Subject to the March 3, 1999 hearing, the Debtors have amended their claimed exemptions to include a wildcard exemption for each of the Debtors in the premises. Both parties have also filed memoranda in support of their respective positions.

The Court continued the March 3, 1999 hearing to March 19, 1999 for the purpose of ruling on the remaining issue, i.e., whether the attachment in question pertained to the entire premises or only Mr. Borchers' interest in the property, if any, since the debt owed to Bergmann is only the obligation of Mr. Borchers. Suit was instituted in the New Hampshire Superior Court prior to the bankruptcy filing, which suit contained a fraudulent conveyance count under state law. The defendants in the suit were both Mr.

and Mrs. Borchers, and the attachment was granted against assets of both of them. Having reviewed the evidence, the testimony at trial and the subsequent memorandum, the Court finds:

1. Mr. Borchers cannot claim a wildcard exemption in property that he does not own, i.e., the real estate, and the amendment to his claim of exemption is denied.
2. The judicial lien attaches to the entire premises. The petition to attach specifically referred to N.H. RSA 545-A:7(1)(b), which provides for the attachment of property of the transferee in a fraudulent conveyance action. This attachment was granted against the property of both defendants and, absent a ruling on the fraudulent conveyance count, it is a valid judicial lien for the purposes of section 522(f).
3. Having found that the lien attaches to the entire premises and the value of the premises is \$220,000, both Debtors have a valid homestead exemption and, having denied Mr. Borchers' wildcard exemption, the amount of the lien remaining pursuant to section 522(f) is as follows:

Add the lien to be avoided:	\$280,000	
With all other liens:	\$ 96,440	1 st mortgage, First Essex Bank
	\$ 36,400	2 nd mortgage, Family Bank
	\$ 60,000	2 homestead exemptions
	\$ 7,537	Mrs. Borchers' wildcard exemption
Total:	\$480,377	
Less the fair market value of the property	\$220,000	
Impairment:	\$260,377	

The partial impairment is \$19,623.

4. The Trustee's objection to the Debtor's claimed exemption on the GCA stock is sustained. The extent of the exemption Mrs. Borchers, the scheduled owner, may claim is \$0, which is the amount listed under Schedule C. At any rate, the Court notes that to the extent Mrs.

Borchers could claim a wildcard exemption in the stock, it would decrease the wildcard amount she could claim on her homestead.

5. The Court finds that the amount Mrs. Borchers may claim for her wildcard exemption is \$7,537. Under N.H. REV. STAT. ANN. § 511:2 (XVIII), Mrs. Borchers may claim \$1,000, plus up to \$7,000 of any unused exemptions under subsections III, VI, VIII, IX, and XVII.

The chart below more fully outlines the Court's finding:

<u>Amount Claimed on Schedule C</u>	<u>Allowed Amount</u>	<u>Available for Wildcard</u>
III: \$4,000	\$3,500	\$0
VI: \$0	\$400	\$400
VIII: \$0	\$800	\$800
IX: \$0	\$5,000	\$5,000
XVII: \$0	\$500	<u>\$500</u>
Total available from unused exemptions:		\$6,700
Plus \$1,000 (under subsection XVIII):		\$7,700
Minus the \$43 and \$120 already claimed equals:		\$7,537

6. The Court sua sponte grants relief from the automatic stay to pursue the fraudulent conveyance action in the New Hampshire Superior Court.
7. The hearing scheduled for March 19, 1999 is canceled.

This memorandum opinion and order, along with the Court's findings and rulings in open court constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

DONE and ORDERED this 18th day of March, 1999, at Manchester, New Hampshire.

Mark W. Vaughn
Bankruptcy Judge