

**UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE**

In re:
Robert A. and Pamela M. Day,
Debtors

Bk. No. 98-13056-MWV
Chapter 7

Edmond J. Ford, Trustee,
Plaintiff

v.

Adv. No. 99-1022-MWV

Leroy Young, Janet Young,
Howard Young, Jr., Elnora Young,
Concord Savings Bank,
Robert J. Nesham, D.C.,
The United States of America,
Internal Revenue Service, and
Town of Northfield, New Hampshire,
Defendants

MEMORANDUM OPINION AND ORDER

The Court has before it the Trustee's ("Plaintiff") partial motion for summary judgment requesting that the Court enter judgment against Defendant Bank of New Hampshire ("BNH"), successor-in-interest to Concord Savings Bank, and Defendant Robert J. Nesham, D.C., on the grounds that neither Defendant opposes the relief sought by the Plaintiff in his complaint. The Plaintiff served his motion and notice of hearing on March 24, 1999. To date, neither BNH nor Robert J. Nesham, D.C. have responded.

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).

Count II of the Plaintiff's complaint alleges that the \$4,500 attachment of Concord Savings Bank "recorded on September 21, 1998, has lapsed as a matter of law under NHRSA 511:55(I) and/or has been

satisfied.” (Pl.’s Compl. at 4, ¶¶ 19-20.) Count III of the Plaintiff’s complaint alleges that “[t]he Execution of Defendant Robert J. Nesham, D.C., recorded on February 26, 1991, has lapsed as a matter of law under NHRSA 511:55(I) and/or has been satisfied.” (Pl.’s Compl. at 4, ¶¶ 21-22.) On January 28, 1999, the Plaintiff served his complaint on all the Defendants.

On February 4, 1999, Robert J. Nesham, D.C., filed a response to the complaint in the form of a letter, which stated: “In response to the summons re: BK case #98-13056MWV issued 1.26.99 my response is I no longer have an interest in any previous debt owed me by the debtors.” (Letter dated Feb. 4, 1999 from Robert J. Nesham, D.C.) Concord Savings Bank did not file an answer to the complaint. A pretrial hearing was held on March 16, 1999, at which counsel for the Defendants United States of America, Internal Revenue Service and Leroy, Janet, Howard and Elnora Young appeared.

The Plaintiff filed his partial motion for summary judgment on March 25, 1999, with two attachments: (1) Mr. Nesham’s letter, as mentioned above; and (2) a letter dated February 8, 1999, to Attorney Dennis Bezanson, the attorney for the Trustee, from Mr. Paul Reynolds, an employee with the Retail Bankruptcy Center at the Bank of New Hampshire. That letter states, in pertinent part, that “the Bank won’t oppose your Adversary Proceeding scheduled for March 16, 1999 in reference to the attachment that Concord Savings Bank had in the amount of \$4,500.” (Pl.’s Partial Mot. for Summ. J., Ex. B.)

Since neither BNH nor Robert J. Nesham, D.C. oppose the relief sought by the Plaintiff in his partial motion for summary judgment, the Court grants the Plaintiff’s motion. Therefore, the Court orders that, to the extent there are any attachments or liens held by BNH and Robert J. Nesham, D.C., they are dissolved and, with respect to these two Defendants, the Plaintiff is the owner of the subject real property free and clear of any of their claims. The hearing scheduled for May 24, 1999 at 10:00 a.m. is hereby canceled.

This opinion and order constitutes the Court’s findings of facts and conclusions of law in accordance with Federal Rule of Procedure 7052.

DATED this ____ day of May, 1999, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge