

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)
)
SIDNEY WAYNE SHEPARD)
) Case No. 05-19405 HRT
and) Chapter 13
)
SARAH CHARLINE SHEPARD)
)
Debtors.)

**ORDER GRANTING CHAPTER 13 TRUSTEE’S MOTION TO DISMISS
THE CASE OF SIDNEY WAYNE SHEPARD AND DENYING THE MOTION TO
DISMISS THE CASE OF SARAH CHARLINE SHEPARD**

This matter is before the Court on the Standing Chapter 13 Trustee’s (the “Trustee”) Motion to Dismiss Chapter 13 Case (the “Motion”) and the Debtors’ Response to Motion to Dismiss. A hearing on the Trustee’s Motion was held on December 8, 2005. The Court, having considered the evidence, supported by witnesses, exhibits and the arguments of counsel, and having reviewed the briefs submitted by the parties, is now ready to rule that Mr. Shepard is not eligible for chapter 13. Mrs. Shepard, however, is eligible for chapter 13 relief and her case shall not be dismissed.

CASE BACKGROUND

Based on the hearing and evidence presented, the Court finds:

1. The Debtors, Sidney and Sarah Shepard, filed their joint Chapter 13 petition on April 22, 2005.
2. Sally Zeman is the Trustee in this case.
3. The Debtors scheduled the following unsecured debts:
 - Schedule F: \$150,890 general unsecured debts
 - Schedule E: \$ 57,100 priority unsecured debts
 - Total: \$207,990 unsecured debts
4. The Debtors scheduled the following secured debts¹:
 - Schedule D: \$143,290
5. Mr. Shepard has an ownership interest in a condominium (the “Condo”) purchased by his daughter, Kelly McWatters (“Daughter”), in 2004.
6. Mr. Shepard co-signed the first and second deeds of trust with Accredited Home

¹ Although the debt is scheduled as a joint obligation, there is nothing in the record to indicate that Mrs. Shepard has any responsibility for this obligation.

Lenders, Inc. (the “Lender”) because Daughter could not qualify for the mortgage without her father’s assistance.

7. Daughter has made all of the mortgage, tax and insurance payments for the Condo.
8. There is no evidence that Mr. Shepard ever lived in or had a possessory interest in the Condo.
9. The Debtors did not schedule the Condo as an asset on Schedule A.
10. On May 9, 2005, the Lender filed a proof of claim for a secured claim in the amount of \$143,920 based on the deeds of trust for the Condo.
11. On August 4, 2005, the Trustee filed the Motion on the grounds that the Debtors’ unsecured debts exceed the statutory limit of \$307,675 prescribed by 11 U.S.C. § 109(e).
12. On August 22, 2005, the Debtors filed their response asserting that Mr. Shepard is a co-owner of the property.

DISCUSSION

The question presented is whether the Debtors are eligible to be debtors under Chapter 13.

With respect to Mrs. Shepard, that question can be answered in the affirmative without need of substantial discussion. Mrs. Shepard was not a party to the transaction with her husband and Daughter and she is not listed on any of the documents relating to Mr. Shepard’s liability for the Condo. Because the Lender’s claim is not against Mrs. Shepard², her debts do not exceed the eligibility limits set by § 109(e). Therefore, this Court finds no grounds for dismissing her case.

The issue raised by the Trustee is that Mr. Shepard’s unsecured obligations exceed the statutory limitation of § 109(e) based on the total amount of his unsecured debts. The Trustee contends that the amount owed to the Lender is an unsecured claim which increases Mr. Shepard’s unsecured debt to a total of \$351,280, and which is over the statutory limit of \$307,675.

As this Court discussed in detail in In re Lower, 311 B.R. 888 (Bankr. D. Colo. 2004), the Court must turn to § 506(a) to determine which debts are secured and which are unsecured. “Using the language of § 506(a), a creditor’s claim secured by a lien in property in which the estate has an interest is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in the property.” Id. at 893.

Initially, the Court must determine the Debtor’s interest in the property. Therefore, the Court must determine whether Mr. Shepard has an equitable interest in the Condo or merely bare legal title. For that, the Court turns to Colorado law and concludes that the answer is the latter. In Valley State Bank v. Dean, 47 P.2d 924 (1935), the Colorado Supreme Court discussed facts similar to those at hand. Sam Dean bought a

² It is worth noting that the Lender filed a proof of claim in this case listing Mr. Shepard and Daughter (who is not in bankruptcy) as debtors; it does not list Mrs. Shepard as a debtor.

piece property with his money. He had it put in his wife Mary's name because Sam had judgments outstanding against him. Sam controlled the title to the Property. Mary never contributed to the purchase or upkeep of the Property nor had possession of the Property. The Colorado Supreme Court found the following:

Where a person purchases land with his own money or gives his own property in exchange for other land and takes a conveyance thereof in the name of another, a resulting trust generally arises in his favor; the beneficial interest or estate follows the consideration and inures to the person from whom the consideration comes and the grantee becomes the trustee. [citations omitted] We have decided other cases to the same effect, but the principle is so firmly established that further citation is unnecessary.

Id. at 926. Based on the foregoing, the Court found that "Mary held the bare legal title as trustee for Sam, who at all times was the sole beneficial owner of the property." Id. at 927.

Mr. Shepard and Daughter's relationship is analogous to that in Dean.³ Here, Daughter paid for the Condo and has continued to make the monthly mortgage, insurance and tax payments on the property. Her father's name was added to the title for her convenience and as an accommodation to the Lender because she could not qualify for the loan on her own. Mr. Shepard has never been a resident of the property and has not exercised any possessory rights to it. Daughter is clearly the sole beneficial owner of the Condo. Mr. Shepard merely has bare legal title to the property; he lacks any equitable or economic interest therein.

If Mr. Shepard has only bare legal title to the Condo, what is the estate's interest in it? That question is controlled by the Supreme Court's analysis of what constitutes property of the estate in U.S. v. Whiting Pools, 462 U.S. 198, 205 f.8 (1983), which states:

Section 541(a)(1) speaks in terms of the debtor's "interests ... in property," rather than property in which the debtor has an interest, but this choice of language was not meant to limit the expansive scope of the section. The legislative history indicates that Congress intended to exclude from the estate property of others in which the debtor had some minor interest such as a lien or bare legal title.

See also Geremia v. Dwyer (In re Dwyer), 250 B.R. 472, 474 (Bankr. D. R.I. 2000). ("[W]hen a debtor holds only bare legal title, and not equitable title to property, only the legal title becomes part of the debtor's bankruptcy estate.").

³ However, this case does not have the hint of larceny contained in the Dean case.

Returning to § 506(a), this provision mandates that a creditor may only have a secured claim in property “to the extent of the value of such creditor’s interest in the estate’s interest in such property...” 11 U.S.C. §506(a). Since Mr. Shepard’s Chapter 13 estate does not have an equitable interest in the Condo, the Lender has no security in that estate to support its claim. Consequently, the Lender’s claim is unsecured. The result for Mr. Shepard is that his unsecured claims exceed the statutory limit for unsecured debts provided in § 109(e), making him ineligible for chapter 13.

The logic behind the holding in the Dwyer case, and those like it, is to shield such property from turnover or avoidance actions by a chapter 7 trustee because the debtor does not have any interest in it. This protects the Daughter, the beneficial owner of the property, from having her Condo tied up in a bankruptcy case. In a chapter 13 case, this rule protects the property from being subject to the best interest of creditors test that would result in the Debtors having to increase their Plan payments to account for the increased value of their net assets and liabilities. While dismissal of Mr. Shepard’s case may appear a somewhat harsh result, finding otherwise would not only contradict the law but would also result in significant harm to those similarly situated to Daughter.

Therefore, it is

ORDERED that the Trustee’s Motion is GRANTED with respect to Mr. Shepard and the Court will allow him until February 3, 2006 within which to convert his case to one under Chapter 7, or failing which, his Chapter 13 case will be dismissed without need for further notice or hearing. It is

FURTHER ORDERED that the Trustee’s Motion is DENIED with respect to Mrs. Shepard, and she may proceed in Chapter 13 or convert to Chapter 7 as her and her counsel may decide.

DATED this 25th day of January, 2006.

BY THE COURT:

/s/ Howard Tallman

Howard R. Tallman, Judge
United States Bankruptcy Court