

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 7
TERRY G. THIES, aka/dba)
Thies Construction Company,) No. BK 89-30032
and MARY LYNN THIES,)
)
Debtor(s).)

O R D E R

Terry and Mary Thies (debtors) filed for protection under chapter 7 of the Bankruptcy Code on January 13, 1989. Debtors' schedule B-4 claimed a joint homestead exemption of \$15,000.00. Mark Twain Illinois Bank (Bank) held a security interest in the debtors' residence, and at the time of the petition the loan balance on the residence owing to the Bank was approximately \$102,000.00.¹

The Bank filed a motion for relief from stay in order to proceed with foreclosure and sale of the debtors' residence. The debtors opposed the motion and eventually an agreement was reached. The agreement provided that the debtors' residence would be sold at public auction on a date certain and that the debtors would be entitled to \$15,000.00 as their homestead exemption prior to the Bank or any other creditors receiving any proceeds from the sale. The debtors were to receive the money within thirty (30) days from the date this Court confirmed the sale. The agreement was executed by the chapter 7 trustee, the debtors, and the Bank.

¹Mark Twain Illinois Bank was formerly known as Mark Twain Belleville Bank, which was formerly known as Bankers Trust Company.

In accordance with the agreement the property was sold, and on July 17, 1989, an order was entered confirming the sale. However, the trustee did not turn over the \$15,000.00 and on October 4, 1989, the debtors filed a petition to require the trustee to pay over the funds.

At the hearing on the petition the Internal Revenue Service appeared and argued that it had a federal tax lien which pursuant to 26 U.S.C. §6334² took priority over the debtors' homestead. The

²(a) Enumeration. - There shall be exempt from levy -

(1) Wearing apparel and school books.-Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects. -If the taxpayer is the head of a family, so much of the fuel, provision, furniture, and personal effects in his household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$1,500 in value;

(3) Books and tools of a trade, business, or profession. -So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$1,000 in value;

(4) Unemployment benefits. -Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or the Commonwealth of Puerto Rico.

(5) Undelivered mail.-Mail, addressed to any person, which has not been delivered to the addressee.

(6) Certain annuity and pension payments. -Annuity or pension payments under the

Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation.-Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the commonwealth of Puerto Rico.

(8) Judgments for support of minor children.-If the taxpayer is required by judgment of court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(9) Minimum exemption for wages, salary, and other income.-Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d);

(10) Certain service-connected disability payments.-Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under

(A) subchapter II, III, IV, V or VI of chapter 11 of such title 38, or

(B) chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

question before this Court is whether the IRS' lien takes precedence over the debtors' claim of homestead.

A federal tax lien attaches to all of the taxpayer's real and personal property upon assessment and demand. 26 U.S.C. §6321. The tax lien also reaches property which the debtor has claimed as exempt pursuant to state law. In re Riley, 88 B.R. 906 (Bankr. W.D. Wis. 1987). In fact the only exemptions which a debtor may claim against a federal tax lien are those listed in §6334(a). Id. Section 6334(a) enumerates ten items which are exempt from levy, however homestead is not one of the ten. Furthermore, an explanatory federal regulation provides:

(c) Other Property. No other property or rights to property are exempt from levy except the property specifically exempted by section 6334(a). No provision of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

26 C.F.R. §301.6334-1 (1989) (emphasis added).

Therefore, the IRS' tax lien takes precedence over the debtors' claim of homestead.

26 U.S.C. §6334(a).

IT IS ORDERED that debtors' petition to pay over is DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: December 20, 1989