

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

June 26, 2001

John Harmelink, Esq.
Counsel for Charles Light
Post Office Box 18
Yankton, South Dakota 17078

Fullerton Lumber
2409 North Broadway
Yankton, South Dakota 57078

Gary Johnson
Gary Johnson Electric
404 Broadway
Yankton, South Dakota 57078

Subject: *In re Constance Schenkel,*
Chapter 7; Bankr. No. 00-40956

Dear Parties in Interest:

Before me is the June 7, 2001 MOTION FOR ORDER DIRECTING REGISTER OF DEEDS TO SATISFY MECHANIC'S LIENS DISCHARGED IN BANKRUPTCY filed by Charles E. Light. As set forth below, the Motion will be denied.

SUMMARY. Constance Schenkel filed a Chapter 7 petition on November 9, 2000. Included in her assets were ten acres of realty that she was purchasing on contract from Charles E. Light. Debtor did not declare this property exempt. She stated Light's claim against the property exceeded its value by \$2,000.

The case trustee has filed a notice stating he has not found any nonexempt assets to liquidate and pay creditors. The case will be closed shortly.

On June 7, 2001, Light filed a MOTION FOR ORDER DIRECTING REGISTER OF DEEDS TO SATISFY MECHANIC'S LIENS DISCHARGED IN BANKRUPTCY. Through the Motion, he sought an order from the Bankruptcy Court declaring that two mechanics' liens on the property should be discharged on the county clerk of court's records. The mechanics liens, held by Gary Johnson, d/b/a Johnson Electric, and Fullerton Lumber Company, were both filed before Debtor's bankruptcy petition.

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Light argues that the liens were discharged under 11 U.S.C. § 524 and have no value because there was no equity in the real property to support them.

DISCUSSION. Light's motion to discharge the mechanics' liens must be denied. First, Debtor's discharge only discharged her *personal* liability on the debts to Johnson Electric and Fullerton Lumber. 11 U.S.C. § 524(a). Any valid lien that attached to the real property before the petition date is unaffected by that discharge.

Second, a determination of the validity, priority, or extent of a lien must be made through a formal adversary proceeding. Fed.R.Bankr.P. 7001. Though an exception to that requirement exists when a debtor is seeking removal of certain liens on exempt property under § 522(f), that is not the situation presented here. The real property at issue here was not declared exempt, the relief sought by Light is not under § 522(f), and, furthermore, not all mechanics' liens are subject to removal under § 522(f).

Finally, even if Light were to file an adversary proceeding, he would have to show why this Court would have jurisdiction over this matter rather than state court. The property is not being administered by the case trustee. There are no bankruptcy law questions presented.

An order denying Light's MOTION FOR ORDER DIRECTING REGISTER OF DEEDS TO SATISFY MECHANIC'S LIENS DISCHARGED IN BANKRUPTCY will be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve copies on parties in interest)

I hereby certify that a copy of this document
was mailed, hand delivered, or faxed this date
to the parties on the attached service list.

JUN 27 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By CR

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUN 27 2001

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Case: 00-40956 Form id: 122 Ntc Date: 06/27/2001 Off: 4 Page : 1
Total notices mailed: 4

Debtor Schenkel, Constance L. 605 E. 16th St., Yankton, SD 57078
Aty Harmelink, John E. PO Box 18, Yankton, SD 57078
Trustee Lovald, John S. PO Box 66, Pierre, SD 57501
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321
intp Fullerton Lumber, 2409 N. Broadway, Yankton, SD 57078
intp Gary Johnson, Gary Johnson Electirc, 404 Braodway, Yantkon, SD 57078
intp Charles E. Light, 114 Broadway Ave., Yankton, sd 57078