

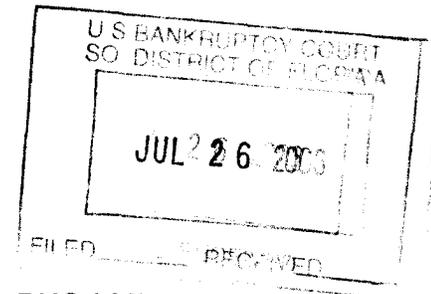
ORDERED in the Southern District of Florida on

July 26, 2006



Laurel Myerson Isicoff
Laurel Myerson Isicoff, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA



STEVE W. COCHRAN

CASE NO. 06-10833-BKC-LMI

Debtor.

Chapter 13

ORDER DENYING CONFIRMATION OF FIRST MODIFIED CHAPTER 13 PLAN

This case came before the Court for Confirmation Hearing on July 13, 2006, and upon the Trustee's Objection to Exemptions (CP #14), the Emergency Objection to Confirmation (CP # 15), filed by creditor Muriel Cochran, and the Objection to Debtor's Claim of Exemptions (CP #16), filed by creditor Muriel Cochran (the "Former Wife"). The Debtor filed his First Amended Chapter 13 Plan (CP #20), on July 7, 2006. For the reasons stated on the record and below, confirmation of the Debtor's First Modified Chapter 13 Plan is DENIED.

It is

ORDERED as follows:

1. In the Debtor's divorce proceedings the state court held that the former wife had a special equity in the marital residence which was the Debtor's sole property. The Former Wife was awarded the sum of \$47,500.00 as her special equity interest in the

CASE NO. 06-10833-BKC-LMI

marital residence. The state court also found that “the valuation of the former marital residence set forth by [the Debtor] ... is well above the amounts owed to the former wife ... [T]here exists a readily available asset from which [the Debtor] can make full payment to the former wife of her special equity award.”

2. The special equity interest in the Debtor’s homestead held by the former wife is a vested property interest. *Canakaris v. Canakaris*, 382 So. 2d 1197,(Fla. 1980); *Wallace v. Wallace*, 922 So. 2d 1008 (Fla. 1st DCA 2006), and accordingly, the wife is entitled to an equitable lien in the former marital residence, the Debtor’s homestead. See *Hieke v. Hieke*, 782 So. 2d 443 (Fla. 4th DCA 2001).

3. To the extent the ruling of the state court did not impose an equitable lien on the Debtor’s homestead based on the former wife’s special equity in the property, this Court imposes such an equitable lien. *Accord Maurer v. Maurer (In re Maurer)*, 267 B.R. 639 (Bankr. M.D. Fla. 2001)(bankruptcy court, applying Florida law, imposed equitable lien).¹ Accordingly, the claim of the Former Wife is secured.

4. As the Debtor’s First Modified Plan treats the Former Wife’s claim as unsecured, the Plan does not satisfy the necessary requirements for confirmation and so, it cannot be confirmed.

###

Copies furnished to:
Sabrina Chassagne, Esq.

¹ The Court has not yet determined whether the award of attorneys’ fees made by the state court based on the Debtor’s “wrongful pursuit of ... bad faith litigation” (referring to the Debtor’s attempt to relitigate the former wife’s special equity claim) is included as part of the equitable lien.

CASE NO. 06-10833-BKC-LMI

Attorney Chassagne shall serve a conformed copy of this order upon all parties in interest and shall file a Certificate of Service of same with the Clerk of the Court.