

Tagged Opinion

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division**

IN RE:

JOHN WILSON LAMBERTSON, a/k/a  
JOHN W. LAMBERTSON, a/k/a  
JOHN RONALD ANEY, JR.,

CASE NO. 04-31680-BKC-SHF  
CHAPTER 7

Debtor.

\_\_\_\_\_ /

PATRICIA DZIKOWSKI, TRUSTEE,

Plaintiff,

ADV. NO. 04-3286-BKC-SHF-A

vs.

KATHY F. LAMBERTSON,

Defendant.

\_\_\_\_\_ /

**FINAL JUDGMENT DETERMINING DIVISION OF NET SALE PROCEEDS  
DERIVING FROM LIQUIDATION OF JOINTLY HELD PROPERTY**

THIS CAUSE came on to be heard on May 22, 2006, pursuant to this Court's March 23, 2006 Order whereby a final evidentiary hearing was scheduled for the purpose of presenting evidence pertaining to the division of the net sale proceeds derived from the liquidation of real property held jointly in the name of the non-debtor defendant, Kathy Fedor (formerly Lambertson) and the debtor. By virtue of this Order, and in accordance with 11 U.S.C § 363(j), the Court determines that the defendant, Kathy Fedor, is entitled to \$27,327.05 for reimbursement of expenditures relating to the real property, and \$14,992.14 as her share of the net sale proceeds, for an aggregate amount of \$42,319.19. The Court further determines that Patricia Dzikowski, chapter 7 trustee, is entitled to the remaining \$14,992.14.

It is undisputed that, in March, 2000, Ms. Fedor, the former spouse of the debtor, together with the debtor, purchased a residence located at 1944 Hanford Road, Burlington, North Carolina. In January, 2002, the debtor left Ms. Fedor, and moved out of the residence. The debtor did not contribute any funds to defray either the monthly mortgage payments, or any other expenses relating to the house, subsequent to January, 2002. Ms. Fedor, however, continued to live in the home until April, 2003. Furthermore, from January, 2002 through March, 2005, Ms. Fedor made all payments relating to mortgage, real estate taxes, plumbing repairs, water bills, homeowners insurance, lawn maintenance, and security. Ms. Fedor seeks to have those monies reimbursed to her from the proceeds of the sale of the house, prior to a division of the remaining sale proceeds between Ms. Fedor and Patricia Dzikowski, the chapter 7 trustee for Mr. Lambertson's bankruptcy estate, in accordance with 11 U.S.C. § 363(h).

Between January, 2002 and March, 2005, Ms. Fedor paid the monthly mortgage of \$843.44 for the subject property solely from her own funds. Ms. Fedor seeks \$32,894.16 in mortgage

payments (39 months), less an allocation of \$688.00 per month as the rental value for the home for the 15 months during which she resided in the home. Below is a list of the additional expenses that Ms. Fedor incurred for maintenance of the home, for which she also seeks reimbursement:

Lawn Maintenance (Def. Ex. H)	\$940.00
Water Bill (Def. Ex. I)	\$212.00
Plumbing Repairs (Def. Ex. J)	\$220.00
Homeowners Insurance (Def. Ex. K)	\$473.00 (3/03 through 3/04)
	\$500.00 (3/04 through 3/05)
Security Alarm (Def. Ex. L)	\$924.00
Window Repairs (Def. Exs. M, N)	\$203.46
County Real Estate Taxes (Def. Ex. Q)	\$659.83
City Real Estate Taxes (Def. Ex. R)	\$620.60

The trustee currently is holding \$57, 311.33 in net proceeds from the sale of the Hanford Road property. The trustee has acknowledged that Ms. Fedor should receive reimbursement, prior to a 50% - 50% division of the remaining sale proceeds, for certain expenses which are set forth below:

Twenty-one monthly mortgage payments of \$834.44 made subsequent to April, 2003 (when Ms. Fedor vacated the real property)	\$17,523.24
Water Bill (Def. Ex. I)	\$212.00
Plumbing Repairs (Def. Ex. J)	\$220.00
Real Estate Taxes (Def. Exs. Q,R)	\$1,280.43
Window Repairs (Def. Exs. M, N)	<u>\$203.46</u>
Total	\$19,439.13

It is the trustee's position that the remaining expenses sought by Ms. Fedor should not be reimbursed prior to a division of the remaining sale proceeds, since Ms. Fedor benefitted from having lived in the residence until April, 2003. Furthermore, the trustee asserts that certain other expenses, in the form of attorney's fees and costs incurred by the trustee in conjunction with the sale of the home, should be shared between the estate and Ms. Fedor. Specifically, the trustee seeks \$2,035.00 in attorney's

fees (Pl. Ex. 2), \$2,335.45 in expenses (Pl. Ex. 2), and \$157.00 in costs (Pl. Ex.3), for a one-half split of \$2,263.72 for each party. As such, the trustee believes that \$17,804.24 (( \$57,311.33 **less** \$19,439.13 **less** \$2,263.72) ÷ 2) represents the appropriate amount to be distributed to Ms. Dzikowski pursuant to 11 U.S.C § 363(j).

After considering the arguments advanced, the Court is persuaded by the testimony and evidence put forth by Ms. Fedor. Her undisputed testimony is that the debtor abandoned the Hanford Road property in January, 2002. At no time thereafter did the debtor return to the property or contribute in any manner to the upkeep of the home. Therefore, Ms. Fedor had been making mortgage payments and providing for the routine maintenance of the residence solely out of her own funds, which expenditures clearly benefitted the debtor's bankruptcy estate. At the evidentiary hearing, Ms. Fedor testified that she could have rented the house at a rate of \$688.00 per month during the time period subsequent to the debtor's "abandonment" of the house and while Ms. Fedor continued to reside there (alone). The Court finds Ms. Fedor's submission that \$688.00 per month as the rental value for the 15 month period during which Ms. Fedor continued to reside in the home, and during which she enjoyed the benefit of occupying the home, is a reasonable rental value. As such, Ms. Fedor is entitled reimbursement of \$2,331.60, representing the aggregate differential between the \$843.44 monthly mortgage payments which she made, and the \$688.00 reasonable rental value of the home, from January, 2002 through April, 2003. As to the 24 months, prior to the sale of the home, during which Ms. Fedor did not reside in the home, she is entitled to reimbursement for the aggregate amount of the mortgage payments made by her, totaling \$20,242.56 (\$843.44/mo. × 24).

In addition to reimbursement of mortgage payments, \$4,752.89 is reimbursable for the following expenses:

City Water (Def. Ex. I)	\$212.00
Plumbing Repairs (Def. Ex. J)	\$220.00
Homeowners Insurance (Def. Ex. K)	\$473.00 (3/03 through 3/04)
	\$500.00 (3/04 through 3/05)
Security Alarm (Def. Ex. L)	\$924.00
Window Repairs (Def. Exs. M, N)	\$203.46
Lawn Maintenance (Def. Ex. H)	\$940.00
County Real Estate Taxes (Def. Ex. Q)	\$659.83
City Real Estate Taxes (Def. Ex. R)	<u>\$620.60</u>
Total:	\$4,752.89

Pursuant to 11 U.S.C § 363 (j) , Ms. Fedor is entitled to a one-half interest in the remaining sale proceeds. Therefore, in addition to the sum of \$27,327.05 (\$2,331.60 + \$20,242.56 + \$4,752.89), representing the aggregate amount of reimbursement of expenses to which Ms. Fedor is entitled to receive, Ms. Fedor also is entitled to receive one-half of the remaining sale proceeds, or \$14,992.14:

Remaining balance held by trustee	\$57,311.33
Less: Aggregate reimbursement of expenses to Kathy Fedor	<u>\$27,327.05</u>
-Net balance available for distribution to co-owners	\$29,984.28
-Allocation of share of net balance to Kathy Fedor	\$14,992.14

Thus, the gross amount of the proceeds held by the trustee which is due to Kathy Fedor is \$42,319.19. The remaining sale proceeds of \$14,992.14 constitutes property of the bankruptcy estate and shall be distributed by the trustee pursuant to 11 U.S.C. § 726. Lastly, in accordance with 11 U.S.C § 363 (j), all remaining costs associated with the administration of this estate, including

trustee's compensation and trustee's attorney's fees are to be deducted from the estate's portion of the sale proceeds.

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The Clerk of Court is directed to provide a copy of this Order to all parties in interest, including:

Kathy Fedor  
P.O. Box 291  
Easton, Ct. 06612