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U.S. BANKRUPTCY COURT
BRUNSWICK, GA
SAMUEL L. ... CLERK

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

IN RE:)	CHAPTER 7 CASE
MARVIN B. SMITH)	NUMBER <u>07-20244</u>
SHARON H. SMITH)	
)	
Debtors)	
)	
ATLANTIC SOUTHERN BANK)	
)	
Objecting Creditor)	
)	
vs.)	
)	
MARVIN B. SMITH)	
SHARON H. SMITH)	
)	
and)	
)	
R. MICHAEL SOUTHER)	
Chapter 7 Trustee)	
)	
Respondents)	

ORDER ON OBJECTION TO SALE

This matter is before me on the objection by Atlantic Southern Bank ("Atlantic Southern") to the proposed sale by the chapter 7 Trustee of a large gilt and crystal chandelier ("Chandelier") that hung for an indeterminate period of time in the foyer of the former home of Debtors Marvin B. Smith and Sharon H. Smith. Atlantic Southern argues that the Chandelier is

a fixture that Atlantic Southern owns as a result of having bought the Smiths' former home at foreclosure, even though the Chandelier had been removed before the foreclosure sale. The Trustee argues that the Chandelier is personalty that should be sold at auction with other assets of the bankruptcy estate for the benefit of creditors. The Trustee is correct, for the reasons that follow.

BACKGROUND

In May 2003, the Smiths, in order to finance the construction of their now-former home on Sea Island, Georgia (the "Sea Island Cottage"), executed a promissory note and a Deed to Secure Debt ("Security Deed"). The Security Deed conveyed the real property on which the Sea Island Cottage was to be built to a bank that later assigned the Security Deed to Atlantic Southern. The Security Deed covered "all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above." (Security Deed ¶ 2, portions attached as an exhibit to Atlantic Southern's amended motion for relief from the automatic stay, August 23, 2007, Dkt. #37.)

Some time after the execution of the promissory note and the Security Deed, the Smiths bought the Chandelier. According to Mrs. Smith's unrefuted testimony at the hearing on this matter, no proceeds of the construction loan were used to buy it. The Smiths bought the Chandelier in Atlanta, and it was hung in the Sea Island Cottage by Mrs. Smith's brother after construction was complete. Installation consisted of clipping the Chandelier onto the wires from the junction box and hanging it by the chain. Mrs. Smith also testified that the purpose of the Chandelier was decorative, as recessed ceiling lights already existed in the area where the Chandelier was hung. Further, she testified that the Smiths had bought other chandeliers over the years and routinely moved them around from one home to another.

On April 2, 2007, the Smiths filed a chapter 11 bankruptcy case, which was later converted to a case under chapter 7. Atlantic Southern received stay relief and foreclosed on the Sea Island Cottage, buying it as the highest bidder at the foreclosure sale on May 6, 2008. At some point before the sale, the Smiths removed the Chandelier and took it with some furniture and decorative accessories to an auction house in South Carolina. Mrs. Smith testified that the Chandelier was easily detached from

the ceiling by unclipping the wires and unhooking the chain and that its removal caused no damage.

The Trustee proposes to sell the Chandelier with the other items of personalty at auction. Atlantic Southern objects, arguing that the Chandelier was a fixture covered under the Security Deed and that the Smiths had no right to remove it from the Sea Island Cottage. Atlantic Southern further argues that because the Chandelier as a fixture became part of the realty, the Chandelier now belongs to Atlantic Southern as a result of its purchase of the Sea Island Cottage at the foreclosure sale.

DISCUSSION

The question of whether the Chandelier is a fixture is determined under Georgia statutory and case law. If the Chandelier is a fixture, it was covered under the Security Deed; it became part of the realty when the Smiths hung it in the foyer of the Sea Island Cottage; the Smiths had no legal right to remove it; and Atlantic Southern now owns it as the purchaser of the realty at the foreclosure sale. If the Chandelier is personalty, it was not covered under the Security Deed; it belonged first to the Smiths and now to the bankruptcy estate;

and it may be sold for the benefit of the creditors. Under Georgia law, the Chandelier is personalty.

I. The Georgia Law of Fixtures

Under the Code of Georgia, "[a]nything which is intended to remain permanently in its place even if it is not actually attached to the land is a fixture which constitutes a part of the realty and passes with it." Ga. Code Ann. § 44-1-6. Courts determine whether a particular article has become realty or remains personalty by applying a multi-factor test incorporating rules of case law that date back as much as 150 years.

Georgia case law applying the law of fixtures specifically to chandeliers and other forms of lighting is limited to two landlord-tenant cases that are both more than a century old. See Wolff v. Sampson, 51 S.E. 335 (Ga. 1905) (holding that gas fixtures were substitutes for lamps or candle stands and thus were personalty that could be removed by a tenant); Raymond v. Strickland, 52 S.E. 619 (Ga. 1905) (holding that a chandelier was personalty that could be removed by the tenant).

The particular holdings, however, are of less interest and importance than the rule in Wolff that has survived:

Whether an article of personalty connected with or attached to realty becomes a part of the realty, and therefore such a fixture that it cannot be removed therefrom, depends upon the circumstances under which the article was placed upon the realty, the uses to which it is adapted, and the parties who are at issue as to whether such an article is realty or detachable personalty.

Wolff, 51 S.E. at 335-36 (cited in, e.g., In re Hillis, No. 97-42591, 1998 WL 34064501, at *4 (Bankr. S.D. Ga. July 30, 1998) (holding that a canopy bed was personalty)).

A simpler rule has endured from a case decided even earlier than Wolff, in the mid-nineteenth century: "[W]herever the article can be removed without essential injury to the freehold, or the article itself, it is a chattel; otherwise, it is a fixture." Wade v. Johnston, 25 Ga. 331, 1858 WL 1963, at *3 (1858) (cited in, e.g., Homac Inc. v. Fort Wayne Mortgage Co., 577 F. Supp. 1065, 1070 (N.D. Ga. 1983) (holding that a mobile home did not become a fixture to the realty); Tidwell v. Slocumb (In re Georgia Steel, Inc.), 71 B.R. 903, 911 (Bankr. M.D. Ga. 1987) (holding that a radio tower was not a fixture)).

Present-day courts incorporate the rules from these historical cases into a multi-factor test that focuses on the parties' intent:

Under Georgia law various factors should be considered in determining whether an article of personalty has become a part of the real property to which it has been actually or constructively annexed. . . .

It is the *intent* of the parties . . . which is the *primary* test in determining whether or not [the article] becomes a fixture.

Manderson & Assoc. v. Gore, 389 S.E.2d 251, 260 (Ga. Ct. App. 1989). See also Goger v. United States (In re Janmar, Inc.), 4 B.R. 4, *9 (Bankr. N.D. Ga. 1979) ("The determination of whether or not an object has become a fixture is generally governed by the intent of the parties and is based upon a variety of factors.")

In addition to intent, courts consider such factors as whether the personalty and the realty share unity of title and, as in Wade 150 years ago, whether the article can be removed without causing damage to the article or to the realty. See, e.g., Williamson v. Washington Mut. Home Loans, Inc. (In re Williamson), 387 B.R. 914, 920 (Bankr. M.D. Ga. 2008). Courts also continue under Wolff to look at "the circumstances under which the article was placed upon the realty, the uses to which

it is adapted, and the parties who are at issue." See, e.g., In re Janmar, 4 B.R. 4, *9 (Bankr. N.D. Ga. 1979) (citing Wolff, 51 S.E. at 335-36.)

The multi-factor test permits individual factors to be given varying weight according to the circumstances of the case. Manderson & Assoc., 389 S.E.2d at 260 (citing 36A C.J.S. Fixtures § 1). If the parties' intention is difficult to discern, detachability of the article becomes important and has been held to be determinative. See In re Georgia Steel, 71 B.R. at 911.

Under the circumstances here, I consider the parties' intention, the detachability of the Chandelier, and the use to which the Chandelier is adapted to determine whether it is a fixture or personalty.

II. The Chandelier is Personalty

A. Intent

Before this dispute arose, the parties did not express an intention as to whether the Chandelier would be considered a fixture, and they do not agree on an intention now. There was no expression of the parties' intention as to the Chandelier when the Security Deed was executed, the Chandelier not having been purchased at that time. The Security Deed provides only that

"fixtures" would become part of the realty, without further elaboration or definition of that term. Mrs. Smith's testimony established that it was never the Smiths' intention for the Chandelier to become a permanent part of the realty and thus never their intention that the Chandelier should be considered a fixture. The Smiths did not communicate their intention to Atlantic Southern, however, just as Atlantic Southern did not communicate its intention as to what specifically would constitute a "fixture" until this dispute arose.

There being no expression or agreement about the parties' intention, that factor does not weigh in either direction in my determination. Consequently, whether the Chandelier is a fixture depends on its detachability and the use to which it is adapted. Both these factors weigh in favor of the Chandelier as personalty.

B. Detachability

Unrefuted testimony established that the Chandelier was easily detachable and in fact was detached without any injury to the Chandelier or to the Sea Island Cottage. The nature of the Chandelier's attachment thus was such that the Chandelier did not become a permanent part of the Sea Island Cottage, unlike the chandelier in a case under Louisiana law that Atlantic Southern

cites, Equibank v. IRS, 749 F.2d 1176 (5th Cir. 1985). In Equibank, the internal wiring of the house and the wiring of the chandeliers had to be professionally disconnected:

Persons effecting the safe removal had to have sufficient knowledge of electricity and electrical wiring to separate the internal wires from the unit wires without risking harm to the worker, or damage to the house and fixtures by the touching of exposed wires or the "shorting out" of the circuitry. **This type removal is not comparable to the simple and ordinary unplugging of a lamp or other electrical appliance from a wall socket.**

Id. at 1177 (emphasis added).

Here, however, the Chandelier had not been wired into the electrical system of the Sea Island Cottage; it had simply been clipped in by Mrs. Smith's brother, who was not represented to have any electrical knowledge or training. Removing the Chandelier thus did not require separating or cutting any wires, but only unclipping the connection. This type of removal is comparable to unplugging a lamp and similarly can be accomplished "by persons with little or no knowledge of electricity," Id. at 1179. Accordingly, the detachability factor weighs in favor of the Chandelier as personalty.

C. Use to Which the Chandelier Is Adapted

Mrs. Smith's testimony established that the purpose of the Chandelier was decorative, the foyer being illuminated already with recessed ceiling lights. Consequently, with the Chandelier removed, a person standing in the foyer of the Sea Island Cottage can still "expect the room to become illuminated when the light switch is thrown," Equibank, 749 F.2d at 1180.

Because the Chandelier's purpose was decorative, not functional, this matter is not analogous to Brooks v. John Hancock Mut. Life Ins. Co., 136 S.E. 166 (Ga. Ct. App. 1926), a case cited by Atlantic Southern as "factually identical" (Atlantic Southern's Br. 3). Atlantic Southern is correct that both here and in Brooks, the parties are a mortgagor and a mortgagee that later bought the realty at foreclosure; and that the mortgagor attached items of personalty to the realty after the execution of the security deed. The items the purchaser sought to recover in Brooks, however, were "a steam engine, boiler, and gin outfit." 136 S.E. 166. This machinery is not "like the chandelier in our case" (Atlantic Southern's Br. 3).

Atlantic Southern says that in Brooks, the mortgagor installed the equipment "to carry out the obvious purpose for which the building was erected" and asserts that the Smiths

installed the Chandelier for the same reason. (Atlantic Southern's Br. 3.) This comparison is inapt. In Brooks, the purpose for which the building was erected was industrial, and machinery is essential to industrial operations. In contrast, the Sea Island Cottage is a residence, and an object purchased for decorative effect, like the Chandelier, is not essential to a residential purpose.

The matter here also is not like the case that Atlantic Southern incorrectly asserts is controlling precedent, Tifton Corp. v. Decatur Fed. Sav. & Loan Assoc., 222 S.E.2d 115 (Ga. Ct. App. 1975). Tifton involved stoves and refrigerators installed in each of the units in an apartment complex. Id. at 116. The court characterized these appliances as "trade fixtures attached to the purpose for which the building was constructed." Id. at 117. The apartment units could not have been rented without stoves and refrigerators. These items thus were essential to the purpose of the realty. The Chandelier, in contrast, is not a trade fixture and is not essential to the purpose of the realty, as explained in the discussion of Brooks, above.

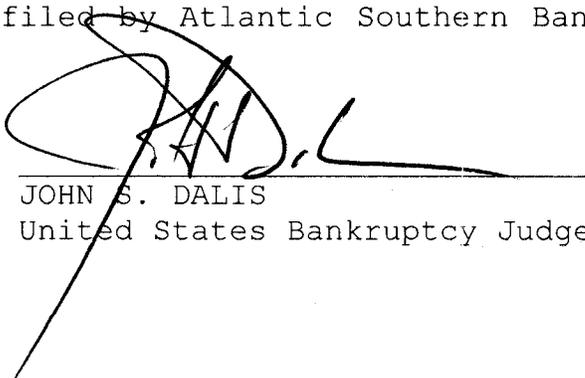
Further, in Tifton there was "absolutely no testimony to show that the stoves and refrigerators were not installed in and attached to the property so as to become a part of the

realty." Id. at 116-17. Here, Mrs. Smith's unrefuted testimony established that the Chandelier was not attached to the Sea Island Cottage in such a way that the Chandelier became part of the realty.

Brooks and Tifton show that when items of personalty with a functional, essential purpose are attached to realty, the items will be considered fixtures. The Chandelier's decorative purpose places it outside the rule in these cases. Accordingly, the use to which the Chandelier is adapted weighs in favor of the Chandelier as personalty.

CONCLUSION

Considering the intention of the parties, the detachability of the Chandelier, and the use to which it is adapted, I conclude that under Georgia law, the Chandelier is personalty. It follows that the Chandelier was not covered under the Security Deed; it belonged first to the Smiths and now to the bankruptcy estate; and it may be sold for the benefit of the creditors. The Objection to Sale filed by Atlantic Southern Bank is therefore **ORDERED OVERRULED.**



JOHN S. DALIS
United States Bankruptcy Judge

Dated at Brunswick, Georgia,
this 24th day of October, 2008.