Homestead exemption

Rogue Fed. Cr. Union v. Dalton BAP #OR-98-1831-KMeRy
In re Donney and Ronda Dalton Bankr. Case #698-61333-fra13

11/4/99 BAP aff'g Alley Unpublished

Rogue Fed. Credit Union (RFCU) had a judgment against the debtors which had been docketed and was a lien against debtors' real property. When the debtors filed bankruptcy, they moved to avoid RFCU's lien against their residence under § 522(f) as impairing their homestead exemption. The bankruptcy court found that the lien impaired the homestead exemption and avoided it. The court also confirmed debtors' chapter 13 plan which did not provide for RFCU's lien. RFCU appealed the avoidance of the lien and confirmation of the plan.

RFCU argued that ORS 23.240, which provides for the homestead exemption, is modified by ORS 23.280 - 23.300, which provides a procedure by which homestead owners may discharge a judgment lien in Oregon state court. That procedure may be used after the owner has executed an agreement to transfer ownership of the property. RFCU thus argued that Oregon's homestead exemption does not exist until an agreement to transfer the property has been executed and there would therefore be no homestead exemption for their lien to impair in this bankruptcy case.

The BAP stated that ORS 23.240 itself provides that the homestead exemption exists without the necessity of the judgment debtor claiming it. The exemption cannot therefore be a "springing future interest" which only attaches when a debtor files an action under ORS 23.280 to sell homestead property free of judgment liens. The Oregon procedure is an alternate method of removing judgment liens outside of bankruptcy, either because the debtor did not file bankrupty or the issue was not brought before the bankruptcy court. Moreover, Oregon case law assumes the homestead exemption is available in bankruptcy proceedings. BAP affirmed both avoidance of the lien and confirmation of debtors' plan.

E99-26(7)
(No underlying Bankruptcy Court opinion)

NOT FOR PUBLICATION

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re DONNEY CONRAD DALTON and RONDA SUE DALTON, Debtors.	BAP No. OR-98-1831-KMeRy Bk. No. 698-61333-fra13
ROGUE FEDERAL CREDIT UNION, Appellant, v. DONNEY C. DALTON and RONDA S. DALTON, Appellees.	**MEMORANDUM**[1]

FILED
NOV - 4 1999
NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

Argued and Submitted on October 21, 1999
at Portland, Oregon

Filed - November 4, 1999

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Frank R. Alley, III, Bankruptcy Judge, Presiding.

Before: KLEIN, MEYERS, and RYAN, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 13 and Circuit Rule 36-3.

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Rogue Federal Credit Union ("RFCU") has a judgment lien against the home of Donney and Ronda Dalton ("the Daltons"). The bankruptcy court found that the lien impaired the Daltons' homestead exemption and avoided the lien pursuant to 11 U.S.C. § 522(f). The bankruptcy court also confirmed the Daltons' chapter 13 plan, which did not provide for RFCU retaining their lien. RFCU appeals. We AFFIRM.

FACTS

RFCU brought an Oregon state court action against the Daltons to collect debts arising from an automobile loan, a VISA loan, and a line of credit loan. The state court entered a default judgment against the Daltons in February 1998. RFCU obtained a judgment lien against the Daltons' real property when the judgment was docketed. The Daltons owe $11,979.49 pursuant to that judgment.

In March 1998, the Daltons filed for chapter 13 bankruptcy protection. The Daltons' schedules list their residence as their only real property asset, with a value of $190,000. That property is encumbered by two mortgages, for a total of $168,000. The Daltons claim the remaining $22,000 equity as their homestead exemption under ORS 23.240.

RFCU does not dispute the scheduled amounts or that the property is a homestead eligible for exemption.

The Daltons moved to avoid RFCU's judgment lien, claiming that it impaired their homestead exemption, and to confirm a plan that treated RFCU as an unsecured creditor. RFCU objected, arguing that the homestead exemption is modified by Oregon statutes providing a state court procedure for the discharge of judgment liens after an agreement to transfer the property has been executed. RFCU argues the homestead

exemption does not spring into existence, and therefore cannot be impaired, until the prerequisites of that state procedure are met.

The bankruptcy court held that the state court procedure does not modify the definition of the homestead exemption, so that the exemption exists during bankruptcy even without an agreement to sell the property. Accordingly, the bankruptcy court entered an order avoiding the fixing of RFCU's lien and confirming the plan.

This appeal ensued.

ISSUES

Whether the bankruptcy court erred in avoiding RFCU's judgment lien pursuant to 11 U.S.C. § 522(f) as an impairment of the Daltons' homestead exemption.

Whether the bankruptcy court erred in confirming the Daltons' chapter 13 plan.

STANDARD OF REVIEW

The scope of a state law exemption involves the construction of state law and is reviewed de novo. Turner v. Marshack (In re Turner), 186 B.R. 108, 112 (9th Cir. BAP 1995).

DISCUSSION

I.

There are two requirements for the avoidance of liens pursuant to § 522(f). First, the lien must have attached to property of the debtor. Second, the property of the debtor must be subject to an applicable exemption.

Oregon judgment liens attach to property when the judgment is

docketed in a county in which the judgment-debtor owns real property. ORS 18.350. The parties do not dispute that RFCU's judgment lien attached to the Dalton's home in February 1998.

Oregon law defines the exemptions that apply in the Daltons' bankruptcy proceeding. Oregon has "opted-out" of the federal exemptions in § 522(d). ORS 23.305. Thus, federal exemptions do not apply, and the Daltons may only claim Oregon's homestead exemption.

The applicable homestead exemption is set out in ORS 23.240. That section exempts a homestead "from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner." The exemption exists "without the necessity of a claim thereof by the judgment debtor." ORS 23.240.

RFCU argues that ORS 23.240 is modified by ORS 23.280-23.300. Sections 23.280-23.300 provide a procedure by which homestead owners may discharge a judgment lien in Oregon state court. The procedure may be used after the owner has executed an agreement to transfer ownership of the homestead property. ORS 23.280. Thus, RFCU argues that Oregon's homestead exemption does not exist until an agreement to transfer the property has been executed.

RFCU's argument that procedures for determining homestead rights alter the definition of those rights is contradicted by the statute itself. The homestead exemption exists without the necessity of the judgment debtor claiming it. ORS 23.240. The exemption, therefore, cannot be a springing future interest that only attaches when a debtor files an action to sell homestead property free of judgment liens under ORS 23.280, as argued by RFCU.

The Oregon legislature provided procedures for determining the existence and extent of debtors' homestead exemption rights in state

court. See, e.g., ORS 23.280, ORS 23.445 (providing protection from execution sale). Without more, we decline to infer that these procedures were intended to affect the definition of those rights. Wood v. Godfrey (In re Godfrey), 102 B.R. 769, 772 (9th Cir. BAP 1989) (discussing ORS 23.445).

Nothing in the Oregon statutes suggests that their procedures for determining homestead exemptions were intended to operate to the exclusion of federal bankruptcy procedures. Rather, ORS 23.280 provides an alternate procedure in case the homestead exemption was not determined by the bankruptcy court, either because the debtor did not file for bankruptcy or the bankruptcy court did not reach the issue.

Oregon case law assumes the homestead exemption is available in bankruptcy proceedings. North Coast Elec. Co. v. Kenney's Plumbing & Repair Serv., Inc., 90 Or. App. 131, 134 (1988) ("If defendant had wanted to void plaintiff's judgment lien in the bankruptcy proceeding, he could have initiated an adversary proceeding to do so."). RFCU has cited no cases to the contrary.

RFCU relies on Pimentel v. White, 79 Or. App. 620 (1986), for the proposition that Oregon judgment liens survive a bankruptcy discharge. That case did not determine, however, whether a judgment lien must survive the bankruptcy. In Pimentel, the lien did survive the debtors' bankruptcy discharge, and the court decided which of two Oregon statutes was the appropriate procedure for discharging the lien in state court. Id. at 623-24. The court did not decide whether the lien could have been avoided in bankruptcy. Thus, RFCU's reliance is misplaced.

The Daltons were entitled to a homestead exemption when they

filed for bankruptcy protection. The bankruptcy court has the power to determine the existence and extent of the exemption. The bankruptcy court did not err in avoiding RFCU's judgment lien because it impaired the Daltons' homestead exemption.

II.

RFCU argues that lien avoidance pursuant to § 522(f) is, in this case, a regulatory taking that violates the takings clause of the Fifth Amendment. The property allegedly taken is the right to a lien on the Daltons' property. This argument fails because nothing was taken from RFCU.

The Oregon right to a judgment lien is limited by Oregon statutes providing for the homestead exemption, ORS 23.240, and discharge of judgment liens, ORS 23.280. In this case, ORS 23.280 determines dischargeability of the lien based on the value of the property at the time of the bankruptcy petition. RFCU has no property right to post-petition increases in the homestead's equity.

RFCU's statutory right is to a lien on the amount by which the fair market value of the property at the time the Daltons' bankruptcy petition was filed exceeded the senior encumbrances plus the homestead exemption amount. There is no such excess value in this case.

The fact that the determination of fair market value and the amount of senior encumbrances is made by the bankruptcy court pursuant to § 522(f) rather than by an Oregon court pursuant to ORS 23.280 is not a taking of RFCU's property.

III.

RFCU's opposition to plan confirmation was based solely on the

avoidance of its judgment lien. The bankruptcy court would have erred in confirming the plan only if it erred in avoiding the lien. Because we affirm the avoidance of the lien, we also affirm the plan confirmation.

CONCLUSION

The Daltons' homestead exemption is effective during their bankruptcy proceedings. The bankruptcy court did not err in finding that RFCU's lien impaired the Daltons' exemption. That finding did not effect a taking of RFCU's property.

Confirmation of the chapter 13 plan was proper because avoiding the lien was proper. We AFFIRM.

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit Court of Appeals
125 South Grand Avenue
Pasadena, California 91105
(626) 583-7906

NOTICE OF ENTRY OF JUDGMENT

BAP No. OR-98-1831-KMeRy

RE: DONNEY CONRAD DALTON AND RONDA SUE DALTON

A separate Judgment was entered in this case on November 4, 1999.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken. Also see, Federal Rule of Appellate Procedure 39.

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged

APPEAL TO COURT OF APPEALS:

An appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the $105 filing fee and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this stamp appears was mailed this date to all parties in interest as designated by the Appellant in the Notice of Appeal.

By: Patti Ippolito

Deputy Clerk: November 4, 1999