

In re Smith Case No. 387-05189-S7

DDS 12/29/89 unpublished

The court sustained the trustee's objection to the debtor's claimed homestead exemption. The debtor's ability to claim the exemption had expired before the bankruptcy petition was filed.

She had moved from the property more than one year before the bankruptcy filing, and her vicarious occupancy through her spouse ended on the date her marriage was terminated by a divorce decree issued in California. The divorce decree was entered nunc pro tunc pursuant to a California statute, and the marriage was effectively terminated more than a year before the bankruptcy was filed. It was not appropriate to permit a collateral attack on the dissolution decree in the bankruptcy court.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 387-05189-S7
SANDRA JOYCE SMITH,)
)
Debtor.) FINDINGS IN SUPPORT OF ORDER
) SUSTAINING OBJECTIONS TO
) HOMESTEAD EXEMPTION

The debtor amended her schedules to claim a homestead exemption for her one-half interest in California real property. The trustee objected. The parties agreed that Oregon law governs entitlement to an exemption. 3 Collier on Bankruptcy, ¶522.06, n.3. The objection should be sustained for the following reasons.

The debtor and her former husband owned real property in California at the time of their separation and divorce. The debtor moved to Oregon no later than May 31, 1986. The California court entered a divorce decree on October 10, 1986 expressly dissolving the debtor's marriage as of September 2, 1986. The debtor filed bankruptcy on October 2, 1987. The property has not yet been sold but a sale is imminent.

1 O.R.S. 23.240 allows an exemption of \$15,000 for property
2 that is actually occupied by the debtor or the debtor's
3 spouse, child, or parent. The exemption continues in the
4 property for one year after the earlier of the debtor's
5 removal, absence, or sale of the property. Where there has
6 been a sale, the exemption also applies to proceeds if held
7 for a year with intent to buy another home.

8 The debtor's right to claim an exemption terminated
9 before she filed bankruptcy when the one-year statutory period
10 governing the life of the exemption expired. Her actual,
11 physical occupancy ceased when she left the home on May 31,
12 1986 and her vicarious occupancy through her spouse ended on
13 September 2, 1986 as expressly provided in the dissolution
14 decree.

15 The debtor may not collaterally attack the California
16 court's decision to retroactively enter the divorce decree.
17 California, by statute, expressly authorizes entry of nunc pro
18 tunc dissolution judgments in Ca. Civ. Code 4513 and the
19 California courts have applied Section 4513 as supplementing
20 rather than superceding the common law, regarding nunc pro
21 tunc entry of judgments. Farner v. Farner, 195 Cal. App. 3d,
22 1139, 241 Cal. Rptr. 655 (1987), Casimir v. Young, 19 Cal.
23 App. 3d, 773, 97 Cal. Rptr. 623 (1971).

24 As a legal matter, the federal courts must give the same
25 full faith and credit to state court judgments "as they have
26 by law or usage in the courts of such state . . . " and may

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1 not permit an "intrusive" collateral attack upon a state court
2 judgment. 28 U.S.C. §1738, Parsons' Steel v. First Alabama
3 Bank, 474 U.S. 518, 106 S. Ct. 768, 88 L.Ed.2d 877 (1986).
4 More importantly and as a practical matter, the effective date
5 of a divorce decree is the demarcation line from which the
6 rights of spousal status, property, custody, and other matters
7 are ordered. A decision of the federal court refusing to
8 enforce the retroactive provision of such a decree would not
9 only be intrusive but would place the federal court in the
10 position of reviewing the effect of its decision on other
11 provisions of the property settlement and dissolution decree.
12 This is particularly obnoxious with respect to the issue of
13 when the marriage should be ended which is the key issue here.

14 The debtor's reliance on Black v. Industrial Commission,
15 83 Ariz. 121, 317 P.2d 553 (1957) is misplaced. Given the
16 express California statute on the subject and the importance
17 of the effective date of the dissolution decree, the
18 California courts would not permit a collateral attack by
19 either a creditor or by one of the parties to the decree. The
20 bankruptcy court must give the decree the same full faith and
21 credit.

22 Alternatively, the debtor either waived the right to
23 claim the exemption or is estopped from claiming it under the
24 circumstances of this case. Testimony established that the
25 trustee hired California counsel and acted to the estate's
26 detriment in reliance upon conduct which can only be construed

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1 as an agreement by the debtor not to claim the exemption. The
2 later prospect of a sale by the trustee and not change of
3 counsel or a mistake is what drives this proceeding. The
4 elements of estoppel are present.

5 The debtor's reliance on In re White, 727 F.2d 884 (9th
6 Cir. 1984) is inappropriate for the reason that the period
7 expired before it could be tolled by the filing of bankruptcy.

8 For the foregoing reasons, a separate order should enter
9 sustaining the objections of the trustee.

10 DATED this 29th day of December, 1989.

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12 DONAL D. SULLIVAN
13 Bankruptcy Judge

14 cc: Bradley J. Woodworth
15 Patty T. Rissberger
16 Robert K. Morrow
17 U. S. Trustee
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