

In re Barton Case no. 390-30863-S7
11/6/90 DDS Unpublished

The court sustained the trustee's objection to the debtor's claimed homestead exemption in a judgment lien arising from a divorce decree. The judgment lien was not a sufficient property interest to support a homestead exemption based on vicarious occupancy through the debtor's child.

Although the judgment is the proceeds of her homestead, she did not reinvest the proceeds within one year of the divorce decree, and therefore lost the exemption.

P90-__ (2)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 390-30863-S7
LYNN MARLENE BARTON,)
) MEMORANDUM SUSTAINING TRUSTEE'S
Debtor.) OBJECTION TO DEBTOR'S HOMESTEAD
) EXEMPTION

The debtor claimed a homestead exemption in her interest in a lien for \$8,000 against her ex-spouse's home. The lien arose from a dissolution judgment which was effective on March 24, 1989, and payable on the sale of the home but not later than July 1, 1993. The trustee objected to the claimed exemption, and the objection should be sustained.

A lien is not a sufficient ownership interest to support a homestead exemption under ORS 23.240. In re White, 727 F.2d 884, 887 (9th Cir. 1984). Therefore, the debtor cannot rely on vicarious occupancy through her child to support an exemption in the judgment lien.

The debtor claims that the lien is the proceeds of her

homestead, which she intends to reinvest in another house. To retain an interest in the proceeds, the debtor must hold them with the intention of procuring another homestead, and may not hold them for more than one year. The debtor claims that the one year deadline should be tolled because it is not her fault that she cannot reinvest the proceeds within one year of the divorce decree.

The debtor filed her bankruptcy petition on February 20, 1990, eleven months after the divorce decree was effective. On March 28, 1990, she filed an amended schedule B-4 to claim the homestead exemption in the judgment lien. She has not sold her interest and reinvested the proceeds, although the year has now expired. The trustee sold the lien for \$3,300 subject to the outcome of this objection.

The debtor is not entitled to toll the one year reinvestment period just because the judgment did not require the lien to be paid within the one year. The debtor could have sold her interest in the judgment lien and invested the money in a new home. She did not do so, and the investment period expired. In re Earnest, 45 Bankr. 395 (Bankr. D. Or. 1984), In re Monks, No. 382-01595, slip op. (Bankr. D. Or. Dec. 13, 1982) (Johnson, B.J.).

The trustee's objection is sustained. A separate order will be entered.

DATED this _____ day of November, 1990.

DONAL D. SULLIVAN
Bankruptcy Judge

cc: Richard M. Friz
Alexander T. Bishop