

ORS 23.240

In re Manz No. 389-34802-S7

DDS 1/31/89 unpublished

The court overruled the objections to the debtor's homestead exemption. Although the debtor had not physically occupied the property at issue for more than two years before the bankruptcy was filed, he fulfilled the requirements of ORS 23.240(1) by vicariously occupying the property through his wife.

The debtor and his wife were divorced less than a month before the debtor filed his bankruptcy petition. The debtor's vicarious occupancy did not cease within one year of the bankruptcy petition, so his claim of homestead was valid on the date the petition was filed and should be upheld.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 389-34802-S7
PETER OTTO MANZ,)
) MEMORANDUM IN SUPPORT OF ORDER
Debtor.) OVERRULING OBJECTIONS TO DEBTOR'S
) HOMESTEAD EXEMPTION

Multco Employees Credit Union and the chapter 7 trustee each objected to the debtor's claimed exemption in real property located at 14455 S.E. Lee Street, Milwaukie, Oregon. The objections are based on the fact that the debtor did not personally reside on the property at issue for more than two years before the bankruptcy petition was filed. The objections should be overruled. My reasons follow.

Mr. Manz moved from the Lee property in September 1987 due to marital difficulties. The couple had no children, and Mrs. Manz continued to occupy the house on Lee Street. The Manzes filed for divorce in early 1989, and the court entered a decree of dissolution on September 15, 1989. The decree, which became effective on October 12, 1989, required the

parties to sell the property on Lee Street and split the proceeds. Mr. Manz filed bankruptcy on October 17, 1989. He has no other property which he claims as a homestead.

The governing statute is O.R.S. 23.240, which provides:

(1) A homestead shall be exempt from sale on execution, from the lien of every judgment and from liability in any form for the debts of the owner to the amount in value to \$15,000, except as otherwise provided by law ... The homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent or child, but the exemption shall not be impaired by:

- (a) Temporary removal or temporary absence with the intention to reoccupy the same as a homestead;
- (b) Removal or absence from the property; or
- (c) The sale of the property.

(2)

(3) The exemption period under paragraphs (b) and (c) of subsection (1) of this section shall be one year from the removal, absence or sale, whichever occurs first.

The language of the statute permits a debtor to claim a homestead in property which he occupies through his spouse, parent or child. Oregon expressly authorizes vicarious occupancy. Consequently, until the divorce decree was final, Mrs. Manz was the debtor's spouse, and the debtor occupied the property at issue through her. The debtor's exemption in the property will not expire until one year from the date the property was no longer occupied by his spouse, which would be

The Oregon homestead exemption is extremely liberal, In re Thurmond, 71 Bankr. 596 (Bankr. D. Or. 1987), aff'd. 875 F.2d 414 (1987) and is to be liberally construed in favor of allowing an exemption. In re Laughlin's Estate, 170 Or. 450,

134 P.2d 961 (1943).

Each time the courts construed the statute to deny the exemption, the legislature amended the statute to extend the circumstances in which the debtor is entitled to a homestead exemption. Oregon enacted O.R.S. 23.240(3) in 1969 in response to a case which allowed liens to attach to a former homestead when the judgment debtor moved out of the house before selling the property. See, Fleischhauer v. Bilstad, 233 Or. 578, 379 P.2d 880 (1963).

Other bankruptcy courts have permitted debtors to retain their homestead exemption under similar circumstances. In re Smith, 57 Bankr. 81 (Bankr. W.D. N.Y. 1985). The exemption was upheld despite the fact that the state statute involved did not explicitly permit vicarious occupancy as Oregon's does.

The result in this case furthers the policy behind the Oregon homestead exemption. A reconciliation is always a possibility during dissolution proceedings, and any suggestion to the non-possessory spouse to rush the divorce to preserve the homestead exemption would not be in the public interest. The debtor should not be deprived of his homestead exemption for the equity in the family home pending a divorce. He is unable to sell the property to obtain his equity and reinvest it in another home. To deny the exemption would simply deprive the debtor of the ability to have a home, a goal which

the Oregon legislature fully supports as shown by the liberal terms of O.R.S. 23.240.

A separate order overruling the objections will be entered.

DATED this _____ day of January, 1990.

DONAL D. SULLIVAN
Bankruptcy Judge

cc: Gary M. Carlson
John S. Butterfield
Robert K. Morrow
Thomas Renn

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 389-34802-S7
PETER OTTO MANZ,)
)
Debtor.) ORDER OVERRULING OBJECTIONS TO
) DEBTOR'S HOMESTEAD EXEMPTION

After a hearing on January 10, 1990, and based on findings issued orally at the conclusion of the hearing and adopted as the Court's findings pursuant to Fed. R. Civ. P. 52(a) and Bankr. R. 9014, and as supplemented by a memorandum entered separately,

IT IS ORDERED that the objections filed by the trustee and Multco Employees Credit Union to the debtor's claimed exemption in the real property located at 14455 S.E. Lee Street, Milwaukie, Oregon are overruled, and the debtor's claim of homestead in the property is upheld.

DATED this _____ day of January, 1990.

DONAL D. SULLIVAN
Bankruptcy Judge

cc: Gary M. Carlson
John S. Butterfield
Robert K. Morrow
Thomas Renn

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