

11 U.S.C. § 522(f)
Homestead exemption
Objection to exemption
Oregon homestead exemption

In re Anibal, Case No. 390-30886-ELP7

4/23/90

CEL

Unpublished

The debtor's ex-spouse, a judicial lienholder, filed an objection to the debtor's claim of exemption for certain unimproved real property. Since the property was not the debtor's actual, occupied abode, the property was not a homestead under Oregon law. The court disallowed the claimed exemption.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Case No.390-30886-P7
)
DALE ANIBAL,) MEMORANDUM OPINION
) AND ORDER THEREON
Debtor.)

The former spouse of the debtor, Arlene Anibal, holds a judicial lien against ten acres of secondary forest land owned by the debtor, which lien was obtained in a marriage dissolution proceeding in 1986.

The lienholder has filed an objection to the debtor's claim of homestead exemption for the property alleging that it is not a homestead as provided by Oregon law and is not the "actual abode of or occupied by the debtor or the debtor's spouse, parent or child".

The testimony indicated that the debtor in 1971 had lived there with a former wife and children in a camp trailer or mobile home, but that after his later marriage to Arlene, Arlene did not desire to live on the premises and they acquired another abode. The debtor placed other parties in a mobile home on the premises until it was destroyed by fire.

On the property is a pump house with no pump, an unconnected septic tank, and an uninhabitable dilapidated shack. The objecting creditor and another witness, Mr. McArthur, testified that on a recent visit they observed no signs of occupancy of the premises.

The debtor testified that he is an odd job laborer, and in

connection with his jobs, stays at various places overnight with friends or relatives or sleeps in a car or camper, although he said he did not own a camper and his bankruptcy schedules do not include ownership of any vehicle. He relies on testimony that he spends one or two nights a week parked in a vehicle on the property to claim a homestead.

The debtor schedules only one debt, that to Arlene Anibal, although her attorney is also named. He lists only this property and \$100 value for his clothing and personal property. He said that he did not list property that he had which he was required to remove from other premises by an eviction order by mistake or oversight, which he valued at possibly \$1,000 to \$2,000.

In 1988, the debtor conveyed the property by bargain and sale deed to one Eleanor J. Luhaorg, who he said was a friend, with the intention to insulate his interest from Arlene Anibal's judgment, and the creditor established that it was reconveyed by Luhaorg when the conveyance to her was challenged as fraudulent.

If the testimony of the debtor be believed, his occasional visits to the property having no suitable abode thereon do not entitle him to claim it as exempt as his actual abode occupied by him.

It is far more than a year since he last lived on the property after his marriage to Arlene. His mail is not received there. He does not have a facility for living thereon, and no showing of capacity or intent to cause one to be placed thereon.

Some states, notably Arizona, provide a statutory homestead exemption to be claimed for unoccupied land without structures under certain conditions. Oregon is not one of them. Should Oregon's legislature have desired to do so, it could have. Instead it carefully chose to restrict the homestead exemption to an actual, occupied abode.

On the facts of this case, the court finds apposite the "Findings

Denying Motion to Avoid Judgment Lien of Debra Miles under 11 U.S.C. 522(f);
Denying Motion to Abstain" (In re Robert Benjamin Faraday Miles, Jr.,
Bankruptcy Case No. 388-00665-S7, District of Oregon, May 13, 1988) in which
Judge Sullivan stated:

"There is a distinction between the intention to
occupy a house as a home and the intention to claim a
homestead exemption for purposes of using the federal
law to avoid his former wife's interest in the house.
These intentions may properly co-exist, but when the
former intention is fathered by the latter,
insincerity must be suspected."

The objection of the creditor, Arlene Anibal, to the claim of
exemption to property described by the debtor as:

Ten acres of secondary forest land off of S. E.
Wildcat Mountain Road, Sandy, Oregon valued at
approximately \$15,000.00

is sustained and the claimed exemption thereof is ORDERED disallowed.

DATED this _____ day of April, 1990

C. E. LUCKEY
Bankruptcy Judge

cc: Ivan M. Karmel
Kenneth Lee Baker
Alexander T. Bishop
U. S. Trustee
Dale B. Anibal