Homestead exemption

McGregor v. Michael Grassmueck, Inc. OR-98-1732-RyBK
In re George and Katherine McGregor 697-67049-fra7

6/3/99 BAP aff'g Judge Alley Unpublished

Prior to the Chapter 7 petition date, the Debtors sold their principal residence. The proceeds from the sale were placed into a segregated bank account and held as exempt property under the Oregon homestead exemption. Pursuant to the homestead statute, the sale proceeds had to be reinvested in another residence within one year to retain their exempt status.

Six months after the sale, Debtors filed their bankruptcy petition. They scheduled the proceeds as exempt pursuant to the Oregon homestead exemption. Because the exemption was valid at the time that the petition was filed, no one objected to the claimed exemption within 30 days after the § 341(a) meeting of creditors.

When the one-year reinvestment period expired without the Debtors reinvesting the proceeds from the sale in another residence, the Chapter 7 trustee filed an objection to the exemption and a motion for turnover of the funds. The Bankruptcy Court denied the objection as moot, finding that the proceeds were no longer exempt under Oregon law, and ordered the Debtors to turn over the funds to the Trustee. Debtors appealed, arguing that the trustee did not object to the exemption within 30 days of the § 341(a) meeting as required by the Code.

In affirming the Bankruptcy Court, the BAP distinguished the present case from the Supreme Court case of Taylor v. Freeland & Kronz, 503 U.S. 638 (1992). In Taylor, the debtor claimed an exemption to which he was not entitled at the petition date. The court held that the trustee must in that case object to the claimed exemption within the statutory deadline. Failure to do so forecloses the trustee from objecting in the future notwithstanding that the debtor may have no basis for claiming the exemption. In the present case, in contrast, there was no basis at the petition date for objecting to the exemption because it was validly claimed. When the proceeds were not reinvested within one year of the sale, they lost their exempt status under Oregon law and became subject to turnover by the Trustee.

E99-15(15)

(No underlying opinion)

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re GEORGE L. McGREGOR and KATHERINE M. McGREGOR, Debtors.	BAP No. OR-98-1732-RyBK Bk. No. 697-67049-fra7
GEORGE L. McGREGOR and KATHERINE M. McGREGOR, Appellants, v. MICHAEL A. GRASSMUECK, INC., Chapter 7 Trustee, Appellee.	**MEMORANDUM**[1]

FILED

JUN -3 1999

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

Argued By Telephonic Conference and Submitted on May 20, 1999

Filed - June 3, 1999

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

Honorable Frank R. Alley III, Bankruptcy Judge, Presiding

Before: RYAN, BRANDT, and KLEIN, 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 Ninth Circuit BAP Rule 13 and Ninth Circuit Rule 36-3.

Several months prior to filing their chapter 7[2] bankruptcy petition, George and Katherine McGregor ("Debtors") sold their principal residence. The proceeds from the sale were placed into a segregated bank account and held as exempt property under the Oregon homestead exemption. Pursuant to the exemption statute, the sale proceeds had to be reinvested in another residence within one year to retain their exempt status.

Six months after the sale, Debtors filed their bankruptcy petition. Debtors scheduled the proceeds as exempt pursuant to the Oregon homestead exemption. Because the exemption was valid at the time that the petition was filed, no one objected to the claimed exemption within thirty days after the § 341(a) meeting of creditors.

When the one-year reinvestment period expired without Debtors reinvesting the proceeds from the sale in another residence, the chapter 7 trustee ("Trustee") filed an objection to the exemption and a motion for turnover of the funds. The bankruptcy court denied the objection as moot, finding that the proceeds were no longer exempt under Oregon law, and ordered Debtors to turn over the funds to Trustee. Debtors timely appeal.

We AFFIRM.

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[2]Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

I. FACTS

On July 1, 1997, Debtors sold their principal residence and placed the sale proceeds into a segregated bank account. A portion of the deposited sale proceeds constituted exempt property as a matter of law pursuant to Oregon's Revised Statutes ("O.R.S.") § 23.240(2).[3]

On December 12, 1997, Debtors filed their bankruptcy petition. They claimed the sale proceeds as exempt in the amount of $24,900 pursuant to O.R.S. § 23.240(2).

On February 4, 1998, the § 341(a) meeting of creditors was

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[3]O.R.S. § 23.240 states in pertinent part:

> (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 of $25,000, except as otherwise provided by law. The exemption shall be effective without the necessity of a claim thereof by the judgment debtor. When two or more members of a household are debtors whose interests in the homestead are subject to sale on execution, the lien of a judgment or liability in any form, their combined exemptions under this section shall not exceed $33,000. The homestead must be the actual abode of and occupied by the owner, or the owner's spouse, parent or child . . . .
> (2) The exemption shall extend to the proceeds derived from such sale to an amount not exceeding . . . $33,000, . . . if the proceeds are held <u>for a period not exceeding one year</u> and held with the intention to procure another homestead therewith.

O.R.S. § 23.240 (West 1999)(emphasis added).

held. Trustee did not object to any of Debtors' claimed exemptions at the § 341(a) meeting or within thirty days thereafter.[4]

During the one-year reinvestment period, Debtors located another residence that they intended to purchase. However, Debtors failed to close their purchase within that period.

After the one-year reinvestment period had expired, Trustee filed a motion for turnover (the "Motion") of the sale proceeds and an objection (the "Objection") to the claimed exemption. On September 1, 1998, a hearing was held on the Motion and the Objection. The bankruptcy court held that the proceeds were no longer exempt under O.R.S. § 23.240(2) because Debtors failed to reinvest the proceeds in another residence within one year. Accordingly, the bankruptcy court ordered Debtors to turn over the sale proceeds to Trustee. The court also overruled the Objection as moot.

The order was entered on September 16, 1998, and Debtors filed a timely notice of appeal.

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[4]Rule 4003(b) provides in pertinent part:

> **(b) Objections to Claim of Exemptions.** The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of the creditors . . . unless, within such period, further time is granted by the court.

FED. R. BANKR. P. 4003(b).

II. STANDARD OF REVIEW

The bankruptcy court's determination of the validity of a homestead exemption based on undisputed facts is a question of law that is reviewed de novo. See Ball v. Payco Gen. Am. Credits, Inc. (In re Ball), 185 B.R. 595, 596 (9th Cir. BAP 1995); Jones v. Heskett (In re Jones), 180 B.R. 575, 577 (9th Cir. BAP 1995).

III. ISSUE

Whether the bankruptcy court erred in ordering Debtors to turn over the sale proceeds to Trustee because Debtors failed to satisfy the reinvestment requirement of O.R.S. § 23.240(2) even though Trustee failed to timely object under Rule 4003(b).

IV. DISCUSSION

The Bankruptcy Court Did Not Err When It Ordered Debtors to Turn Over the Sale Proceeds After Debtors Failed to Comply with the Reinvestment Requirement of O.R.S. § 23.240(2).

The bankruptcy court granted the Motion because the proceeds from the sale of Debtors' residence lost their exempt status when Debtors failed to reinvest the sale proceeds in another residence within one year of the sale as required by O.R.S. § 23.240(2).

Debtors argue that the bankruptcy court erred in granting the Motion because Trustee did not timely object to the claimed exemption. Debtors rely on the plain language of Rule 4003(b) and the Supreme Court case Taylor v. Freeland & Kronz, 503 U.S. 638, 643 (1992), which Debtors assert stand for the proposition that a trustee must object within thirty days after the § 341(a) meeting in order to invalidate a claimed exemption. Debtors argue that Trustee's failure to object to the claimed exemption within thirty days following the § 341(a) meeting precluded him from later recovering the sale proceeds as non-exempt property. We disagree.

"When a debtor files a bankruptcy petition, all of his property becomes property of the bankruptcy estate." Taylor, 503 U.S. at 642 (citing 11 U.S.C. § 541). "The Code, however, allows the debtor to prevent the distribution of certain property by claiming the property as exempt." Id. "Section 522(b) provides for exemptions under federal or state law." Arrol v. Broach (In re Arrol), 170 F.3d 934, 935 (9th Cir. 1999). "The federal exemptions listed in section 522(d) are available to a debtor in bankruptcy if the state where the bankruptcy petition has been properly filed has not 'opted out' of the federal exemption scheme; otherwise, the debtor is entitled to claim the exemptions provided by the law of the state where the petition was filed." Id. at 935-36 (citing 11 U.S.C. §§ 522(b)(1) and (b)(2)(A)). Pursuant to O.R.S. § 23.305, "Oregon has opted out of the federal exemption scheme." Mitchell v. West (In re West), 81 B.R. 22, 26 (9th Cir. BAP 1987)(citing O.R.S. § 23.305). The Ninth Circuit has held that "[w]hen a debtor elects to claim an exemption under state law pursuant to 11 U.S.C. § 522, he is required to comply with the state law in effect at the time of the filing of his petition." England v. Golden (In re

Golden), 789 F.2d 698, 700 (9th Cir. 1985).

Section 522(l) provides the procedure for claiming an exemption. Pursuant to § 522(l), "the debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(l)(emphasis added).

"Fed.R.Bankr.P 4003 governs the objection process." Canino v. Bleau (In re Canino), 185 B.R. 584, 590 (9th Cir. BAP 1995). Pursuant to Rule 4003(b), the trustee and creditors have thirty days from the initial meeting of creditors to object or, within that time, to request an extension of time to object. See FED. R. BANKR. P. 4003(b).

Debtors argue that the thirty-day objection period in Rule 4003(b) must be strictly construed, see Taylor, 503 U.S. 638, and that Taylor governs the outcome of this case. We disagree.

In Taylor, the debtor scheduled a pending employment discrimination lawsuit as exempt. Id. at 640. Although the debtor did not have a right to exempt more than a small portion of the proceeds, the debtor claimed the full amount as exempt. Id. However, because the trustee thought that the lawsuit had little value to the bankruptcy estate, he decided not to object to the claimed exemption within the thirty-day period set forth in Rule 4003(b). Id. at 641.

After the debtor recovered a $110,000 settlement from the lawsuit, the trustee brought a motion for turnover of the recovered funds. Id. The trustee argued that because the debtor had "no statutory basis" for claiming the full amount of the proceeds from the lawsuit as exempt, the court should order the debtor to turn over the portion of the funds that were improperly claimed as exempt. Id.

The bankruptcy court agreed and ordered the debtor to turn over the funds to the trustee. Id. at 638. The district court affirmed. Id. However, the Third Circuit reversed, finding that the bankruptcy court erroneously required the debtor to turn over the settlement proceeds despite the trustee's failure to timely object to the claimed exemption. Id.

The Supreme Court affirmed the Third Circuit, finding that the trustee "apparently could have made a valid objection under § 522(l) and Rule 4003 if he acted promptly." Id. at 642. The Court, relying on the plain language of Rule 4003(b) and § 522(l), held that "trustee's failure to [object] prevents him from challenging the validity of the exemption now." Id.

Taylor is distinguishable from the situation here. In Taylor, the trustee could have timely objected to the claimed exemption under Rule 4003(b). The Supreme Court held that the trustee's failure to object prevented him from later challenging the validity of the exemption. See Taylor, 503 U.S. at 642. Here, however, there was no basis for Trustee to object to the claimed exemption within the thirty-day objection period because the claimed exemption was valid at the time. Because the continued validity of the exemption was contingent upon Debtors reinvesting the proceeds in another residence within the one-year reinvestment period of O.R.S. § 23.240(2) and the reinvestment date occurred outside of the objection period of Rule 4003(b), the bankruptcy court concluded that Rule 4003(b) did not apply.

This conclusion is consistent with the Ninth Circuit's holding in Golden. In Golden, the debtor sold his residence prior to filing his bankruptcy petition. After filing bankruptcy, the debtor claimed the proceeds of the sale as exempt pursuant to California law. See Golden, 789 F.2d at 700. The California homestead exemption statute, however, required the debtor to reinvest the sale proceeds in another residence within a six-month period. During the thirty-day objection period set forth in Rule 4003(b), no one objected to the claimed exemption because, at that time, the proceeds were properly claimed as exempt. However, after the objection period expired, the debtor failed to timely reinvest the sale proceeds in another residence as required by the California homestead exemption statute. Consequently, the trustee brought a motion for turnover of the funds. Id. at 698.

The bankruptcy court granted the motion, determining that the sale proceeds lost their exempt status under California law because the debtor failed to reinvest the proceeds in another residence within the six-month reinvestment period. Consequently, the bankruptcy court ordered the debtor to turn over the funds to the trustee. Id. The district court and the Ninth Circuit affirmed. Id.

The Ninth Circuit noted that "when a debtor elects to claim an exemption under state law pursuant to 11 U.S.C. § 522, he is required to comply with the state law in effect at the time of the filing of his petition." Id. (citation omitted)(emphasis added). Because the debtor failed to reinvest the sale proceeds within six months of the sale as required by California law, the Ninth Circuit held that the bankruptcy court properly granted the trustee's motion for turnover of the funds. Id. at 700. The Ninth Circuit stated that to allow otherwise "would frustrate the objective of the . . . homestead statute and bankruptcy act itself." Id.

In addition, the Ninth Circuit stated that the trustee was not estopped from recovering the sale proceeds even though the trustee did not provide notice to the debtor that the trustee intended to claim the sale proceeds as estate property. The court reasoned that

> [b]ecause the exemption remained in effect during the six-month period, and the trustee had no right to claim the proceeds during that period, we see no reason for requiring that he notify the debtor of a claim not yet in existence. Given the clarity of provisions requiring reinvestment, Golden could not have reasonably relied upon trustee's silence as an indication of a permanent exemption.

Id. at 701 (emphasis added).

Thus, the Ninth Circuit, interpreting California law, held that the debtor was effectively on notice that the exemption would not last beyond the six-month reinvestment period if the debtor failed to satisfy the condition subsequent of reinvestment. The homestead proceeds lost their exempt status when the debtor failed to reinvest the proceeds within the six-month reinvestment period set forth in the California homestead exemption statute. Id.

Here, Golden is dispositive. Debtors claimed a homestead exemption under an Oregon statute that was virtually identical to the California homestead statute involved in Golden.[5] As in Golden, the homestead exemption statute required Debtors to reinvest the proceeds from the sale of their residence to purchase another residence within a specified time period in order to maintain the validity of the exemption. In addition, the reinvestment deadline involved in both cases extended beyond the objection period of Rule 4003(b). Notwithstanding the trustee's failure to object within the thirty-day period, the Ninth Circuit applied California law in determining whether the debtor was not

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[5]Debtors argue without providing any support that the California and Oregon statutes are distinguishable because (1) the California homestead statute has a six-month reinvestment requirement whereas the Oregon homestead statute has a one-year reinvestment requirement and (2) the Oregon homestead statute has an "intent to reinvest" requirement that the California statute did not have. At oral argument, Debtors' counsel admitted that there were no material differences between the statutes. We agree. Indeed, in interpreting the California exemption statute, the Ninth Circuit stated that "the Oregon statute is similar to the California statute, because '[b]oth require reinvestment [of proceeds] within a fixed period of time.'" Golden, 789 F.2d at 700 (quoting White v. White (In re White), 727 F.2d 884, 888 (9th Cir. BAP 1984))(alteration in original).

entitled to the exemption because the debtor failed to satisfy the condition subsequent for a valid exemption by timely reinvesting the sale proceeds. See Golden, 789 F.2d at 700. Similarly, we must look to the Oregon homestead statute to determine whether Debtors lost their exemption.

Here, Debtors were required to reinvest their sale proceeds in another residence within one year in order to retain their homestead exemption. See O.R.S. § 23.240(2). The bankruptcy court found that Debtors failed to reinvest the proceeds in another residence within the one-year reinvestment period. This finding is not in dispute. Consequently, the bankruptcy court did not err in determining that the sale proceeds lost their exempt status when Debtors failed to reinvest the funds within one year of the sale of their residence. "Although exemption statutes are to be liberally construed, . . . to allow an indefinite period for reinvestment is simply to ignore the plain language of the statute." Earnest v. Stookey (In re Stookey), 42 B.R. 395, 397-98 (Bankr. D. Or. 1984)(interpreting the "condition subsequent" of O.R.S. § 23.240(2))(citation omitted). Because the Oregon homestead statute contains a condition subsequent that requires "an initial view from the future before a decision [can] be made on the allowance of the exemption . . .[,] the court cannot avoid, after a year's passage, a judicial inquiry to determine if the debtor either receives or keeps, as the case may be, the exemption." Id.

at 388-89.[6]

Furthermore, unlike the facts in Taylor, Rule 4003(b) is inapplicable to the facts here. As in Golden, the bankruptcy court properly granted the Motion despite the fact that Trustee did not object to the claimed exemption during the thirty-day objection period because during that period the proceeds were exempt. As the Ninth Circuit stated, "we see no reason for requiring that [the trustee] notify the debtor of a claim not yet in existence." Golden, 789 F.2d at 701. Similarly, raising an objection during the thirty-day period would have been frivolous because the sale proceeds at the time were validly claimed as exempt. Because there was no reason for Trustee to object to the claimed exemption under

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[6]Debtors also argue that exemption rights are determined as of the date of the bankruptcy filing and that the bankruptcy court erred in invalidating the exemption because the exemption was valid at that time. We disagree. Generally, exemption rights are determined as of the date that the bankruptcy petition is filed. See Harris v. Herman (In re Herman), 120 B.R. 127, 130 (9th Cir. BAP 1990). However, the Ninth Circuit recognizes a limited exception to the general rule where a state exemption statute contains a "sunset provision" that conditions validity of an exemption on the satisfaction of a condition subsequent such as reinvesting the sale proceeds within a specified time period. See In re Combs, 166 B.R. 417, 420 (Bankr. N.D. Cal. 1994)(citing Golden, 789 F.2d at 700). Because bankruptcy courts must apply the state law as it exists at the time of the bankruptcy filing, see Golden, 789 F.2d at 700, they must consult facts occurring after the petition date when state law so provides.

Rule 4003(b), Taylor is inapposite.[7]

Finally, Debtors argue that Trustee was required to request an extension of time to object to the claimed exemption in order to preserve his right to object if the reinvestment requirement was not satisfied. We disagree. The Oregon exemption statute provides that the proceeds are exempt "for a period not exceeding one year." O.R.S. § 23.240(2). The language of the homestead exemption statute clearly indicates that if the proceeds are not reinvested within this time period, the proceeds will lose their exempt status. "Given the clarity of the provision requiring reinvestment, [debtor] could not have reasonably relied upon the trustee's silence as an indication of a permanent exemption." Golden, 789 F.2d at 701. Placing an affirmative duty on Trustee to request an extension of time in order to preserve his right to object in the event that Debtors failed to comply with the reinvestment requirement would eviscerate the intent of the Oregon legislature by making it possible to obtain a benefit that "they

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[7]We note that other "Ninth Circuit cases have made inroads on [sic] Taylor. For example, where a claimed exemption is ambiguous, it will be resolved against the debtor." Canino, 185 B.R. at 593 (citing Seror v. Kahan (In re Kahan), 28 F.3d 79, 83 (9th Cir. 1994), cert. denied, 513 U.S. 1150 (1995); Hyman v. Plotkin (In re Hyman), 967 F.2d 1316, 1319 (9th Cir. 1992)). Other cases "have limited [Taylor's] broad rule, and have held that the debtor's exemption must be in good faith to be upheld, notwithstanding the absence of a timely objection." Hyman, 123 B.R. at 353 (quoting Munoz v. Dembs (In re Dembs), 757 F.2d 777 (6th Cir. 1985)). Thus, the exception recognized in Golden is consistent with other Ninth Circuit authority.

would not have received if they had not filed bankruptcy." Earnest, 42 B.R. at 399. "[W]hen the debtor fails to reinvest homestead proceeds within [the specified time period] . . . the proceeds should revert to the Trustee." Golden, 789 F.2d at 700. This is especially true where Debtors had control of the proceeds for one year "and did not reinvest the proceeds in a new residence." Id. at 701. Cf. In re Seyfert, 97 B.R. 590, 592 (Bankr. S.D. Cal. 1989)(stating that the Golden exception does not apply where the trustee compelled the sale of the residence postpetition, removing the proceeds from the debtor's control).

Accordingly, the bankruptcy court did not err in granting the Motion.

V. CONCLUSION

In sum, Debtors' failure to reinvest the sale proceeds within one year of the sale of their residence as required by O.R.S. § 23.240(2) caused the proceeds to lose their exempt status. Consequently, the bankruptcy court did not err in granting the Motion.

AFFIRMED.

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit Court of Appeals
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NOTICE OF ENTRY OF JUDGMENT

BAP No. OR-98-1732-RyBK

RE: GEORGE L. McGREGOR and KATHERINE M. McGREGOR

A separate Judgment was entered in this case on ______6/3/99____________.

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 by order. See Federal Rule of Appellate Procedure 41.

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.