

In the United States Bankruptcy Court

for the Northern District of Iowa

EARL M. TREADWAY and
JOYCE I. TREADWAY

Debtor(s).

Bankruptcy No. 95-50677XS

Chapter 7

DECISION RE: TRUSTEE'S OBJECTION TO EXEMPTIONS

The trustee objects to debtors' claim of exemption in a tort claim. Hearing was held September 13, 1995. Trustee Wil L. Forker appeared pro se. Donald H. Molstad appeared for the debtors.

Earl and Joyce Treadway filed their joint chapter 7 petition on April 17, 1995. Wil L. Forker was appointed as trustee. Debtors scheduled their home in Nebraska as an asset and estimated its value at \$30,000.00.

Debtors purchased the property in August 1992 for approximately \$42,000.00. They made a \$1,500.00 downpayment and financed the balance with Northwest Mortgage Co. on a 30-year mortgage. The balance due on the secured loan is approximately \$41,000.00. After the purchase, a neighbor allegedly diverted a waterway on his property, causing damage to Treadways' property and the property of others. Diverted water allegedly damaged the foundation of Treadways' home, killed trees and damaged their septic system and outbuildings. Treadways estimate that it will take approximately \$26,000.00 to repair the damage.

Treadways and others filed a state court action against the neighbor. Some of the plaintiffs are represented by legal counsel, but Treadways are not. According to Mr. Treadway, the state court has already "disallowed" plaintiffs' requests for punitive damages. Treadways testified that if the property is repaired, its value could increase to about \$49,000.00.

Treadways scheduled the tort claim at an unknown value and claimed it and the real estate as their exempt homestead under Neb.Rev. Stat. 40-101. Trustee Forker objected to the claim to the tort action. He contends that the tort claim is personalty not realty, but that if it is exempt, the exemption must be limited to the statutory amount of \$10,000.00.

Nebraska law permits a homestead to be claimed exempt. The statute states:

A homestead not exceeding ten thousand dollars in value shall consist of the dwelling house in which the claim- ant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land, to be selected by the owner, and not in any incorporated city or village, or at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village, and shall be exempt from judgment liens and from execution or forced sale, except as provided in sections 40-101 and 40-117.

Neb.Rev. Stat. 40-101.

Debtors' domicile for the 180 days prior to filing was in Nebraska and it is undisputed that they are entitled to claim exemptions under Nebraska law. It is also undisputed that the real property in question was debtors' homestead at filing and that the damage to the property occurred while it was their homestead.

The first question presented is whether a tort claim for damages to a homestead may be claimed exempt as a homestead. The statute allows a homestead claim in land, a dwelling house and appurtenances. Nebraska law provides also that a homestead claim may apply to some or all of the proceeds of the sale of a homestead. Neb. Rev. Stat. §§ 40-111, -112, and -113. There is no published court interpretation of the Nebraska homestead exemption statute which determines the question now before the court. Also, I do not find any Nebraska case that extends the homestead exemption to insurance proceeds of a damaged or destroyed homestead. Other jurisdictions extend their homestead exemption to such proceeds. Olson v. Havir Manufacturing Co. of St. Paul, 357 N.W.2d 136, 138 (Minn. Ct.App. 1984).

Exemption statutes are to be liberally construed for the purpose of effecting their objectives. Thomas v. Sternhagen, 134 N.W.2d 237, 240 (Neb. 1965). It is a reasonable interpretation of the homestead statute to extend its protections to a debtor's claim of exemption in a claim for damage to his home. If the law were not so interpreted, creditors could reach the money necessary to restore or repair a home to make it a home in fact. If successful, Treadways' state court recovery would theoretically put them in the same position they were in prior to the damage. "L" Investments, Ltd. v. Lynch, 322 N.W.2d 651, 656 (Neb. 1982). The measure of their damages may be the reasonable cost of repair, if the damage is repairable, limited by the market value of the property immediately preceding the damage. *Id.* Nonetheless, if they recover, it appears likely that they will have a homestead worth somewhere between only \$42,000.00 and \$49,000.00. The mortgage claim is approximately \$41,000.00. The claim of exemption does not appear to exceed the statutory limit of \$10,000.00. However, the value of the tort claim is unliquidated. Debtors may claim the tort claim exempt to the extent of \$10,000.00. Any excess would not be exempt and would be property of the estate, subject to any security interest of the mortgagee. Inasmuch as both the Treadways and the trustee have an interest in the tort action, the court will leave it to the parties and to the state court as to who may be parties plaintiff in the state court action.

IT IS ORDERED that trustee's objection to debtors' claim of exemption in the tort claim is sustained in part and overruled in part.

IT IS ORDERED that debtors' interest in the tort claim is Any excess recovery remains property of the estate.

SO ORDERED THIS 15th DAY OF SEPTEMBER 1995.

WILLIAM L. EDMONDS
Chief Bankruptcy Judge