

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

MICHAEL E. BREINER and
MARIAN K. BREINER

Bankruptcy No. 96-50355XS

Debtor(s).

Chapter 7

MEMORANDUM DECISION RE: TRUSTEE'S OBJECTION TO HOMESTEAD EXEMPTION

The matter before the court is the trustee's objection to each debtor's claim of homestead exemption. Hearing was held September 10, 1996 in Sioux City. Donald H. Molstad appeared as trustee. Alvin J. Ford appeared for the debtors, Michael and Marian Breiner.

Breiners, husband and wife, filed their joint petition on February 21, 1996. They claimed as exempt a homestead legally described as:

Lots 19 and 20, Block 2, Original plot (sic) of Gruver, Emmet County, Iowa.

The address of the homestead is 302 - 2nd Avenue, Gruver, Iowa.

The trustee objects to the claims for the reason that certain scheduled debts were incurred prior to the acquisition of the property as a homestead. Breiners were married in October 1994. They purchased the property by contract executed December 10, 1994. As direct evidence is lacking on this point, I infer that the debtors occupied the property as their home immediately upon purchase.

When he filed bankruptcy, Michael Breiner owed secured debts to Avco Financial Services and EMCO Credit Union. He owed income taxes to the Internal Revenue Service and to the State of Iowa. These debts and most, if not all, of his scheduled unsecured debts were incurred prior to the acquisition of the home.

Marian Breiner scheduled only two debts--a debt secured by her car and a debt to The State Bank for \$1,439.06. Both debts were incurred prior to the couple's marriage and prior to the acquisition of the home. The State Bank has re-assigned its claim to The Wooden Nickel, Ltd., the original holder. Since the filing of her bankruptcy petition, Mrs. Breiner has paid The Wooden Nickel, Ltd. \$1,000.00 as a settlement of its claim.

Other than their joint obligation on the purchase of the home, the couple has scheduled no joint obligations. None has been shown to exist.

Trustee contends that the debtors' homestead is not exempt to the extent of the \$1,439.06 owed to The Wooden Nickel, Ltd. at the time of filing and that the post-petition settlement with that creditor is irrelevant.

I conclude that the homestead is exempt from all of the pre-petition claims. Breiners may exempt from the estate any property which is exempt from execution under Iowa law on the date of filing. 11U.S.C. § 522(b); Iowa Code § 627.10. Iowa statute permits the exemption of the homestead from judicial sale. Iowa Code § 561.16. However, there are certain debts for which the homestead is liable and these include: "[t]hose contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution." Iowa Code § 561.21 (1).

Clearly, each debtor had contracted for pre-acquisition debt. The parties agree that only the pre-acquisition unsecured debt is relevant to the dispute. I conclude that the homestead is liable to judicial sale only to satisfy joint pre-acquisition debt, and there is none. The Iowa Supreme Court has held that "[t]here can be no splitting of homestead rights" and that "[a] creditor who seeks to satisfy his debt out of a homestead must be certain he has a right against the *whole* property, not just part of it." Merchants Mutual Bonding Co. v. Underberg, 291N.W.2d 19, 21 (Iowa 1980). Despite the fact that Michael Breiner does owe pre-acquisition debts, he does not owe a debt to The Wooden Nickel, Ltd. His homestead interest cannot be held liable for Marian's debts. The reverse is true also. If one spouse's homestead interest is not subject to execution, then neither is the other's. *Id.* The analysis must be made on a creditor-by-creditor basis. As there are no debts for which the couple is jointly liable, the trustee may not prevent the exemption.

IT IS ORDERED that the trustee's objection to each debtor's claim of homestead exemption is overruled. Judgment shall enter accordingly.

SO ORDERED THIS 16th DAY OF SEPTEMBER 1996.

William L. Edmonds
Chief Bankruptcy Judge