

In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

DAVID JOSEPH BROWN
Debtor(s).

Bankruptcy No. 97-01623S
Chapter 7

ORDER RE: TRUSTEE'S OBJECTION TO EXEMPTIONS

The matter before the court is the Trustee's objection to the debtor's claim of exemption in his homestead to the extent of pre-acquisition debt. Hearing was held October 14, 1997 in Sioux City. Wil L. Forker appeared for debtor David Brown. Trustee Donald H. Molstad appeared for himself. The court now issues its findings and conclusions as required by Fed.R.Bankr.P. 7052. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B).

Findings of Fact

David Brown filed his Chapter 7 petition on May 27, 1997. He scheduled an interest in real estate legally described as Lots 6 and 7, Block 19, Anthon, Woodbury County, Iowa, and locally known as 209 S. 3rd Avenue, Anthon, Iowa. He claimed the property exempt as his homestead.

Brown purchased the property at auction sale. Prior to the sale, he talked with his father and his grandmother, Genevieve Brown, about financing the purchase of the property. He also discussed a loan with Heritage Bank in Anthon; he then knew how much he could bid at the auction.

The auction took place November 6, 1993. On the day of the sale, a Saturday, Brown executed a real estate contract for a purchase price of \$11,000. Exhibit 1. He wrote a check for \$1,100 as a down payment. He had an agreement with Genevieve Brown that she would lend him money to make the check good. The following Monday, Genevieve gave David \$5,000 in cash. He immediately deposited the money in his checking account. The same day, November 8, 1993, he gave Genevieve a promissory note. Exhibit 3. He did not give her a mortgage on the property. In his bankruptcy schedules, David listed his debt to Genevieve as \$3,500.

David Brown was entitled to immediate possession of the property. Exhibit 1, ¶ 5. He moved in approximately two weeks after the sale date. He did not own any real estate prior to the time of the purchase. He had been renting other property.

Under the terms of the contract, the balance of the purchase price was due upon delivery of the abstract showing marketable title. Exhibit 1, ¶ 1. David Brown borrowed \$8,250 for purchase money from Heritage Bank and gave the bank a note and mortgage. Exhibits 5, 6. The sale closed on April 4, 1994. Exhibit 7.

Discussion

The Trustee claims that the debt to Genevieve was incurred prior to David's acquisition of his homestead, and that the homestead is not exempt to that extent. Section 561.21(1) of the Iowa Code provides:

The homestead may be sold to satisfy debts of each of the following classes:

1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.

The Trustee argues the debt owed to Genevieve is pre-acquisition debt for two reasons. First, he argues that Genevieve loaned the money on November 8, 1993, whereas David did not acquire the homestead until approximately two weeks later when he moved in. Alternatively, he argues that the debt should be considered pre-acquisition debt because Genevieve's agreement prior to the sale to assist with financing made it possible for David to bid at the sale. It is not necessary to discuss the second argument, because Iowa homestead law requires a finding that the debt is pre-acquisition debt. Iowa courts have long held that a homestead is "acquired" when the homestead right attaches by actual use and occupation of the property as the homestead, not when a person acquires title to the property. Elston & Green v. Robinson, 23 Iowa 208 (1866); Hale v. Heaslip, 16 Iowa 451 (1864). David's argument, that he purchased the property with the intent that it would be his homestead, is unavailing. Iowa case law is consistent in the view that an intention to occupy a home in the future, though subsequently carried out, is not sufficient to establish a homestead. Christy v. Dyer, 14 Iowa 438 (1863); In re McClain's Estate, 220 Iowa 638, 644, 262 N.W. 666, 669 (1935). "[P]roof of an intention to occupy property as a home, no matter how definite and conclusive, is insufficient to give that property the homestead character...." Id.

The evidence shows that David Brown did not actually use and occupy his home as his homestead until approximately two weeks after he incurred debt with Genevieve Brown. Therefore, his homestead is not exempt to the extent of his debt to her.

IT IS ORDERED that the Trustee's objection to David J. Brown's claim of homestead exemption is sustained to the extent of his debt to Genevieve Brown.

SO ORDERED THIS 21st DAY OF OCTOBER 1997.

William L. Edmonds
Chief Bankruptcy Judge