In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

NANCY A. CARLSON
Debtor(s).

Bankruptcy No. 98-03692S
Chapter 7
Contested No. 9011

OBJECTION TO HOMESTEAD EXEMPTION

Debtor Nancy A. Carlson seeks to avoid the judgment lien against her homestead held by Siouxland Economic Development Corporation (SEDC). This contested matter is a core proceeding under 28 U.S.C. § 157(b)(2)(K). Trial was held March 17, 1999 in Sioux City. Donald H. Molstad appeared as attorney for Nancy A. Carlson, the debtor. Molly M. Williams appeared as attorney for SEDC.

Findings of Fact

In 1982, Nancy James, now known as Nancy Carlson, and her former spouse purchased real property in Spirit Lake, Iowa. It is legally described as Lots 1 and 5, Block A, Plat of Methodist Camp Ground, Dickinson County, Iowa, and it is commonly known as 15111 - 212th Avenue. At the time of the purchase, the couple resided in South Sioux City, Nebraska. They used the Spirit Lake property as a vacation home.

The property comprised two lots. The house was located on Lot 5, adjacent to the lake. Lot 1 was located to the north and east of Lot 5. Its southern border was on the same longitude as the northern border of Lot 5. There were no structures on Lot 1; it was used to park cars.

Separating the lots is an alleyway running nearly north and south. The alleyway is not a paved road. It is covered by grass, a patio, a sidewalk, and a wall built to divert water runoff. The sidewalk is used to walk between Lots 1 and 5. Debtor had a garage built on Lot 1 sometime prior to 1995.

The debtor's former spouse owned and operated drugstores in South Sioux City and Sioux City. In a matter relevant to his business, the couple signed a promissory note to SEDC in April 1985. The couple divorced in approximately 1989. The debtor was awarded the lake home. She moved into it as her permanent residence in September 1989. SEDC obtained a judgment against her in the Iowa District Court for Woodbury County. SEDC transcribed its judgment to Dickinson County in 1997 under Iowa Code § 624.26.

The debtor remarried; her last name is now Carlson. Although her husband resides in the Spirit Lake home, he is not a titleholder. Nancy Carlson filed her chapter 7 petition on December 11, 1998. At the time of the filing, her debt to SEDC was $29,747.14 (docket nos. 18 and 19).

Discussion

SEDC resists Carlson's motion, contending that its judgment lien does not impair a homestead exemption to which Carlson is entitled. SEDC argues that its claim antedates Carlson's acquisition of the Spirit Lake property as a homestead, and therefore the property is not exempt from its claim. Second, SEDC contends that Carlson may not claim as exempt two non-contiguous lots.

The Bankruptcy Code permits a debtor to avoid the fixing of a judicial lien against an interest of the debtor in property "to the extent that such lien impairs an exemption to which the debtor would have been entitled" but for the lien itself. 11 U.S.C. § 522(f)(1)(A); Owen v. Owen, 111 S.Ct. 1833, 1836-37 (1991). In Iowa, "[t]he homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." Iowa Code § 561.16 (1997). Iowa's homestead statute prescribes that a homestead is liable to satisfy a debt contracted prior to its acquisition. Iowa Code § 561.21(1).

Even though a debt may antedate the acquisition of a particular homestead, the homestead may not be sold to satisfy such debt, if there has been a protected change in the homestead. The Iowa Code states that "[t]he owner may, from time to time, change the limits of the homestead by changing the metes and bounds, as well as the record of the plat and description, or vacate it." Iowa Code § 561.7. And,

> [w]here there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.

Iowa Code § 561.20.

A change in the limits of the homestead under which the new homestead might be protected could be a property-for-property exchange. American Savings Bank v. Willenbrock, 228 N.W. 295, 298 (Iowa 1929). Or, a protected change could result from the movement of a person from one homestead to another, without a party's exchange of properties or the use of proceeds from one homestead to purchase another. Shaffer Bros. v. Chernyk, 107 N.W. 801 (Iowa 1906). Indeed, "the change of homesteads contemplated by the statute includes cases wherein a person owning at the same time two pieces of property changes his residence from the one to the other." In re Johnson, 118 F. 312, 314 (N.D. Iowa 1902).

This is certainly so when such a change in residence has taken place entirely within the State of Iowa. Then the new homestead, to the extent of the value of the old homestead, has been found exempt in cases where the old homestead would have been exempt from execution. Id.; Furman v. Dewell, 35 Iowa 170, 172 (1872); Pearson v. Minturn, 18 Iowa 36, 38 (1864).

In the pending case, the properties owned by Carlson were in Nebraska and Iowa. She owned both properties at the time the debt to SEDC was incurred, but her homestead rights at that time were governed by Nebraska law. She moved and occupied the Iowa property as her residence in September 1989, after incurring the debt to SEDC.

The issue before the court is whether § 561.20 of the Iowa Code protects the Spirit Lake homestead from SEDC's debt to the extent of the value of Carlson's Nebraska home. Although there is little or no evidence as to the value of the properties on the date of the change in homestead, Carlson argues that

it does, and she cites a case completely on point decided in this court. In re Welch, A87-02433S (Bankr. N.D. Iowa Sept. 7, 1988).

Welch involved debtors who occupied a Nebraska homestead in 1971 and during the same year purchased an Iowa residential property. The debtors incurred a debt to a lender in 1980. They moved to their Iowa property, occupying it as a homestead in February 1987. In November 1987, they filed bankruptcy in the Northern District and claimed the Iowa homestead exempt. The creditor objected asserting that the Iowa property was not exempt from its pre-acquisition claim. The creditor's objection was overruled. The court ruled that pursuant to Iowa Code § 561.20, the Iowa homestead was exempt to the extent of the value of the Nebraska homestead and that the change in residences from one state to another did not prevent the application of § 561.20. Id., slip op. at 7-8.

The Welch court cited American Savings Bank v. Willenbrock, 228 N.W. 295 (Iowa 1929), for the proposition that a debtor may accomplish an interstate transfer of a homestead exemption into Iowa under § 561.20. In re Welch, slip op. at 3. Welch points out Willenbrock's reliance for such conclusion on the Eighth Circuit's decision in First National Bank v. Glass, 79 F. 706, 708 (8th Cir. 1897). Welch, slip op. at 3.

I respectfully disagree that Willenbrock supports using § 561.20 to protect an Iowa homestead from a pre-acquisition debt to the extent of the value of a homestead located in another state. Willenbrock involved a debtor's exchange of an Iowa 117-acre farm (including a 40-acre homestead) for a 40-acre homestead also located in Iowa. The fighting issue in the case was, considering property values, mortgage debt, mortgage payments and improvement costs, to what extent was the new homestead exempt from a debt incurred after the acquisition of the original homestead but before the exchange. The case did not deal with an interstate transfer of homesteads.

Willenbrock cites First National Bank v. Glass, but not for the proposition that the predecessor of § 561.20 (Iowa Code § 2981) protected an Iowa homestead to the extent of a homestead previously occupied in another state. Willenbrock cited Glass for the proposition that a creditor may not reach a debtor's exempt property merely because the debtor has obtained the property by the sale or exchange of non-exempt property. See Willenbrock, 228 N.W. at 299.

The facts in Glass were these. A debtor residing in Nebraska in 1892 had a right to a $2,000 homestead exemption. The debtor became indebted to the creditor. The debtor thereafter sold the Nebraska homestead for $6,100 and purchased a 160-acre Kansas farm which was fully exempt under Kansas law. The creditor tried to reach the Kansas property on the theory that debtor had sold the Nebraska home, which was not fully exempt, and then moved to Kansas for the purpose of defrauding the creditor and preventing the creditor from recovering its claim from the Nebraska property. The District Court of Kansas denied the creditor relief. The Circuit Court affirmed. The Court recognized the debtor's right to move from one state to another, and held that the debtor's conversion of non-exempt property to exempt property was not a fraud on the creditor. First National Bank v. Glass, 79 F. 706, 707.

Glass pointed out that the Kansas Constitution exempted from forced sale a homestead which did not exceed 160 acres of farming ground, regardless of value. 79 F. 706 (citing Kan. Const. art. 15, § 9; 1 Gen. Stat. 1889, ¶ 235). There is no indication in the opinion that the Kansas Constitution contained a pre-acquisition debt exception to the homestead exemption. The case was decided on whether there had been fraud in the acquisition of the Kansas homestead. Willenbrock cited it for that reason. I do not believe Glass provides any aid to interpreting § 561.20 of the Iowa Code.

Two cases which are instructive in deciding Carlson's motion are Rogers v. Raisor, 14 N.W. 317 (Iowa 182) and Dalton v. Webb, 50 N.W. 58 (Iowa 1891). Both cases involved changes in homestead from another state into Iowa.

Rogers had a homestead in Iowa. After incurring debt to a railway company, he sold the Iowa homestead and used part of the sales proceeds to purchase a home in Missouri. Still later, he sold the Missouri homestead and used the proceeds to purchase a homestead in Iowa. He sold it and purchased another homestead in Iowa. The creditor obtained judgment and sought to levy on the Iowa home. Rogers sought an injunction against sale. It was denied, and he appealed to the Iowa Supreme Court.

The Supreme Court recognized that under the Iowa homestead statute, "a new homestead, acquired with the proceeds arising from the sale of the old one, is exempt from judicial sale in all cases in which the former homestead would have been exempt." Rogers v. Raisor, 14 N.W. at 318. It stated, however, that each state's laws "apply only to homesteads acquired and held under its own laws, and within its territorial jurisdiction." Id. In deciding the effect of the interstate transfers of homestead, the Court assumed, because it was not pled, that Missouri's homestead statute was the same as Iowa's. Id.

The Court reasoned that when Rogers sold the Iowa homestead and took the proceeds to Missouri to buy a homestead, that Missouri would not recognize the proceeds from the Iowa sale as exempt proceeds, as Missouri would give no effect to Iowa's homestead statute. The Court stated that "the fund arising from the sale of the Iowa homestead, upon being carried into Missouri, lost the distinctive character of being the proceeds of a sale of a homestead." Id. Thus, under Missouri law, which the Court assumed to be the same as Iowa's, the Missouri homestead was not exempt from debt contracted for prior to its acquisition, regardless of the homestead source of the proceeds. Id. The same reasoning was applied when Rogers sold the Missouri home and purchased another Iowa homestead. It was held not to be exempt from debt contracted for before its purchase, despite the fact the debt was one from which the original Iowa homestead had been exempt. The source of the purchase money was not recognized as having a homestead character. Id. Dalton v. Webb was a similar case in which the Court cited to and relied on its holding in Rogers. 50 N.W. at 59.

The Court in Welch held these two decisions not to be applicable to the Welch facts. The Court explained that Rogers and Dalton were proceeds cases, and that Welch was not a proceeds case, rather it involved an owner's choice of homestead from between two properties. Welch, slip op. at 4. The Welch Court distinguished Rogers and Dalton also for the reason that the Iowa Supreme Court had not had the opportunity to consider what character the proceeds would have had if the proceeds from an out-of-state homestead had been brought into Iowa to purchase a home. Id. at 5.

I respectfully disagree that these are material distinctions. As to the latter point, I think that is what the Iowa Supreme Court did consider in Rogers. As to the former point, the Iowa Supreme Court held that the predecessor of § 561.20 did not protect an Iowa homestead from debt incurred prior to its acquisition merely because the source of the funds to purchase it came from a homestead in another state. Rogers v. Raisor, 14 N.W. at 318. Considering that holding, it is unlikely the Iowa Supreme Court would give more favorable treatment to a debtor who moves from another state into Iowa to occupy a home not purchased with proceeds of the sale of the homestead in the other state.

For these reasons, I decline to follow Welch. Based on Rogers and Dalton, I conclude that Carlson's Iowa homestead is not exempt from SEDC's claim. As it is not exempt from SEDC's claim, Carlson may not avoid SEDC's judgment lien. Because I find Iowa Code § 561.20 unavailing to Carlson, and because neither party has cited any authority beyond the statute, I do not reach the issue of whether

two lots used as a homestead may be claimed exempt despite the separation of the lots by an alley used only by the debtor.

IT IS ORDERED that Nancy A. Carlson's motion to avoid the judgment lien of the Siouxland Economic Development Corporation is denied.

SO ORDERED THIS 14th DAY OF MAY 1999.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed by U.S. mail or provided a copy of this order and a judgment to Don Molstad, Molly Williams, Wil Forker, and U.S. trustee.