

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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MARCUS GERHARDT TIBBE  
*Debtor(s).*

Bankruptcy No. 99-02072S  
Chapter 7

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### ORDER RE: TRUSTEE'S OBJECTION TO EXEMPTION

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The matter before the court is the trustee's objection to the debtor's claim of exemption in his homestead. Hearing was held on April 11, 2000 in Sioux City. Appearing were trustee Wil L. Forker and debtor Marcus Tibbe, *pro se*. The court now issues its findings of fact and conclusions of law. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

#### Findings of Fact

Marcus Tibbe filed a Chapter 7 bankruptcy petition on August 5, 1999. He scheduled an interest in real property legally described as Lot 2 in Drury, a replat of Block 10, Lawn Ridge Addition, Sioux City, Woodbury County, Iowa, and locally known as 2224 Jones Street, Sioux City. He claimed the property exempt as his homestead.

Tibbe listed in his bankruptcy schedules an unsecured debt of \$15,867.85 incurred in 1990 for student loans. Prior to incurring the student loan debt, Tibbe had purchased a home at 1211 W. 15th Street in Sioux City for \$15,000.

In September 1996, Tibbe married. He and his wife lived at 3219 Glenn Avenue, property purchased by his wife prior to the marriage. Tibbe never had an ownership interest in the Glenn Avenue property.

Tibbe rented out the 15<sup>th</sup> Street property; he later sold it. He and his wife used the proceeds to purchase the Jones Street home and a duplex as rental properties. They purchased the Jones Street property for \$52,000 under a real estate contract dated October 29, 1997. Exhibit 1.

In January 1998, Tibbe and his wife separated and later divorced. He moved from Glenn Avenue to the Jones Street property. Tibbe received the Jones Street property as his sole property in the dissolution proceedings. Tibbe is current on his contract payments. The contract balance is approximately \$47,658.

#### Discussion

The trustee objects to the debtor's claim of exemption in the Jones Street property to the extent of debt incurred prior to the acquisition of the homestead. The trustee contends that Tibbe's student loan debt is such pre-acquisition debt.

A person's homestead "is exempt from judicial sale where there is no special declaration of statute to the contrary." Iowa Code § 561.16. An exception to the homestead exemption appears in Iowa Code § 561.21(1), which provides that "[t]he homestead may be sold to satisfy debts ... 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 homestead is not exempt to the extent of pre-acquisition debt. In re Thompson, No. 95-32455XF, slip op. at 5-6 (Bankr. N.D. Iowa July 29, 1996).

A homestead is acquired when the homestead right attaches by actual use and occupation of the property as a homestead, not when a person acquires title to the property. In re Streeper, 158 B.R. 783, 788 (Bankr. N.D. Iowa 1993) (citing Hale v. Heaslip, 16 Iowa 451 (1864); Elston & Green v. Robinson, 23 Iowa 208 (1867)). A debtor may change homesteads. Iowa Code § 561.7.

Where 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. If there has been a protected change of homesteads pursuant to § 561.20, debt incurred after a homestead has been established does not become "pre-acquisition" debt as to a new homestead. The exempt status of the first homestead continues into the new homestead. Streeper, 158 B.R. at 788.

Tibbe acquired his homestead at 1211 W. 15th Street before he incurred the student loan debt. His homestead was not subject to sale for satisfaction of that debt. Tibbe moved to Glenn Avenue, then to Jones Street. If § 561.20 applies to protect his change of homesteads, his current homestead on Jones Street will be exempt as well. The trustee argues that Tibbe's current homestead is not exempt from the student loan debt because there was a "gap" between the homesteads. The court agrees.

Real property loses its character as homestead property when the owner abandons it as such. Whether a homestead has been abandoned is a question of the debtor's intent to be determined from all the facts of the case. Charter v. Thomas, 292 N.W. 842, 843 (Iowa 1940). The evidence here is that when Tibbe married and moved in with his wife at the Glenn Avenue address, he intended to abandon the 15th Street property as a homestead and did not intend to return to it. He rented the property out, then sold it to purchase other rental property.

Tibbe's wife was the sole owner of the Glenn Avenue home. While a homestead claimant need not have fee title in land, he must have an interest in real property that would support a homestead. In re Linman, No. 98-03770S, slip op. at 7 (Bankr. N.D. Iowa Aug. 20, 1999); see also Rutledge v. Wright, 186 Iowa 777, 171 N.W. 28, 30 (1919) ("It is not essential to the acquisition of a homestead ... that the claimant have a perfect or complete legal title. It is essential that he have a sufficient title to justify his occupancy. Occupancy under such a title will justify a claim of homestead right").

When Tibbe moved from Glenn Avenue in 1998, he was leaving property that was not his "old or former homestead." He had abandoned his prior homestead in 1996. Tibbe's change in homesteads, as it relates to exemption law, is factually similar to the debtor's situation in In re Conley, No. 95-62047KW (Bankr. N.D. Iowa July 15, 1996) (Kilburg, J.). Mabel Conley had been living in a duplex

she owned in Cedar Rapids. In 1993, she moved in to the home of Lester Sauer, who had had a stroke, to be his housekeeper. She rented out the duplex. In June 1995, she sold the duplex and purchased a house in Hazelton. Ms. Conley had defrauded Mr. Sauer. On August 4, 1995, he obtained a money judgment against her and an order for her to vacate his property. She immediately moved in to the home in Hazelton. The Hazelton property did not qualify as a new exempt homestead within the meaning of § 561.20 because she had first abandoned the duplex as a homestead. Id., slip op. at 9-10. The court concludes that when Tibbe moved to the Jones Street home in 1998, it was not a protected change of homesteads pursuant to Iowa Code § 561.20.

IT IS ORDERED that the Trustee's objection to Marcus Tibbe's claim of exemption in his homestead is sustained. The homestead, legally described as Lot 2 in Drury, a replat of Block 10, Lawn Ridge Addition, Sioux City, Woodbury County, Iowa, is not exempt to the extent of \$15,867.85.

SO ORDERED THIS 2<sup>nd</sup> DAY OF MAY 2000.

William L. Edmonds  
U.S. Bankruptcy Judge