

APPEAL History

(See Order Re Complaint to Determine Interest In and Partition Real Estate 11/27/2000)

Appealed to B.A.P. on 02-16-2001

In the United States Bankruptcy Court
for the Northern District of Iowa

CHARLES E. GLASER

Bankruptcy No. 00-01218-C

Debtor(s).

Chapter 7

PAUL G. SWANSON
Trustee Eastern Division
of Wisconsin

Adversary No. 00-9113-C

Plaintiff(s)

vs.

CHARLES E. GLASER and RENEE
HANRAHAN in her sole capacity
as Trustee

Defendant(s)

ORDER RE MOTION TO AMEND OR MAKE ADDITIONAL FINDINGS

This matter came before the undersigned on January 11, 2001 on Motion to Amend or Make Additional Findings. Attorney Kimberly Ashby appeared for Plaintiff Paul G. Swanson. Attorney Joseph Peiffer appeared for Debtor/Defendant Charles Glaser. After hearing arguments of counsel, the Court took the matter under advisement. The time for filing briefs has passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B).

STATEMENT OF THE CASE

On November 27, 2000, this Court entered an Order re Complaint to Determine Interest in and Partition Real Estate. Plaintiff Paul G. Swanson holds a default judgment of \$40,000 from the E.D. Wisconsin Bankruptcy Court. That court's default judgment was entered in Plaintiff's adversary proceeding asserting that property was transferred in the dissolution proceedings of Debtor and his former spouse for less than reasonably equivalent value under §548(a). Plaintiff is the chapter 7 Trustee for Debtor's former spouse, Margaret Glaser, in E.D. Wis. Bankruptcy Court. This Court on November 27, 2000, determined that the Wisconsin judgment does not recreate an interest in the

property, but rather awards Plaintiff the value of such interest. To the extent Plaintiff challenges this conclusion in his Motion to Amend Findings, the Court denies Plaintiff relief. The November 27, 2000 Order is this Court's final ruling on that issue.

Also at issue and determined in the Court's November 27, 2000 Order was Plaintiff's Objection to Exemption filed in Debtor Charles E. Glaser's bankruptcy case, No. 00-01218-C. The Court concluded that the exemption issue was moot as Plaintiff did not hold a lien on the property. Plaintiff's Motion to Amend Findings asserts that, even in the absence of a lien on the property, Debtor's homestead is not exempt from the \$40,000 judgment. Plaintiff asserts the judgment is a preacquisition debt. He relies on Iowa Code sec. 561.21(1) which excepts preacquisition debts from claims of homestead exemptions. He also asserts Debtor's homestead is not exempt from debts arising from the parties' dissolution of marriage, citing Iowa Code sec. 598.21(1).

Three courts have now determined the property interests of County, Iowa District Court, first divided the parties' interests in real estate in their dissolution action.⁽¹⁾ Mrs. Glaser later filed for bankruptcy relief in Wisconsin. Her bankruptcy trustee, Plaintiff herein, obtained the default property interests in the dissolution action and granted Mrs. Glaser's Trustee a judgment of \$40,000.⁽²⁾ This Court, refusing to rule on the appropriateness or wisdom of the Wisconsin judgment,⁽³⁾ determined in its Order filed November 27, 2000 that the judgment did not create a property interest or a lien on the property.

Plaintiff now asks this Court to re-enter the fray and determine that the Wisconsin judgment arises from a debt which relates back in time to prior to Debtor's acquisition of his homestead. In the alternative, Plaintiff asserts Debtor's homestead is not exempt from execution on the judgment as arising in a dissolution action.⁽⁴⁾ The Iowa Code excepts these types of debts from the homestead exemption. Iowa Code §§561.16, 561.21(1), 598.21(1). Although the Court is reluctant to revisit issues concerning Mr. and Mrs. Glaser's marital property, it appears that Plaintiff's current arguments merit attention. The Court intends this to be a final determination of these matters.

FINDINGS OF FACT

Debtor and Mrs. Glaser purchased the subject homestead real estate in 1974 under a real estate contract. They received a deed in fulfillment of the contract in 1980 as joint tenants. The parties' dissolution action was finalized with the January 6, 1998 filing of the Stipulation of Agreement and Decree of Dissolution of Marriage. Pursuant to the Stipulation, the filing of financial statements in the dissolution action was waived. The Stipulation provides the real estate "shall be the sole property of the Petitioner, Charles E. Glaser [Debtor herein]. Petitioner to assume the existing mortgage thereon." The parties stipulate that at the time of the Decree of Dissolution, the homestead real estate had an approximate value of \$93,600 and was subject to a first mortgage of approximately \$52,100, leaving equity of \$41,500.

Plaintiff asserts Debtor was solely responsible for the \$52,100 mortgage debt prior to the dissolution. He alleges the house had previously been paid off and the mortgage constituted a personal debt of Debtor related to his business. The record, however, is silent as to these assertions. The Court does not consider these matters to be proven on the record and, thus, will not take them into consideration in making its conclusions.

CONCLUSIONS OF LAW

A debtor is not entitled to a homestead exemption under Iowa Code sec. 561.16 and 561.21(1) as to debt contracted prior to the acquisition of the homestead. In re Streeper, 158 B.R. 783, 788 (Bankr. N.D. Iowa 1993). The homestead is nonexempt from antecedent debt regardless of whether the creditor has reduced the debt to judgment. Id.

As to dissolution debt, Iowa Code section 598.21(1) is a special declaration that overrides the homestead exemption. In re Marriage of Belz, 541 N.W.2d 894, 895 (Iowa 1995); Iowa Code §561.16. The effect is to make an Iowa homestead nonexempt from debt arising from a division of property in a dissolution of marriage action. Belz, 541 N.W.2d at 895.

Plaintiff characterizes the debt formalized in the judgment from the E.D. Wis. Bankruptcy Court on July 14, 1999 as preacquisition debt under Iowa Code section 561.21(1) or dissolution debt under section 598.21(1). The Court notes that this debt arises from a finding of constructive fraud under the Bankruptcy Code, §548(a)(1)(B), not actual fraud. In order to find that this debt either (1) predates Debtor's acquisition of rights in his homestead or (2) arises from a division of property in the parties' dissolution action, the judgment must be found to relate back in time to the filing of the parties' Decree of Dissolution and Stipulation.

Plaintiff has not presented the Court with any legal authority to make such a finding. In fairly similar circumstances, this Court considered, upon expedited hearing, whether an Iowa state court decree divesting title based on an actually fraudulent conveyance revested title retroactively to the date of the fraudulent conveyance. In re Kampen, 190 B.R. 99, 104 (Bankr. N.D. Iowa 1995) (Edmonds, J.). The Court title took effect in the state court decree. Id.

Had he intended that title revested retroactively to 1985, the date of the fraudulent conveyance, I expect he would have expressly so stated. He did not. . . . [] I choose not to expand Judge Goode's ruling to effectuate the revestment any sooner than the date of the decree.

Id. The Court concluded the date of the decree in the fraudulent conveyance action was determinative in considering whether the property was acquired by the debtors postpetition in their bankruptcy case and in considering whether certain debts were antecedent debts against which the debtors may not claim an exemption under state law. Id.

No additional or contrary relevant legal authority has been presented despite protracted proceedings in this case. In the absence of contrary authority, the Court concludes that the July 14, 1999 judgment rendered in the E.D. Wis. Bankruptcy Court does not predate Debtor's acquisition of rights in his homestead real estate and does not arise from a division of property in the parties' dissolution action. Therefore, Plaintiff's Objection to Exemption must be denied.

WHEREFORE, based on the foregoing, Plaintiff's Motion to Amend or Make Additional Findings is DENIED.

FURTHER, Plaintiff's Objection to Exemption filed in Debtor Charles E. Glaser's bankruptcy case, No. 00-01218-C is DENIED.

SO ORDERED this 6th day of February, 2001.

Paul J. Kilburg

Chief Bankruptcy Judge

1. Mrs. Glaser was not at the time represented by counsel. She did, however, sign the Stipulation, acknowledging her voluntary participation in the dissolution proceedings.
2. Mr. Glaser was properly served but failed to appear in the adversary proceeding in E.D. Wis. Bankruptcy Court.
3. Plaintiff prepared the proposed order signed by Judge McGarrity in E.D. Wis. Bankruptcy Court.
4. Plaintiff did not noticeably assert these arguments at the October 17, 2000 hearing or in his Trial Brief or Post-Trial Brief. However, he did timely raise the issues in his Objection to Exemption filed in the bankruptcy case on July 11, 2000.