

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

FILED  
U.S. BANKRUPTCY COURT  
DISTRICT OF NC

FEB - 2 1995

IN RE:

TIMOTHY LEE BRYANT f/d/b/a  
CallBox Systems,  
S.S. No. [REDACTED]-7304,

Debtor.

J. EASON GROSSMAN  
94-10476 /Chapter 7  
ORDER

THIS MATTER is before the court on the Chapter 7 Trustee's Objection to the debtor's claim of his "homestead" exemption in a house located in Tennessee. For the reasons stated below, the court has concluded that the debtor's exemption of the equity in his house in Tennessee is appropriate, and he is entitled to exempt such equity up to the \$10,000.00 maximum allowed under the North Carolina statute.

The debtor filed a voluntary Chapter 7 proceeding on October 27, 1994. On Schedule A attached to the debtor's voluntary petition, the debtor listed real property and improvements, his residence, located at 7273 Sugarwood Drive, Talbot, Tennessee 37877 and on Schedule C attached to the debtor's voluntary petition, the debtor exempted the equity in the residence up to the \$10,000.00 maximum allowed pursuant to North Carolina General Statutes Section 1C-1601(a)(1). On Schedule D attached to the voluntary petition, the debtor listed U. M. Rogers as the first lienholder on his residence with an approximate indebtedness of \$82,000.00.

Subsequent to the Chapter 7 filing, the debtor received an offer to purchase his residence which he accepted; that sale of

the residence was approved by the Court and conducted on December 20, 1994 resulting in cash equity remaining of \$8,105.07. On or about December 12, 1994, the Trustee filed a written objection to the debtor's exemption in the Tennessee real property.

It was presented to the Court by the debtor through the debtor's attorney and acknowledged by the Trustee that the debtor was a resident and had his domicile in Tennessee through 1993 and lived in the Talbot, Tennessee residence in question in this matter. Beginning in 1994, the debtor changed jobs and found himself spending more time in North Carolina to fulfill the requirements of his work. At the time of filing, the debtor spent the majority of his time, generally five days a week, in North Carolina and two days, primarily the weekend days, at his residence in Tennessee.

The debtor owns no other real estate and owns no other physical residence other than the house in Tennessee. He is domiciled in North Carolina and stays in a rented apartment in Henderson County, North Carolina. The debtor has spent the majority of the last 180 days in North Carolina, has a vehicle registered in North Carolina, is licensed to do business in North Carolina and pays North Carolina income and Henderson County property taxes. Most of the debtor's household goods remained in his house in Tennessee until the sale, and the debtor considered the home in Tennessee to be one of his residences. He returned to it consistently throughout the year of 1994 and resided there primarily on the weekends.

The court finds that the debtor is a domiciliary of Henderson County, North Carolina pursuant to 28 U.S.C. Section 1408(1), and that he has filed his voluntary Chapter 7 petition under Title 11, U.S. Bankruptcy Code, in the proper forum. No one has challenged the venue of the case or the status of the debtor as a domiciliary of North Carolina. As a domiciliary and a resident of North Carolina the debtor is entitled to claim exemptions under the state's laws pursuant to 11 U.S.C. Section 522(b).

Domicile "is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there." Mississippi Bank of Choctaw Indians v. Holyfield, 109 S. Ct. 1597, 1608 (1989). By comparison, residence may refer to living in a particular locality without the intent to make it a fixed and permanent home. Black's Law Dictionary 1176 (6th ed. 1990). A person can have but one domicile, but may have several residences. Williamson v. Osenton, 34 S. Ct. 442, 443 (1914).

At issue is whether a domicilliary and resident of North Carolina may claim a homestead exemption pursuant to N.C. Gen. Stat. §1C-1601(a)(1) in a residence located in Tennessee. The North Carolina homestead exemption provides that:

(a) Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:

(1) The debtor's aggregate interest, not to exceed ten thousand dollars (\$10,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence. . . .

N.C.Gen.Stat. §1C-1601(a)(1)(emphasis added)(1991).

There is no statutory definition of "residence" for purposes of the exemption, and there is no requirement that the homestead exemption be utilized on real property or personal property located in North Carolina. In determining the scope of a state created exemption, the bankruptcy court must look to state law. In re McManus, 681 F.2d 353 (5th Cir.1982); In re Reed, 700 F.2d 986 (5th Cir. 1983); Cheeseman v. Nachman, 656 F.2d 60 (4th Cir.1981); 3 Collier on Bankruptcy, (15th ed. § 522.23 (1984).

The general rule is that North Carolina's exemption laws are to be liberally construed in favor of the exemption. In Re Laues, 90 B.R. 158, 161 (Bankr. E.D.N.C. 1988). The homestead exemption in particular is a favorite of the law and will be sustained whenever possible. Pence v. Price, 192 S.E. 99 (N.C. 1937).

The North Carolina homestead exemption is conditioned upon continued ownership of the property and continued occupancy as a residence by the debtor or the debtor's family. In re Love 42 B.R. 317, 318 (Bankr. E.D.N.C. 1984), aff'd, 54 B.R. 947 (D.C.N.C. 1985). Once the debtor ceases to use the exempt property as a residence the right to the exemption ceases. Id.

There is no North Carolina law on a debtor's ability to claim a homestead exemption in property located outside of the state, but using the standards outlined above, this court finds that the debtor has continually occupied the Tennessee property

as a residence sufficient to claim a North Carolina homestead exemption.

The debtor lived in the Tennessee residence through 1993. In 1994, the debtor changed jobs, and his new position required him to spend significant periods of time in North Carolina. At the time of filing, the debtor spent five days a week in North Carolina and two days, primarily the weekend days, at his residence in Tennessee.

The debtor owns no other real estate, no other physical residence other than the house in Tennessee and resides and is domiciled in North Carolina in a rented apartment in Henderson County, North Carolina. Most of the debtor's household goods remained in his house in Tennessee until its sale, and the debtor considered the home in Tennessee to be one of his residences, and returned to it consistently throughout the year of 1994. This court finds that the debtor's contacts with the home in Tennessee were sufficient throughout the year 1994 and before to establish that house as a residence and entitle him to the exemption.

The court is aware of inconsistent authority from other jurisdictions that have addressed this issue. Some courts have decided that a debtor may not claim a homestead exemption in property located outside of the state. See, In re Peters, 91 B.R. 401, 404 (Bankr. W.D. Tex. 1988) (statute specifically refers to "all homesteads in this state" (emphasis added)); and In re Halpin, 1994 WL 594199 (Bankr. D. Idaho 1994) (no clear state law on the issue); while another court found that a debtor could

claim the state exemption. See, In re Grimes, 18 B.R. 132 (Bankr. D. Maryland 1982).

This court is persuaded by the economic reality of the times and is not compelled to penalize a debtor whose job required him to spend a portion of his time in North Carolina, (a time sufficient to require him to file his Chapter 7 bankruptcy here), while spending the remaining time at his residence in Tennessee. The debtor's use of his home in Tennessee was continual and his retention of a majority of his household belongs there is consistent with use as a residence. While the debtor physically occupied the home only two days out of the week, this use is not like that of a vacation home in that it was not purchased with only weekend use in mind, and it was not frequented on a seasonal basis in favor of some other piece of real property. See, In re Tomko, 87 B.R. 372 (Bankr. E.D. Pa. 1988).

The debtor occupied the Tennessee property in a manner more closely akin to circumstances that have not constituted an intentional "abandonment" of the homestead. See, In re Joy, 5 B.R. 681, 684 (Bankr. D. Minn. 1980) (divorce); In re Kingman, 1993 WL 35958 (Minn. App. 1993) (divorce); In re Thomas, 27 B.R. 367 (Bankr. S.D.N.Y. 1983) (debtor thrown out by abusive husband); and In re Moody, 77 B.R. 580 (Bankr. S.D. Texas 1987), aff'd, 862 F.2d 1194, cert. den., Moody v. Smith, 112 S. Ct. 1562 (1988) (health concerns).

Based upon the foregoing Findings of Fact and Conclusions of Law, it is therefore ORDERED, ADJUDGED and DECREED that:

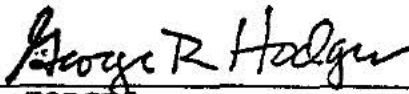
1. The Court has jurisdiction over all parties and matters in this case.

2. The debtor is a domiciliary of North Carolina with residence in both North Carolina and having a house as a residence in Tennessee.

3. The debtor is entitled to claim the North Carolina exemptions, specifically, North Carolina General Statute, Section 1C-1601(a)(1) up to the \$10,000.00 equity in the homestead exemption.

4. The debtor is not entitled to the exemption pursuant to North Carolina General Statutes, Section 1C-1601(a)(2) to the extent that the (a)(1) exemption exceeds the \$3,500.00 amount indicated in that exemption paragraph.

This the 31<sup>st</sup> day of January, 1995.

  
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GEORGE R. HODGES  
Chief Bankruptcy Judge Presiding