

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 15-14892
)
ROBERT F. AERNI and) Chapter 7
ELAINE A. AERNI,)
Debtors.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**

The debtors Robert and Elaine Aerni, who live in one unit of their four-unit apartment building, claim a homestead exemption in the whole property. The chapter 7 trustee agrees that their occupied unit is exempt, but objects to the rest of the exemption under Ohio law. For the reasons stated below, the objection is overruled and the exemption is allowed.¹

JURISDICTION

Jurisdiction over this matter exists under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B), and it is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011) and its progeny.

STIPULATED FACTS²

The debtors' scheduled assets include real property consisting of a four-unit rental property on one parcel (PPN:313-25-097) which is zoned as "Class C" commercial property (the

¹ Docket 17, 26, 33, 34.

² Docket 32.

property). The debtors claim a homestead exemption in the amount of \$101,300.00.

The debtors occupy one unit, their adult, non-dependent daughter occupies another, and the other two are used as rentals. The debtors claimed the property as business rental property on their 2014 federal income tax return and reported rental income as business income. They deducted advertising, vehicle expenses, insurance, maintenance, travel, entertainment, and other expenses relating to the property. Their tax returns reflect the property as both income producing real estate and as rental property, and they paid self-employment tax on the income from the property.

In 2004, the debtors borrowed funds for the property through the HOME program (HOME Investment Partnerships Program), which provides funds for assisted rental housing projects. In connection with that transaction, they granted the Cuyahoga County Board of Commissioners a mortgage on the property and signed a Declaration of Restrictive Covenants.

11 U.S.C. § 522

The debtors' interest in the property became property of the chapter 7 bankruptcy estate when they filed their case. *See* 11 U.S.C. § 541(a)(1) (providing generally that the property of the chapter 7 estate includes "all legal or equitable interests of the debtor[s] in property as of the commencement of the case."). The Bankruptcy Code permits debtors to exempt certain property from the bankruptcy estate so that they have the means for a fresh economic start. *See* 11 U.S.C. § 522. Under § 522(b)(2), states may opt-out of the federal bankruptcy exemptions and require debtors to use the state's exemptions instead. Ohio has done so. *See* OHIO REV. CODE § 2329.662. Consequently, debtors filing in Ohio may only claim the exemptions allowed under

Ohio law and under applicable non-bankruptcy federal law. 11 U.S.C. § 522(b)(3)(A). This includes Ohio’s homestead exemption found in Ohio Revised Code § 2329.66(A)(1)(b).

A trustee who objects to a claim of exemption has the burden of proving that the exemption is not properly claimed. FED. R. BANKR. P. 4003(c).

OHIO REVISED CODE § 2329.66

The Ohio legislature created the exemption statute to protect funds intended primarily for the maintenance and support of a debtor's family. *See Daugherty v. Cent. Trust Co. of Ne. Ohio, N.A.*, 504 N.E.2d 1100, 1104-5 (Ohio 1986) (internal quotation marks and citation omitted) (“We realize that the longstanding purpose of Ohio's exemption statute is to protect from creditors' legal process those debtors with minimal assets . . . for the benefit of the children as well as for the parents, in order that the children may be protected against the dangers to which they would be exposed without those household facilities which make the family relation possible.”); *see also In re Way*, 2014 WL 4658745 at * 3 (Bankr. N.D. Ohio 2014) (internal quotation marks and citations omitted) (“The overarching policy justification for bankruptcy exemptions is to ensure that debtors and their families have sufficient means to support themselves through difficult times without becoming a public charge.”).

OHIO REVISED CODE § 2329.66(A)(1)(b)

Section 2329.66(A)(1)(b)—the homestead exemption—provides for an exemption of up to \$132,900.00³ of an interest “in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence.” OHIO REV. CODE § 2329.66(A)(1)(b). The

³ This is the current homestead exemption amount. *See* OHIO REV. CODE § 2329.66(B) (providing for adjustment of the exemption amount by the Ohio Judicial Conference); and Ohio Judicial Conference website at <http://www.ohiojudges.org/> (“Exemptions” hyperlink).

term “parcel” is statutorily defined as “a tract of real property as identified on the records of the auditor of the county in which the real property is located.” OHIO REV. CODE

§ 2329.66(A)(1)(c). The term “residence” means that the premises serves as a debtor’s principal place of dwelling. *See In re Aubiel*, 534 B.R. 300, 304-5 (B.A.P. 6th Cir. 2015) (discussing Ohio law).

THE POSITIONS OF THE PARTIES

The trustee takes the position that the exemption should be limited to the one unit in which the debtors live. He cites to the commercial nature and use of the rest of the property, and relies on case law interpreting other states’ exemption statutes to support this result. He also argues that interpreting the provision to permit the exemption as to the entire property would lead to an absurd result.

According to the debtors, the language of the exemption statute is clear and requires only two things: (1) that the property be one parcel; and (2) that the property be used as a residence by the debtors. They contend they meet both requirements, making the property exempt in its entirety.

DISCUSSION

I.

Because there is no Ohio law on this issue, this court must make its best prediction as to how the Ohio Supreme Court would resolve it. *Baumgart v. Alam (In re Alam)*, 359 B.R. 142, 147 (B.A.P. 6th Cir. 2006). That court applies the following analysis:

Our role in cases of statutory construction is to determine legislative intent by looking to the language of the statute and the purpose to be accomplished by the statute. *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St.3d 510, 2010-Ohio-2550, 929 N.E.2d

448, ¶ 20. Where the statute's meaning is clear and unambiguous, we apply the statute as written. *Id.* This court must give effect to the words used, refraining from inserting or deleting words. *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 53–54, 524 N.E.2d 441 (1988). “No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.” *Boley*, ¶ 21, quoting *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 373, 116 N.E. 516 (1917). In the absence of a definition of a word or phrase used in a statute, the words are to be given their common, ordinary, and accepted meaning. *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948), paragraph five of the syllabus.

In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land Encumbered with Delinquent Tax Liens, 18 N.E.3d 1151, 1154 (Ohio 2014). “Simply stated, ‘an unambiguous statute means what it says.’” *State of Ohio v. Waddell*, 646 N.E.2d 821, 822 (Ohio 1995) (quoting *Hakim v. Kosydar*, 359 N.E.2d 1371, 1373 (Ohio 1977)).

On the other hand, when a statute is ambiguous the court must use other means to determine the legislative intent. “However, ambiguity in a statute exists only if *its language* is susceptible of more than one reasonable interpretation.” *Dunbar v. State of Ohio*, 992 N.E.2d 1111, 1116 (Ohio 2013) (emphasis in original). To determine whether a statute is ambiguous, its provisions must be considered in context and ordinary rules of grammar must be applied. *Ohio Neighborhood Fin., Inc. v. Scott*, 13 N.E.3d 1115, 1122 (Ohio 2014).

If a statute is ambiguous, Ohio Revised Code § 1.49 identifies factors courts should consider in determining legislative intent. *Symmes Twp. Bd. of Trustees v. Smyth*, 721 N.E.2d 1057, 1063 (Ohio 2000). Those factors include: “(A) The object sought to be attained; (B) The circumstances under which the statute was enacted; (C) The legislative history; (D) The common law or former statutory provisions, including laws upon the same or similar subjects; (E) The

consequences of a particular construction; [and] (F) The administrative construction of the statute.” OHIO REV. CODE § 1.49. Additionally, the Ohio Code provides that remedial laws are to be liberally construed to promote their purpose. OHIO REV. CODE § 1.11. Ohio exemptions, therefore, are liberally construed in favor of debtors and “any doubt in interpretation should be in favor of granting the exemption.” *In re Alam*, 359 B.R. at 148.

Although both parties cite to case law construing other states’ homestead exemptions, that case law is not helpful here because it discusses exemptions using different language and/or having different legislative history.⁴ Instead, as explained above, the proper focus is on § 2329.66(A)(1)(b), which by its terms allows a debtor to exempt his or her interest in “one parcel . . . of real . . . property that the person . . . uses as a residence.” The legislature could not have been more direct in stating that a debtor must prove just two things in order to claim the exemption: (1) that the property is one parcel; and (2) that the debtor uses the property as a residence. *See In re Kimble*, 344 B.R. 546, 552-53 (Bankr. S.D. Ohio 2006) (noting that § 2329.66(A)(1)(b) imposes these two requirements).

Here, the debtors meet both requirements. The parties stipulated that the property is one parcel and the trustee concedes that the debtors use the property as their residence. While the

⁴ For example, the trustee cites *In re Aliotta*, 68 B.R. 281 (Bankr. M.D. Fla. 1986), a case where the debtors owned a 4-unit apartment building, living in one unit and renting the others. In deciding that Florida law did not permit the debtors to exempt the whole building, the court relied on a recent change in Florida law. Where previously the Florida Constitution had a homestead exemption for a residence *and* business property, the Constitution as amended deleted any reference to business property, thus showing the legislature’s “unequivocal intent” to limit the exemption to the residence. Ohio does not have any comparable history. While the trustee also cites one bankruptcy case that discusses Ohio law, the discussion is in the context of oil and gas rights, which raise discrete issues of property law. *See In re Way*, 2014 WL 4658745 (Bankr. N.D. Ohio 2014).

trustee contends that the exemption should nevertheless be limited to the portion of the parcel of property in which the debtors reside, that limitation is not found in the statutory language. Interpreting the statute in that way would require this court to insert additional limiting language, which would be contrary to Ohio's rules of statutory interpretation.

The trustee argues that this construction will lead to the absurd result of allowing a debtor who owns a 223 unit apartment building located on one parcel to live in one unit, rent out 222 units, and claim an exemption in the entire building. This argument is not compelling, however, because the exemption is capped at a specified amount (currently \$132,900.00). Therefore, a debtor may only exempt that amount regardless of the size of the parcel or the type of structure in which the debtor resides.

II.

Additionally, even if the court were to find that the language used in § 2329.66(A)(1)(b) is ambiguous on this point, it is unlikely that the Ohio legislature intended to limit the exemption as the trustee suggests based on these indicia of legislative intent:

One, the trustee's proposed construction of the exemption is restrictive and exemptions are to be liberally construed in favor of debtors.

Two, the purpose of the homestead exemption is to allow debtors to exempt the value of certain property for their families to keep them from being impoverished. The evolution of the homestead exemption in Ohio shows a legislative intent to expand this protection because the amount that a debtor can exempt has risen from \$5,000.00 before 2008 to \$132,900.00 today. *See In re Depascale*, 496 B.R. 860, 866 (Bankr. N.D. Ohio 2013) (discussing the legislative history resulting in this increase). And the amount is to be adjusted upward every three years to

reflect any increase in the consumer price index. OHIO REV. CODE § 2329.66(B). Therefore, construing § 2329.66(A)(1)(b) to limit the exemption based on the type of property that serves as a debtor's residence is inconsistent with the legislative purpose.

Three, as the debtors note, the Ohio legislature “knows how to limit residential protections when it wishes.”⁵ It did just that when it addressed actions to enforce deficiencies on money judgments as to debts secured by a mortgage on a debtor's homestead. In that context, the legislature enacted a provision that limited those actions. *See* OHIO REV. CODE § 2329.08 (limiting the enforcement of “[a]ny judgment for money . . . upon any indebtedness which is secured or evidenced by a mortgage, or other instrument in the nature of a mortgage, on real property or any interest therein, upon which . . . there has been located a dwelling or dwellings for not more than two families which has been used in whole or part as a home or farm dwelling or which at any time was held as a homestead by the person who executed or assumed such mortgage or other instrument . . .”); *see also* OHIO REV. CODE § 323.151 (defining the term “homestead” for purposes of the homestead reduction for real property taxes). Additionally, the legislature recently amended § 2329.66 to define the term “parcel” for the first time. *See* Ohio Legacy Trust Act, H.B. 479, 130th Cong. (Ohio 2012). Before that, Ohio case law broadly defined the term to include “any land, regardless of legal identification numbers, as long as the land is contiguous and used by the debtor as a single residence.” *In re Way*, 2014 WL 4658745 at *5. The statutory definition is narrower and limits the term to a tract of real property as identified on the records of the county auditor.

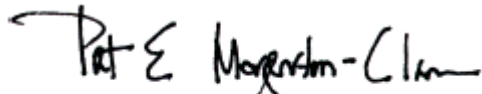
⁵ Docket 34 at 2.

Based on these indica, this court concludes that the Ohio legislature did not limit the exemption in the way the trustee suggests, meaning that the debtors are entitled to their claimed exemption.

CONCLUSION

For the reasons stated, the trustee's objection to the debtors' claim of exemption is overruled and the exemption is allowed.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge