

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 00-60293
)	
EVE ROSEANN BRIGGS,)	CHAPTER 7
Debtor.)	
)	ADV. NO. 01-6002
)	
ANNE PIERO SILAGY,)	JUDGE RUSS KENDIG
TRUSTEE,)	
Plaintiff,)	
)	
v.)	
)	
EVE ROSEANN BRIGGS, et al.,)	
Defendants.)	MEMORANDUM OF DECISION

This matter came before the court upon trustee’s motion for authority to compromise controversy pursuant to Fed. R. Bankr. P. 9019 and trustee’s objection to exemption. Trustee filed her motion for authority to compromise controversy May 10, 2001. Debtor filed her objection May 16, 2001. Bank One, N.A., filed its response to debtor’s objection May 16, 2001. Trustee filed the objection May 24, 2001. The court held a hearing on the motion and objection June 4, 2001. Appearing were Anne Piero Silagy, the chapter 7 trustee, Donald R. Little, counsel for the debtor, Amy L. Arrighi, counsel for Bank One, and Eve Roseann Briggs, the debtor. For the reasons which follow, the trustee’s compromise shall be **APPROVED**.

FACTS

Trustee commenced an adversary proceeding seeking to avoid the lien on debtor’s home held by Bank One, alleging the mortgage executed by debtor was not properly witnessed as required by Ohio Revised Code §5301.01. Trustee sold the property at auction, yielding net proceeds of approximately \$10,900.00. Bank One offered to compromise the controversy. Trustee consented to accept \$3,000.00 in full and complete satisfaction of the estate’s claims in exchange for Bank One’s retention of the balance of the proceeds of approximately \$7,900.00. Trustee seeks approval of this compromise.

Debtor's objection asserted debtor's homestead exemption rights and requested that debtor receive \$5,000.00 of the proceeds. Debtor argued that she was given inadequate notice of trustee's auction and its effect on her homestead rights. Debtor had asserted an unidentified homestead exemption right in her answer to the trustee's adversary complaint, but otherwise did not claim any exemption until she amended her Schedule C (Property Claimed As Exempt) to reflect her \$5,000.00 homestead exemption claimed under Ohio Revised Code §2329.66 (A)(1)(b). The amendment was filed May 16, 2001. Debtor's answer was filed February 14, 2001. Debtor's petition was filed February 9, 2001.

Bank One's response asserted that any homestead exemption rights held by debtor are subject to the bank's lien, which exceeds the fair market value of debtor's home. Accordingly, Bank One argued that there are insufficient funds to satisfy debtor's exemption rights following the satisfaction of the bank's lien and asks that trustee's compromise be approved and that debtor's objection be overruled.

Trustee objected to debtor's claimed exemption, arguing that any estate recovery by the trustee's avoidance of the lien is not exempt under 11 U.S.C. §522(g). The trustee argued further that any auction proceeds retained by the estate represent the payment of an agreed administrative expense and are not subject to the debtor's asserted exemption.

DISCUSSION

11 U.S.C. §522(g) provides that where the trustee recovers property for the benefit of the estate following the exercise of trustee's avoidance powers pursuant to §§ 544, 550 and applicable state law, the debtor may still claim an exemption in the recovered property "to the extent that the debtor could have exempted such property . . . if such property had not been transferred, if ... such transfer was not a voluntary transfer of such property by the debtor . . . " 11 U.S.C. §522(g).

"There is no statutory definition of voluntariness, so the courts must provide some guidance on that issue." 4 Collier on Bankruptcy ¶ 522.12[2][b], pp. 522-99 (15th ed. rev. 1998). Courts have consistently held that the grant of a consensual lien or other security interest in debtor's homestead represents a voluntary transfer. See In re: Young, 238 B.R. 112 (6th Cir. B.A.P. 1999) (voluntary nature of debtor's transfer of homestead property precluded debtor's raising his homestead exemption in order to reduce trustee's recovery after avoidance of transfer by trustee); In re: Kildow, 232 B.R. 686 (Bankr. S.D. Ohio 1999) (debtor could not refute voluntary nature of transfer as he intended to grant security interests and there was no issue that the liens were consensual); In re: Sutton, 1994 WL 127597 (Bankr. N.D. Ohio March 25, 1994) (debtor's voluntary transfer of mortgage to lender would not permit debtor's recovery or avoidance under 11 USC §522(g)(1) or (h)).

The trustee recovered assets for this estate through the exercise of avoidance powers under 11 U.S.C. §544. Debtor may not assert her homestead exemption rights with respect to this recovery because her prepetition mortgage granted to Bank One was clearly a voluntary transfer and consensual lien. Debtor provided no evidence to the contrary. Accordingly, debtor may not claim her homestead exemption in the assets recovered by the trustee.

The court need not address the issue of the timeliness of the claim of exemption.

CONCLUSIONS

The court finds the compromise proposed by the trustee to be fair, reasonable and in the best interest of this estate and its creditors. Trustee's motion to compromise is well taken and should be granted. Debtor's objection, asserting her homestead exemption rights, is not well taken and should be denied. The responses to debtor's objection filed by the trustee and Bank One are well taken and should be sustained.

An appropriate order shall enter.

RUSS KENDIG
United States Bankruptcy Judge

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EVE ROSEANN BRIGGS, et al.,)	
Defendants.)	ORDER

This matter came before the court upon trustee's motion for authority to compromise controversy and trustee's objection to exemption. The court held a hearing on the motion and objection June 4, 2001 and took the matter under advisement.

IT IS HEREBY ORDERED that trustee's motion for authority to compromise controversy shall be **GRANTED**; and

IT IS FURTHER ORDERED that debtor's objection to trustee's motion and debtor's claim of exemption shall be **OVERRULED**.

RUSS KENDIG
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this ____ day of June, 2001, the above Memorandum of Decision and Order were sent via regular U.S. Mail to:

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