

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:) Case No. 04-30505
)
John D. Campbell,) Chapter 7
)
Debtor.)
) JUDGE MARY ANN WHIPPLE

ORDER GRANTING MOTION OBJECTING TO EXEMPTIONS

This matter is before the court after an evidentiary hearing on the Trustee's Motion Objecting to Exemption [Doc. # 15] and Debtor's opposition [Doc. # 19]. The Trustee objects to Debtor's homestead exemption claimed under Ohio Revised Code § 2329.66(A)(1) in a house located in Brooklyn, Michigan. The Trustee argues that Debtor did not reside at the Brooklyn, Michigan home at the time he filed his petition and, therefore, is not entitled to the claimed Ohio exemption. Although the court finds that Debtor did reside in Brooklyn, Michigan at the time his petition was filed, for the reasons that follow, the Trustee's motion will be granted.

FACTUAL BACKGROUND

Debtor filed his Chapter 7 petition in this court on January 30, 2004.¹ At the hearing, he testified that on the date of filing he resided at 220 Cedar St., Brooklyn, Michigan and had resided there for approximately eight months. After separating from his wife in 2003, Debtor moved from their marital home located at 168 N. Goodrich, Oregon, Ohio, to a home owned by Debtor and located at 220 Cedar Street, Brooklyn, Michigan. As part of the divorce proceedings, the Ohio property was awarded to Debtor's ex-wife and the Michigan property was awarded to Debtor. Debtor no longer has any interest in the Ohio property.

¹ Based on the court's findings set forth below as to Debtor's domicile for the longer part of the 180 days preceding the commencement of this case, venue of the case was not initially proper in this court. *See* 28 U.S.C. § 1408(a). The court later, however, denied Debtor's motion to transfer the case to the Eastern District of Michigan. [Doc. ## 25, 30].

Debtor testified that he had decided in December 2003 to file for relief under Chapter 7 of the Bankruptcy Code and was advised, correctly so, that his Michigan home would be sold by the Chapter 7 Trustee. As a result, he began cleaning and preparing the house for sale. He also made arrangements with his ex-wife to move back into the Ohio home in order to facilitate the sale. He testified that he moved after filing his bankruptcy petition. At the time of the hearing, Debtor had a Michigan driver's license and Michigan license plates on the vehicle he leased just a few weeks before filing his Chapter 7 petition.

Nevertheless, Debtor's petition appears to contradict his testimony in that it indicates that his "street address" was 168 N. Goodrich, Oregon, Ohio. In addition, Debtor's Statement of Financial Affairs required him to "list all premises which [he] occupied during [the two years immediately preceding the commencement of the case] and vacated prior to the commencement of the case." [Doc. #1, Petition, Statement of Financial Affairs, ¶ 15]. Debtor responded by listing the home in Brooklyn, Michigan. But Debtor's petition also indicates that his mailing address is the Brooklyn, Michigan address. Indeed, court notices have been sent to that address. [Doc. #3, Notice of Commencement of Case].

The court, having observed Debtor and heard his testimony, finds his testimony credible that he still lived at the Brooklyn, Michigan address on the date he filed his bankruptcy petition. The court puts little weight on his designation of the Ohio address as his street address in his petition or his response regarding vacating the Michigan property. At the time of filing his petition, he still received his mail at the Brooklyn, Michigan address. At the hearing, Debtor testified that he intended to reside in Ohio after filing his petition and, in fact, he did move to the Oregon, Ohio address shortly thereafter. The court finds it more likely than not that his responses on the petition reflected this post-petition intent and not what had actually occurred.

LAW AND ANALYSIS

The Trustee's motion and argument at the hearing on the motion raise the following two distinct issues: (1) whether Debtor may claim any exemptions under Ohio law, and (2) regardless of which state's exemption law is applied, is Debtor entitled to a homestead exemption in the Michigan property. For the following reasons, the court concludes that Debtor is not entitled to exemptions under Ohio law but that he would be entitled to claim a homestead exemption under either Michigan or federal law. But because only Ohio exemptions are now claimed by Debtor in his filed Schedule C [Doc. #1, Schedule C], the Trustee's motion objecting to the claimed homestead exemption under Ohio law will be granted.

In deciding which state's exemption laws apply, the Bankruptcy Code directs the court and

the parties to look back to the facts existing for the 180 day period preceding the commencement of the case. Section 522 of the Bankruptcy Code permits a debtor to exempt from property of the estate the following property:

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place. . . .

11 U.S.C.A. § 522(b)(1) and (2)(A). The plain language of this provision provides that debtors may only exempt property according to the laws of the state in which they were *domiciled* for 91 or more of the 180 days before the commencement of the bankruptcy case. *Drenttel v. Jensen-Carter (In re Drenttel)*, 309 B.R. 320, 324 (B.A.P. 8th Cir. 2004); *see Furr v. Lordy (In re Lordy)*, 214 B.R. 650,662 (Bankr. S.D. Fla. 1997). In turn, "domicile," for purposes of § 522(b)(2)(A), is defined as "actual residence with a present intention to remain there." *In re Lusiak*, 247 B.R. 699, 703 (Bankr. N.D. Ohio 2000)(also observing that domicile and residence are different concepts).

The evidence at the hearing was uncontested that Debtor was domiciled in Michigan for the majority of the 180-day period immediately preceding the filing of his petition. The relevant statutory time period dates back to July 2003. Debtor had moved to the Michigan property some eight months before he filed for bankruptcy. He had a Michigan driver's license and Michigan license plates on his car. He did not decide to file for bankruptcy until sometime during December, 2003. Rather, as the court has found, Debtor did not move to Ohio until after his petition was filed. These facts all demonstrate his actual presence in Michigan, coupled with an intent to remain there, that persisted for the majority of the 180 day period before the commencement of the case on January 30, 2004. Debtor is therefore not entitled to claim any exemptions under Ohio law because he was domiciled in Michigan during the relevant statutory time period. For this reason, the Trustee's motion objecting to Debtor's claimed homestead exemption under Ohio law will be granted.

Nevertheless, because Debtor was domiciled in Michigan for the longer portion of the 180-day period than any other place immediately preceding the date of filing his petition, he is entitled to choose either the exemptions under Michigan law or those provided in § 522(d). *In re Wickstrom*, 113

B.R. 339, 348, n. 11 (Bankr. W.D. Mich. 1990) (indicating Michigan has not chosen, under § 522(b)(1), to "opt-out" of the federal bankruptcy exemptions). In contrast to the look back period to determine what exemption law applies, a debtor's exemption rights in particular property are determined as of the date the bankruptcy petition was filed, *In re Lude*, 291 B.R. 109, 110 (Bankr. S.D. Ohio 2003) (citing *Armstrong v. Peterson (In re Peterson)*, 897 F.2d 935 (8th Cir.1990)). Michigan's \$3,500 homestead exemption applies to any house owned and occupied by a resident of Michigan. Mich. Const. art. 10, § 3; Mich. Comp. Laws Ann. § 600.6023(1)(h) (West 2000). Alternatively, under § 522(d), Michigan debtors may exempt up to \$17,425 of their interest in real property that the "debtor uses as a residence. . . ." 11 U.S.C. § 522(d).

Other courts have held that, since the date of filing is the critical date, moving out of property *after* the commencement of a case does not destroy a debtor's entitlement to a homestead exemption, even in situations where the intention to do so was formed pre-petition. *In re Knudsen*, 80 B.R. 193, 196 (Bankr. C.D.Cal. 1987); *In re Zohner*, 156 B.R. 288 (Bankr. Nev. 1993). And here, Debtor's testimony showed that his move was directly connected with administration of the bankruptcy estate and the impending forced sale of the property by the Trustee, with whom the Debtor has a statutory duty of cooperation under 11 U.S.C. § 521(3). This is not the more typical homestead exemption dispute scenario, about which courts have expressed understandable concern from a policy standpoint, where a debtor engages in exemption shopping to take advantage of a more advantageous exemption statute. *See Lusiak*, 247 B.R. at 703; *Tanzi v. Comerica Bank-California (In re Tanzi)*, 297 B.R. 607 (B.A.P. 9th Cir. 2003). Creditors had been dealing with Debtor in Michigan for an extended period of time. As to the car lease, one creditor extended new credit to Debtor in Michigan shortly before the commencement of the case. So creditors' reasonable expectations would have been that Michigan or federal exemptions would apply should Debtor seek a fresh start through bankruptcy.

In light of the court's finding that Debtor still lived at the Brooklyn, Michigan residence on the date

of filing, it appears that either the Michigan or federal homestead exemption would apply². Debtor must, however, amend Schedule C of his bankruptcy petition to properly claim these

exemptions. *See* Fed. R. Bankr. P. 4003 and 1009(a).

THEREFORE, for the foregoing reasons, good cause appearing

IT IS ORDERED that the Trustee's Motion Objecting to Exemptions [Doc. # 15] be, and hereby is, **GRANTED**.

/s/ Mary Ann Whipple

Mary Ann Whipple
United States Bankruptcy Judge

² The court acknowledges that this is likely dicta in the specific procedural posture in which this case is now before the court. But this issue was clearly part of the issues and arguments addressed during the hearing and all of the relevant facts have been elicited as a matter of the record. The court believes that the parties are entitled to and will benefit from knowing the court's thinking on this issue.