

In re Hampton

United States Bankruptcy Court, S.D. Florida
Case No. 17-17068-SMG
Signed June 18, 2020
616 B.R. 917

***918** Mark Bonacquisti, Zachary Malnik, Plantation, FL, for Trustee.

Robert F. Reynolds, Ft. Lauderdale, FL, Jeffrey H. Tromberg, Florida Debt Relief Center, LLC, Boca Raton, FL, for Debtor.

ORDER (I) GRANTING DEBTOR'S MOTION FOR SUMMARY JUDGMENT, (II) OVERRULING TRUSTEE'S AMENDED OBJECTION TO DEBTOR'S CLAIMED HOMESTEAD EXEMPTION, AND (III) AUTHORIZING RELEASE OF HOMESTEAD SALE PROCEEDS

Scott M. Grossman, Judge

Trustee Sonya Slott objects to Debtor Sharon Hampton's claimed homestead exemption in a condominium unit Ms. Hampton owned when she filed for bankruptcy. The Trustee claims Ms. Hampton's exemption should be denied because Ms. Hampton withdrew and transferred to others \$251,000 of equity in her homestead before she filed for bankruptcy, and after she filed for bankruptcy, Ms. Hampton sold her homestead and failed to reinvest the proceeds in a new homestead. Ms. Hampton moved for summary judgment, contending there is no genuine issue as to any material fact, and she is entitled to judgment as a matter of law that the equity in her condominium unit on the date she filed for bankruptcy is exempt.

The Court has considered the Trustee, Sonya S. Slott's, Amended Objection to Debtor's Claimed Homestead Exemption¹ (the "Objection"), the Debtor's Motion for Summary Judgment with Regard to Trustee, Sonya S. Slott's, Amended Objection to Debtor's Claimed Homestead Exemption² (the "Motion for Summary Judgment"), the Trustee's Response in Opposition ***919** to Hampton's Motion for Summary Judgment³ (the "Response"), the Debtor's Reply to Trustee's Response in Opposition to Debtor's Motion for Summary Judgment with Regard to Trustee, Sonya S. Slott's, Amended Objection to Debtor's Claimed Homestead Exemption,⁴ and the record in this case. For the reasons discussed below, the Court will grant Ms. Hampton's Motion for Summary Judgment and overrule the Trustee's Objection.

Facts

Ms. Hampton purchased condominium unit #1107 at 3111 North Ocean Drive, Hollywood, Florida (the "Property") in September 2000.⁵ About a year later, she obtained a secured home equity line of credit ("HELOC") from Wachovia Bank, N.A., with a \$130,000 limit.⁶ Her credit limit was later raised to \$276,300.⁷ In August 2015, Ms. Hampton first listed the Property for sale for \$729,000.⁸ At that time, she owed only \$22,800 on the \$276,300 HELOC,⁹ leaving "about \$251,000 available" to borrow, according to the Trustee.¹⁰ A few months later, Ms. Hampton increased her asking price to \$749,000, and placed the Property on the Multiple Listing Service.¹¹

From December 12, 2016 through April 20, 2017, Ms. Hampton drew a total of \$251,000 from her HELOC.¹² When added to an existing balance of \$22,667.37, she had drawn nearly the maximum \$276,300 available on her HELOC by April 2017.¹³ Ms. Hampton used the money she drew from her

HELOC to, among other things, pay attorneys and pay real property taxes on another property she owned.¹⁴ She also transferred \$60,000 from her HELOC funds to her son, Daniel Koehler.¹⁵

As of April 6, 2017, Ms. Hampton had entered into a contract to sell the Property for \$665,000.¹⁶ Ms. Hampton then filed this case as a chapter 13 case on June 5, 2017¹⁷ (the “Petition Date”). As of that date the previously pending sale had not closed, and no pending sale contract was listed as an executory contract on her Bankruptcy Schedules.¹⁸ She claimed a homestead exemption in the Property on her Bankruptcy Schedule C.¹⁹ No party in interest objected to her claimed homestead exemption while this case was pending under chapter 13.

On April 2, 2018, Ms. Hampton filed an emergency motion to approve a sale of the ***920** Property for \$635,000.²⁰ The Court entered an order authorizing the sale on April 17, 2018, requiring the net proceeds to be held in her chapter 13 counsel, Jeffrey H. Tromberg, Esq.'s trust account.²¹ The sale closed on May 4, 2018, and after payoff of the HELOC and other sale-related expenses, resulted in net proceeds of approximately \$300,000.²²

On June 18, 2019, Ms. Hampton voluntarily converted her case to chapter 7,²³ and on June 19, 2019, the Trustee was appointed.²⁴ Ms. Hampton amended her Bankruptcy Schedules several times throughout this case, the most recent amendment being on September 16, 2019, wherein she continued to claim a homestead exemption in the Property under Fla. Const. art. X, § 4(a)(1) and Fla. Stat. Ann. §§ 222.01 and 222.02,²⁵ noting that her homestead was sold during the case and that the proceeds were being held in her counsel's trust account.²⁶ On November 4, 2019, the Trustee timely objected to the homestead exemption claimed by Ms. Hampton in the converted chapter 7 case.²⁷ Ms. Hampton later filed her Motion for Summary Judgment,²⁸ contending there are no genuine issues of material fact with respect to this contested matter and that she is entitled to judgment as a matter of law overruling the Trustee's Objection.

Summary Judgment Standard

Federal Rule of Civil Procedure 56(a), made applicable to this contested matter by Federal Rules of Bankruptcy Procedure 7056 and 9014, requires the Court to grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”²⁹ “An issue of fact is ‘material’ if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case.”³⁰ In considering a motion for summary judgment, the Court must construe all facts and draw all reasonable inferences in the light most favorable to the non-moving party.³¹

The moving party has the burden of establishing that there is an absence of any genuine issue of material fact.³² Once the moving party meets that burden, the burden shifts to the non-movant, who must present specific facts showing that there exists a genuine dispute of material fact.³³ The nonmoving party must provide more ***921** than “a mere ‘scintilla’ of evidence” supporting its position; it must present enough of a showing that a “jury could reasonably find for that party.”³⁴ But the Court will not weigh the evidence or find facts at the summary judgment stage. Rather, the Court determines only whether there is sufficient evidence upon which a reasonable juror could find for the non-moving party.³⁵

Analysis

The Trustee objects to Ms. Hampton's claimed homestead exemption for two principal reasons. First, the Trustee contends Ms. Hampton has waived her homestead exemption because she has failed to reinvest

the sale proceeds within a reasonable time. Second, the Trustee contends Ms. Hampton's pre-petition draws of \$251,000 on her HELOC were a "manipulation" of her HELOC balance and an "abuse" of her homestead exemption.

Bankruptcy Code section 522(b) permits a debtor to claim certain property as exempt from creditors' claims.³⁶ Although the Bankruptcy Code contains a list of federal exemptions, it permits states to "opt out" and require use of its own state law exemptions.³⁷ Florida is an "opt-out" state, so Florida debtors must use Florida exemptions.³⁸ Among the exemptions available to Florida debtors is Florida's constitutional homestead exemption, which permits a debtor to exempt a homestead of unlimited dollar value, but subject to certain acreage limitations.³⁹ Taking into consideration Florida's status as an opt-out state, as relevant here Bankruptcy Code section 522(b)(3)(A) permits a debtor to claim as exempt "any property that is exempt under ... State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition."⁴⁰

It is "settled law"⁴¹ – dating back to the enactment of the Bankruptcy Code in 1978⁴² – that a debtor's claim of exemptions is determined as of her bankruptcy petition date.⁴³ Thus, the only material ***922** fact – as to which there is no genuine issue – is that the Property was indeed Ms. Hampton's homestead on the Petition Date.⁴⁴ Because the Property was her homestead on the Petition Date, that is the beginning and end of the inquiry. That she later (upon notice to creditors and with Court approval) sold the Property does not change the fact that on the Petition Date it was her homestead, which she properly claimed as exempt.

Further underscoring this point is Bankruptcy Code section 522(c), which provides, with limited exceptions not relevant here,⁴⁵ that: "[u]nless the case is dismissed, property exempted under this section is not liable during or after

the case for any debt of the debtor that arose ... before the

commencement of the case."⁴⁶ Thus, under a plain reading of Section 522 – as reinforced by the legion of cases uniformly so holding⁴⁷ – if property was exempt as of the petition date, it is exempt, period.

That Ms. Hampton later sold her homestead – and what she plans to do with the proceeds of that sale – has no applicability whatsoever as to whether, on June 5, 2017, the Property was her homestead. Put another way, in bankruptcy the Court's only temporal concern regarding exemptions is the status of the property as of the petition date. What Ms. Hampton did with her homestead, its equity, or the proceeds of a later sale is irrelevant and does not and cannot result in waiver of an otherwise valid homestead exemption. Because there is no genuine issue as to this material fact – that on June 5, 2017, the Property was her homestead⁴⁸ – Ms. Hampton is entitled to judgment as a matter of law sustaining her exemption.

Similarly, with respect to the \$251,000 Ms. Hampton drew down on her HELOC, those funds represented exempt equity in her homestead, with which she could do as she pleased. Although the Trustee raised her argument as an objection to Ms. Hampton's homestead exemption due to "manipulation" of her HELOC and "abuse" of her homestead exemption, what the Trustee is really arguing is that Ms. Hampton withdrew money from her HELOC and used those funds to pay others (in some cases, according to the Trustee, with the intent to hinder, delay or defraud creditors).⁴⁹ But, as a matter of ***923** law, Ms. Hampton could not fraudulently transfer the exempt equity in her homestead,⁵⁰ because that equity was not available to satisfy creditor claims to begin with.⁵¹

Conclusion

Two unassailable principles of bankruptcy law clearly defeat the Trustee's Objection here. First, exemptions are determined as of the petition date. If property is exempt as of the petition date, it is not liable during or after the case for the claims of creditors (subject to narrow exceptions discussed above but not applicable here). So what Ms. Hampton did with the equity in the Property (and when she did it) after she filed this case is irrelevant to the determination of her exemption claim as of the Petition Date.

Second, as a matter of law, a debtor cannot fraudulently transfer (or “manipulate” or “abuse”) exempt equity by taking it out of a homestead.⁵² So the fact that Ms. Hampton drew down \$251,000 from her HELOC before her bankruptcy filing has no legal effect on the homestead exemption she claimed in the remaining equity in the Property as of her Petition Date.

Accordingly, there is no genuine issue as to any material fact, and Ms. Hampton is entitled to judgment as a matter of law in her favor overruling the Trustee's Objection and sustaining her homestead exemption. Further, in light of the Court's ruling, there is also no reason to continue requiring Ms. Hampton's counsel to hold the net proceeds from the sale of the Property. It is therefore

ORDERED:

1. Ms. Hampton's Motion for Summary Judgment is GRANTED.
2. The Trustee's Objection is OVERRULED.
3. The Property (including its sale proceeds) is exempt under ***924** Article X, Section 4(a)(1) of the Florida Constitution and Section 522 of the Bankruptcy Code.
4. The Court's December 23, 2019 Order Granting Motion to Hold Disbursement of Proceeds Pending Further Order of the Court⁵³ is VACATED.
5. Jeffrey H. Tromberg, Esq., is authorized to release from his trust account and distribute to Ms. Hampton the net proceeds from the sale of the Property.

ORDERED in the Southern District of Florida on June 18, 2020.

Footnotes

1 ECF No. 386.

2 ECF No. 392.

3 ECF No. 400.

4 ECF No. 401.

5 Objection at ¶ 13.

6 Id. at ¶ 14.

7 Id. at ¶ 15.

8 Id. at ¶ 22.

9 Id. at ¶ 23.

10 Id. at ¶ 32. The actual difference between the \$276,300 credit limit and the outstanding balance of \$22,800 is \$253,500. But, in construing the facts in the light most favorable to the Trustee as the nonmoving party, the \$2,500 difference

between \$253,500 and \$251,000 will not be material to the Court's analysis.

11 Id. at ¶ 24.

12 Id. at ¶¶ 36, 37 and pp. 9-11.

13 Id. at pp. 9-11.

14 Id. at ¶ 42.

15 Id.

16 Id. at ¶ 51.

17 ECF No. 1.

18 ECF No. 11.

19 Id.

20 ECF No. 102.

21 ECF No. 108.

22 Response at 13.

23 ECF No. 265.

24 ECF No. 267.

25 Fla. Stat. § 222.01 is titled “Designation of homestead by owner before levy,” and Fla. Stat. § 222.02 is titled “Designation of homestead after levy.” Neither the Trustee nor Ms. Hampton addressed the applicability of these statutes to Ms. Hampton's claimed homestead exemption. Because application of Article X, Section 4 of Florida's Constitution fully resolves the issues here, the Court will not address the applicability of these statutes either.

26 ECF No. 328.

27 ECF No. 353.

28 ECF No. 392.

29 Fed. R. Civ. P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

30 *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

31 Id.

32 *Celotex*, 477 U.S. at 323, 106 S.Ct. 2548.

33 *Walker v. Darby*, 911 F.2d 1573, 1576 (11th Cir. 1990) (citation omitted).

34 Id. at 1577 (citing *Anderson*, 477 U.S. at 252, 106 S.Ct. 2505).

35 *Morrison v. Amway Corp.*, 323 F.3d 920, 924 (11th Cir. 2003).

36 11 U.S.C. § 522(b).

37 Id.; see also *Yerian v. Webber (In re Yerian)*, 927 F.3d 1223, 1226 (11th Cir. 2019).

38 Fla. Stat. § 222.20; *Yerian*, 927 F.3d at 1226.

39 Fla. Const. Art. X, § 4(a)(1). If within an incorporated municipality, the homestead is limited to half an acre; if outside an incorporated municipality, it is limited to 160 acres. Id.

40 11 U.S.C. § 522(b)(3)(A). There have been no allegations that Ms. Hampton was not domiciled in Florida for the 730 days before her Petition Date.

41 *Yerian*, 927 F.3d at 1229 (quoting *In re Fodor*, 339 B.R. 519, 521 (Bankr. M.D. Fla. 2006)).

- 42 See, e.g., *Matter of Rivera*, 5 B.R. 313, 315 (Bankr. M.D. Fla. 1980) (“the right to claim exemptions by a Debtor is governed by the facts and governing circumstances which existed on the date the petition was filed and not by any changes which may have occurred thereafter”); *In re Crump*, 2 B.R. 222, 223 (Bankr. S.D. Fla. 1980) (“The value and status of exempt property in bankruptcy is determined as of the date the petition is filed”).
- 43 *Yerian*, 927 F.3d at 1229; see also *Lubin v. Mason* (*In re Mason*), 607 B.R. 360, 364 n.4 (Bankr. N.D. Ga. 2019) (collecting cases from the Fifth, Sixth, Ninth and Tenth Circuits holding the same); *In re Vick*, No. 07-10844-BKC-AJC, 2008 WL 2444526, at *2 (Bankr. S.D. Fla. June 16, 2008) (“exemptions are determined as of the date of the filing of the petition”); *In re Ballato*, 318 B.R. 205, 209 (Bankr. M.D. Fla. 2004) (“It is also well settled that the claim of exemption is to be determined as of the petition date, and not as of the date of conversion to chapter 7.”).
- 44 Indeed, by arguing that Ms. Hampton's homestead interest terminated when she later sold the Property, the Trustee is acknowledging that the Property was her homestead as of the Petition Date.
- 45 These exceptions include debts for certain taxes and domestic support obligations; most debts secured by liens; certain debts related to failed financial institutions; and certain debts related to financing education at institutions of higher learning. 11 U.S.C. § 522(c).
- 46 11 U.S.C. § 522(c) (emphasis added).
- 47 See notes 41, 42, 43, *supra*.
- 48 That Ms. Hampton was trying to sell the Property before she filed for bankruptcy does not negate its status as her homestead. *Vick*, 2008 WL 2444526, at *2 (“It is well established Florida law that homestead property does not lose its constitutional protection because of a contract to sell the property.”); see also *Crump*, 2 B.R. at 223-24 (property under sale contract but occupied by debtors on petition date was entitled to homestead exemption even though debtors moved out the next day) (citing *Beensen v. Burgess*, 218 So. 2d 517 (Fla. 4th DCA 1969)).
- 49 Although she does not explicitly make this argument, that is the suggestion based on the Trustee's allegations that Ms. Hampton “used the money drawn from the HELOC, which otherwise would have been excess proceeds ... subject to creditors' claims, to” among other things, make “preferential payments” to lawyers and “give her son, Daniel Koehler, \$60,000 to secrete the money from her creditors.” Objection at ¶42.
- 50 *Bakst v. Levenson* (*In re Goldberg*), 229 B.R. 877, 882 (Bankr. S.D. Fla. 1998) (Hyman, J.) (“The Debtor, as a matter of law, could not have formulated the fraudulent intent necessary to commit a fraudulent transfer if the source of the transfer is an exempt asset absent a commingling of the funds with nonexempt assets.”); see also *Jensen v. Anderson* (*In re Anderson*), 561 B.R. 230, 240 (Bankr. M.D. Fla. 2016) (“[A] transfer of property that is exempt from creditors may not be the subject of an action to avoid a fraudulent transfer.”) (citing *Sneed v. Davis*, 135 Fla. 271, 184 So. 865 (1938) and *Goldberg*, 229 B.R. at 882-83); *Syngenta Seeds, Inc. v. Wingate* (*In re Wingate*), 377 B.R. 687, 695 (Bankr. M.D. Fla. 2006) (“It is generally held that a debtor's transfer of exempt property cannot be avoided pursuant to the fraudulent transfer provisions of the Bankruptcy Code.”) (citing *Goldberg*, 229 B.R. at 882-83).
- 51 In fact, the Trustee's argument is counterintuitive. It would have been more financially advantageous for Ms. Hampton to not have withdrawn and used \$251,000 of otherwise exempt equity before she filed for bankruptcy. That strategy would have maximized her exemption, and left her creditors to file claims in the case and share with other creditors, while she kept over half a million dollars in exempt equity for her own use.
- 52 Indeed, the Florida Supreme Court has held that a homestead acquired by a debtor with the specific intent to hinder, delay, or defraud creditors is still exempt under Article X, Section 4 of the Florida Constitution. *Havoco of America, Ltd. v. Hill*, 790 So.2d 1018, 1030 (Fla. 2001). Thus, if a homestead acquired by taking non-exempt funds and transferring them into an exempt homestead with actual intent to hinder, delay or defraud creditors is still exempt under Florida law, then certainly withdrawing exempt equity – thus ultimately reducing the value of a claimed exemption – cannot be considered “manipulation” or “abuse” of the homestead exemption.
- 53 ECF No. 364.