

In re Laubenstein

United States District Court, M.D. Florida, Fort Myers Division

Case No. 2:20-cv-804-JLB; Bankr. No. 9:20-bk-3697-FMD

Signed July 27, 2021

632 B.R. 856

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Brian David Zinn, ZinnLaw, Fort Myers, FL, for Appellees.

JOHN L. BADALAMENTI, United States District Judge

Appellees Paul C. Laubenstein and Lisa M. Laubenstein (collectively, the “Laubensteins”) formerly operated an adult recreational hockey league from their single-family home in Naples, Florida. When they declared bankruptcy in May 2020, they asserted that their home was protected by Florida's homestead exemption. One of their creditors, Pilgrim Skating Arena, Inc. (“Pilgrim”), objected to the Laubensteins claiming the homestead exemption because they conducted business activity out of their home—that is, they operated their hockey league.

After a brief hearing, the U.S. Bankruptcy Court for the Middle District of Florida (“Bankruptcy Court”) overruled Pilgrim's objection and held that the Laubensteins' home was covered by the homestead exemption. Pilgrim timely appealed. Upon careful review of the record, the Court holds that the Bankruptcy Court correctly overruled Pilgrim's objection. The Laubensteins' operation of the hockey league did not render their personal residence nonexempt. Therefore, the Bankruptcy Court's order overruling Pilgrim's objection (Doc. 3-2) is **AFFIRMED**.

BACKGROUND¹ I. The Laubensteins operate a hockey league out of their home in Florida until they go bankrupt.

In 1982, the Laubensteins founded the New England Senior Hockey League, (“NESHL”), an organization that formed and operated adult recreational hockey leagues in the greater Boston area. (App. 175:20–22.) NESHL eventually became the Laubensteins' main source of income and was incorporated in the state of Massachusetts ***859** in 2012. (App. 154–60.) Mr. and Mrs. Laubenstein each owned fifty percent of NESHL. (App. 179:2–6.) They occupied all of NESHL's officer positions and served as two of the organization's three full-time employees. (App. 177:17–24, 179:24–180:3)

NESHL made money by billing the various teams that signed up to play in its leagues. (App. 186:6–12.) It would then use the revenue to provide its teams with the trappings of an organized hockey league, like renting ice hockey rinks for the teams to play their matches. (App. 193:24–195:5.) One of the ice rinks that NESHL rented for its games belonged to Pilgrim. (App. 161–62.) By March 2015, the Laubensteins had moved from Massachusetts to Naples, Florida, and purchased a single-family residence located at 2729 Crystal Way, Naples, FL 34119 (the “Property”). They continued to run NESHL from the Property until May 2020, when they shut it down and filed the bankruptcy petition in this case. (App. 22–28.)

The Laubensteins performed about half of the work associated with running NESHL by phone or e-mail from the Property—the other half was done by NESHL's third employee in Massachusetts. (App

142:15–19.) But the Property was never NESHL's registered place of business, and the Laubensteins claim to have never accepted business mail, business guests, vendors, or supplies at the Property's address. (App. 127.) Instead, NESHL received mail and supplies at either a PO Box in Massachusetts or a UPS box in Naples. (Id.) The Laubensteins' workspace in the Property was apparently their den—a room that also contained personal books, a television, and an area for exercise and yoga. (Id.) They never claimed a home-office deduction on their federal or state tax returns. (App. 142:24–143:1.)

II. Pilgrim files a claim against the Laubensteins and objects to their claiming a homestead exemption for the Property.

The Laubensteins filed their voluntary petition on May 12, 2020, initially under Chapter 13. (App. 22–28.) The case was later converted to a Chapter 7 bankruptcy by order of the Bankruptcy Court. (App. 6.) The Property was listed as one of the Laubensteins' assets, but they claimed it as exempt from the bankruptcy estate under Florida's homestead exemption. (App. 31, 38.) Pilgrim filed a proof of claim against the Laubensteins in the sum of \$702,486. (App. 118.) Pilgrim then filed a written objection to the Laubensteins' claimed exemption on the Property, arguing that the Property was disqualified from the exemption because it “was not used solely and exclusively for residential purposes.” (App. 117.) The Laubensteins filed a written response, arguing that the homestead exemption protected the Property even though they may have operated NESHL out of their den. (App. 126– 34.) After hearing argument from counsel (App. 135–48), the Bankruptcy Court overruled Pilgrim's objection, and Pilgrim timely appealed. (App. 150–53.)

LEGAL STANDARD

“In reviewing bankruptcy court judgments, a district court functions as an appellate court. It reviews the bankruptcy court's legal conclusions de novo but must accept the bankruptcy court's factual findings unless they are clearly erroneous.” *In re JLJ Inc.*, 988 F.2d 1112, 1116 (11th Cir. 1993) (internal citations omitted). A factual finding is clearly erroneous if, after reviewing all the evidence, the Court is “left with the definite and firm conviction that a mistake has been committed.” *Lykes Bros. v. U.S. Army Corps of Eng'rs*, 64 F.3d 630, 634 (11th Cir. 1995) (quoting *860 *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 92 L.Ed. 746 (1948)).

It is the objecting party's burden to demonstrate that the debtor is not entitled to a homestead exemption. See *In re Ballato*, 318 B.R. 205, 209 (Bankr. M.D. Fla. 2004) (citing *In re Harrison*, 236 B.R. 788, 790 (Bankr. M.D. Fla. 1999)).

DISCUSSION

The bankruptcy code allows debtors to exclude from the bankruptcy estate any property exempt under “state or local law ... applicable on the date of the filing of the petition.” 11 U.S.C. § 522(b)(3)(A). The Florida Constitution states that “the residence of the owner or the owner's family” shall be exempt from the forced sale of any court as follows:

There shall be exempt from forced sale under process of any court ... the following property owned by a natural person: ... a homestead, ... if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family[.]

Fla. Const., art. 10, § 4(a)(1). The Supreme Court of Florida has long held that the homestead exemption “should be liberally construed in the interest of protecting the family home.” *Quigley v. Kennedy & Ely Ins., Inc.*, 207 So. 2d 431, 432 (Fla. 1968).

“Despite its liberal interpretation, courts have repeatedly held that the homestead exemption cannot exempt property used for business purposes.” *In re Wilson*, 393 B.R. 778, 782 (Bankr. S.D. Fla. 2008). This limitation stems from changes to the Florida Constitution in 1968. The pre-1968 version of the homestead exemption protected the “residence and business house of the owner.” *Matter of Aliotta*, 68 B.R. 281, 282 (Bankr. M.D. Fla. 1986) (emphasis added). The Supreme Court of Florida struggled to apply this broader homestead exemption, vacillating between a restrictive “perpendicularity rule” and a more liberal rule that allowed courts to protect the owner's means of making a “livelihood.” See generally *Edward Leasing Corp. v. Uhlig*, 652 F. Supp. 1409, 1412–14 (S.D. Fla. 1987) (summarizing the case law governing the pre-1968 exemption).

In 1968, the homestead exemption was revised to eliminate the “business house” language and restrict the exemption to “the residence of the owner or the owner's family.” *Wilson*, 393 B.R. at 782. Courts had no trouble announcing that, at least in theory, “[t]he elimination of the business property reference ... show[ed] unequivocal intent to limit homestead exemptions to the residence of the owner and to disallow any claim for an exemption that exceeds the residence of the owner.” *Aliotta*, 68 B.R. at 282.

But theory and practice often diverge. Even after 1968, Florida and federal courts continued to apply the homestead exemption to single-family residences which contain no “severable portions” used “solely for income-producing or business purposes.” *Ballato*, 318 B.R. at 210. This hesitance to narrowly apply the post-1968 homestead exemption is attributable to the fact that, from 1885 until the present, “not a single reported case has declared a residential unit occupied by the owner as his family home to be non-exempt simply because the owner conducted business activities within those premises.” *Uhlig*, 652 F. Supp. at 1416; see also *Anderson v. Letosky*, 304 So. 3d 801, 807 (Fla. 2d DCA 2020) (finding that *Uhlig*’s statement about the absence of such case law remained true in 2020). Those cases that did render certain portions of a homestead nonexempt involved property “separate from the owner's family dwelling unit,” like a garage or a unit in a larger apartment building. *Uhlig*, 652 F. Supp. at 1416. In short, despite ***861** the more restrictive language of the post-1968 homestead exemption, courts have continued to “deriv[e] some guidance from pre-1968 rulings pertaining to homestead exemption claims where residential and business functions were carried out on the same property.” *Id.* at 1415.

Having explained the current state of the law, the Court finally comes to the arguments on appeal. Pilgrim begins by asking this Court to start from a blank slate and construe the plain language of the homestead exemption to mean that running a corporate entity (like NESHL) out of a single-family residence automatically excludes that residence from qualifying as a homestead. (Doc. 16 at 19–32.) The Court rejects this invitation. Florida's homestead exemption is obviously a creature of state constitutional law. “When interpreting state law, the Court is bound to follow Florida Supreme Court precedent and, absent interdistrict conflict, caselaw from Florida's district courts of appeal (the ‘DCAs’).” *In re Mendoza*, 597 B.R. 686, 690 (Bankr. S.D. Fla. 2019). While the Supreme Court of Florida has not commented on federal courts' importation of pre-1968 case law into the modern homestead exemption, the DCAs have embraced it (albeit with varying results). See *Anderson*, 304 So. 3d at 803–06; cf. *Furst v. Rebholz*, 302 So. 3d 423, 432–33 (Fla. 2d DCA 2020); *First Leasing & Funding of Fla., Inc. v. Fiedler*, 591 So. 2d 1152, 1153 (Fla. 2d DCA 1992). The Court is not free to ignore these decisions and start anew. At present, the law in

Florida is that the homestead exemption does not apply to “property used for business purposes,” but it does apply to a single-family residence in which the owner conducts business activities if the residence contains no “severable portions” used solely for “income-producing or business purposes.” *Wilson*, 393 B.R. at 782; *Ballato*, 318 B.R. at 210.

Starting from that foundation, this becomes an easy case. The Laubensteins did not run NESHL from a severable portion of their Property, like an unattached garage or a separate unit in an apartment building. Instead, they operated it out of their den, where they also had a yoga area. (App. 127.) There is no “imaginary line” that can be drawn to sever the den “from the remainder of the property,” at least not “without destroying its utility as a single-family residence.” *Anderson*, 304 So. 3d at 804 (citing *Fiedler*, 591 So. 2d at 1153). In fact, Pilgrim does not ask the Court to hold that only the den is nonexempt, which is the most that Florida law would dictate. See *In re Englander*, 95 F.3d 1028, 1032 (11th Cir. 1996) (explaining that where the property is not divisible, the bankruptcy trustee could sell the property and apportion the proceeds based on the part that is nonexempt). On the contrary, Pilgrim wants the Court to hold that the entire Property is nonexempt. (Doc. 17 at 17.) No case law supports such a harsh result.

Pilgrim also tries to argue that operating NESHL out of the Property is akin to allowing the Property to be “used and occupied by a third party” for “business purposes.” (Id. at 33.) As a general matter, it is true that the homestead exemption “cannot include any portion which is rented to and occupied by a third party or used by the third party as his own business.” *In re Nofsinger*, 221 B.R. 1018, 1021 (Bankr. S.D. Fla. 1998) (holding that a portion of debtor's real property containing an irrigation system and leased to a nursery company owned by himself and his ex-wife was nonexempt). But the record does not reflect that NESHL “rented” the Property from the Laubensteins in a literal sense. Pilgrim's position seems to be that a “third party” occupied the Property simply because the Laubensteins ran NESHL out of the den of their single-family house. None of the cases cited in Pilgrim's briefing suggest that a corporation “occupies” an owner's homestead simply because the owner partially operates the corporation out of their den.² As the U.S. Bankruptcy Court for the Southern District of Florida explained, the fact that it is possible for a debtor “to work from his home office as long as he had his computer and a broadband internet connection” does not imply that the debtor “is to be denied the opportunity to claim a homestead to the extent one is appropriate.” *In re Prestwood*, 322 B.R. 463, 468 (Bankr. S.D. Fla. 2005) (holding that a debtor was entitled to exempt his Florida condominium even though he teleworked for a tech company in California and had various other connections to California). The same reasoning applies here.

Finally, Pilgrim claims that the “public policy” behind the homestead exemption supports holding that the Property is nonexempt. (Doc. 17 at 39–41.) This makes no sense. As the Supreme Court of Florida has explained, the public policy behind the homestead exemption “is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law.” *Pub. Health Tr. of Dade Cnty. v. Lopez*, 531 So. 2d 946, 948 (Fla. 1988) (citing *Bigelow v. Dunphe*, 143 Fla. 603, 197 So. 328, 330 (1940)). It is difficult to see how such a policy could possibly be served by holding that the Laubensteins' Property is nonexempt. If anything, public policy supports the Bankruptcy Court's ruling.

CONCLUSION

The Bankruptcy Court's order overruling Pilgrim's objection to the Laubensteins' homestead exemption (Doc. 3-2) is AFFIRMED. The case is REMANDED to the Bankruptcy Court for further proceedings.

consistent with this Opinion. The Clerk is DIRECTED to transmit a copy of this Opinion to the Bankruptcy Court, terminate the appeal, and close the file.

ORDERED in Fort Myers, Florida, on July 27, 2021.

Footnotes

- 1 The parties to this appeal both rely on an appendix to Pilgrim's initial brief. The documents in the appendix were clearly part of the record below but were not transmitted as part of the record. For purposes of this appeal, the Court assumes that the parties jointly intended to supplement the record with the appendix and will therefore treat the appendix as part of the record. The Court notes, however, that parties have a responsibility to ensure that a complete and thorough record is transmitted to this Court. The appendix will be cited as “(App. ____).”
- 2 See Nofsinger, 221 B.R. at 1019 (irrigated portion of debtor's real property that was separate from debtor's dwelling); Wilson, 393 B.R. at 781 (apartment on second floor of commercial building, the first floor of which debtor operated as a nightclub); In re Kain, No. 12-31492-KKS, 2014 WL 10250731, at *2 (Bankr. N.D. Fla. Feb. 14, 2014) (commercial property that debtor operated as a clinic and later partially converted to a dwelling after losing her marital home in foreclosure).