

ORDERED in the Southern District of Florida on

April 12, 2006



Laurel Myerson Isicoff

Laurel Myerson Isicoff, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:

CASE NO. 05-19588 BKC-LMI

LOUIS G. WECHSLER,

Chapter 7

Debtor.

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**ORDER DENYING TRUSTEE'S OBJECTION TO
DEBTOR'S CLAIMED EXEMPTION OF HOMESTEAD PROCEEDS AND
MOTION TO COMPEL TURNOVER (C.P. ## 56, 57)**

This matter came before the Court on Wednesday, February 22, 2006 at 10:30 a.m. on the Trustee's Objection to Claimed Exemption of Homestead Proceeds and Motion to Compel Turnover. The Court heard testimonial evidence at the hearing, and, pursuant to Order dated February 27, 2006 (C.P. #72) the parties submitted memoranda of law. The Court having considered the pleadings, the evidence presented, argument of counsel and the memoranda filed, makes the following findings of fact and conclusions of law.

Facts

In 1975 Louis G. Wechsler (the "Debtor") and his wife, Ruth Wechsler (the "Ex-Wife") divorced. In connection with the divorce the Debtor and the Ex-Wife entered into a Marital Settlement Agreement (the "Agreement"). As part of the

Agreement, the Debtor was allowed to continue to reside in the marital home located at 3669 Royal Palm Avenue, Coconut Grove, Florida (the "Marital Home"), with the understanding that when the Marital Home was sold, the proceeds of sale would be divided between the Debtor and the Ex-Wife.

When the Debtor and the Ex-Wife sold the Marital Home on December 18, 2001, there was a dispute between them as to the allocation of the net proceeds of sale. The net proceeds of \$246,713.00 (the "Sale Proceeds") were placed in an escrow account and the parties returned to family court to resolve the dispute over the allocation of the Sale Proceeds.

In August, 2003, while the dispute was ongoing, the family court judge ordered a distribution of \$25,000.00 each to the Ex-Wife and the Debtor.

On November 29, 2004, the family court judge entered her order regarding distribution of the Sale Proceeds (the "State Court Order"), which State Court Order the Debtor appealed to the Florida Third District Court of Appeal.

On September 6, 2005 (the "Petition Date"), the Debtor petitioned for relief under Chapter 7 of the United States Bankruptcy Code. Joel Tabas was appointed as the Chapter 7 Trustee. The Debtor scheduled the total amount of the Sale Proceeds as exempt property, pursuant to Article X of the Florida Constitution.

On November 2, 2005, the Third District Court of Appeal denied the Debtor's appeal and confirmed the State Court Order.

The Trustee has filed an objection to the Debtor's claimed exemption of the homestead proceeds and seeks turnover of the Debtor's share of the Sale

Proceeds.¹ The Trustee argues that the Debtor did not intend to reinvest the proceeds of the Marital Home in a new home when the Marital Home was sold, and that even if the Debtor did intend to reinvest the proceeds when the Marital Home was sold, the Sale Proceeds lost their exempt status because the Debtor did not reinvest the Sale Proceeds within a reasonable period of time and the cause of the delay (the dispute with the Ex-Wife) was entirely within the Debtor's control. Moreover, the Trustee argues, when the family court judge allowed the distribution of \$50,000.00 from the escrow account to the Debtor and the Ex-Wife for purposes other than the purchase of a new homestead, the Sale Proceeds lost whatever exempt status they might otherwise have enjoyed.

Finally, the Trustee argues, should the Court find that the Sale Proceeds were exempt on the Petition Date, the exempt status will be lost, and the Sale Proceeds will become property of the estate, unless the Debtor invests the Sale Proceeds in a new homestead within a reasonable amount of time following the Court's decision on this matter.

Florida Homestead and the Exemption of Sales Proceeds

The homestead in Florida is virtually sacrosanct and immune from almost every form of attack. *Havoco of America, Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001). This immunity extends to the proceeds of the sale of the homestead so long as those proceeds are segregated, intended for reinvestment in a new homestead and are, in fact, reinvested in a new homestead "within a reasonable

¹ The Ex-Wife also filed an Objection to Debtor's Claim of Homestead Exemption (C.P. # 10) insofar as Debtor's schedules suggested Debtor had an interest in what the Ex-Wife asserted, and the state court found, was the Ex-Wife's share of the Sale Proceeds. That Objection has been resolved by agreement and a separate order resolving the Ex-Wife's Objection was entered on February 22, 2006 (C.P. # 69).

period of time.” *Orange Brevard Plumbing & Heating Co. v. La Croix*, 137 So. 2d 201, 206 (Fla. 1962). What is a reasonable period of time is determined by the facts and circumstances of the particular case. *Id.*

In the instant case, the Debtor testified, and the Court finds, that when the Marital Home was sold, the Debtor intended to reinvest the Sale Proceeds in a new home. Thus, the Court must determine whether the circumstances following the sale of the Marital Home had an impact on whether, and to what extent, the homestead exemption continued to protect the Sale Proceeds.

Not surprisingly, the Debtor argues that his homestead interest in the Sale Proceeds was not compromised by either the delay caused by the litigation over the Sale Proceeds or by the state court authorized distribution of \$50,000.00. The Court agrees. Whatever the Debtor’s motivations in disputing the allocation of the Sale Proceeds, there was, in fact, ongoing litigation which was not resolved until after the bankruptcy petition was filed. Under the circumstances of this case, the Court will not penalize the Debtor for choosing to pursue his position, including his appellate rights, with respect to this issue. *Accord Rimmel v. Huth (In re Huth)*, 122 B.R. 724, 725 (Bankr. E.D. Mo. 1988). The Court also finds that the distribution of the \$50,000.00 from the escrow account did not cause the Sale Proceeds to lose their exempt status. *See In re Binko*, 258 B.R. 515, 517 (Bankr. S.D. Fla. 2001).

Accordingly, the Court finds that on the Petition Date, the Sale Proceeds were exempt pursuant to Article X Section 4 of the Florida Constitution, and,

therefore, the Debtor's interest in the Sale Proceeds was not property of the estate on the Petition Date.

Property of the Estate After the Fact

The sole remaining issue, therefore, is whether, as suggested by the Trustee, the Sale Proceeds will become property of the estate if the Sale Proceeds lose their exempt status post-petition. The Debtor argues that the relevant time period to assess the exemption of the Sale Proceeds ended on the Petition Date, and, while he has every intention of investing the balance of the Sale Proceeds in a new home, if he does not do so, it will not cause the Sale Proceeds to become property of the estate.

11 U.S.C. § 541 defines what assets constitute "property of the estate". §541(a)(5) lists certain assets that, although acquired by the debtor after the petition date, become, nonetheless, property of the estate.² Since the Sale Proceeds do not fall into any of these categories, even if the Sale Proceeds lose their exempt status post-petition, the loss of that status will not cause the Sale Proceeds to become property of the estate. For purposes of determining whether the Sale Proceeds are property of the estate, the relevant date is the Petition Date. Since on the Petition Date the Sale Proceeds were exempt, the Trustee cannot claim them for the benefit of pre-petition unsecured creditors, no matter what happens post-petition.³

² Chapters 11 and 13 of the United States Bankruptcy Code include a broader scope of assets in the purview of "property of the estate" not applicable in a Chapter 7 case.

³ This may be a hollow victory for Debtor as several parties are asserting an interest in the Sale Proceeds, some of which interests, under applicable state law, may cause a forfeiture of the Sale Proceeds nonetheless.

Conclusion

Based on the foregoing, it is ORDERED that the Trustee's Objection to Claimed Exemption of Homestead Proceeds and Motion to Compel Turnover are DENIED.

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Copies furnished to:
Michael Frank, Esq.
Scott Brown, Esq.

Attorney Frank shall serve a conformed copy of this order upon all parties in interest and shall file a Certificate of Service of same with the Clerk of the Court