

In re John Angelo

Case No: 05-36319-BKC-SHF

Order entered on March 17, 2006

**ORDER DETERMINING EQUITY IN DEBTOR'S  
HOMESTEAD TO BE NOT IN EXCESS OF HOMESTEAD**

An evidentiary hearing was scheduled pursuant to this Court's January 30, 2006 Order Sustaining Trustee's Objection to the Debtor's Claim of Exempt Property, to determine the amount of the equity in the real property, consistent with *In re Wayrynen*, 332 B. R. 479 (Bankr. S.D. Fla. 2005) and in *In re Kaplan*, 331 B. R. 483 (Bankr. S. D. Fla. 2005).

However, the Court determines that Patricia Dzikowski, chapter 7 trustee, has failed to satisfy her burden of proof with regard to establishing the amount of equity in the debtor's residence in excess of **(1)** the mortgage encumbering the property, and **(2)** the \$125,000.00 homestead exemption provided under 11 U.S.C. § 522 (p)(1). The trustee failed to prove that equity exists in excess of \$125,000.00. Although the trustee elicited testimony from the debtor as to his estimate of the present value of the property, the debtor is not an expert witness, nor has he been qualified as such in the area of real estate. The trustee's evidence as to the value of the property is deficient and this Court will not speculate as to the value of the property.

Held: The Court finds that there is no equity in the property, and that the property is exempt in its entirety.