

CONSUMER BANKRUPTCY

Debtor Can Protect Home He Was Ousted From

By Craig D. Robins

Conventional wisdom would lead one to believe that a consumer debtor who moved out of his house prior to filing for Chapter 7 relief is not entitled to utilize the homestead exemption to protect his interest in the house.

Yet, as we will see in a recent case in our district in which the debtor was ousted from his home, there can be exceptions.

Generally, in order to utilize the homestead exemption, a debtor must not only own his home, but he must also occupy it as his principal residence at the time he files the bankruptcy case.

A debtor in a recent case, however, representing himself *pro se*, sought to protect his interest in a marital home, despite not currently living there. The debtor and his spouse purchased their Huntington home in 2012, and moved in, in February 2013. However, marital strife ensued, resulting in a hotly contested matrimonial proceeding in Suffolk County Supreme Court.

The matrimonial judge issued an order in December 2014 barring the debtor from entering the home. Consequently, the debtor was prohibited from residing at the property at the time he filed his bankruptcy peti-



Craig Robins

tion four months later. The debtor indicated that his interest in the house was worth \$148,500.

Although the debtor sought to protect this interest by claiming a homestead exemption pursuant to CPLR § 5206, the trustee, Richard J. McCord, filed an objection, arguing that the debtor

did not live in the home at the time the petition was filed, and that other evidence indicated that this property was not the debtor's principal residence. The trustee contended that the address the debtor used on his bankruptcy petition, driver's license, voter registration, and tax returns all showed a different

address for another property the debtor owned in Brooklyn, and not the Huntington address for the property the debtor was seeking to exempt.

Judge Carla E. Craig, sitting in the Brooklyn Bankruptcy Court here in the Eastern District of New York, held that the debtor was indeed entitled to exempt his interest in the home, despite the fact that he was not living there. *In re Brian H. Denker-Youngs* (Bankr. E.D.N.Y., No. 15-41069-ccc, June 2, 2016).

She denied the trustee's motion, stating that the debtor intended to occupy the Huntington property as his principal residence at the time of the bankruptcy filing, and vacated the

(Continued on page 22)

Debtor Can Protect Home (Continued from page 16)

premises involuntarily as a result of the state court's order awarding exclusive occupancy to his spouse.

Judge Craig began her discussion by stating that exemption statutes are to be construed liberally in favor of the debtor. Here, the debtor exempted his interest in the home pursuant to CPLR § 5206(a), which, at the time of filing, permitted debtors to exempt equity of \$150,000 in land with a dwelling thereon, owned and occupied as a principal residence.

As for occupancy, the judge stated that when determining the allowance of an exemption, the court must consider the circumstances, as they existed on the petition date. The debtor's ouster from the Huntington property did not prevent the debtor from claiming a homestead exemption in it.

Although the matrimonial court required the debtor to leave the marital property, this was temporary, Judge Craig stated, as that court had not reached a final resolution of the spouses' respective property rights in the residence.

Thus, a court should not construe absence from the marital abode, pending final resolution of property rights, to constitute an abandonment of the right to reside in the home or utilize the homestead exemption. Otherwise, hostile parties to a matrimonial dispute would continue to share the marital abode merely to prevent a loss of property rights.

As for documentary evidence showing that the debtor used the Brooklyn address, rather than the Huntington address, Judge Craig held that the debtor's failure to change his address on these documents does not establish that the debtor's principal

residence was anywhere other than the Huntington property. At a Bankruptcy Court trial, the debtor testified that he intended to remain in the Huntington residence, but for the matrimonial order, which forbade him from doing so. Judge Craig found this persuasive.

Finally, the judge struck down the trustee's third argument, which was that the debtor should be judicially estopped from claiming a homestead exemption in the Huntington property because he filed an affidavit in an action he commenced against his spouse in Kings County Supreme Court in which he stated that he has "always maintained and been a permanent and voting registrant herein the County of Kings."

Judge Craig held that the doctrine of judicial estoppel had no application here, even though the debtor's statement seems to be inconsistent with his claim that the Huntington property was his principal residence, as there was no evidence that the Kings County Court adopted his statement in any way, nor was there any evidence that the debtor would derive an unfair advantage to claim the homestead exemption notwithstanding this statement.

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