UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CFCU Community Credit Union,

Appellant,

-v-

DECISION AND ORDER
06-CV-6290 CJS

Jerald John Hayward, II and
Lois Evelyn Hayward,

Appellee,

Peter Scribner,

Chapter 7 Trustee.

INTRODUCTION

Now before the Court is an appeal of CFCU Community Credit Union ("the Credit Union"), of the Decision and Order of the Honorable John C. Ninfo II, U.S. Bankruptcy Judge, entered on May 25, 2006, denying the Credit Union's motion ("the Exemption Motion") to disallow the homestead exemption claimed by Jerald John Hayward, II and Lois Evelyn Hayward ("Debtors"). For the reasons that follow, the Decision and Order is affirmed.

BACKGROUND

On October 14, 2005, Debtors filed a Chapter 7 bankruptcy petition. In his Decision & Order, Judge Ninfo set forth the following facts:

> On the Schedules and Statements required to be filed by [11 U.S.C. §] 521 and Rule 1007 [of the Federal Rules of Bankruptcy Procedure], Debtors: (1) indicated that Jerald Hayward was the owner of real property located at 4120 Seneca Road, Valois, Schuyler County, New York ("the Property"), which had a current market value of $95,294.00; (2) indicated that there was a mortgage lien on the

> Property in the amount of $49,775.98; (3) on Schedule C, claimed the Property as exempt, pursuant to Section 5206(a) of the New York Civil Practice Law and Rules ("the Homestead Exemption Statute"), as amended by Chapter 623 of Laws of New York, 2005, effective August 30, 2005 ("the Homestead Exemption Amendment"), which increased the homestead exemption for a New York State resident from $10,000.00 to $50,000.00; and (4) on Schedule D listed [the Credit Union] as the holder of an $11,291.63 claim, [resulting from a May, 2003 car loan] secured by a 2003 Chevy Cavalier automobile valued at $7,185.00, and as an otherwise general unsecured creditor with a claim of $4,106.63.
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> On December 16, 2005, the Credit Union filed a motion (the "Exemption Motion"), which requested that the Court enter an Order disallowing the Debtors' claim of a homestead exemption to the extent that it exceeded $10,000.00.

In re Hayward, 343 B.R. 41, 42-43 (W.D.N.Y. May 25, 2006).

In support of the Exemption Motion, the Credit Union argued that the Homestead Exemption Amendment should not be given a retroactive effect. The Credit Union further argued that even if the Homestead Exemption Amendment were to be applied retroactively, such retroactive application would violate Article 1, Section 10 of the U.S. Constitution ("the Contract Clause").

In his Decision and Order of May 25, 2006, Judge Ninfo denied the Credit Union's application, and held that the Debtors were entitled to the $50,000 homestead exemption, even though they had incurred their debt to the Credit Union prior to the 2005 amendment of C.P.L.R. § 5206(a). Judge Ninfo specifically adopted the reasoning of the Bankruptcy Court for the Northern District of New York in *In re Little*, 2006 WL 1524594 (Bankr. N.D.N.Y. Apr. 24, 2006), in which Chief Judge Stephen D. Gerling concluded that the Homestead Exemption Amendment was remedial and therefore should be applied retroactively, and that such retroactive application would not violate the Contracts Clause. In doing so, Judge Ninfo observed:

> It may be, as determined by the Court in *Little*, that the Homestead Exemption Statute is remedial and that it may be applied retroactively, and that any amendment of the statute would, by necessity, also be remedial and entitled to retroactive application in the absence of a specific provision in the legislation to the contrary.

In re Hayward, 343 B.R. at 45.

Additionally, Judge Ninfo found that the Homestead Exemption itself was remedial and should be applied retroactively. In support of this determination Judge Ninfo relied on the legislation's sponsoring memo and the analysis of the New York State Supreme Court Appellate Division Third Department, in *Cady v. Broome County*, 87 A.D.2d 964 (N.Y.A.D. 1982). Judge Ninfo reasoned that the remedy and correction in the amendment was to adjust the exemption law to make it realistic in light of current economic conditions. Moreover, Judge Ninfo concluded that to apply the statute prospectively, and not retroactively, "would defeat the clearly evident intention of the New York State Legislature." *In re Hayward*, 343 B.R. at 46. Finally, in rejecting the Credit Union's alternative argument as to the Contract's Clause, Judge Ninfo relied on the *Little* analysis of the Second Circuit's three-part test for determining whether a state law is violative of this constitutional provision.

On appeal, the Credit Union again maintains that the amendment to C.P.L.R. § 5206(a) was not intended to be applied retroactively, and again alternatively maintains that to do so would violate the Contract Clause.

STANDARD OF REVIEW

Pursuant to 28 U.S.C. §158, "the district courts of the United States . . . have jurisdiction to hear appeals" "from final judgments, orders, and decrees" of a bankruptcy

judge. 28 U.S.C. §158(a)(1). Additionally, as outlined under Rule 8013 of the Federal Rules of Bankruptcy Procedure, "[o]n an appeal the district court may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings," and findings of fact "shall not be set aside unless clearly erroneous." Fed.R.Bankr.P.8013. Moreover,

> [u]nder this standard, the district court is not authorized to engage in independent fact finding and reviews the bankruptcy court's findings only for clear error. The findings of fact can only be set aside by the district court when, after reviewing the evidence, the court is left with the firm and definite conviction that a mistake has been committed.

Bagel Bros. Maple, Inc. v. Ohio Farmers, Inc., 279 B.R. 55, 61 (Bankr. W.D.N.Y. 2002) (citations and internal quotation marks omitted). However, when a district court is reviewing conclusions of law, a *de novo* standard is applied. *Id.; See also, In re Enron North America Corp.*, 312 B.R. 27, 28 (Bankr. S.D.N.Y. 2004).

DISCUSSION

———"Pursuant to [11 U.S.C.] § 522(b)(1) New York has 'opted out' of the federal exemption scheme, choosing instead to provide its own exclusive set of permissible exemptions in bankruptcy for debtors domiciled in the state." *In re Nudo*, 147 B.R. 68, 70 (Bankr. N.D.N.Y. 1992). "The exemptions to which [a] debtor may be entitled are provided in § 282 of the New York State Debtor and Creditor Law, . . . [which] specifically incorporates the homestead exemption provided in NYCPLR § 5206." *In re Onyan*, 163 B.R. 21, 24-25 (Bankr. N.D.N.Y. 1993). In relevant part, C.P.L.R. § 5206 states:

> (a) Exemption of homestead. Property of one of the following types, not exceeding fifty thousand dollars in value above liens and encumbrances, owned

> and occupied as a principal residence, is exempt from application to the satisfaction of a money judgment, unless the judgment was recovered wholly for the purchase price thereof:
>
> (1) a lot of land with a dwelling thereon[.]

N.Y. C.P.L.R. § 5206 (McKinney 2007). As already mentioned, on August 30, 2005, C.P.L.R. § 5206 was amended to increase the homestead exemption from $10,000 to $50,000. 2005 N.Y. Sess. Laws Ch. 623, § 1 (McKinney). To determine whether Debtors may claim the $50,000 exemption against claims arising prior to August 30, 2005, this Court must apply New York law, including New York laws governing the retrospective application of statutes.[1] *See Weber v. U.S.*, 484 F.3d 154, 161 (2d Cir. 2007) (citing analysis of New York law undertaken in *In re Little* and finding C.P.L.R. § 5206 "plausibly remedial" within the meaning of New York statute law); *see also Gernat v. Belford*, 192 B.R. 601, 604 (D.Conn. 1996) (looking to Connecticut law to determine whether Connecticut's Homestead Exemption should be applied retroactively), *aff'd sub nom. In re Gernat*, 98 F.3d 729 (2d Cir. 1996).

In this appeal there is no dispute as to findings of fact. Rather, the Credit Union disputes Judge Ninfo's legal conclusion that the Homestead Exemption Amendment should be applied retroactively, and his legal conclusion that retroactive application would not run afoul of the Contracts Clause. On these issues, upon *de novo* review, the Court agrees with Judge Ninfo's reasoning and upon appeal rejects the arguments

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[1] As to states such as New York which have "opted out" of the federal exemption scheme, 11 U.S.C. § 522(b) provides that debtors may exempt "any property that is exempt under . . . State or local law that is applicable on the date of the filing of the petition . . ." 11 U.S.C. § 522(b)(3)(A). Several courts have held that this provision allows debtors to exempt property if the state law exemption existed on the date of filing, without regard to whether the state courts would apply the exemption retroactively. *See In re Elmasri*, 2007 WL 1518618, 7 (Bankr. E.D.N.Y. 2007); *see also In re Skjetne*, 213 B.R. 274, 277-278 (Bankr. D.Vt. 1997).

of the Credit Union.

CONCLUSION

Accordingly, the Court affirms Judge Ninfo's May 25, 2006 Decision and Order upon "the opinion of the court below." *Victor Talking Mach. Co. v. Hoschke*, 188 F. 326, 328 (2d Cir. 1911).

So Ordered.

Dated Rochester, New York
September 11, 2007

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge