UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

VIRGINIA LOUISE ANDERSON Case No. 02-16131 K

Debtor

The issue is whether the Debtor is entitled to a homestead exemption on the only piece of land she owns, given that she lives with her boyfriend for the winter each year, and shares the expenses on his apartment. Specifically, the question is whether a piece of vacation property may become a debtor's "homestead" when she lives there only seven months of the year, and lives with her boyfriend in an apartment they rent together in the other months. The Court will allow the exemption under the facts of this case.

These constitute the pertinent Findings of Fact under Rule 52 of the Federal Rules of Civil Procedure.

1. In 1990 the Debtor became the owner of 5124 Pleasant Valley Road, Lot 183, Bliss, New York.

2. The property is a lot in a Recreational Vehicle park which closes down for one month each year.[1] The land, if cleared of the present trailer, would likely be worth $ 8,000.

[1] The Court takes judicial notice that parks of that type close briefly to avoid being taxed as residential property; if they close for a month they are taxed at a lower rate. The Court does not believe that fact to be determinative of whether the trailer and lot are her principal "residence."

3. On the Bliss lot is a mobile trailer with wheels. It has a furnace, but the Debtor does not use the furnace. That trailer is worth nothing, separate from the lot. It would fall apart if moved. Indeed, the land might be worth more if the trailer were removed; see Finding 2.

4. Initially, after the 1990 purchase, the Debtor only used the Bliss property on the weekends.

5. The Debtor moved from her parents' family residence at 63 Montrose Avenue in Rochester in January, 2000, after the neighborhood "got too bad," and she began residing at her boyfriend's home on Bryden Park in Rochester.

6. Ten years later the Debtor began residing "full time" at the Bliss property, in April 2000. She has lived there from the months of April through November each year, the arrival of spring weather and of winter weather dictating the moves. This coming season/year will therefore be her fourth year of that pattern.

7. The Debtor is employed at the Morgan Stanley brokerage office in Rochester and began commuting from Bliss to Rochester beginning in April of 2000, but only in the fair weather months.

8. The Debtor drains the pipes and turns off the heat each winter when closing the trailer.

9. The Debtor's personal property located at the Bliss location includes furniture, pots and pans, television, and lawn furniture. It remains at the Bliss property during the months the Debtor resides in Rochester. She apparently moves some or all of her clothes seasonally.

10. The Debtor used the Bryden Park address on her 2001 tax return. That Rochester address was used because she resided at that address at the time she filed her taxes and was waiting for her tax refund.

11. The boyfriend lost the property at Bryden Park to foreclosure, and so they leased property at 25 Long Croft under the Debtor's name. His own property's foreclosure cost him his creditworthiness. The utilities and cable at 25 Long Croft are also in the Debtor's name.

12. The Debtor pays the utilities at 25 Long Croft all year to account for her portion of the living expenses, and the boyfriend pays the monthly rent all year.

13. The Debtor currently uses the 25 Long Croft address all year for mailing purposes to be certain that important mail reaches her during the winter months. This is because although there is mail delivery year round to the Bliss address, receipt of mail in Bliss is uncertain during the winter months because the park management does not continuously plow the road going to her lot. Receiving mail in Rochester while she is living in Bliss is not inconvenient, because mail addressed to the Debtor at 25 Long Croft during the summer months is brought to Bliss each weekend by her boyfriend. If the Debtor used the Bliss address all the time, then in winter she or her boyfriend would have to drive to Bliss to retrieve mail.

14. The Debtor received notification that she was registered to vote in Irondequoit after changing her mailing address to 25 Long Croft from Bryden Park. The Debtor never voted in Irondequoit, and her registration there was a result of having received an unsolicited mailing that she signed. (The Court takes judicial notice that the various county

Boards of Elections do send registration materials on an unsolicited basis to new residents who are not registered.)

16. The Debtor pays the property taxes on the Bliss property.

17. The Debtor's driver's license shows her address to be Bliss, New York. The Debtor never changed the address on her driver's license to Bryden Park or Long Croft because she considers Bliss, New York to be her permanent residence.

DISCUSSION

The Court finds that the Bliss location is the Debtor's "principal residence" and that the Debtor is entitled to a homestead exemption. This is because the Court is convinced of the Debtor's credibility[2] and because the Court is concerned about otherwise imposing a double standard. This Debtor's only piece of real estate is this plot. It is no less her homestead because she has to work year round (and so shares expenses with her boyfriend) than if she had no need to work and so could stay in her trailer or spend the winter at leisure with relatives either locally or in some Sun State.

It was only 25 years ago that a "homestead exemption" in the state of New York was available only to the extent of $2,000, and required that the homeowner have registered the homestead in the County Clerk's Office. That method provided a "bright-line" rule, but was abolished by the State in 1977, and also the exemption then was raised to $10,000. See *In the*

[2] If the Court believed that the Debtor continued to use this land as a weekend "getaway" only, the exemption would be denied.

matter of Russo, 1 B.R. 369 (Bankr. E.D. N.Y., 1979). And it was only with the advent of joint bankruptcy filings (an innovation of the 1978 Bankruptcy Reform Act) that the exemption could rise to $20,000 in a husband/wife joint bankruptcy case. Since then, this Court has had no difficulty in allowing a $10,000 or $20,000 exemption even to a person or persons who own two or more parcels of land, so long as the claimed parcel is his or her (or their) "principal" residence. See, for example, *In re Cline*, No. 98-12031 K (Bankr. W.D.N.Y. Jan. 12, 1999).

Furthermore, this Court has had no difficulty in allowing such an exemption to persons who have not lived on their "homestead" for a number of years, so long as that was due to temporary circumstances. See, for example, *In re DiPrinzio*, No. 91-13042 (Bankr. W.D.N.Y. May 1, 1992).

Also important are some circumstances within the experience of this Court, which can only be examined as "hypotheticals" because the availability of the homestead exemption was not placed at issue before the Court. Some such circumstances were those of a widow or widower who owned a small home here and who was welcomed each fall to a friend or relative's home down south for the winter. This is a common occurrence, and in this Court's experience, the homestead exemption for such person has never been challenged.

Many debtors in this Court have had to relocate on a permanent or semi-permanent basis to a place of employment, leaving older children, or young children in the care of other friends or family, in their modest abode in the inner city. No trustee has been heard to complain that the landowner has ceased utilizing that premises as his or her "principal" residence.

Not within this Court's experience, but certainly not far from it, would be the hypothetical of a migrant farm worker or carnival worker who owns a single plot of land[3] to which he or she returns with his or her travel trailer when not on the road. It is doubtful that a trustee would challenge that that parcel of land is such a person's "homestead" entitled to an exemption.

Once a "homestead" ceased (in 1977) to be a matter of recordation in the State of New York, it became a matter of conduct and intent. This Judge does not care whether that conduct and intent is directed at a campsite rather than a multi-acre lot with an extravagant dwelling in an affluent suburb; whether that conduct and intent is directed at a 25-foot wide lot with a dilapidated structure in a derelict and vermin-infested part of an inner city alley, or a tenth floor waterfront condominium; or whether the landowner has the luxury of not having to work at all during the winter months and instead visits friends or relatives in Florida, or whether the landowner, like this Debtor, has to work for a living and, by combining her means with that of her boyfriend, may enjoy a warmer rental abode during the winter months when her "homestead" is not as hospitable or as convenient because winter roads can be bad in Western New York.

This notion is indeed specifically expressed in the oath of office of the United States Judges, which requires that the Judge "will administer justice without respect to persons, and do equal right to the poor and to the rich . . ." This Debtor falls somewhere between the two,

[3] Small parcels of rural land in New York are constantly sliced off from farm parcels at minimal cost and value, except where waterfront or creekfront, timber lot, road-frontage or park or resort status is involved. People buy them to hunt on, camp on, etc., with minimal, if any improvement.

and will be permitted to keep her $ 8,000 plot of land.

Dated: Buffalo, New York
April 8, 2003

/s/ Michael J. Kaplan

U.S.B.J.