UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

MARY J. MUSCATO 98-14386 B

Debtor DECISION & ORDER

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Bucki, Chief U.S.B.J., W.D.N.Y.

In this reopened case, the Chapter 7 trustee objects to the debtor's claim of exemption for a previously undisclosed interest in real property. The central issue involves the extent to which this Court can disallow a valid but tardily claimed exemption under the standard that the Supreme Court established in *Law v. Siegel*, 134 S.Ct. 1188 (2014).

Mary J. Muscato is the prior owner in fee simple of real property at 187 Columbus Avenue in the City of Buffalo, New York. On March 19, 1992, Muscato recorded a deed under which she retained a life estate but transferred the remainder interest jointly to her children. Then on July 1, 1998, Mary Muscato filed a petition for relief under Chapter 7 of the Bankruptcy Code. However, in schedules presented with her petition, Mrs. Muscato neglected either to acknowledge the existence of her life estate or to claim that interest as exempt. Having identified no administrable assets, the trustee filed his final report. After entry of an order of discharge, the case was closed on October 30, 1998.

As applicable for cases filed in 1998, section 554(c) of the Bankruptcy Code provided generally that "any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor

. . . ." Here, because the debtor failed to schedule her interest in the property on Columbus Avenue, the closing of the case did not result in its abandonment. Consequently, the life estate remained an asset of the bankruptcy estate in March of 2016, when Mrs. Muscato and her children executed a deed which purported to convey the property to a third party. In response to a title objection raised by counsel for the purchaser, the sellers agreed to hold the entire net proceeds in escrow until such time as they could resolve the interest of the bankruptcy estate. After some delay, Mrs. Muscato moved to reopen her case on August 9, 2017. Upon the granting of that motion, Mrs. Muscato amended her schedules to acknowledge ownership of a life estate at the time of the bankruptcy filing and to claim a homestead exemption in that interest. Meanwhile, because the original trustee is now deceased, the Office of the United States Trustee has appointed Wendy J. Christophersen to serve as successor trustee.

Mrs. Muscato was 77 years old when she filed her bankruptcy petition in 1998 and was 96 when she reopened her case in 2017. The purported sale of 187 Columbus Avenue in 2016 generated net proceeds of approximately $50,000. Subject to the results of a more precise actuarial calculation, both the debtor and trustee agree that for a person of the debtor's age, the life estate would have had a value of approximately $31,700 in 1998. At the time of bankruptcy filing, New York State allowed a maximum homestead exemption of $10,000. Asserting that she lived in the property at the time of her bankruptcy filing, Mrs. Muscato claims an exemption of $10,000 in the sale proceeds now in escrow.

The trustee objects to the debtor's claim of a homestead exemption for essentially two reasons. First, the trustee argues that the debtor has acted in bad faith, as evidenced by her intentional failure to disclose a known asset. Ms. Christophersen urges the court to infer knowledge from the debtor's occupancy of the property, from her payment of taxes, and from her subsequent execution of a deed. Secondly, the trustee contends that the debtor's amendment to her schedules should be rejected as untimely and unduly prejudicial to the bankruptcy estate. In particular, Ms. Christophersen believes that creditors have been prejudiced by reason of the delay of nineteen years from commencement of the bankruptcy petition and the delay of more than sixteen months from the purported sale. Mrs. Muscato is now represented by a newly retained attorney having no involvement in the initial bankruptcy filing. He

asserts that the debtor may have been unfamiliar with the concept of a life tenancy and that she likely believed that title had passed to her children. Counsel asks that the court find that the initial failure to disclose the debtor's life estate was an innocent mistake that should not affect her right to an exemption.

Discussion

The outcome of the present dispute is resolved by the decision of the Supreme Court in *Law v. Siegel*, 134 S.Ct. 1188 (2014). This case held that a bankruptcy trustee could not surcharge an exemption for administrative costs that resulted from the debtor's fraudulent misrepresentation. In reaching this result, the Court recognized a broad entitlement to the benefit of a statutorily allowed exemption, without regard to the good faith of the debtor or prejudicial impact on the bankruptcy estate:

> "But even assuming the Bankruptcy Court could have revisited [the debtor's] entitlement to the exemption, § 522 does not give courts discretion to grant or withhold exemptions based on whatever consideration they deem appropriate. . . . A debtor need not invoke an exemption to which the statute entitles him; but if he does, the court may not refuse to honor the exemption absent a valid statutory basis for doing so."

134 S.Ct. at 1196. In the present instance, the trustee seeks not to surcharge an exemption, but to deny its allowance. This distinction is without consequence, however, in that either characterization seeks the same outcome of depriving the debtor of a statutory right. Having claimed a homestead exemption, Mary Muscato is entitled to its benefit even now, many years after the order for relief in bankruptcy.

The trustee argues that undue and prejudicial delay should here preclude the debtor from amending her schedules. Bankruptcy Rule 1009(a) states that "[a] voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed." In the trustee's view, the opportunity to amend schedules for the purpose of claiming an exemption would have terminated upon the initial closing of this bankruptcy case on October 30, 1998. What the trustee overlooks, however, is that Rule 1009(a) addresses only the right to amend

"as a matter of course." In the present instance, because the case was already closed, Mary J. Muscato could not simply amend her schedules, but needed also to reopen her case pursuant to 11 U.S.C. § 350(b).[1] Indeed, section 350(b) expressly acknowledges that a proper purpose of reopening is "to accord relief to the debtor." Pursuant to 11 U.S.C. § 522, bankruptcy relief includes the right to enjoy the benefit of all allowable exemptions. *See Gortmaker v. Avco Financial Services (In re Gortmaker)*, 14 B.R. 66, 68 (Bankr. D.S.D. 1981). Upon the reopening of this case, the debtor duly amended her schedules to claim an exemption. The denial of this opportunity would serve as a mere subterfuge for disallowing a proper exemption. Again, we follow the guidance of the Court in *Law v. Siegel*:

> "[The trustee] points out that a handful of courts have claimed authority to disallow an exemption (*or to bar a debtor from amending his schedules to claim an exemption, which is much the same thing)* based on the debtor's fraudulent concealment of the asset alleged to be exempt. He suggests that those decisions reflect a general, equitable power in bankruptcy courts to deny exemptions based on a debtor's bad-faith conduct. For the reasons given, the Bankruptcy Code admits no such power."

134 S.Ct. at 1196 (emphasis added)(citations omitted). Although dicta, the above emphasized text resolves a split of authority on the question of whether a debtor may freely amend her schedules to claim an exemption. Accordingly, this court believes that it is compelled to follow those cases which have held that "the debtor, under Rule 1009, may amend schedules without limitation of whether the case is open or reopened after closing." *Martin v. Avco Financial Services (In re Martin)*, 157 B.R. 268, 274 (Bankr. W.D. Va. 1993). *Accord, Towers v. Boyd (In re Boyd)*, 243 B.R. 756, 766 (N.D. Cal. 2000); *Goswami v. MTC Distributing (In re Goswami)*, 304 B.R. 386, 392-93 (B.A.P. 9th Cir. 2003); *Equitable Life Assurance Co. v. Union Planters Bank (In re Jordan)*, 276 B.R. 434, 438 (Bankr. N.D. Miss. 2000).

This court acknowledges but rejects those decisions which have held that in a reopened case, debtors may amend their exemption schedule only upon a showing of

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[1]We need not here consider the circumstances under which a court may deny the reopening of a case. The trustee has not asked the court to reconsider its order of reopening, possibly because she would have wanted the same outcome in order to administer the value of the life estate in excess of any allowed exemption.

excusable neglect sufficient to satisfy the requirements of Bankruptcy Rule 9006(b). *See, e.g., In re Benjamin*, 580 B.R. 115 (Bankr. D.N.J. 2018) and *In re Dollman*, 2017 WL 4404242 (Bankr. D.N.M. 2017). In relevant part, Bankruptcy Rule 9006(b) states:

> "[W]hen an act is required or allowed to be done *at or within a specified period* by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." (emphasis added)

By its language, Rule 9006(b) speaks to a specific period, and not to an indeterminate span of time whose length is not precisely set. As stated by the court in *In re Goswami*, 304 B.R. 386, 393 (B.A.P. 9th Cir. 2003), "there is no justification for applying Rule 9006 in this case. The Federal Rules of Bankruptcy Procedure do not require that exemption schedules be amended 'within a specified period.'"

For bankruptcy cases filed in 1998, the State of New York had exercised the option allowed under section 522 of the Bankruptcy Code, to mandate use of the state's own exemption law. At the time of bankruptcy filing, the applicable New York statutes permitted a homestead exemption of $10,000. *See* N.Y. DEBT. & CRED. L. § 282 (McKinney 1990) and N.Y. C.P.L.R. 5206(a) (McKinney 1997). Theoretically, New York could have imposed restrictions on the enjoyment of an exemption. However, the trustee cites no statutory language or judicial interpretation which might compel an exception to the homestead exemption under New York law. Meanwhile, "*federal law* provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the [Bankruptcy] Code." *Law v. Seigel*, 134 S. Ct. at 1197." *Accord, In re Taylor*, 562 B.R. 16 (Bankr. W.D.N.Y. 2016).

This opinion does not address the possibility that in some unusual circumstances, a debtor may be estopped from claiming an exemption or from transferring a claim of exemption to other property. Furthermore, nothing in this decision precludes a trustee from contesting an exemption on grounds other than those which are addressed herein. Although delay in claiming an exemption will not without more justify its denial, we express no opinion on whether delay might create other bases for objection. For example, if property loses value between the initial closing of

a case and its reopening, a trustee might argue that the debtor has already received the full benefit of her exemption. What consequences follow from depreciation, from the infliction of damage, from the failure to maintain, or from a loss of net value by reason of tax or mortgage delinquencies? To the extent that the trustee seeks to explore such issues, she is free to make further inquiry. For now, however, the trustee has presented no valid reason to disallow the debtor's claim of exemption.

For the reasons stated herein, this Court must overrule the trustee's current objection to the debtor's homestead exemption.

So ordered.

/s/ Carl L. Bucki

Dated: Buffalo, New York
March 22, 2018

Hon. Carl L. Bucki, Chief U.S.B.J., W.D.N.Y.