UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:

CASE #96-23495

Roger W. Stewart and
Madeline A. Stewart,

DECISION & ORDER

Debtors.

BACKGROUND

On November 19, 1996, Roger W. Stewart and Madeline A. Stewart (the "Debtors") filed a petition initiating a Chapter 7 case. On their schedules of real property and property claimed as exempt, the Debtors listed as their principal residence, a house and lot at 107 Norway Ridge Road, Steuben County, New York ("Parcel I") and an additional fourteen acres of adjoining land ("Parcel II"). The schedules indicated that: (1) Parcel I had been purchased under a land contract on July 14, 1989, had a value of $17,500.00 and was subject to liens with outstanding balances of $17,257.03; and (2) Parcel II had been purchased in 1994, had a value of $4,550.00 and was free and clear of liens.

On January 21, 1997, the Debtors' Chapter 7 Trustee (the "Trustee") filed an objection (the "Objection") to the Debtors' claim of an exemption in Parcel II, which he made returnable on January 31, 1997, the date scheduled for the Debtors' initial Section 341 meeting of creditors. The Objection alleged that Parcel II did not qualify for the homestead exemption under Section 5206(a) of the New York Civil Practice Law and Rules, the applicable exemption statute ("CPLR 5206(a)")[1],

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[1] CPLR §5206 provides in pertinent part:

Real property exempt from application to the satisfaction of money judgments.

because it: (1) was an after-acquired separate parcel of property from Parcel I, which the Debtors had purchased and for four years used as a homestead - a lot with their dwelling house on it; (2) continued to have a separate real estate tax identification number; (3) was vacant land; (4) was not encumbered by the liens against Parcel I[2]; and (5) was unnecessary for the use of Parcel I as a residence.

On March 4, 1997, after the hearing on the Objection was adjourned by consent to March 28, 1997, the Debtors filed an Answer (the "Answer") to the Objection, which alleged that: (1) Parcel II was a woodlot purchased by the Debtors for the express purpose of providing wood to heat their residence; (2) the Debtors, after the purchase of Parcel II as a woodlot, converted their residence to wood heat, and now have no other way to heat the residence; (3) the Debtors also used Parcel II for maintaining several head of livestock which they slaughtered and used for food; and (4) Parcel II is contiguous to Parcel I and together these Parcels comprised one working unit.

At the March 28, 1997 adjourned hearing date on the Objection, the Debtors confirmed that:

(a) Exemption of homestead. Property of one of the following types, not exceeding ten 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,
2. shares of stock in a cooperative apartment corporation, or
3. units of a condominium apartment.

But no exempt homestead shall be exempt from taxation or from sale for non-payment of taxes or assessments.

[2] The schedules indicated that the liens on Parcel I were both granted in 1989 before Parcel II was acquired.

(1) they had purchased Parcel II, which they estimated had sufficient Eastern Birch on it to heat their residence for their anticipated lifetimes, for $9,600.00[3]; (2) they then converted their residence from propane heat, which had cost them approximately $2,000.00 in fuel costs annually, to wood heat; and (3) they had estimated that over a reasonable period of time they could recoup the acquisition cost of Parcel II by their annual savings of approximately $800.00 from not having to purchase wood for fuel. The Debtors also confirmed that they did not sell any of the wood on Parcel II to third parties, and the livestock maintained on Parcel II was used for their sole consumption.

DISCUSSION

In his decision in *In re Flatt*, 160 B.R. 497 (Bankr. N.D.N.Y. 1993), now Chief Bankruptcy Judge Stephen D. Gerling, sets out an excellent overview of New York law on the question of whether a debtor can be allowed a homestead exemption on a contiguous, but arguably separate, parcel from a parcel on which the debtor's dwelling is located. In *Flatt,* I believe the Court correctly concludes that: (1) the creation of a homestead is a question of fact based largely on the owner's intent; and (2) there is a policy in New York law to construe exemption statutes liberally in favor of a debtor. *In re Flatt*, 160 B.R. at 501.

After applying the factors, conclusions and policies set forth in *Flatt* to the facts and circumstances presented in this case, I conclude that the Debtors are entitled to a homestead exemption under CPLR 5206(a) in both Parcel I and Parcel II, for the following reasons: (1) Parcel I and Parcel II are contiguous; (2) the Debtors purchased Parcel II with the stated intention of using

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[3] Even if the value of Parcel II was the acquisition price of $9,600.00, rather than the scheduled value of $4,550.00, if it qualifies for the combined $20,000.00 homestead exemption, there would be no non-exempt equity in the two parcels.

the wood on the lot to heat their dwelling; (3) the Debtors' actual use of Parcel II has been consistent with their stated intent at the time of acquisition in that subsequent to their purchase of Parcel II, they converted their dwelling from propane to woodburning heat; (4) the Debtors have further utilized Parcel II to maintain livestock which they slaughter and use for food; (5) the overall economics of the purchase and integration of Parcel II with Parcel I supports the reasonableness of the acquisition; (6) Parcel II has not been used for any commercial purposes; (7) there is no indication of any abuse on the part of the Debtors in the acquisition, integration or utilization of Parcel II, which was acquired a number of years prior to their bankruptcy filing; and (8) Parcel I and Parcel II at the time of the Debtors' bankruptcy filing were fully integrated and used to provide the Debtors with some of their fundamental personal needs - heat and food.

CONCLUSION

The Trustee's Objection to the Debtors' claimed homestead exemption in Parcel II is denied, and the Debtors' claimed homestead exemption in Parcel I and Parcel II is allowed.

IT IS SO ORDERED.

_____/s/_____
HON. JOHN C. NINFO, II
U.S. BANKRUPTCY JUDGE

Dated: May 12, 1997