

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

In Proceedings
Under Chapter 7

MICHAEL CASTANEDA and
BRANDEE A. CASTANEDA,

Case No. 05-41307

Debtors.

OPINION

The issue before the Court is whether the debtors may claim a homestead exemption under Illinois law in a spare lot of land that sits adjacent to the lot of land occupied by the debtors' house. Cynthia Hagan, the Chapter 7 Trustee, has objected to the claimed exemption arguing that the spare lot is not exempt under the Illinois homestead exemption statute since the debtors do not reside on that spare lot.

Debtors Michael and Brandee Castaneda filed their voluntary petition pursuant to Chapter 7 of the Bankruptcy Code on May 17, 2005. On Schedule C, debtors listed the following real property as exempt: single story home on three and a half lots valued at \$70,000 plus a single spare lot valued at \$7,500. Debtors own the spare lot free and clear of any encumbrances, but according to debtors' Schedule D, their home and three and a half lots are subject to a secured claim in the amount of \$77,553. Debtors claimed a \$7,500 exemption in the spare lot pursuant to the Illinois homestead exemption. *See* 735 ILL. COMP. STAT. § 5/12-901(West 2005). The Trustee filed a timely objection to the debtors' exemption on July 6, 2005.

The Illinois homestead exemption provides:

Every individual is entitled to an estate of homestead to the extent in value of \$7,500 of his or her interest in a farm or *lot of land and buildings thereon*, a condominium, or personal property, owned or rightly possessed by lease or otherwise and *occupied by him or her as a residence*, or in a cooperative that owns property that the individual uses as a residence. That homestead and all right in and title to that homestead is exempt from attachment, judgment, levy, or judgment sale for the payment of his or her debts or other purposes and from the

laws of conveyance, descent, and legacy, except as provided in this Code or in Section 20-6 of the Probate Act of 1975.

735 ILL. COMP. STAT. § 5/12-901(West 2005)(emphasis added). The purpose of the homestead exemption is to foster the debtor's fresh start in bankruptcy and secure for the debtor and his family necessary shelter from creditors. *See, e.g., In Re Doyle*, 209 B.R. 897, 900 (Bankr. N.D. Ill. 1997); *Bank of Illmo v. Simmons*, 142 Ill.App.3d 741, 745 (5th Dist. 1986). Since the homestead exemption was designed for the benefit of the debtor, courts are required to liberally interpret the homestead exemption in the debtor's favor. *In Re Barker*, 786 F.2d 191, 196 (7th Cir. 1985).

The Supreme Court of Illinois interpreted the homestead exemption statute in *Stocker v. Curtis*, 106 N.E. 441 (Ill. 1914).¹ In *Stocker*, a judgment creditor executed a levy on two lots jointly owned by a husband and wife - a lot occupied by the couple's permanent residence and an adjacent lot which contained a clothesline, garden and yard used in connection with the residence. *Id.* The couple alleged their exemption interest in the lot occupied by their permanent residence was less than the current statutory exemption amount of \$1,000. *Id.* at 442. The couple sought to enjoin the sale of both lots pursuant to the homestead exemption. *Id.* at 441. The Court disagreed with the judgment creditor's argument that the homestead exemption could not embrace more than one lot. *Id.* at 442. The Court held that when an adjacent lot is used in connection with the lot upon which the house stands and both lots are occupied as one parcel of property, "the [homestead exemption] may extend to both lots, where the one upon which the house stands is worth less than the [statutory exemption amount]." *Id.*; *see also Sever v. Lyon*, 48

¹At the time of the Supreme Court's decision in *Stocker*, the homestead exemption statute entitled an individual to an estate of homestead to the extent in value of \$1,000 of his interest in a lot of land. *Stocker*, 106 N.E. at 441.

N.E. 926, 926-27 (Ill. 1897) (in a case where two adjoining lots and dwellings thereon were not worth the current statutory exemption amount of \$1,000, Court held it was possible for the homestead exemption to include two more adjoining lots if they were “occupied as one lot of land constituting a single residence”); *Reames, for Use of Rastede v. Morrow*, 1915 WL 2058 at *1 (Ill. App. 1915) (two city lots, one occupied by a house and the other occupied by fruit trees and a garden, qualified for the homestead exemption where the value of both lots did not exceed the current statutory exemption amount of \$1,000).

Federal Rule of Bankruptcy Procedure 4003(c) governs hearings on objections to exemptions. Rule 4003(c) expressly places the burden of proof on the objecting party to show that an exemption was not properly claimed. FED. R. BANKR. P. 4003(c).² In this case, the Chapter 7 Trustee, as the objecting party, has the burden of proving by a preponderance of the evidence that the homestead exemption was not properly claimed. *See In Re Moneer*, 188 B.R. 25 (Bankr. N.D. Ill. 1995)(citing *Bankruptcy Litigation and Practice: A Practitioner’s Guide*, § 7.13(M)(1993 and 1994 Supp.); *In Re Ritter*, 190 B.R. 323, 325-26 (Bankr. N.D. Ill. 1995).

As grounds for her objection, the Trustee argued that the homestead exemption was not properly claimed in the debtors’ spare lot because that lot is not used as the debtors’ residence. The Trustee’s argument fails in light of the Illinois Supreme Court’s decision in *Stocker*. Just as in *Stocker*, the debtors’ spare lot is adjacent to the lot on which the debtors’ house stands, and the debtors’ exemption interest in the lot occupied by their house is clearly less than the statutory exemption amount of \$7,500 since debtors have no equity in that lot. The spare lot contains a partially built pole barn, but debtors have not otherwise presented sufficient evidence for this

²Rule 4003(c) states: “In any hearing under [Rule 4003] the objecting party has the burden of proving that the exemptions are not properly claimed.”

Court to determine to what extent the adjacent lot is used in connection with the lot occupied by the debtors' house. While this lack of evidence prevents the Court from making a specific determination as to whether or not the adjacent lot would qualify for a homestead exemption under the standards set out in *Stocker*, the Trustee has the burden of proving that debtors' exemption is improper. *See In Re Doyle*, 209 B.R. at 903 (when neither debtor nor Trustee offered sufficient evidence to the Court on objection to exemption issue, Court noted Trustee had the burden of proof and the Trustee's "failure to offer any evidence in support of his objection [was] fatal"). The Trustee's mere allegation that the debtors do not reside on the adjacent lot is insufficient under the law to prevail on her objection. The Trustee offered no additional evidence or authority to support her argument. Consequently, the Trustee's objection to debtors' homestead exemption is OVERRULED.

SEE WRITTEN ORDER

ENTERED: January 31, 2006

/s/ Kenneth J. Meyers

UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Court's opinion entered this date, IT IS ORDERED that the Objection to Debtors' Claim of Exemptions filed by the Chapter 7 Trustee on July 6, 2005 is hereby OVERRULED.

ENTERED: January 31, 2006

/s/ Kenneth J. Meyers

UNITED STATES BANKRUPTCY JUDGE