

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

IN RE:

SHARON HORN,

Debtor.

In Proceedings
Under Chapter 7

Case No. 05-41734

OPINION

The issue before the Court is whether the debtor 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 debtor's residence, when that residential lot is owned solely by the debtor's non-debtor husband. 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 debtor does not reside on that spare lot. At a hearing on the Trustee's objection, the Trustee further argued that the debtor has no ownership interest in the residential lot adjoining the spare lot.

Debtor Sharon Horn filed her voluntary petition pursuant to Chapter 7 of the Bankruptcy Code on July 1, 2005. On Schedule C, the debtor claimed a \$6,400 exemption pursuant to the Illinois homestead exemption in the following real property: "½ interest in 32 acres of scrubland where [debtor] live[s]" which is "full of tree stubs and briars." The Trustee filed a timely objection to the debtor's exemption on August 15, 2005.

The real property described in debtor's Schedule C is a spare lot of land used by the debtor and her husband as an extended yard and is adjacent to the lot occupied by their residence. The residential lot is owned solely by debtor's non-debtor husband.

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 statute has two requirements that must be satisfied by a debtor claiming a homestead exemption. First, the debtor must occupy the lot as his or her residence. *Id.* Second, the residential lot must be "owned or rightly possessed by lease" by the debtor. *Id.* If the debtor meets both requirements, the homestead exemption may, under certain circumstances, extend to an adjoining spare lot. *See Stocker v. Curtis*, 106 N.E. 441 (Ill. 1914).¹

This Court, in the case of *In Re Carver*, 2003 WL 23211627 (Bankr. S.D. Ill. 2003), interpreted the homestead exemption's "ownership" requirement. In *Carver*, this Court adopted the reasoning of *In Re Popa*, 218 B.R. 420 (Bankr. N.D. Ill. 1998), *aff'd*, 238 B.R. 395 (N.D. Ill. 1999) and "expressly [found] that marital status does not confer upon a non-titled spouse the right to claim a homestead exemption in real property owned by the other spouse." *Id.* at *1. The Court further stated: "The estate in land to which the homestead right attaches must be supported by title or some ownership interest, and possession alone is insufficient to entitle an individual to claim a homestead exemption." *Id.*

In this case, the debtor is prevented from claiming a homestead exemption in the residential lot since she has no ownership interest in that lot. Since the debtor does not have a valid homestead exemption claim in the residential lot, she may not extend an exemption to the

¹A debtor may claim a homestead exemption in a spare lot adjoining the debtor's residential lot if two requirements are satisfied. *Stocker*, 106 N.E. at 442. First, the adjacent spare lot must be used in connection with the residential lot so that both lots are occupied as one parcel of property. *Id.* Second, the debtor's exemption in the residential lot must be less than the statutory exemption amount. *Id.*

spare lot under the circumstances set out in *Stocker*. Consequently, the Trustee's objection to the debtor's homestead exemption is SUSTAINED.

SEE WRITTEN ORDER

ENTERED: February 6, 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 Debtor's Claim of Exemptions filed by the Chapter 7 Trustee on August 15, 2005 is hereby SUSTAINED.

ENTERED: February 6, 2006

/s/ Kenneth J. Meyers

UNITED STATES BANKRUPTCY JUDGE