



The relief described hereinbelow is SO ORDERED.

Signed September 07, 2005.

A handwritten signature in cursive script that reads "Robert D. Berger".

ROBERT D. BERGER
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:

RICHARD FRANKLIN STROBLE and
MARY SUSAN STROBLE,

Case No. 03-24926
Chapter 7

Debtors.

MEMORANDUM OPINION AND ORDER

The Chapter 7 trustee's objection to claim for exemption (Doc. No. 10) is before the Court. The parties have agreed to submit the matter for consideration on briefs and exhibits to be filed. The Court has received and reviewed the relevant pleadings and the record and is prepared to rule.

Background

The debtors, Mr. and Mrs. Stroble (the "Strobles"), filed their petition for Chapter 7 relief on November 19, 2003. On January 26, 2004, the Strobles amended their schedules to include as an asset and claim as exempt a \$950.83 settlement (the "Settlement") resolving concerns of

unfair and deceptive mortgage lending practices raised by an investigation into the lending practices of their mortgage lender, Household International Inc. (“Household”).¹ The investigation was initiated by the attorneys general and/or bank and consumer finance regulators of all 50 states and the District of Columbia. The Chapter 7 trustee filed his objection to exemption of the Settlement on January 30, 2004, and contends that the homestead exemption provided by Kansas law does not extend to the Strobles’ prepetition interest in the Settlement. The Journal Entry of Consent Judgment² giving rise to the Settlement resolves claims against Household alleging violations of both the Kansas Consumer Protection Act³ and the Kansas Consumer Credit Code.⁴ Although the Settlement is not considered forgiven debt under the Consent Judgment, it is described as “restitution” for Household’s lending practices.⁵

Discussion

Under § 522(b)(2),⁶ a debtor may exempt any property which is exempt under federal non-bankruptcy law or, alternatively, under the laws of the state of the debtor’s domicile. However, K.S.A. § 60-2312 prohibits Kansas citizens from electing to use federal bankruptcy

¹ More specifically, Household International, Inc., its direct and indirect subsidiaries, affiliates, officers, directors, employees, agents, related entities, successors, and assigns.

² *State of Kansas, ex rel., v. Household International, Inc.*, Case No. 02 C 1636, slip op. at 5 (District Court of Shawnee County, Kansas, Dec. 16, 2002).

³ K.S.A. § 50-623, *et seq.*

⁴ K.S.A. § 16a-1-101, *et seq.*

⁵ The allegations giving rise to the Settlement relate to Household’s conduct with regard to its lending practices, including: two real estate secured loans made at or near the same date to the same borrower, loan points and origination fees, interest rates, monthly payment amounts, prepayment amounts, balloon payments, etc. *See Household*, Case No. 02 C 1636, slip op. at 4-5.

⁶ All references are to the Bankruptcy Code, Title 11 U.S.C. §§ 101, *et seq.*, unless otherwise noted.

exemptions, with the exception of those delineated in § 522(d)(10).⁷ Therefore, to determine the validity of a claimed homestead exemption under K.S.A. § 60-2301, this Court need only look to applicable Kansas law.⁸ The burden of proof on an objection to exemption is borne by the objecting party, who must prove by a preponderance of the evidence that the objection was improper.⁹

That the Strobles' principal residence is an exempt homestead is not disputed. Instead, the trustee asserts that the protection afforded to the Strobles by the Kansas homestead exemption does not extend to the restitution they received through the Settlement. The Strobles argue that as proceeds derived from their homestead, the Settlement is protected by Kansas law. Alternatively, the Strobles argue that the Settlement is also functionally equivalent to down payments made on improvements to existing homesteads, which are entitled to exemption under Kansas homestead law. The Court finds that the Kansas courts would conclude the Kansas homestead exemption protects the Strobles' interest in the Settlement.

Under Kansas law, the homestead is not an estate; it is a constitutional right, augmented by statute and implemented as an exemption that is remedial in nature:

A homestead to the extent of ... one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law...¹⁰

⁷ K.S.A. § 60-2312(a), (b).

⁸ *In re Hodes*, 402 F.3d 1005, 1009 (10th Cir. 2005).

⁹ *Id.* at 1010 (citing FED. R. BANKR. P. 4003(c); *In re Sims*, 241 B.R. 467 (Bankr. N.D. Okla. 1999)).

¹⁰ Kan. Const. art. 15, § 9; Kan. Stat. Ann. § 60-2301.

Kansas residents may exempt the full value of the qualified homestead regardless of its actual dollar value.¹¹ The word “homestead” itself “represents the dwelling house where the family resides.”¹² Historically, Kansas courts have liberally interpreted the homestead exemption to effectuate its purpose: namely, “for the benefit of the family and of society - to protect the family from destitution, and society from the danger of her citizens becoming paupers.”¹³

The Kansas courts have extended the homestead exemption equitably to protect the proceeds from the sale of the homestead, provided an intent to use the proceeds to obtain another homestead is formed at or before the time of the sale.¹⁴ The Tenth Circuit Court of Appeals has also recently affirmed the use of the equitable conversion doctrine to allow debtors to claim as exempt under Kansas homestead law all \$225,000 of their deposit with a builder for the construction of an addition to their existing homestead.¹⁵ The equitable extension of homestead protection is a “sort of equitable fiction drawn from the spirit of the homestead exemptions laws....”¹⁶ Equitable conversion itself “is neither a fixed rule of law nor a remedy, but rather is a legal fiction devised in recognition of the maxim that equity regards as done that which ought to be done.”¹⁷

Although the facts presented in this matter have not been considered previously, the

¹¹ *Hodes*, 402 F.3d at 1009-10.

¹² *Anderson v. Shannon*, 146 Kan. 704, 711, 73 P.2d 5, 10 (1937).

¹³ *Id.* (internal quotations omitted).

¹⁴ *In re Ginther*, 282 B.R. 16, 19 (Bankr. D. Kan. 2002) (citations omitted).

¹⁵ *See Hodes*, 402 F.3d 1005.

¹⁶ *Smith v. Gore*, 23 Kan. 488 (1880).

¹⁷ *Hodes*, 402 F.3d at 1011.

equitable considerations warranting the protection of homestead proceeds and the application of the equitable conversion doctrine are present. Here, the Stobles have received “restitution” on account of Household’s mortgage practices. *Black’s Law Dictionary* defines restitution as “[a]n equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred.”¹⁸ Accordingly, while the Settlement is not the forgiveness of debt, it represents the Stobles’ restoration to their position prior to any damage incurred as a result of financing the obligation secured by their principal residence.

Because the damage suffered by the Stobles resulted from Household’s alleged abusive mortgage lending practices regarding loan points and origination fees, interest rates, monthly payment amounts, prepayment amounts, balloon payments, etc., it is appropriate to classify the Settlement as reflecting restitution for an impairment of equity. In other words, had the Stobles in their dealings with Household made the same financial contributions absent any abusive practices, the equity in their homestead would have been greater. Therefore, to deny the Stobles the right to claim as exempt funds representing equity lost as a result of a mortgage lender’s bad acts is incongruous with the Kansas homestead exemption’s basic applied effect of protecting equity in the homestead.

With guidance from the maxim that “equity regards as done that which ought to be done,” this Court concludes that the Settlement is protected by the homestead exemption afforded under existing Kansas law. Under the limited factual scenario presented, the trustee has not satisfied his burden of proving the Stobles are not entitled to exempt the Settlement.

¹⁸ BLACK’S LAW DICTIONARY 1313 (6th ed. 1990).

Conclusion

For the foregoing reasons, the trustee's Objection to Exemption is denied.

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ROBERT D. BERGER
U.S. BANKRUPTCY JUDGE
DISTRICT OF KANSAS