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U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF TX
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

IN RE:	§	
	§	Case No. 02-10726
MELBA JOYCE KENNEDY	§	
	§	
Debtor	§	Chapter 7

MEMORANDUM OF DECISION[1]

This matter is before the Court upon hearing of the Trustee's Objection to Property Claimed as Exempt (the "Trustee's Objection") filed by the Chapter 7 Trustee, Daniel J. Goldberg (the "Trustee"). Based upon the evidence and legal argument presented, the Court concludes that the Trustee's Objection should be sustained.[2]

Factual and Procedural Background

The relevant facts of this case have been stipulated by the parties.[3] The Debtor, Melba Joyce Kennedy (the "Debtor), filed a petition for relief under Chapter 7 on January 29, 2002. The Debtor thereafter claimed a homestead exemption as to a 6.574 acre-tract in Angelina County, Texas. Four years prior to her petition date, the Debtor had actually sold 1.584 acres of this 6.574-acre tract to Kevin Keith Bentley and Kenneth Bentley, as Custodian for Kerry

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[1]This Memorandum of Decision is not designated for publication and shall not be considered as precedent, except under the respective doctrines of claim preclusion, issue preclusion, the law of the case or as to other evidentiary doctrines applicable to the specific parties in this proceeding.

[2] This Court has jurisdiction to consider the objection pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157(a). The Court has the authority to enter a final order in this contested matter since it constitutes a core proceeding as contemplated by 28 U.S.C. §157(b)(2)(A), (B), and (O).

[3] *See* Stipulation between Debtor and Chapter 7 Trustee on Trustee's Objection to Debtor's Exemption of 1.584 Acre Tract of Land in Angelina County, Texas.

Michelle Bentley under the Texas Transfers to Minors Act ("Buyers"). This 1.584-acre parcel was sold to the Buyers under a contract for deed. Upon consummation of the sales transaction, the Debtor relinquished possession of the 1.584 acres to the Buyers, who proceeded to operate a flea market thereon prior to the time of the Debtor's bankruptcy.

The Buyers were in default under the terms of the contract for deed as of the time of the Debtor's Chapter 7 petition. The Debtor sent a Notice of Default to the Buyers on January 24, 2002, giving the Buyers until February 25, 2002, to cure the alleged default. The Debtor then filed her bankruptcy petition five days later. Notwithstanding the creation of the bankruptcy estate upon the filing of the petition and the subsequent appointment of the Trustee to administer that estate, the Debtor forwarded to the Buyers, after the expiration the 30-day curing period, a notice of cancellation of the contract for deed. The Trustee thereafter filed his objection to the Debtor's exemption of the entire 6.574 acres on April 4, 2002. The Court subsequently conducted an evidentiary hearing on the Trustee's objection, with the burden of proof resting upon the Trustee as the objecting party. FED. R. BANKR. P. 4003(c).

Discussion

The commencement of a bankruptcy case creates an estate encompassing all legal and equitable interests in property of the debtor as of the petition date, including any property that might potentially be exempt. 11 U.S.C. §541(a). The debtor may then exempt certain property from the bankruptcy estate by claiming either the federal exemptions provided by §522(d), or any other exemptions provided by applicable federal, state, or local law. 11 U.S.C. §522(b). In assessing a debtor's claimed exemptions, the court must look to state law to interpret the state exemption rights. *Bradley v. Pacific Southwest Bank (In re Bradley)*, 121 B.R. 306, 312 (Bankr.

N.D. Tex. 1990), rev'd on other grounds, *In re Bradley*, 960 F.2d 502 (5th Cir.), cert. denied sub. nom., *Commonwealth Land Title Ins. Co. v. Bradley*, 507 U.S. 971, 113 S.Ct. 1412, 122 L.Ed.2d 783 (1993); *see also In re Moody,* 77 B.R. 580, 590 (S.D. Tex. 1987) ["Bankruptcy courts must resort to state law for an interpretation of state exemption rights in homesteads."], aff'd by *Matter of Moody*, 862 F.2d 1194 (5th Cir.), cert. denied, *Moody v. Smith*, 503 U.S. 960, 112 S.Ct. 1562, 118 L.Ed.2d 209 (1992). The facts and law existing as of the date of the petition govern a debtor's claimed exemptions. *Zibman v. Tow*, 268 F.3d 298, 302 (5th Cir. 2001) ["This focus on the status as of the date of filing is commonly referred to as the 'snapshot' approach to determining the extent of the bankruptcy estate and the scope of the exemptions."] (*citing White v. Stump*, 266 U.S. 310, 312, 45 S.Ct. 103, 69 L.Ed. 301 (1924) ["(The Bankruptcy Code) makes the state laws existing when the petition is filed the measure of the right to exemptions."]); *Hrncirik v. Farmers Nat'l Bank (In re Hrncirik),* 138 B.R. 835, 839 (Bankr. N.D. Tex. 1992) [stating that exemptions are determined as of the date of the filing of the bankruptcy petition].

Because the Debtor in this case selected the Texas state law exemptions, the Court must look to Texas law existing as of the January 29, 2002, petition date. The Texas Constitution, both now and in January of 2002, states that:

> [t]he homestead, not in a town or city, shall consist of not more than 200 acres of land, which may be in one or more parcels, with the improvements thereon . . . provided, that the same shall be used for the purposes of a home. . . ."[4]

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[4] *See* TEX. CONST. art. XVI, §51; *see also England v. FDIC*, 975 F.2d 1168, 1172 (5th Cir. 1992) ["From the beginning of Texas' statehood in 1845, its constitutions have provided homestead protection to its residents. . . ."].

Similarly, TEX. PROP. CODE ANN. §41.002 (Vernon 2000) states as follows:

> (b) If used for the purposes of a rural home, the homestead shall consist of:
>
> (1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or
>
> (2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

This exemption protects a debtor's homestead from seizure for the claims of creditors, except for encumbrances which are "properly fixed" on the homestead property.[5] Section 41.001(b) then proceeds to describe those encumbrances which may be "properly fixed on homestead property," *see* TEX. PROP. CODE ANN. §41.001(b), and §41.001(c) thereafter states the rule that "[t]he homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale." TEX. PROP. CODE ANN. §41.001(c).

The homestead exemption under Texas law has a long and distinguished history. In fact, one commentator has stated that "[t]he homestead protection is a Texas creation . . . [that was] [b]orn out of the United States Panic of 1837, in which numerous Texas families lost their homes and farms through foreclosure." Charles C. Boettcher, *Taking Texas Home Equity For A Walk, But Keeping It On A Short Leash!*, 30 TEX. TECH. L. REV. 197, 203-04 (1999) [recognizing that "the homestead protection was first codified in 1839 by the Republic of Texas."]. Several rationales have historically been cited to support the necessity of the Texas homestead exemption, including the public policy of assisting debtors in becoming "useful members of society instead of charges or burdens thereon," as well as an historical anti-creditor sentiment

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[5] TEX. PROP. CODE ANN. §41.001(a) states that "[a] homestead . . . [is] exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.

that remains prevalent in Texas today. *Id.* at 204. Likewise, in *1018-3rd Street v. State*, a Texas appellate court listed the following purposes of the availability of the homestead exemption in Texas: (1) maintaining the unity of the family and encouraging homesteading; (2) providing a home and a means of support for both the debtor and the family; and (3) establishing in the individual a sense of freedom and independence which was determined necessary to the continued existence of democratic institutions. 331 S.W.2d 450, 453 (Tex. Civ. App. – Amarillo 1959, no writ); *see also England v. FDIC (In re England)*, 975 F.2d 1168, 1174 (5th Cir. 1992) ["Texas cases have consistently held that the fundamental purpose of the Texas homestead laws is to secure a place of residence against financial disaster."] (*citing Cocke v. Conquest*, 35 S.W.2d 673, 678 (Tex. 1931)). In order to advance the above-stated purposes, Texas courts have always liberally construed any claimed homestead exemption. *Woods v. Alvarado State Bank*, 19 S.W.2d 35 (Tex. 1929) ["The rule that homestead laws are to be liberally construed to effectuate their beneficent purpose is one of general acceptation."] (*citing Trawick v. Harris*, 8 Tex. 312 (Tex. 1852)); *In re Mitchell*, 132 B.R. 553, 557 (Bankr. W.D. Tex. 1991).

The Court now turns to the particular homestead exemption claimed by the Debtor in this case. The Debtor filed her bankruptcy petition on January 29, 2002, claiming the entire 6.574 acres as her rural homestead. However, she no longer owned 1.584 acres of that original tract due to the sale of such property to the Buyers more than four years before, and it is upon this basis that the Trustee rests his objection to the Debtor's exemption of the 1.584 acres. The Debtor argues that, because the transaction was structured as a contract for deed, she is now

entitled, through her retention of legal title to the 1.584 acres,[6] to exempt the entire 6.574 acres. Upon due consideration, the Court concludes that the Trustee's objection to that exemption claim must be sustained for several reasons.

First of all, the Debtor effectively abandoned her homestead claim to the 1.584 acres by selling this land to the Buyers. It has long been recognized under Texas law that the abandonment of a homestead interest is primarily a question of intent, *see, e.g., City of El Paso v. Long*, 209 S.W.2d 950, 954 (Tex. App. — El Paso 1947, writ ref'd n.r.e.), although abandonment is not evidenced by intent alone. *Staten v. Harris*, 239 S.W. 334, 337 (Tex. App. — Dallas 1922, writ ref'd.) (*Citing Bayless v. Guthrie*, 235 S.W. 843 (Tex. Comm'n App. 1921) ["[H]omestead rights are not abandoned by mere intention, but the intention must be accompanied by a discontinuance of the use of the property as a homestead."]). "[A]bandonment of a homestead is a question of fact to be determined in each case from the entire evidence before the court or jury and . . . in cases of physical absence, the lack of definite intention of not to return and use and occupy such homestead is the controlling fact." *In re Leonard*, 194 B.R. 807, 810 (Bankr. N.D. Tex. 1996) (*quoting Coleman v. Banks*, 349 S.W.2d 737, 741 (Tex. Civ. App. — Dallas 1961, writ ref'd n.r.e.)). In fact, as the *Long* Court stated, "[t]he ultimate question to be resolved is as to whether claimant intended to resume the possession of the premises as a homestead." 209 S.W.2d at 954.

The Debtor relies upon the case of *O'Fiel v. Janes*, 220 S.W. 371 (Tex. Civ. App — Beaumont 1920, writ ref'd) for the proposition that "an Executory Contract to sell does not *as a*

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[6] A purchaser under a contract for deed obtains either equitable title or equitable rights in the property at the time of the contract, while the seller retains legal title until such time as the purchase price is fully paid. *Graves v. Diehl*, 958 S.W.2d 468, 472 (Tex. App. — Houston [14th Dist.] 1997, no pet.).

matter of law deprive land of its homestead character." (emphasis added). While that statement is undoubtedly true, even the court in *O'Fiel* recognized that a sale via an executory contract is merely "a circumstance to be considered by the jury in determining the issue of abandonment." *Id.* at 374.

Looking at all the factors present in the current dispute, the Court concludes that the Debtor abandoned her homestead claim as to the 1.584 acres at the time of the sale of the tract to the Buyers. She voluntarily entered into a contract for deed — not merely a lease of the property. In accordance with the contract, the Debtor surrendered possession of the property to the Buyers in 1997 and the Debtor has not resided thereon since that time. The Buyers subsequently utilized that property in a manner inconsistent with any continuing homestead claim by the Debtor. Thus, the Debtor could not have possibly retained the intent to use that portion of the premises as her homestead and the evidence supports no other conclusion than that the Debtor abandoned her homestead rights in the 1.584 acres at that time.

Additionally, at the time of the bankruptcy filing, the Debtor was not entitled to any homestead claim in the 1.584 acres. A debtor's exemptions are determined as of the date of filing. "This focus on the status as of the date of filing is commonly referred to as the 'snapshot' approach to determining the extent of the bankruptcy estate and the scope of the exemptions." *See Zibman,* 268 F.3d at 302. In the present case, the parties stipulated that, as of the petition date, the Debtor was not in possession of the premises and that the contract for deed had not yet been canceled by the Debtor. Although the Debtor had sent a Notice of Default to the Buyers five days prior to the filing of the bankruptcy petition, the grace period provided by the Notice of Default did not expire until 27 days after the Debtor's petition was filed. Thus, on the date of the

petition, the Debtor did not occupy the premises, nor was it certain that the Debtor would ever be authorized to exercise such a right. Hence, on the date of the petition, it is clear that the Debtor had not reacquired any right to assert a homestead interest in the 1.584 acres.

This denial of the Debtor's right to assert a homestead interest in the 1.584 acres does not frustrate or impair the policies supporting the availability of a homestead exemption under Texas law. The Debtor's homestead claim as to the remaining 4.990 acres was never abandoned nor has it been challenged by the Trustee. *See In re England*, 975 F.2d at 1174 ["Texas cases have consistently held that the fundamental purpose of the Texas homestead laws is to secure a place of residence against financial disaster."] (*citing Cocke,* 35 S.W.2d at 678). The loss of the 1.584 acres sold to the Buyers will not deprive the Debtor of a residence protected by the homestead exemption, nor will it cause the Debtor to become a burden or a charge upon society. The Debtor made the decision to forego her homestead interest in the 1.584 acres in 1997 in favor of the alienation of the property, and the remaining 4.990 acres has actually constituted the Debtor's homestead since that time. Thus, the policies underlying the homestead exemption do not mandate a decision in favor of the claimed exemption.

Finally, it is well-settled that the purchaser under a contract for deed has a sufficient interest in the property being purchased to claim a homestead exemption thereon. *See Laubhan v. Alliance Life Ins. Co.*, 134 S.W.2d 788, 792 (Tex. App. — Amarillo 1939, no writ) ["Since the (purchasers) obtained an equitable title and interest in the homestead tract under the contract to purchase the land in 1916, there can be no doubt that they could establish a homestead upon the land before they acquired the legal title."]; 43 TEX. JUR. 3D *Homesteads* §52 (2002) ["A claim of homestead is sustainable in respect of premises held by the claimant as equitable owner as under

a contract by virtue of which he may acquire title. This conclusion is not affected by the fact that the purchase price has not been paid."]. Hence, it is clear that the Buyers, if they had sought to do so, would have held a sufficient interest in the 1.584 acres to claim it as their homestead. Therefore, because no single tract of real property can be claimed concurrently as a homestead by different individuals, and because the Buyers' equitable rights in the property were sufficient to impress the 1.584 acres with a homestead exemption in favor of the Buyers, had they chosen to utilize the property in such a manner, it necessarily follows that the Debtor's conveyance of the 1.584 acres, though achieved through a contract for deed, was sufficient to strip the Debtor of her homestead interest in that tract. That fact, when combined with the fact that the property had not returned to the care, custody, and control of the Debtor as of the time of the filing of her bankruptcy petition, precludes the Debtor from making any homestead exemption claim in the 1.584 acres.

Thus, the Court concludes that the Trustee's Objection to Debtor's Claim of Exemptions must be sustained and the Debtor's claim of a homestead exemption as to the 1.584 acres of a 6.574 acre-tract identified by the Debtor as 0044 Soto J.M., Tract 126, and located on Stringer Road, Lufkin, Angelina County, Texas, and earlier made the subject of that certain contract of sale to Kevin Keith Bentley and Kenneth Bentley, is hereby denied. This memorandum of decision constitutes the Court's findings of fact and conclusions of law[7] pursuant to Fed. R. Civ. P. 52, as incorporated into contested matters in bankruptcy cases by Fed. R. Bankr. P. 7052 and

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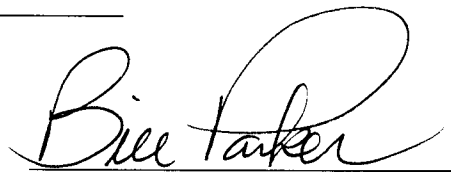
[7] To the extent that any finding of fact is construed to be a conclusion of law, it is hereby adopted as such. To the extent any conclusion of law is construed to be a finding of fact, it is hereby adopted as such. The Court reserves the right to make additional findings and conclusions as necessary or as may be requested by any party.

9014. A separate order will be entered which is consistent with this opinion.

SIGNED: AUG 5 2002



BILL PARKER
UNITED STATES BANKRUPTCY JUDGE

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