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United States Bankruptcy Court,

D. Idaho.

In re Kenneth Wayne THOMASON and Sandra Fay Thomason, Debtors.  
No. 12–41121–JDP.

Feb. 19, 2013.

John O. Avery, Idaho Falls, ID, for Debtors.

Brett R. Cahoon, Racine Olson Nye Budge & Bailey, Pocatello, ID, for Gary L. Rainsdon, chapter 7 trustee.

## MEMORANDUM OF DECISION

JIM D. PAPPAS, United States Bankruptcy Judge.

### *Introduction*

**\*1** This contest presents the latest chapter in the case law exploring the boundaries of Idaho's homestead exemption laws. The chapter 7 <sup>FN1</sup> debtors asserting the claim of exemption are Kenneth Wayne Thomason and Sandra Fay Thomason (“Debtors”). The chapter 7 trustee objecting to their exemption claim is Gary L. Rainsdon (“Trustee”). Collectively, they present a novel issue for resolution: whether a debtor may appropriately establish a homestead exemption in a home in which the debtor owns a remainder interest, but no current possessory interest?

FN1. Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037, and all “Civil Rule” references are to the Federal Rules of Civil Procedure.

The Court conducted a hearing concerning this matter on January 2, 2013, and took the issue under advisement. After considering the submissions of the parties, the testimony, evidence and arguments presented by counsel at the hearing, as well as the applicable law, this Memorandum disposes of Trustee's objection to Debtors' claim of exemption. Rules 7052; 9014.

Slip Copy, 2013 WL 625343 (Bkrtcy.D.Idaho)

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### ***Facts***

The important facts are undisputed and may be succinctly stated. Evan E. Jones was married to Patricia A. Jones, Mr. Thomason's mother. The couple owned and lived in a house located at 534 N. 300 W., Malad City, Idaho ("Jones Home").

Some time in 2011, Mr. Jones learned he had cancer and was not expected to recover. Mr. Jones was concerned that a probate proceeding could be lengthy and cumbersome. In addition, he was determined that Mrs. Jones should have unfettered access to their home for the remainder of her life. Exhs. 101–03. Therefore, to avoid probate, on December 12, 2011, Mr. and Mrs. Jones executed a "Corrected Quit Claim Deed" ("the Deed")<sup>FN2</sup> which conveyed a fee simple interest in the Jones Home to Debtors, but reserved a life estate for Patricia A. Jones.<sup>FN3</sup> Exh. 202. Mr. Jones passed away in March, 2012.

FN2. The corrected quitclaim deed was apparently intended to correct a mistake or deficiency in an earlier, similar quitclaim deed. The corrected deed is dated December 12, 2011, the Jones' signatures were notarized on December 23, 2011, and the deed was recorded in Oneida County on December 29, 2011. Exh. 202.

FN3. The relevant provisions of the corrected quit claim deed provide:

For Value Received, EVAN E. JONES and PATRICIA A. JONES, husband and wife, the Grantors, do hereby grant, bargain, sell and convey unto KENNETH W. THOMASON and SANDRA F. THOMASON, husband and wife, whose current address is 427 North Main, Malad City, Idaho 83252, the Grantees, the following described premises in Oneida County, Idaho, to-wit

[property description]

#### **Reserving a lifetime estate for Patricia A. Jones**

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever, and the said Grantors to hereby covenant to and with the said Grantees that they are the owners in fee simple of said premises; that they are free from all encumbrances and that they will Warrant and Defend the same from all lawful claims.

Slip Copy, 2013 WL 625343 (Bkrtcy.D.Idaho)

(Cite as: 2013 WL 625343 (Bkrtcy.D.Idaho))

Exh. 202 (emphasis and capitalization in original).

At the time the Deed was executed and recorded, Debtors lived in a house at 427 N. Main, Malad City, Idaho (“Thomason Home”). They had resided there for approximately six years, and continued to do so even as of the date of the hearing. The Thomason Home had formerly belonged to their ex-nephew, Greg Allred. However, Debtors agreed to assume Mr. Allred's mortgage payments on the house, whereupon he deeded ownership of the Thomason Home to Debtors.

In the days leading up to the commencement of their bankruptcy case, Debtors executed and recorded a Declaration of Abandonment of Homestead as to the Thomason Home, and a Declaration of Homestead as to the Jones Home. Exhs. 104,105. Trustee has not challenged the legal sufficiency of these declarations.

On August 9, 2012, Debtors filed a chapter 7 bankruptcy petition. Dkt. No. 1. Debtors originally listed only their remainder interest in the Jones Home on their Schedule A, Exh. 101, but they later amended the schedule to show their interests in both the Jones Home and the Thomason Home. Exh. 102. When Trustee inquired about the Jones Home at the § 341(a) meeting, Ms. Thomason testified that the only reason Debtors' names were on the Deed to the Jones Home was because Mr. Thomason's step-father had been gravely ill and was concerned about the house being tied up in a probate proceeding after his death.<sup>FN4</sup> Exh. 201. Ms. Thomason stated, “Well in a roundabout way, if something happens to [Mr. Thomason's] mom, the house goes to the three boys, but we are the only ones that live in Malad so it was put in our name with the stipulation that she lives there until she passes away and that's the only reason our name is even on it.” *Id.*

FN4. During their § 341(a) meeting testimony, Debtors exhibited a certain amount of confusion regarding their interest in the Thomason Home. Exh. 201. They first indicated that they were just renting the home, but later admitted that Allred had quitclaimed his interest in the Thomason Home to them. *Id.* However, they then stated that they had no claim in the home at all, because they had abandoned it. *Id.* The Court presumes this testimony reflects a misunderstanding by Debtor as to the legal effect of the Declaration of Abandonment. The confusion is of no moment to determining the issues in the contest.

**\*2** At the hearing before the Court, Debtors testified that they understood that they are entitled to live in the Jones Home according to their remainder interest, but in the event they were to sell the house, the proceeds must be split three ways—amongst Mr. Thomason and his two brothers—pursuant to the terms of the Jones' will, which was not admitted into evidence. Debtors also testified that they intend to move into the Jones Home in the near future to care for Ms. Jones,

Slip Copy, 2013 WL 625343 (Bkrtcy.D.Idaho)

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whose health is deteriorating.

In their Schedule C, Debtors claimed their interest in the Jones Home exempt as their homestead. Exh. 103. Trustee objected to this claim. Dkt. No. 25.

### *Analysis and Disposition*

#### **I.**

When a debtor files a bankruptcy petition, a bankruptcy estate is created comprised of all of the debtor's legal and equitable interests in property as of the filing date. § 541(a)(1). However, a debtor may exempt certain property, thereby shielding it from sale by a trustee to pay creditors. *See* § 522(b)(1). Idaho bankruptcy debtors may access only those exemptions allowed under Idaho law, as well as those listed in § 522(b)(3). Idaho Code § 11–609; § 522(b)(3).

Idaho law includes a procedure allowing a debtor to establish an exemption in a qualifying homestead. Idaho Code § 55–1001, *et seq.*; *In re Marriott*, 10.2 I.B.C.R. 44, 45 (Bankr.D.Idaho 2010). A homestead exemption is established automatically when a debtor occupies a home as a principal residence; otherwise, a debtor establishes an exemption through the execution and recordation of an appropriate homestead declaration. Idaho Code § 55–1004(2); *In re Naputi*, 07.2 IBCR 33, 34 (Bankr.D.Idaho 2007). Once properly established, a debtor may exempt up to \$100,000 in equity in the home. Idaho Code § 55–1003; *In re Capps*, 10.4 IBCR 99, 99 (Bankr.D.Idaho 2010).

Debtors' exemption rights are fixed as of the petition date. *In re Almgren*, 08.1 I.B.C.R. 3, 3 (Bankr.D.Idaho 2008). As the objecting party, Trustee bears the burden of proving an exemption is not properly claimed. Fed. R. Bankr.P. 4003(c); *In re Wiley*, 352 B.R. 716, 718 (Bankr.D.Idaho 2006). Once Trustee produces evidence sufficient to rebut the validity of Debtors' claimed exemption, the burden shifts to Debtors to demonstrate that their claimed homestead exemption is valid. *In re Cerchione*, 414 B.R. 540, 549 (9th Cir.BAP2009). Idaho's homestead exemption statutes must be liberally construed in favor of Debtors. *In re Cerchione*, 398 B.R. at 703; *In re Kline*, 350 B.R. 497, 502 (Bankr.D.Idaho 2005) (citing *In re Steinmetz*, 261 B.R. 32, 33 (Bankr.D.Idaho 2001)).

#### **II.**

Idaho statutes and case law are control the disposition of the issues here. One of the prerequisites to qualify for an Idaho homestead exemption is ownership, as a "homestead" is, according to the statute, the "dwelling house or the mobile home in which the owner resides...." Idaho Code § 55–1001(2); *In re Dougan*, 350 B.R. 892, 896 (Bankr.D.Idaho 2006). The Idaho homestead definition of "owner" includes, "but is not limited to, a purchaser under a deed of trust, mortgage, or

Slip Copy, 2013 WL 625343 (Bkrtcy.D.Idaho)

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contract, or a person who takes the subject property under a life estate.” Idaho Code § 55–1001( 4) (emphasis added).

\*3 Here, Debtors hold a remainder interest in fee simple in the Jones Home, which will automatically vest upon Ms. Jones' passing. *Riley v. Rowan*, 965 P.2d 191, 194 (Idaho 1998). If a life estate constitutes an adequate ownership interest to establish a homestead under the exemption statute, then it makes sense that a future fee simple interest, already granted and awaiting only the eventual passing of the life tenant, is also clearly sufficient. The homestead statutes “contemplate an ownership interest in property with a corresponding monetary value that a debtor can claim as exempt.” *In re LaVelle*, 350 B.R. 505, 511 (Bankr.D.Idaho 2005) (citing *In re Hale*, 04.3 IBCR 128,130–31 (Bankr.D.Idaho 2004)). A fee simple remainder interest, which follows a life estate, may be sold, and thus has a monetary value. Thus, Debtors' remainder interest is a sufficient ownership interest upon which to base a homestead exemption claim.

Idaho law also does not require that an owner currently reside in a home, or on a property, in order to claim it as his or her exempt homestead. Idaho Code § 55–1004(1) provides that property of the kind described in § 55–1001 constitutes a homestead, “if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after [the time] the declaration or declarations required in this section are filed for record,....” Subsection (2) of Idaho Code § 55–1004 explains when a declaration of homestead and declaration of abandonment must be filed, and details what such declarations must contain. There is no dispute in this case that the declarations executed and recorded by Debtors included the information required by the statute.

Moreover, Debtors not only stated in their recorded declaration that it was their intention to, eventually, occupy the Jones Home and make it their homestead, but they took overt acts toward that end. At the hearing, Mr. Thomason testified that he has informed Mr. Allred of Debtors' intention to deed the Thomason Home back to him, and to move into the Jones Home to care for Mr. Thomason's mother.

In sum, Debtors' vested remainder interest in the Jones Home, their compliance with Idaho Code § 55–1004, coupled with their expressed intent and acts to occupy the house as their homestead, leads the Court to conclude that Debtors have a valid homestead exemption in the Jones Home.

The fact that Debtors believe the proceeds from any sale of the Jones Home must be split between Mr. Thomason and his brothers is of no consequence in this bankruptcy case, as the evidence demonstrates Debtors have a vested remainder interest in fee in the Jones Home following Ms. Jones' life estate. Whatever would become of the proceeds of any sale of the Jones Home in the future, is both speculative and irrelevant to resolution of Debtors' homestead exemption rights.

Slip Copy, 2013 WL 625343 (Bkrtcy.D.Idaho)

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***Conclusion***

Debtors' remainder interest, coupled with their proper filing and recording of a declaration of abandonment in their present residence, and as a declaration of homestead as to the Jones Home, was adequate to establish a valid homestead exemption under these facts in accordance with Idaho Code § 55–1004(1). Trustee's objection to Debtors' claim of exemption will be denied by separate order. Bkrtcy.D.Idaho,2013.

In re Thomason

Slip Copy, 2013 WL 625343 (Bkrtcy.D.Idaho)

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