

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

LAVERNE F. KEMP,)

DEBTOR)

CASE NO. BK87-1191

Chapter 13

MEMORANDUM OPINION

This matter came on for hearing on August 17, 1987, on the Objection to confirmation filed by FDIC. Appearing on behalf of FDIC was Clifford Ruder of Omaha, Nebraska. Appearing on behalf of the debtor was Eric Wood of Omaha, Nebraska.

Facts

The FDIC holds a judgment lien, perfected in 1984, on the homestead owned by debtor. In 1984, Neb. Rev. Stat. Section 40-101 permitted a homestead exemption not exceeding \$6,500. In 1986, the Nebraska legislature raised the homestead exemption to \$10,000. Debtor filed for Chapter 13 relief in April 1987 and claimed a homestead exemption of \$10,000.

The FDIC objects to the amount of the exemption, claiming that retrospective application of the exemption violates the canons of statutory construction as well as the fifth amendment and the contract clause of the United States Constitution. Debtor contends that the amount of an exemption is determined by the law in effect when the bankruptcy petition is filed and points to numerous cases so holding.

Issue Presented

Whether debtor may claim the \$10,000 homestead exemption provided by state law on the date debtor's petition was filed when creditor's lien on the homestead was perfected when state law limited the homestead exemption to \$6,500.

Analysis

The Court finds that Hollytex Carpet Mills v. Tedford, 691 F.2d 392 (8th Cir. 1982), is precedent for the instant case. In Hollytex, the Eighth Circuit, relying on Section 522(b) of the Bankruptcy Code and an earlier Nebraska bankruptcy decision, In re Statmore, 22 Bankr. 37 (Bankr. D. Neb. 1982), found that "a debtor

may exempt any property that is exempt under federal, state or local law on the date of the filing of the petition." Hollytex, 691 F.2d at 393.

The Eighth Circuit's finding mirrors the language of Section 522(b):

Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate

....

(2)(A) any property that is exempt under Federal law ... or state or local law that is applicable on the date of the filing of the petition

11 U.S.C. § 552(b) (1987). In addition, subsection (f) of Section 522 which reads: "Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is (1) a judicial lien," allows debtor to avoid the FDIC's lien in the exemption amount permitted at time of filing. The statutory language is clear and unambiguous.

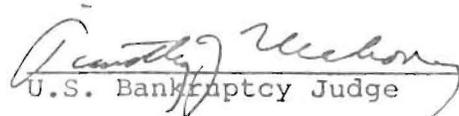
Collier on Bankruptcy provides a thorough discussion of the constitutionality of Section 522(f). See 3 Collier on Bankruptcy, ¶ 522.29 (15th ed. 1980). And, in discussing what comprises the bankrupt estate, Collier states: "It is clear, therefore, that the critical time as of which the property comprising the estate is to be determined, and the rights of others connected with the proceeding adjusted, is the date upon which the petition is filed." 4 Collier on Bankruptcy, ¶ 541.04 (15th ed. 1980) (footnote omitted).

The Northern District of Illinois Bankruptcy Court, in countering a contractual impairment argument, stated the majority position, with which this Court agrees, "Numerous courts have found the application of an increased exemption to be but a minimal alteration of the parties' contractual relationship." In re Hockinson, 60 Bankr. 250, 254 (Bankr. N.D. Ill. 1986).

Therefore, the FDIC's objection to the homestead exemption of \$10,000 claimed by debtor is overruled.

DATED: November 9, 1987.

BY THE COURT:



U.S. Bankruptcy Judge

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