

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
TAKAHIRA & BETTY LOU SATO,) CASE NO. BK88-691
)
DEBTORS) CH. 7

MEMORANDUM

A hearing on the Objection to Claim of Exemptions filed by Masaya Murata, a creditor of the above debtors, was held on December 8, 1988. Loren Galvin, Omaha, Nebraska, appeared on behalf of the debtors. Casey Quinn, Omaha, Nebraska, appeared on behalf of the creditor.

The factual issue is: what is the value of a residence? The legal issue is: for purposes of determining a Chapter 7 debtor's exemption rights in real property, does the Court use fair market value, liquidation value, or some other standard? Section 522(a)(2) defines value as "fair market value." However, fair market value of property in a Chapter 7 bankruptcy case must take into consideration the liquidation context of the case. See In re Walsh, 5 Bankr. 239 241 (Bankr. Dist. Col. 1980).

In Nebraska a Chapter 7 debtor is limited to a homestead exemption of \$10,000. If the real estate on which the exemption is claimed has a net value in excess of \$10,000, the trustee will usually sell it, pay the \$10,000 to debtor after paying the encumbrances and cost of sale, and distribute the remainder to creditor.

If the property is worth more than the encumbrance, the trustee usually will sell it only if its value will bring enough proceeds to benefit the unsecured creditors after paying expenses, encumbrances and homestead exemption.

To this Court then, the "fair market value," in the context of the homestead exemption, must be liquidation value. That is the amount the trustee will receive upon sale of the asset. The trustee need not and should not sell property of little or no benefit to the estate.

In this case, the net value of this property, its liquidation value, is \$52,500 less cost of sale, encumbrance, and homestead exemption. No evidence of the cost of sale was presented. Two appraisers testified. Two written appraisals

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Judith M. Napier
Clerk, U.S. Bankruptcy Court
By _____ Deputy

were submitted. Both appraisers made assumptions about the costs involved in fixing up the house and how such costs impact upon market value. They used similar or identical comparable sales. Debtors' appraiser estimated fix up costs higher, based upon his experience, than did creditor's appraiser. This Court notes debtors' appraiser's experience and gives more weight to his testimony.

Mrs. Sato testified that the house was, in her opinion, worth less than either appraiser believed. She is entitled to testify as to value, but the Court accepts a professional appraiser's opinion of value over debtor's opinion.

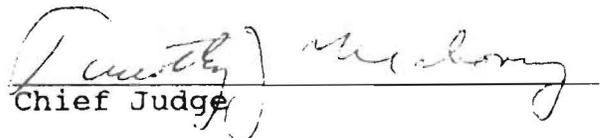
The appraiser for the debtor suggested that a trustee sale, with no willing seller, would bring a lower amount than \$52,500. He testified that buyers are aware of the forced sale nature of a trustee sale and the result could be a decline in sale price of up to 40 percent. The Court, having received from the witness no concrete examples to support such opinion, cannot devalue his estimate of market value by 25-40 percent.

However, the Court accepts the \$52,500 figure as representative of the gross price that could have been received had the property sold on petition date. From that, the trustee must deduct all estimated sale expenses, encumbrances, taxes and homestead exemption to determine if the sale of such property would be of benefit to the estate.

Separate journal entry to be entered.

DATED: December 15, 1988.

BY THE COURT:


Chief Judge