

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)
)
CHRISTOPHER J. YONKIN and) Case No. 6:12-bk-07357-KSJ
HEIDI L. YONKIN,) Chapter 7
)
Debtors.)
)
_____)

**ORDER PARTIALLY SUSTAINING
TRUSTEE'S OBJECTION TO HOMESTEAD EXEMPTION**

The Chapter 7 Trustee, objects to the Debtors' claim their home as exempt under the Florida constitution. The property at issue is subdivided into two parcels. One parcel (3801 Beasley Road) is the site of debtors' permanent home. A contiguous but separately subdivided parcel (3811 Beasley Road) contains a mobile home rented to a third party.

The Trustee withdrew her objection as to the parcel at 3801 Beasley Road, and, on November 28, 2012, the Court overruled her objection to the extent it encompassed that portion of the property located at 3801 Beasley Road (Doc. No. 34). The Trustee continues to object, however, to the claim of homestead exemption as to the parcel at 3811 Beasley Road. The Parties agree the mobile home sits on a separately platted parcel and contains a mobile home, and is rented to a third party.

Debtors maintain they are entitled to claim 3811 Beasley Road as exempt under the Florida Constitution, Article X, Section 4(a)(1) because it is contiguous to 3801 Beasley Road, is outside a municipality, and is less than one hundred and sixty acres. Debtors argue it is irrelevant that 3811 Beasley Road parcel is rented.

The Court reviewed the parties' written submissions and heard oral argument on the matter on November 15, 2012. At the hearing, the Court gave the parties until December 7,

2012, to submit further legal authority in support of their positions. No additional filings were made.

Debtors may not claim the Florida homestead exemption on property that clearly is not used as their home. “There is no question that the requirement that before properties may be exempted as homestead, [they] must be the actual residence of the claimant equally applies to rural as well as municipal homesteads.” In re Pietrunti, 207 B.R. 18, 20 (Bankr. M.D. Fla. 1997). When Debtors leased 3811 Beasley Road to a third party, they lost any ability they may have had to claim it as their homestead. Id. “[T]he mere fact the claimant[s] occup[y] part of the property as a residence is not enough to entitle [them] to an exemption for the entire property when the other part of the property is used as rental property.” Id. (citing In re Rodriguez, 55 B.R. 519, 520 (Bankr. S.D. Fla. 1985)).

Accordingly, the Trustee’s objection is sustained as to the 3811 Beasley Road parcel. The Trustee may administer the property located at 3811 Beasley Road in the normal administration of this case.

DONE AND ORDERED in Orlando, Florida, on January 8, 2013.



KAREN S. JENNEMANN
Chief United States Bankruptcy Judge