

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

GREGORY G. HUBER,

Case No. 6:10-bk-14252-ABB

Chapter 7

Debtor.

_____ /

ORDER

This matter came before the Court on the Trustee's Objection to Property Claimed as Exempt (Doc. No. 15) filed by the Chapter 7 Trustee Richard B. Webber II ("Trustee") and the Response thereto (Doc. No. 16) filed by the Debtor Gregory G. Huber. An evidentiary hearing was held on November 15, 2010 at which the Trustee and counsel for the Debtor appeared. The matter was abated pending the decision of the Florida Supreme Court in Osborne v. Dumoulin, No. SC09-751.

The Debtor on the petition date of August 12, 2010 owned and resided in real property located at 101 West Grossenbacher Drive, Apopka, Florida 32712 ("Property"), which is encumbered by mortgages held by Wells Fargo and SunTrust Bank. He did not claim the Property as exempt in Schedule C and set forth in his Statement of Intentions he intends to surrender the Property. He fully claimed the \$4,000.00 personal property exemption of Section 222.25(4), Florida Statutes, in Schedule C: (i) \$1,000.00 for household goods; and (ii) \$3,000.00 for a 2002 GMC Envoy.

The Trustee objects to the Section 222.25(4) exemption claims asserting the Debtor, by residing in the Property, is receiving the benefits of the homestead exemption and is not entitled to claim the Section 222.25(4) exemption. He requests the Debtor be directed to turn over the household good and GMC Envoy.

The Debtor, by not claiming the homestead exemption, effectively surrendered the Property to the Trustee for administration. Osborne v. Dumoulin, ___ So.3d ___, 2011 WL 320986, at *9 (Fla. Feb. 3, 2011). The Debtor has not received the benefits of the homestead exemption; he lost those benefits upon his decision to not exempt the Property from the bankruptcy estate. Id. The Trustee was free to administer the Property, but has not done so, probably due to the absence of equity in the Property.¹ A trustee's decision to not administer homestead property does not negate the debtor's loss of the benefits of the homestead exemption. Id.

The Debtor is entitled to claim the \$4,000.00 personal property exemption of Section 222.25(4). The Trustee's Objection is due to be overruled and the exemption claims are due to be allowed.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Trustee's Objection (Doc. No. 15) is hereby **OVERRULED** and the Debtor's claims of exemption pursuant to Section 222.25(4), Florida Statutes, are hereby **ALLOWED** and his household goods and GMC Envoy constitute exempt property of the estate.

Dated this 30th day of March, 2011.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

¹ Wells Fargo's Motion seeking relief from the automatic stay of 11 U.S.C. Section 362(a) was unopposed and an Order granting stay relief was entered on September 27, 2010 (Doc. No. 12).