

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 2:20-bk-07403-FMD
Chapter 13

Christopher John Mangieri,

Debtor.

**ORDER (1) OVERRULING CREDITOR, TBF
FINANCIAL, LLC'S OBJECTION TO
DEBTOR'S EXEMPTIONS, (2) DENYING
CREDITOR'S MOTION TO DISMISS
BANKRUPTCY BASED ON DEBTOR'S BAD
FAITH, AND (3) OVERRULING CREDITOR'S
OBJECTION TO CONFIRMATION**

Under Florida law, a debtor's homestead property is exempt from the claims of creditors until it is abandoned; the critical factor in determining whether a homestead has been abandoned is the debtor's intent. Here, the issue before the Court is whether Debtor, who owned a home jointly with his girlfriend, abandoned his homestead when he vacated the home after they broke up. On the facts presented, the Court concludes that Debtor did not intend to abandon his homestead and that his less than candid representations regarding his place of residence were not an abuse of the Bankruptcy Code such that the Court should dismiss his Chapter 13 case or deny confirmation of his Chapter 13 Plan.

Accordingly, the Court will overrule the *Objection to Debtor's Exemptions*,¹ deny the *Motion to Dismiss Bankruptcy Based on Debtor's Bad Faith*, and overrule the *Objection to Confirmation Based on Debtor's Bad Faith* filed by Creditor TBF Financial, LLC.²

¹ Doc. No. 15.

² Doc. No. 29.

³ Claim No. 6-1.

I. Facts

In 2010, Bank of America, N.A., obtained a judgment in the amount of \$99,634.38 against debtor Christopher Mangieri ("Debtor") in a Connecticut state court action styled *Bank of America, N.A. v. Mangieri/Solutions, et al*, Docket No. FBT-CV-10-6009564-S, (the "Judgment").³ Thereafter, TBF Financial, LLC ("Creditor") acquired the Judgment.

In 2013 or 2014, while living in New Jersey, Debtor met and began a relationship with Lynn Lewis ("Ms. Lewis"). In December 2014, Debtor and Ms. Lewis moved to Florida together. In August 2018, they jointly purchased a home located on Cascada Way in Naples, Florida (the "Cascada Home")⁴ and resided there together. The purchase of the Cascada Home was financed with a mortgage loan of approximately \$246,800.00 (the "Mortgage").⁵

In 2015, Debtor obtained a Florida driver's license; in August 2018, he obtained a replacement Florida driver's license that listed the Cascada Home as his address.⁶

In February 2020, Debtor and Ms. Lewis ended their relationship under difficult circumstances; Debtor moved out of the bedroom that he had shared with Ms. Lewis and into the front bedroom of the Cascada Home.

In April 2020, Debtor and Ms. Lewis listed the Cascada Home for sale. Ms. Lewis testified at trial that Debtor moved out of the Cascada Home in May 2020, but that he left some of his belongings, including a television, mattress, sofa, artwork, and a set of golf clubs, at the Cascada Home when he left.

After Debtor "moved out" of the Cascada Home, he continued to pay the Mortgage and the monthly bill from xfinity for television cable and internet services. Ms. Lewis paid the gas and electric bills, and Debtor and Ms. Lewis split the

⁴ Doc. No. 29, p. 12, Affidavit of Lynn Lewis, ¶ 3; Doc. No. 55, ¶ 5.

⁵ Claim No. 9-1.

⁶ Debtor's Ex. 8, Doc. No. 53-8.

homeowners' association fees. Ms. Lewis testified that it was an "even split." In addition, Debtor's mail continued to be delivered to the Cascada Home. Debtor would notify Ms. Lewis when he wanted to pick up his mail, and she would leave it for him under the doormat.

Apparently, Debtor did not have his own key to the Cascada Home, but he was able to access the garage, and his practice was to enter the Cascada Home through the garage. At some point after their separation, Ms. Lewis began locking the doors to prevent Debtor's entry. On at least one occasion, Debtor called the sheriff to gain access to the Cascada Home.

In June 2020, Debtor met Debra Edge ("Ms. Edge") and they began a romantic relationship. Ms. Edge lives on Borghese Lane, Naples, Florida (the "Borghese Property"). Beginning in June 2020, Debtor began staying at the Borghese Property with Ms. Edge because, as he testified, the situation at the Cascada Home with Ms. Lewis was uncomfortable. He also testified that he did not spend every night with Ms. Edge, although Ms. Lewis testified that Debtor never stayed overnight at the Cascada Home during this period.⁷

On June 26, 2020, Creditor recorded the Judgment against Debtor in the Circuit Court for Collier County, Florida.⁸ Thereafter, Creditor initiated an action to garnish Debtor's bank account at PNC Bank (the "Garnishment Action").

In August 2020, Debtor bought a 2020 Lexus. The vehicle registration lists Debtor's address as the Cascada Home.⁹

On September 8, 2020, in connection with the Garnishment Action, Debtor signed a *Claim of Exemption and Request for Hearing*¹⁰ in which he

claimed his Social Security benefits as exempt from garnishment and asked that notice of the hearing be sent to him at the Borghese Property address. Debtor contended that he used the Borghese Property address for convenience and to avoid conflicts with Ms. Lewis.¹¹ At trial, Debtor testified that he used the Borghese Property address because Ms. Lewis "was messing with his mail," and he wanted to make sure he received the notice of hearing.

Between September 9, 2020, and February 9, 2021, Debtor's bank statements from Fifth Third Bank reflect Debtor's address as the Cascada Home.¹²

On September 30, 2020, Debtor filed a petition under Chapter 13 of the Bankruptcy Code. In his answer to the bankruptcy petition's question "Where You Live," Debtor listed the address of the Cascada Home.¹³ And on his *Schedule C: The Property You Claim as Exempt*, Debtor claimed the Cascada Home as exempt homestead under article X, § 4(a)(1) of the Florida Constitution.¹⁴ On the petition date, Debtor also filed a Chapter 13 Plan in which he proposes to pay the Chapter 13 Trustee \$300.00 per month for 36 months (the "Plan").¹⁵

On November 4, 2020, Debtor mailed a "change of address" to the Chapter 13 Trustee, stating that his old address was the Cascada Home and that his new address was the Borghese Property. Debtor testified that he changed his address "for the Trustee" because he needed to receive the Trustee's communications and was having difficulty retrieving his mail from the Cascada Home. The Trustee filed the change of address with the Court.¹⁶

On November 12, 2020, the Chapter 13 Trustee conducted the § 341 meeting of creditors in

⁷ Debtor testified that, on occasion, he would access the front bedroom of the Cascada Home through the garage after Ms. Lewis was asleep in the rear bedroom and could not hear him. The Court finds this testimony to be less than credible.

⁸ Claim No. 6-1, Part 2.

⁹ Debtor's Ex. 7, Doc. No. 53-7.

¹⁰ Creditor's Ex. 3, Doc. No. 57-3.

¹¹ Doc. No. 55, ¶ 10.

¹² Debtor's Ex. 5, Doc. No. 53-5.

¹³ Doc. No. 1, p. 2.

¹⁴ Doc. No. 1, p. 16.

¹⁵ Doc. No. 2. The Trustee filed an *Unfavorable Recommendation and Objections to Confirmation of the Plan*, primarily asserting that Debtor has not dedicated all of his disposable income to the Plan (Doc. No. 13).

¹⁶ Doc. No. 12.

Debtor's bankruptcy case. At the § 341 meeting, Debtor testified at various times that he was "officially" living at the Cascada Home, that he was living at the Cascada Home with a partner, that his current address was the Cascada Home, that he lived at the Cascada Home on the date that he filed the bankruptcy petition, that he did not live at the Cascada Home "all the time," that he stayed at the Borghese Property "on and off since September," and that he stayed at the Borghese Property "when he fe[lt] like it."¹⁷

On November 18, 2020, Debtor filed a *Motion to Approve Sale of Homestead Property*, asserting that he maintained a homestead interest in the Cascada Home, that he had negotiated a sale of the Cascada Home, and that he would use any proceeds from the sale to obtain a new homestead.¹⁸

Between November 1, 2020, and January 31, 2021, Debtor's bank statements from PNC Bank reflect Debtor's address as the Cascada Home.¹⁹

On December 9, 2020, Debtor moved back into the Cascada Home. Ms. Lewis testified that Debtor told her he returned to the Cascada Home to preserve the pending sale and his homestead exemption. She also testified that Debtor asked her not to say that he had not lived in the Cascada Home since May or June 2020.

On January 6, 2021, the Court entered an order granting Debtor's motion to sell the Cascada Home.²⁰ On February 22, 2021, while Debtor was living there, the sale of the Cascada Home closed with a sales price of \$395,000.00. The net proceeds of the sale, after payment of the Mortgage and closing costs, were divided between Debtor and Ms. Lewis. Debtor's share of the proceeds are currently held in an escrow account.²¹ Debtor testified that he intends to remain in Naples and to purchase another home with the proceeds.

II. Creditor's Objection to Debtor's Homestead Exemption and Motion to Dismiss

Creditor objected to Debtor's claimed exemption of the Cascada Home as his homestead under Florida law (the "Objection").²² In addition, Creditor filed a motion to dismiss the Chapter 13 case under 11 U.S.C. § 1307(c)²³ combined with an objection to confirmation of Debtor's Plan under § 1325(a)(3), based on Debtor's alleged bad faith (together, the "Dismissal Motion").²⁴

In the Objection, Creditor asserts that Debtor is not entitled to claim the Cascada Home as his exempt homestead because he did not reside in the Cascada Home or intend to make the Cascada Home his homestead on the date of his bankruptcy petition. Creditor contends that Debtor instead abandoned the Cascada Home by moving out in May or June 2020 and establishing his primary residence with Ms. Edge at the Borghese Property.

In the Dismissal Motion, Creditor asserts that Debtor has acted in bad faith in the Chapter 13 case by misrepresenting his residence in at least two instances. First, Creditor contends that Debtor falsely stated in his bankruptcy petition that he lived at the Cascada Home on the date of the filing. And second, Creditor contends that Debtor falsely stated at his § 341 meeting of creditors that he lived at the Cascada Home. Creditor contends that Debtor's material misstatements, made while under oath in the bankruptcy case, constitute "cause" for dismissal under § 1307(c) and grounds to deny confirmation of Debtor's Chapter 13 Plan under § 1325(a)(3).

III. Florida's Homestead Exemption

Article X, section 4 of the Florida Constitution protects a debtor's homestead from "forced sale."²⁵ The homestead exemption is "designed to protect

¹⁷ Creditor's Ex. 4, Doc. No. 57-4, pp. 8- 9, 11-14.

¹⁸ Doc. No. 14.

¹⁹ Debtor's Ex. 6, Doc. No. 53-6.

²⁰ Doc. No. 35.

²¹ Doc. No. 55, ¶ 20.

²² Doc. No. 15.

²³ Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

²⁴ Doc. No. 29.

²⁵ Fla. Const., art. 10, § 4(a). Florida is an "opt out" state (meaning that Florida bankruptcy debtors may not avail themselves of the slate of federal exemptions listed in 11 U.S.C. § 522(d)); however, under § 522(a)(3), Florida

the place of actual residence of the debtor and his family,” such that debtors “may not claim the Florida homestead exemption on property that is not used as their home.”²⁶ Florida’s homestead exemption is liberally construed in favor of the party claiming the exemption in order to promote its purpose of protecting the family home. Consequently, a party objecting to a claim of homestead has the burden of showing that the claimant is not entitled to it.²⁷

In *In re Martinez*,²⁸ the court addressed the two threshold requirements to establish a debtor’s homestead exemption under the Florida Constitution. First, the debtor must intend to reside permanently at the subject property. As explained in *In re Martinez*, a debtor’s intent is subjective and difficult to prove through testimony, which may be “unavoidably self-serving.” Consequently, “courts often look to documentary evidence in the form of driver’s license registration, voting registration, mail delivery, and other similar discrete indicators of continued intent to reside at the property claimed as homestead.”²⁹

The second requirement is that the debtor must actually reside at the property. This requirement is typically more objective and generally is shown through “habitation at the property for a significant period.”³⁰

Once a debtor establishes a property as homestead, its status as homestead remains until it is abandoned.³¹ “Courts have described abandonment as occurring when the owner leaves the home with no intention of returning, takes up permanent abode at another place, and pursues a livelihood in the new area.”³² Stated another way, a homestead is abandoned when it no longer serves

as the debtor’s bona fide home and place of permanent residence.³³

But “[a]bsence from the property is not determinative, rather [the debtor’s] intent is the critical factor in determining whether the homestead has been abandoned.”³⁴ And the issue of whether a debtor abandoned his homestead “should be determined by a consideration of all the pertinent facts and circumstances of each individual case.”³⁵ For example, in *In re Martinez*, the court found that the trustee met the burden to prove that the debtor had abandoned his homestead where the debtor (1) had leased the property to a third party for three years, (2) had signed a contract to sell the property to the third party, (3) had established a residence in other locations, including a residence that he had intended to purchase and where he lived for one year, (4) had not maintained the property’s homestead tax designation, (5) had not paid for insurance and taxes on the property, and (6) had not made candid disclosures in his bankruptcy case.³⁶

However, in *In re Lloyd*, the court found that a creditor failed to meet his burden to show that the debtor had abandoned her homestead where the debtor (1) had moved from the home to live with her boyfriend in California, (2) “came and went” between California and Florida, (3) maintained the Florida home, tended to its condition, and attempted to perform repairs after the home was damaged by a hurricane, (4) never established a permanent residence elsewhere, and (5) credibly testified that she always intended to return to Florida.³⁷

bankruptcy debtors are entitled to the exemptions provided under Florida law.

²⁶ *In re Wiley*, 570 B.R. 661, 668 (Bankr. N.D. Fla. 2016) (citations omitted).

²⁷ *Id.* at 668; *In re Lloyd*, 394 B.R. 605, 610 (Bankr. S.D. Fla. 2008).

²⁸ 595 B.R. 912 (Bankr. S.D. Fla. 2019).

²⁹ *Id.* at 919-20 (citations omitted).

³⁰ *Id.*

³¹ *In re Lloyd*, 394 B.R. at 610 (citing *In re Frederick*, 183 B.R. 968, 971 (Bankr. M.D. Fla. 1995)).

³² *In re Martinez*, 595 B.R. at 920 (citing *In re Bennett*, 395 B.R. 781, 789 (Bankr. M.D. Fla. 2008), and *Barlow v. Barlow*, 23 So. 2d 723, 724 (Fla. 1945)).

³³ *In re Lloyd*, 394 B.R. at 610 (quoting *In re Klaiber*, 265 B.R. 290, 293 (Bankr. M.D. Fla. 2001)).

³⁴ *In re Mackey*, 158 B.R. 509, 513 (Bankr. M.D. Fla. 1993) (citations omitted).

³⁵ *In re Minton*, 402 B.R. 380, 383 (Bankr. M.D. Fla. 2008) (quoting *Marsh v. Hartley*, 109 So. 2d 34, 38 (Fla. 2d DCA 1959)).

³⁶ *In re Martinez*, 595 B.R. at 920-21, 923.

³⁷ *In re Lloyd*, 394 B.R. at 610-11, 614.

IV. Creditor did not meet its burden to show abandonment.

It is undisputed that the Cascada Home was Debtor's homestead from August 2018 to May 2020. During that 21-month period, Debtor owned the Cascada Home jointly with Ms. Lewis and lived there with the intent to remain permanently. Debtor met both requirements for a homestead exemption under Florida's constitution and established the Cascada Home as his homestead. The issue is whether Debtor abandoned the Cascada Home in May or June 2020 after he and Ms. Lewis separated and he began staying at the Borghese Property.

The Court has carefully considered the evidence and finds that Creditor did not meet its burden to prove Debtor's abandonment of the Cascada Home.

First, the Court can conclude from the record that that Ms. Edge lived at the Borghese Property before she met Debtor, and that Debtor stayed at the Borghese Property as her guest. The evidence does not show that Debtor established a new residence at the Borghese Property, or elsewhere, after he left the Cascada Home.

Second, although Debtor spent most, if not all, of his nights between May 2020 and December 9, 2020, at the Borghese Property, Debtor did not have an ownership interest in the Borghese Property, and there is no evidence that he had any responsibilities—such as sharing in expenses or maintenance—at the Borghese Property that would have evidenced his intent to establish the Borghese Property as his permanent residence.

Third, the following facts demonstrate that Debtor did not intend to abandon his homestead: (a) after May 2020, Debtor continued to perform his

responsibilities as an owner of the Cascada Home by paying the Mortgage, one-half of the homeowners' association fees, and the cable/internet bill;³⁸ (b) Debtor left several items of furniture and other personal property at the Cascada Home after he "moved out," and never removed all of his belongings from the Cascada Home;³⁹ (c) Debtor's mail continued to be delivered to the Cascada Home, and he returned regularly to the Cascada Home to retrieve it; (d) Debtor did not change his address from the Cascada Home for important documents and business such as his driver's license and bank records and listed the Cascada Home as his address on a new vehicle registration in August 2020—three months after he stopped staying there overnight;⁴⁰ and (e) Debtor resumed living in the Cascada Home on December 9, 2020, and continued to live there for more than two months until it was sold.

These undisputed facts are evidence of Debtor's intent to maintain the Cascada Home as his homestead. The Court concludes that Creditor did not meet its burden to prove that Debtor left the Cascada Home with no intention of returning or that Debtor established a new permanent residence at another place.

V. Creditor did not establish Debtor's bad faith.

Creditor asserts that Debtor made false statements regarding the Cascada Home in his bankruptcy case, and that the case therefore should be dismissed under § 1307(c) based on Debtor's bad faith in filing the petition. Creditor also asserts that Debtor's false statements evidence his bad faith in filing his Plan, and that confirmation of the Plan should be denied under § 1325(a)(3).

would ask her to leave small items, such as cups, at the door when he wanted them.

⁴⁰ The only time prior to filing his bankruptcy petition that Debtor appears to have used the address of the Borghese Property as his mailing address is in his *Claim of Exemption and Request for Hearing* filed in response to the Garnishment Action. But Debtor testified that he was having difficulty retrieving his mail from the Cascada Home at that time.

³⁸ Compare *In re Martinez*, 595 B.R. at 920-21 (the debtor abdicated the responsibilities of a homeowner by failing to pay insurance and taxes), with *In re Lloyd*, 394 B.R. at 610-11 (the debtor tended to the condition and maintenance of the home).

³⁹ For example, Ms. Lewis testified that Debtor came to the Cascada Home on June 28, 2020, and told her that he needed paperwork from the house. After the sheriff was called and arrived, Debtor took some tools from the Cascada Home. Ms. Lewis also testified that Debtor

Section 1307(c) provides that, on request of a party in interest, the court may dismiss a Chapter 13 case “for cause.”⁴¹ The section then sets forth a non-exclusive list of examples that may constitute “cause” for dismissal. “Although bad faith, or lack of good faith, is not included in this list, bad faith can constitute cause for dismissal under section 1307(c).”⁴² In the Eleventh Circuit, a good-faith analysis includes consideration of the facts and circumstances of the specific case, including factors such as the debtor’s motive in filing the petition and whether the debtor misrepresented facts in his bankruptcy papers.⁴³ But under this analysis, the basic inquiry is whether there has been “an abuse of the provisions, purpose or spirit” of the Bankruptcy Code.⁴⁴

Section 1325(a) sets forth the requirements for confirmation of a Chapter 13 plan. Under § 1325(a)(3), a requirement for confirmation is that “the plan has been proposed in good faith.”⁴⁵ As with the bad-faith analysis under § 1307(c), courts review the totality of the circumstances to determine whether the debtor filed his plan in bad faith, and the underlying inquiry is whether there has been an abuse of the Bankruptcy Code.⁴⁶

Dismissal of a Chapter 13 case is a more severe remedy than denying confirmation of a debtor’s Chapter 13 plan.⁴⁷ Consequently, a dismissal under § 1307(c) requires a more stringent showing of bad faith, and the moving party bears the burden of demonstrating the debtor’s bad faith.⁴⁸ However, even under § 1325(a), denial of confirmation on bad-faith grounds is reserved for extreme situations where the court discovers unmistakable manifestations of bad faith.⁴⁹

⁴¹ 11 U.S.C. § 1307(c).

⁴² *In re Howe*, 2020 WL 5745651, at *2 (Bankr. M.D. Fla. Jan. 21, 2020) (quoting *In re Kirk*, 548 B.R. 597, 603 (Bankr. S.D. Ga. 2016) (additional citations omitted)).

⁴³ *In re Howe*, 2020 WL 5745651, at *2 (citing *In re Kirk*, 548 B.R. at 603-04, and *In re Buis*, 337 B.R. 243, 251-52 (Bankr. N.D. Fla. 2006)).

⁴⁴ *In re Howe*, 2020 WL 5745651, at *2 (citing *In re Kirk*, 548 B.R. at 604 (quoting *In re Kitchens*, 702 F.2d 885, 888 (11th Cir. 1983))).

⁴⁵ 11 U.S.C. § 1325(a)(3).

⁴⁶ *In re Brown*, 402 B.R. 384, 401 (Bankr. M.D. Fla. 2008).

Generally, the “bankruptcy process is dependent upon full and complete disclosure of a debtor.”⁵⁰ Here, the Court finds that Debtor’s statements regarding his residence in his bankruptcy petition and at the § 341 meeting—made under oath—were not completely forthright.⁵¹ However, the Court has found that Debtor always considered the Cascada Home to be his primary residence, that Debtor did not abandon the Cascada Home, and that Debtor never established a permanent residence at the Borghese Property or anywhere other than the Cascada Home. Instead, Debtor’s living arrangement on the petition date was temporary until the Cascada Home could be sold and Debtor could receive his share of the sale proceeds.

Under these circumstances, the Court concludes that Creditor did not meet its burden to show that Debtor’s statements were an abuse of the purpose or spirit of the Bankruptcy Code under § 1307(c) or § 1325(a)(3).

Accordingly, it is

ORDERED:

1. *Creditor, TBF Financial, LLC’s Objection to Debtor’s Exemptions* (Doc. No. 15) is **OVERRULED**, and Debtor’s claim of homestead exemption as to the real property located at 9078 Cascada Way, Unit 101, Naples, Florida, is **ALLOWED**.

2. *Creditor, TBF Financial, LLC’s Motion to Dismiss Bankruptcy Based on Debtor’s Bad Faith* (Doc. No. 29) is **DENIED**.

⁴⁷ *In re Howe*, 2020 WL 5745651, at *2.

⁴⁸ *Id.* (citing *In re Kirk*, 548 B.R. at 604).

⁴⁹ *In re Brown*, 402 B.R. at 401-02 (quoting *In re Waldron*, 785 F.2d 936, 941 (11th Cir. 1986)).

⁵⁰ *In re Kinsale*, 617 B.R. 58, 68 (Bankr. D.S.C. 2020).

⁵¹ Debtor stated on his bankruptcy petition and testified at his § 341 meeting that he lived at the Cascada Home. When Creditor questioned Debtor at the § 341 meeting, Debtor further testified that he did not live at the Cascada Home “all the time” and that he stayed at the Borghese Property “on and off.”

3. *Creditor, TBF Financial, LLC's Objection to Confirmation Based on Debtor's Bad Faith* (Doc. No. 29) is **OVERRULED**.

DATED: May 3, 2021.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge