

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

In re:

Case No. 6:05-bk-17239-ABB  
Chapter 7

MARILYN BYRD LINDSEY

Debtor.

---

**ORDER**

This matter came before the Court on the Creditor's Objections to Debtor's Claimed Exemptions<sup>1</sup> ("Objection") filed by David A. Lindsey, herein ("Lindsey"), in which Lindsey objects to the homestead exemption claimed by Marilyn Byrd Lindsey, the Debtor herein ("Debtor"). An evidentiary hearing on the Objection was held on November 14, 2006, at which the Debtor, counsel for the Debtor, and Lindsey, *pro se*, appeared. The parties were granted an opportunity to file additional documentary evidence involving the homestead exemption issue. Both the Debtor and Lindsey filed additional documents relating to the exemption issue.<sup>2</sup> The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises:

**FINDINGS OF FACT**

The Debtor instituted this individual Chapter 7 case on October 16, 2005 ("Petition Date"). The Debtor and Lindsey were previously married and owned a home located at 9956 Long Bay Drive, Orlando, FL 32832. They sold the home and transferred the proceeds to a property they contracted to purchase, 9968 Indigo Bay Circle, FL 32832 (the "Property"). The Debtor and Lindsey filed for divorce shortly after the purchase of the Property. The Debtor has been residing at 2316 Genova Drive, Oviedo, FL 32765 in Seminole County.

The Warranty Deed<sup>3</sup> on the Property was issued to both the Debtor and Lindsey. Lindsey secured the mortgage on the property and has maintained the mortgage payments. The Final

---

<sup>1</sup> Doc. No. 26.

<sup>2</sup> Doc. Nos. 61 and 62.

<sup>3</sup> Debtor's Ex. No. 2.

Judgment of Dissolution of Marriage and Order Enforcing Property Settlement Agreement ("Divorce Decree") was entered on April 20, 2006<sup>4</sup> and a Property Settlement Agreement ("Settlement Agreement")<sup>5</sup> executed by the parties was incorporated therein. The Debtor would take exclusive possession of the property and pay the mortgage, home owner's insurance, taxes and maintenance expenses until it sold pursuant to the Settlement Agreement.<sup>6</sup> The property is to close no later than July 31, 2007 and the Settlement Agreement provides for the distribution of the net proceeds.<sup>7</sup>

Lindsey obtained a temporary restraining order against the Debtor on June 30, 2005 which has dissolved. The Debtor does not currently reside on the Property due to the close proximity to Lindsey who lives in the neighborhood. The parties do not have an amicable relationship and the Debtor has concern for the well-being of her children. She has continued to reside elsewhere only to avoid conflict and turmoil with Lindsey.

The Debtor lists the Property as an asset in Schedule A of her Schedules and claims the Property as exempt in Schedule C pursuant to "Fla. Const. art. X, § 4(a)(1); Fla. Stat. Ann §§ 222.01, 222.02, 222.05."<sup>8</sup> Lindsey objected to the Debtor's homestead exemption claim contending the following:

"Debtor never resided or domiciled in said realty. Debtor permanently and voluntarily abandoned said realty. Debtor did not use her own exempt funds; cannot trace segregated personal debtor exempt funds to acquire an aliquot or the entire moiety of immunized from creditor, funds to lawfully claim this real property as debtor scheduled as her exempt property. Debtor apparently otherwise intentionally and fraudulently claimed in this matter that Debtor is the legal obligor or payor of a mortgage on said claimed realty exemption. Allegedly, the Debtor impermissibly tried to defeat or dwarf

---

<sup>4</sup> Debtor's Ex. No. 1

<sup>5</sup> Debtor's Ex. No. 2.

<sup>6</sup> Debtor's Ex. No. 2, ¶ 3.

<sup>7</sup> Id.

<sup>8</sup> Doc. No. 1. The value of the claimed exemption is \$250,000.00 (the difference between the Debtor's valuation of the property of \$325,000 and the secured mortgage claims of \$75,000.00).

creditors claims against claimed debtor exempt property by Debtor's willful and intentional acts via "the obtaining of funds through fraud or egregious conduct by Debtor" in order to obtain, invest, purchase, attempt to shelter as exempt this asset, or to improve Debtor's claimed exempt realty. . . Evidently, Debtor/lawyer Marilyn Byrd Lindsey's [conduct] arises from deviations imposed upon Debtor/lawyer duty involving equitable liens and constructive trusts for parties in interest. Furthermore, Debtor never used this realty as her own domicile and with the honest intent regarding her own homestead."

Objection, p. 2, ¶ E. Lindsey further objected to all exemptions listed by the Debtor on her Schedule C alleging the Debtor failed to account for several assets and she undervalued all items claimed exempt. He did not offer any evidence pertaining to the Debtor's listed exemptions except homestead. The Debtor has always intended the Property be her homestead and principal place of residence, albeit circumstances prevented her from residing there. The Debtor chose to live elsewhere to protect the welfare of her family. The Property is her homestead.

### **CONCLUSIONS OF LAW**

The issue is governed by Florida constitutional, statutory and case law. Florida opted out of the federal bankruptcy exemption scheme and a debtor filing for bankruptcy protection in Florida must use Florida's state law exemptions. The Florida exemptions include a homestead exemption found at Florida Constitution, Article X, Section 4(a)(1):

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; upon which the exemption

shall be limited to the residence of the owner or the owner's family.

FLA. CONST. ART. X, § 4 (*emphasis added*). Sections 222.01, 222.02, and 222.05 of the Florida Code set forth the procedures for claiming a homestead exemption. Fla. Stat. Ann §§ 222.01, 222.02, 222.05.

The Florida courts have consistently held the homestead exemption should be liberally construed in the interest of protecting the family home. Quigley v. Kennedy & Ely, Ins. Inc., 207 So.2d 431, 432 (Fla. 1968); Graham v. Azar, 204 So.2d 193, 195 (Fla. 1967). "Any challenge to the homestead exemption claim places a burden on the objecting party to make a strong showing that the Debtor is not entitled to the claimed exemption." In re Laing, 329 B.R. 761, 770 (Bankr. M.D. Fla. 2005); In re Harrison, 236 B.R. 788, 790 (Bankr. M.D. Fla. 1999). Consideration must be given to the owner's intention to make the property his or her homestead and the owner's actual use of the property as the principal residence. Southern Walls, Inc. v. Stilwell Corp., 810 So.2d 566, 571 (Fla. 5<sup>th</sup> DCA 2002).

Property may lose its homestead character if the claimant effectively abandons the property as her homestead. In re Frederick, 183, B.R. 968, 970-971 (Bankr. M.D. Fla. 1995). "Abandonment, however, may only be proven by a strong showing that the Debtor never intended to return to the residence, and mere absence due to health, financial, or family reasons, does not constitute abandonment." Harrison, 236 B.R. at 790.

Lindsey asserts the Debtor is not entitled to her claimed homestead exemption because she has never resided on the Property, she affectively abandoned the Property, and her claimed exemption is merely an attempt to defraud her creditors. The Debtor has been given exclusive use and possession of the property pursuant to the parties' Settlement Agreement incorporated in their Divorce Decree. The Debtor and Lindsey do not have an amicable relationship which has limited the Debtor's ability to comfortably reside on the Property, but the Debtor has always intended the property be her principal residence and homestead. The Debtor preferred to reside elsewhere to preserve the welfare and safety of her family. She has not abandoned the Property. Lindsey's Objection is due to be overruled and the Debtor's claim of exemption be allowed.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that Lindsey's Objection to the Debtor's claim of exemption is hereby **DENIED**; and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor's claims of exemption are **ALLOWED** and all property claimed exempt, including, but not limited to, her home located at 9968 Indigo Bay Circle, Orlando, Florida 32832 are exempt in their entirety.

Dated this 13<sup>th</sup> day of December, 2006.

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