UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Case No. 3:14-bk-02966-JAF
Chapter 13

JOHN J. DIDELIS and
CYNTHIA S. DIDELIS,

Debtors.
_____/

ORDER SUSTAINING TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS

THIS CASE is before the Court on the Chapter 13 Trustee's Objection to Property Claimed as Exempt by Debtors (the "Objection") (Doc. 24). The Court held a hearing on the Objection and took the matter under advisement. Upon consideration of the parties' evidence and arguments, the Court concludes that the Objection should be sustained.

Background

John Didelis and Cynthia Didelis ("Debtors") filed a joint voluntary petition under Chapter 13 of the Bankruptcy Code on June 18, 2014. (Doc. 1 at 10). On their Schedule A, Debtors listed their Florida residence valued at $70,000, subject to a mortgage in the amount of $133,000 (Doc. 1). Thus, there is no equity in the property. Debtors did not claim their residence as exempt pursuant to Article X, Section 4(a)(1) of the Florida Constitution (the "Homestead Exemption") on their Schedule C. (Doc. 1 at 15). Instead, Debtors elected to claim the "wildcard exemption" under § 222.25(4), Florida Statutes, to exempt certain personal property (Doc. 1 at 15). Debtors' First Amended Chapter 13 plan provides for payments on the mortgage and cures the arrearage on the mortgage (Doc. 25 at 1-2). The Trustee filed his Objection, contending that

Debtors receive the benefit of the Homestead Exemption, even though they did not claim it on their Schedules, and are therefore ineligible to claim the wildcard exemption (Doc. 24).

Analysis

Section 222.25(4), also known as the wildcard exemption, allows individuals to exempt up to $4,000 in personal property as long as the individual does not "claim or receive the benefits of" the Homestead Exemption, which provides one benefit-it shields the home from forced judicial sale.[1] In re Bennett, 395 B.R. at 788. As the ultimate purpose of Chapter 13 is very different from the purpose of Chapter 7, application of § 222.25(4) differs in a Chapter 7 case and a Chapter 13 case.

"The purpose of a Chapter 7 case is to administer efficiently the liquidation of the estate for the benefit of the creditors." In re Glados, Inc., 83 F.3d 1360, 1365 (Fla. 11th Cir. 1996). The Chapter 7 trustee is charged with "collecting and reducing to money the property of the estate"—that is, administering the estate. 11 U.S.C. § 704(a)(1). If a debtor does not claim the Homestead Exemption, then he or she effectively surrenders the homestead to the trustee for administration. In re Bennett, 395 B.R. at 790–91. At that time, the debtor loses the benefits of the Homestead Exemption because the trustee may dispose of it as he sees fit. See id. at 790-91 ("Even if there is little or no equity in a piece of real property, and possibly even if the real property is greatly under water, a trustee may be able to find a buyer willing to speculate and purchase property at *some* price. Debtors who choose not to claim the Homestead Exemption take that chance)". Osborne v. Dumoulin, 55 So. 3d 577, 587–88 (Fla. 2011) (determining that the term "benefits" in § 222.25(4) refers "only to the protection of the homestead from the reach of creditors"); see also

[1] "Whether a debtor has equity in the property, lives in the home, or enjoys any other types of tax benefits has no relevance to the question of whether a debtor receives the benefits of the Florida Homestead Exemption." In re Bennett, 395 B.R. 781, 788 (Bankr. M.D. Fla. 2008). "The general benefits of owning a home are also irrelevant to this analysis." Id.

In re Dumoulin, 428 F. Appx 871, 873 (11th Cir. 2011) (stating that "[w]hen the debtor elects not to [claim the Homestead Exemption], thus surrendering the home to the bankruptcy trustee, the debtor has lost the benefits of the homestead exemption"). Consequently, bankruptcy courts have generally found that a Chapter 7 debtor who does not claim the Homestead Exemption may instead claim the wildcard exemption under § 222.25(4).

In contrast, Chapter 13 is "designed to facilitate adjustments of debts of individuals with regular income through extension and composition plans funded out of future income, under the protection of the court." In re Brown, 742 F.3d 1309, 1314 (11th Cir. 2014) (internal quotations omitted). In a Chapter 13 case, the trustee does not collect and reduce to money the property of the estate. 11 U.S.C. § 1302(b)(1). Consequently, the debtor's residence is not surrendered to administration by the Chapter 13 trustee by application of the Bankruptcy Code. In re Valone, 500 B.R. 645, 651 (Bankr. M.D. Fla. 2013), aff'd, Valone v. Waage (In re Valone), No. 2:13-cv-171-FTM-38, 2014 WL 970024 (M.D. Fla. Mar. 12, 2014). Therefore, a Chapter 13 debtor who proposes to retain his or her residence during the term of his or her Chapter 13 plan but who does not claim the residence as exempt on the Schedules still receives the Homestead Exemption's protections despite failing to assert the Homestead Exemption. Id. Accordingly, under such circumstances, the Chapter 13 debtor would not be entitled to the wildcard exemption under Section 222.25(4) because he or she is receiving the benefits of the Homestead Exemption.

Here, the Debtors did not claim their residence as exempt homestead but propose to retain their residence throughout the term of their Chapter 13 plan. Therefore, the Debtors are receiving the benefits of the Homestead Exemption's protection—that is, their residence is protected from the reach of creditors during the duration of their Chapter 13 plan.

Consequently, the Debtors cannot enjoy both the wildcard exemption and the Homestead Exemption. Accordingly, it is

ORDERED

1. The Trustee's Objection to Debtors' claim of exemption pursuant to § 222.25(4) (Doc. 24) is sustained.
2. Debtors' claim of exemption pursuant to § 222.25(4) is disallowed.

DATED this 15 day of January, 2014 in Jacksonville, Florida.

/S/_____
Jerry A. Funk
United States Bankruptcy Judge

Attorney, John Freeman, is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.