


ORDERED.

Dated: July 14, 2017



Jerry A. Funk
United States Bankruptcy Judge

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

In re:

Case No.: 3: 16-bk-3105-JAF

HENRY CRUSAW,

Chapter 13

Debtor.
_____ /

**ORDER OVERRULING OBJECTIONS TO DEBTOR'S CLAIM OF HOMESTEAD
EXEMPTION**

This case came before the Court upon Trustee's Objection to Property Claimed as Exempt by Debtor on Amended Schedule C filed by Douglas W. Neway, the Chapter 13 Trustee, and Creditors' Objections to Property Claimed as Exempt by Debtor on Amended Schedule C filed by John Crusaw, Bertha Wright, and W. James Crusaw (the "Objecting Creditors") (collectively, the "Objections"). The Court conducted a hearing on the Objections on May 9, 2017 and elected to take the matters under advisement. Upon a review of the evidence and the applicable law, the Court finds it appropriate to overrule the Objections.

Procedural Background

On August 15, 2016, Debtor filed this Chapter 13 bankruptcy petition. On March 3, 2017, Debtor filed [Second] Amended Schedules A and C. On his Second Amended Schedule A Debtor listed “Homestead Property; Approximately 16.8 acres.” On his Second Amended Schedule C Debtor claimed the property as exempt pursuant to Fla. Const. art. X, § (4)(a)(1); Fla. Stat. §§ 222.01 and 222.02. On March 8, 2017 and March 13, 2017, the Trustee and the Objecting Creditors, respectively, filed the Objections (Docs. 70, 72).¹

Findings of Fact

On March 31, 1970, John Crusaw, Sr., Debtor’s father, died. At that time, 12 heirs, including Debtor (“the “Heirs”), inherited: 1) undivided interests in 160 acres, subject to a life estate in Annie Crusaw, Debtor’s mother; and 2) undivided interests in 80 additional acres subject to a child’s share of Annie Crusaw. On October 14, 2001, Annie Crusaw died. At that time, the Heirs became fee simple tenants in common with equal undivided interests in 198.75 acres (the “Property”).

In 2007 John Crusaw and Bertha [Wright], two of the Heirs (the “Partition Creditors”), sued a number of the other Heirs in Suwannee County, Florida Circuit Court (the “Circuit Court”) seeking to have the Property partitioned and seeking an accounting of the rents and profits since the death of Annie Crusaw (the “Partition Action”). On November 25, 2013, the Partition Creditors submitted to the Circuit Court a proposed survey sketch which set forth the physical location of each Heir’s share of the land and indicated twelve lots of 16.8 acres each.²

¹ Although Debtor filed two previous Schedules A and C to which the Trustee and the Objecting Creditors objected, those filings are not at issue here.

² 16.8 multiplied by 12 equals 201.60 rather than 198.75. However, because the parties do not dispute that the survey sketch contained 12 lots of 16.8 acres each, the Court will use that figure.

The Circuit Court adopted the proposed survey sketch but ordered that the Property be sold rather than partitioned (the “Sale Order”). On November 24, 2015, the First District Court of Appeal reversed the Sale Order and remanded the matter for partition in accordance with the survey sketch adopted by the Circuit Court.

On June 29, 2016, the Circuit Court entered a Final Judgment of Partition, Fees and Costs (the “Partition Judgment”) in the Partition Action. Paragraph 4(a) of the Partition Judgment provided that the Circuit Court adopted the survey sketch as mandated by the First District Court of Appeal and noted that “the 198.75 acres is partitioned into 12 equal shares to the [Heirs].” The Partition Judgment provided that each Heir’s share would be reduced by $\frac{1}{2}$ acres. The 12 parcels of $\frac{1}{2}$ acres would be transferred into a 6 acre lot which would be awarded to W. James Crusaw as compensation for his services as personal representative of Annie Crusaw’s estate. The Partition Judgment commissioned J. Sherman Frier and Associates, Inc. to legally describe each of the parcels using the previously adopted survey sketch with each parcel reduced by $\frac{1}{2}$ acre.

Paragraph 5 of the Partition Judgment provided that after the surveys of the parcels were completed the Circuit Court would enter judgments of conveyance “vesting title of their share in each heir or heir’s estate subject to the court’s ruling set forth in paragraphs 4(d) and 6(e) of [the Partition Judgment].” Paragraph 4(d) of the Partition Judgment provided that: “[e]ach parcel, except the parcels of John Crusaw, Jr. and Bertha Wright is subject to judgment as indicated below. A judgment is rendered against each heir in favor of John Crusaw, Jr. and Bertha Wright jointly of \$10,794.29 for 1/12 attorney[’s] fees and costs . . . [Debtor] sustain[s] an additional amount of \$24,388.00 in the judgment against [him] in favor of John Crusaw, Jr. and Bertha Wright jointly [for profits he received from the property] . . . these costs and fees shall be part of

the judgments of conveyance referred to in Paragraph 5 below.” Paragraph 6(e) of the Partition Judgment found that Debtor owes \$35,879.43 to John Crusaw, Jr. and Bertha Wright.

On March 21, 2017, the Circuit Court entered a Final Judgment of Conveyance, which provided: “[p]ursuant to [the Partition Judgment], IT IS ADJUDGED that the land described in Exhibit 1 attached hereto [comprising 16.49 acres] is conveyed by this judgment and shall vest title in [Debtor] an heir of John Crusaw, Sr. and Annie Elizabeth Crusaw subject to taxes for 2016 and subsequent years.”

As the Court noted, Debtor claimed 16.8 acres and a mobile home situated thereon as his homestead on his Second Amended Schedule C. At the hearing on the Objections, Debtor testified on cross-examination that he is claiming as his homestead the 16.49 acres set forth in the Final Judgment of Conveyance and the mobile home situated thereon (“Debtor’s Parcel”) rather than 16.8 acres. Debtor testified he has lived on Debtor’s Parcel for many years and intends to stay there until he dies. The Objecting Creditors do not dispute Debtor’s testimony.

Conclusions of Law

The exemption of a debtor's homestead from process in Florida is constitutionally protected. See Fla. Const. Art. X, § 4. “[T]he homestead exemption is to be liberally construed in the interest of protecting the family home.” Havoco of Am., Ltd. v. Hill, 790 So. 2d 1018, 1020 (Fla. 2001). “[U]nder Rule 4003(c) of the Federal Rules of Bankruptcy Procedure, the burden is on the party objecting to exemptions to prove, by a preponderance of evidence, ‘that the exemptions are not properly claimed.’” In re McFarland, 790 F.3d 1182, 1186 (11th Cir. 2015); Fed. R. Bankr. P. 4003(c).

The Objecting Creditors do not dispute that Debtor has lived on Debtor’s Parcel for many years. Instead, they argue that Debtor did not own Debtor’s Parcel until March 21, 2017, the

date of the entry of the Final Judgment of Conveyance. They assert that because a certified copy of the Partition Judgment, which subjected Debtor's Parcel to a judgment of \$35,879.43 in favor of John Crusaw, Jr. and Bertha Wright, was recorded on September 8, 2016, several months before Debtor acquired the specifically, legally described parcel, he is not entitled to claim the property as exempt.

The Court finds the cases of Southern Walls v. Stilwell Corp., 810 So. 2d 566 (5th D.C.A. 2002) and In re Alexander, 346 B.R. 546, 551 (Bankr. M.D. Fla. 2006) (Williamson, J.) instructive. The issue in Stilwell was whether a judgment debtor's cooperative apartment was homestead property which qualified for protection under the Florida Constitution. The court noted that while the Constitution quantifies the amount of real property that may comprise a homestead, it does not define "owned." Stillwell, 810 So. 2d at 569. "In other words, it does not designate how title to the property is to be held and it does not limit the estate that must be owned, i.e., fee simple, life estate, or some lesser interest." Id. "Thus 'a one-half interest, the right of possession, or any beneficial interest in land [gives] [a] claimant a right to exempt it as his homestead' and '[i]t [is] not essential that he hold the legal title to the land.'" Id. (quoting Bessemer Props., Inc. v. Gamble, 158 Fla. 38 (Fla. 1946)). The court concluded that the owner of a co-op may qualify as an "owner" of a "residence" under the Florida Constitution. Id. at 572. In addition, the owner must intend to make the co-op his or her homestead and must actually use the property as a principle residence. Id. The court allowed the claim of homestead exemption.

In In re Alexander, 346 B.R. at 551, the court held that a debtor, whose residence's title was held in a revocable trust for which she was the sole trustee and primary beneficiary, owned a beneficial interest in the home sufficient to entitle her to Florida's homestead exemption. The court stated: "An individual must have an ownership interest in a residence that gives him or her

the right to use and occupy it as his or her place of abode in order to qualify for Florida's homestead exemption. The individual claiming the exemption need not hold fee simple title to the property. Instead, it is sufficient if the individual's legal or equitable interests give the individual the legal right to use and possess the property as a residence.” Id.

Although the Property was partitioned into 12 shares of approximately 16.8 acres each on June 29, 2016 and Debtor received a conveyance of 16.49 acres pursuant to the Final Judgment of Conveyance on March 21, 2017, Debtor was a tenant in common with an equal undivided interest in the Property (and Debtor’s Parcel) beginning on October 14, 2001, the date of Annie Crusaw’s death. That ownership, while not fee simple title, gave Debtor the right to use and occupy Debtor’s Parcel from that date forward. There is no dispute that Debtor has lived on Debtor’s Parcel for many years and that he intends to reside there for the rest of his life. The Court finds that Debtor’s interest in Debtor’s Parcel is sufficient to entitle him to Florida’s homestead exemption.

The Objecting Creditors rely on Owen v. Owen (In re Owen), 961 F.2d 170 (11th Cir. 1992), for the notion that the Partition Judgment attached to Debtor’s Parcel prior to the Final Judgment of Conveyance and he is therefore not entitled to claim it as exempt. In Owen, the judgment debtor purchased a condominium which became subject to the creditor’s judgment lien at the time the judgment debtor bought the condominium. At the time of the purchase, Florida law did not permit a homestead exemption for condominiums. A year later, the Florida Constitution was amended to provide for such an exemption. Thereafter, the judgment debtor filed a bankruptcy petition, claimed the condominium as homestead, and sought to avoid the judgment creditor’s lien under 11 U.S.C. § 522(f). The bankruptcy court, district court, and the Eleventh Circuit all denied the relief sought. The United States Supreme Court reversed and

remanded, instructing the Eleventh Circuit to determine whether there was a fixing of a lien on an interest of the debtor and whether the Florida Statute extending the homestead was a taking. The court found that there was never a fixing of a lien on an interest of the debtor because the debtor had no property interest prior to the fixing of the lien. Id. at 172. The court noted that while the Florida Constitution provides that homestead property is exempt from the claims of creditors not secured by a lien on the property, it allows the attachment of a judgment lien where the lien came into existence prior to the property attaining homestead exemption status. Id. at 172. Permitting the debtor to avoid the judicial lien would give him a greater interest in the property than he had prior to the filing of the bankruptcy petition. The court determined that the debtor could not avoid the judicial lien. Id. at 173.

The Objecting Creditors argue that their judgment lien came into existence upon the recording of the Partition Judgment, which was prior to Debtor's Parcel being deeded to him by the Final Judgment of Conveyance, at which time it attained homestead status. Consequently, they argue that, based on the reasoning in Owen, it does not qualify for a homestead exemption. While Debtor's Parcel was not specifically delineated until the Final Judgment of Conveyance, Debtor became a tenant in common with an equal and undivided interest in the Property (and Debtor's Parcel) on October 14, 2001, the date of Annie Crusaw's death. That ownership gave Debtor the right to use and occupy Debtor's Parcel from that date forward. As it is undisputed that Debtor has lived on Debtor's Parcel for many years, it attained homestead status well before the recording of the Partition Judgment. Accordingly, Owen is inapposite to the instant case. Upon the foregoing, it is

ORDERED:

1. The Objections to Debtor's Claim of Homestead Exemption are overruled.

2. The property described in the attachment to the Final Judgment of Conveyance [to Debtor] dated March 21, 2017 is exempt pursuant to Fla. Const. art. X, § (4)(a)(1).

Rehan N. Khawaja is directed to serve a copy of this Order on interested parties and file a certificate of service within three days of the entry of the Order.