



Council Bluffs, Pottawattamie County, Iowa and the legal description is as follows: Lakewood Villas, Lt 82 Ex Beg NE Cor Sly 50.6 Nly 132.46 Nely 81.87 Se134.8 to POB.

2. Debtor acquired this property by warranty deed June 30, 1988 This deed recited that it was in fulfillment of a contract for deed

3. On April 17, 1989, Debtor and his wife executed a quit claim deed transferring the property from themselves to Insurance USA, Inc. Debtor was the sole shareholder of that corporation. This was a tax free transfer pursuant to Iowa Code § 428A.2(15), as it was a transfer between a family corporation and its shareholders.

4. On December 20, 1990, Debtor executed a promissory note in favor of Leonard Havelka in the principal sum of \$100,000 together with interest accruing at the rate of 10% per annum. (Exh.D). Mr. Havelka obtained a judgment against Debtor on March 21, 1997, in the amount of \$100,000 plus accrued interest as of August 21, 1996, in the amount of \$55,669.91 for a total judgment of \$156,669.91, together with interest accruing thereafter at the rate of \$27.39 per day. (Exh. G).

5. On December 4, 1992, Geoffrey A. Jennings, Inc., an Iowa corporation and a successor entity to Insurance USA, Inc., transferred the property at issue back to Debtor by a quit claim deed. This deed was signed by Geoffrey A. Jennings, Pres. The recited consideration was \$113,000.00 and the deed stated that Debtor was a single person.

6. Debtor has resided in this residence, personally occupying the premises, continuously for over ten years. Debtor still resided there on the day he filed his bankruptcy petition.

## DISCUSSION

Section 522(b) of the Bankruptcy Code permits a debtor to choose between the federal exemptions provided in § 522(d) and the exemptions provided under state law, unless a state "opts out" of the federal exemptions. Huebner v. Farmers State Bank, Grafton, Iowa, 986 F.2d 1222, 1224 (8th Cir. 1993); Hanson v. First National Bank in Brookings, 848 F.2d 866, 868 (8th Cir. 1988). The state of Iowa has opted out of the federal exemptions. See Iowa Code § 627.6(8)(e). Consequently, Iowa law will govern the scope of the exemptions in this case.

"Homestead" is defined in Iowa Code §561.1 as follows:

"The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead."

"Owner" as used in §561.1 is not statutorily defined.

In Iowa, a debtor's homestead is exempt pursuant to Iowa Code § 561.16, with certain exceptions enumerated at Iowa Code § 561.21.

As relevant herein, §561.16 reads as follows:

"The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. . . A single person may claim only one homestead to be exempt from judicial sale. . . ."

As relevant herein, §561.21(1) reads as follows:

"The homestead may be sold to satisfy debts of each of the following classes:  
1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.  
2. . . ."

Debtor has continuously lived at this residence since June 30, 1988. During the time that Debtor lived there, title to the property was transferred to other entities and ultimately reconveyed

to the Debtor. The Court must determine the date the Debtor "acquired" the homestead, and whether Debtor was divested of his homestead right at any point.

The Iowa courts construe the homestead statutes broadly and liberally in favor of exemption. Matter of Bly, 456 N.W.2d 195 (Iowa 1990). "In this state, homestead statutes are broadly and liberally construed in favor of exemption. . . (citations omitted) 'Regard should be had to the spirit of the law rather than its strict letter'. . . 'The homestead exemption is not 'for the benefit of the husband or wife alone, but for the family of which they are a part' . . . Further still, we have recognized that the exemption is not only 'for the benefit of the family, but for the public welfare and social benefit which accrues to the state by having families secure in their homes. . . The policy of our law is to jealously safeguard homestead rights. . . ." Bly, supra, 195 N.W.2d at 199.

If the transfer of title to Debtor's corporation divested Debtor of his homestead rights in the property, then the debt to Mr. Havelka would be considered to have been contracted prior to the transfer of title back to Debtor by quit claim deed on December 4, 1992, establishing an exception to the homestead exemption.

A homestead is "acquired" when the homestead right attaches by actual use and occupation of the property as a homestead, not when a person acquires title to the property. In re Streeper, 158 B.R. 783, 788 (Bankr. N.D. Iowa 1993) (citing Hale v. Heaslip, 16 Iowa 451 (1864) (holding homestead rights had not attached after property was purchased and before possession); Elston & Green v. Robinson, 23 Iowa 208 (1867) (same)). See also Harris v. Carlson, 205 N.W. 202, 201 Iowa 169 (1925) ("Actual occupation of premises as home, except in cases of temporary absence, is required to support claim of "homestead," and mere use or cultivation is insufficient . . ."). Iowa case law thus emphasizes the primary importance of

occupation and use of property as a homestead, as opposed to ownership. Consequently, a homestead right is not an estate in the land. It is a right which is granted by the legislature which is a privilege of exemption from execution on the estate which the holder occupies.

Homestead rights however require *some* type of ownership, as evidenced by Iowa Code section 561.1, stating that "[t]he homestead must embrace the house used as a home by the *owner* . . . ." (emphasis added). The Supreme Court of Iowa, however, has held that something less than full ownership is required in order for the occupant of property to claim it as their homestead. Perhaps the earliest and most frequently cited Iowa Supreme Court case is Pelan v. De Bevard, 13 Iowa 53, 55-56 (1862), which held that a homestead right does not necessarily depend upon a title in fee simple, but may attach to a leasehold interest. See also, In re Guynn, No. L-91-1545C, slip op. at 2 (Bankr. N.D. Iowa Aug. 17, 1993).

A look at the definition of the term "owner" reveals its somewhat broad meaning: one "who has dominion of a thing, real or personal . . . which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right." Bauldry v. Hall, 174 F.2d 379, 381 (8th Cir. 1949) (quoting Bovier's Law Dict., Rawle's Third Revision, p. 2437). See also Black's Law Dictionary 764 (abr. 6th ed. 1991). In this case, Debtor made no agreement restraining his right to exercise dominion and control over his homestead, regardless of the transfer of legal title to his corporation.

The U.S. Bankruptcy Court for the Northern District of Iowa has interpreted the ownership requirement of I.C.A. § 561.1 as mandating that a debtor hold a *possessory* interest in the property claimed as a homestead. In re Guynn, No. L-91-1545C, slip op. at 2 (Bankr. N.D. Iowa Aug. 17, 1993) (citing In re Nielsen, No. 84-00352, slip op. at 3 (Bankr. N.D. Iowa Jan. 14,

1986)). This interpretation is supported by early Iowa cases, which hold that homestead rights can arise from "title sufficient to justify . . . occupancy," such as a life estate, a leasehold estate, or an equitable estate. Lennert v. Cross, County Sheriff, 241 N.W. 787, 788 (Iowa 1932); Rutledge v. Wright, 171 N.W. 28, 30 (Iowa 1919); Livasy v. State Bank of Redfield, 170 N.W. 756 (Iowa 1919); Green v. Root, 62 F. 191, 195-96 (S.D. Iowa 1893). See also Bauldry v. Hall, 174 F.2d 379, 381 (8th Cir. 1949). "The homestead right is that of possession and enjoyment, use and occupancy." Id.; Livasy, 170 N.W. at 756.

The Iowa Supreme Court case, Kleinsorge v. Clark, 4 N.W.2d 433 (Iowa 1942), is cited by the creditor for the proposition that, "[o]rdinarily, one who parts with ownership of his homestead loses his homestead rights even though he later reacquires the property." Id. at 434. While Kleinsorge does so hold, it also makes a distinction between legal and equitable ownership. The case involved a debtor whose homestead mortgage was foreclosed upon, and a sheriff's deed was issued to the receiver of the bank which held the mortgage. The debtor remained in possession of the property. The court held that the debtor retained an equitable ownership interest in the property sufficient to maintain his right of homestead. Id. at 435.

Debtor's right of occupancy has not been challenged. Under the present record he retained sufficient interest to justify his occupancy of the property as sole shareholder of the corporation holding legal title to the real estate. When legal title was transferred, the right to occupy the homestead was not given up. Debtor's homestead exemption has thus been continuous and unbroken and dates at least from the time he first gained title in fee to the premises, June 30, 1988. The debt to the Creditor, having been incurred on December 20, 1990, was not contracted prior to Debtor's acquisition of his homestead, and thus does not qualify as an exception to the Debtor's homestead exemption under I.C.A. 561.21.

**ORDER**

IT IS THEREFORE ORDERED that Creditor's Objection to Debtor's Claim of Exemption regarding his homestead is OVERRULED and DENIED.

FURTHER, the above described real estate is exempt as Debtor's homestead as to the indebtedness owed to Leonard Havelka and secured by Leonard Havelka's judgment lien thereon.

Dated this \_\_\_\_\_ day of September, 1999.

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RUSSELL J. HILL, CHIEF JUDGE  
U.S. BANKRUPTCY COURT