

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

JUDITH ANN JOHNSON

CASE NO. 93-62387

Debtor

APPEARANCES:

ALLAN J. BENTKOFSKY, ESQ.
Trustee
504 Metcalf Plaza
Auburn, New York 13021

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Attorneys for Debtor
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Syracuse, New York 13202

MICHAEL J. BALANOFF, ESQ.
Of Counsel

STEPHEN D. GERLING, Chief U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court considers herein the objection filed by Allan J. Bentkofsky, the Chapter 7 Trustee ("Trustee"), to the equity exemption claimed by Judith Ann Johnson ("Debtor"), in her homestead, to the extent of any amount in excess of \$10,000.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §§1334(b) and 157(a)(1) and (2)(B).

FACTS

The Debtor filed a voluntary petition pursuant to Chapter

7 of the Bankruptcy Code (11 U.S.C. §§101-1330) ("Code"), on August 4, 1993, and claimed a homestead exemption in her residence in the sum of \$10,000. The Trustee filed no objection and the exemption was allowed. On or about June 10, 1994, the Debtor filed an amended Schedule C - Property Claimed Exempt - increasing her claimed homestead exemption to \$20,000. The Trustee then filed an objection, alleging that Debtor was entitled to a single \$10,000 exemption.

At the time of the filing of her Chapter 7 petition, Debtor was a widow, having previously owned her residence jointly with her husband who died in June, 1990, approximately three years prior to the filing of Debtor's Chapter 7 petition.

ARGUMENTS

Debtor contends that she is entitled to a \$20,000 equity exemption in her residence by virtue of §5206(b) of the New York Civil Practice Law and Rules ("NYCPLR"), which defines a homestead exemption allowable to a New York resident. By virtue of Code §522(b) and §282 of the New York Debtor and Creditor Law ("NYD&CL"), the homestead exemption contained in NYCPLR §5206 is likewise available to a New York resident who files bankruptcy.

Debtor asserts that NYCPLR §5206(b) is intended to continue the homestead exemption of a deceased spouse after his or her death so as to make it available to the surviving spouse for his or her benefit. Thus, Debtor argues that she may claim not only her \$10,000 equity exemption in the home, where she presently

resides, but may also claim the \$10,000 homestead exemption of her now deceased husband, for a total exemption of \$20,000.

At oral argument, Debtor contended that her deceased husband's \$10,000 equity exemption was a vested property right which passed to her upon his death, and therefore, upon her filing of a Chapter 7 case some three years later, she was able to claim her exemption of \$10,000 as well as his.

The Trustee opposes Debtor's homestead exemption to the extent that it is claimed to exceed \$10,000.

Code Section 522(b) permits a debtor the exemptions to which he/she is entitled under other Federal law and the law of the state of his/her domicile. Section 282 of the NYD&CL, which addresses permissible exemptions in bankruptcy under New York law, provides that an individual debtor under Code §522 may exempt from the property of the estate, to the extent permitted by §522(b), real property exempt from application to the satisfaction of money judgments under §5206 of the NYCPLR. Section 5206(a) indicates that real property owned and occupied as a principal residence is exempt from application to the satisfaction of money judgments in an amount not to exceed \$10,000 in value, above liens and encumbrances. Furthermore, Code §522(m) indicates that it shall apply separately with respect to each debtor in a joint case. The intention of Congress in enacting Code §522(m) was to allow the exemption to run to the benefit of each debtor or spouse who filed a joint petition. Manufacturers and Traders Trust Co. v. Borst, 128 Misc.2d 691, 692 (S.Ct. Erie Cty. 1984). As one court has pointed out, "The purpose of the New York legislation was clearly

to provide joint debtors the opportunity to make a 'fresh start' with a \$20,000 homestead exemption." John T. Mather Memorial Hosp. v. Pearl, 723 F.2d 193, 195 (2d Cir. 1983).

The right to claim an exemption vests at the time the petition is filed. In re Friedman, 38 B.R. 275, 276 (Bankr. E.D.Pa. 1984). Furthermore, the exemption "is not a vested right but one the validity of which is to be determined, in most instances, by the conditions which exist at the time the privilege is claimed." Wyoming Cty. Bank & Trust Co. v. Kiley, 75 A.D. 477, 479 (4th Dep't 1980). In fact NYCPLR §5206(b), upon which the Debtor relies for her argument, refers to property which was exempted, leading one to conclude that the privilege has to have been previously asserted by the spouse prior to his/her death. that is exactly what occurred in Friedman, supra. Both husband and wife had filed a joint petition, which included a claim for homestead exemption as to each of them. The husband subsequently died, and the court held that the wife was entitled to claim the exemption of her deceased debtor-husband, as well as her own. See also In re Costello, 72 B.R. 841 (Bankr. E.D.N.Y. 1987) (Debtors filed a joint petition and both claimed a homestead exemption. The case was closed and two years later the wife died. The court permitted the case to be reopened in order to avoid the fixing of judicial liens that impaired the homestead exemptions originally elected under the joint petition. Bankruptcy Judge Conrad Duberstein, citing Friedman, supra, with approval, noted that that court reasoned "that a debtor's exemptions are determined as of the time of the filing of the petition." (citations omitted).

The approach adopted in Costello, supra, also comports with Fed.R.Bankr.P. 1016, which provides that in a liquidation case under Chapter 7 of the Code, the estate shall be administered as if the death had not occurred.

In the matter before the Court, there is no evidence that the Johnsons previously filed a joint petition pursuant to Chapter 7 of the Code and claimed homestead exemptions. Mrs. Johnson has filed an individual petition. The words "was exempted" used in NYCPLR §5206(b) would be meaningless if the Court was to accept the Debtor's reasoning that she is entitled to claim an additional \$10,000 as surviving spouse, which has never been claimed previously and has never vested. Mr. Johnson died in June, 1990. Mrs. Johnson's petition was filed in August, 1993. Furthermore, if the Court were to agree with the Debtor's interpretation of the statute, any amount that the Debtor's spouse might have been entitled to claim as exempt would presumably have had to have been determined at the time of his death. NYCPLR §5206(a) simply sets forth the maximum amount of the homestead exemption. Such a determination would run contrary to the general rule that exemptions are to be determined as of the date of filing.

For the reasons discussed above, Debtor is entitled to claim a single homestead exemption in the maximum amount of \$10,000.

IT IS SO ORDERED.

Dated at Utica, New York
this day of July, 1994

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge