



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: January 29, 2016**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

TAMMY J. ANDRUS,

CASE NO. 15-02866-NPO

DEBTOR.

CHAPTER 7

**ORDER OVERRULING
TRUSTEE'S OBJECTION TO EXEMPTIONS**

This matter came before the Court for hearing on January 19, 2016 (the "Hearing"), on the Trustee's Objection to Exemptions (the "Objection") (Dkt. 26)¹ filed by Eileen N. Shaffer, the chapter 7 trustee (the "Trustee"), and the Answer (the "Answer") (Dkt. 35) filed by Tammy J. Andrus, the debtor (the "Debtor") in the Bankruptcy Case. At the Hearing, the Trustee represented herself, and Robert Rex McRaney, Jr. ("McRaney") appeared on behalf of the Debtor. After fully considering the matter, the Court finds as follows:

Jurisdiction

The Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).

¹ Citations to the record are as follows: (1) citations to the docket entries in the above-styled chapter 7 bankruptcy case (the "Bankruptcy Case") are cited as "(Dkt.____)"; and (2) citations to testimony at the § 341 Meeting are cited by the timestamp of the audio recording.

Facts

1. The Debtor filed a voluntary petition for relief (the “Petition”) pursuant to chapter 7 of the Bankruptcy Code on September 16, 2015. (Dkt. 1). On the Petition, the Debtor listed “2428 Perkins Rd, Anguilla, MS 38721” (the “Anguilla Property”) as her street address and “556 Traceview Rd, Madison, MS 39110” (the “Madison Property”) as her mailing address. (Pet. 1 at 1).

2. On October 14, 2015, the Debtor filed her statements and schedules (the “Statements and Schedules”) (Dkt. 16). On Schedule A – Real Property, the Debtor listed the Anguilla Property, which had a current value of \$60,000, as her homestead. (State. & Sched. at 3). On Schedule B – Personal Property, the Debtor listed the location of her cash on hand, household goods, clothing, jewelry, and automobiles as the Anguilla Property. (*Id.* at 4, 6). On Schedule C – Property Claimed as Exempt, the Debtor claimed a homestead exemption on the Anguilla Property pursuant to MISS. CODE ANN. § 85-3-21.² (*Id.* at 7).

3. On October 21, 2015, JPMorgan Chase Bank, National Association, filed the Motion for Relief from Automatic Stay and for Other Relief (the “Motion”) (Dkt. 19), asking the Court to terminate the automatic stay so that it could commence a foreclosure action on the

² Mississippi’s homestead exemption law provides, in pertinent part:

Every citizen of this state . . . being a householder shall be entitled to hold exempt from seizure or sale, under execution or attachment, the land and buildings owned and occupied as a residence by him, or her, but the quantity of land shall not exceed one hundred sixty (160) acres, nor the value thereof, inclusive of improvements, save as hereinafter provided, the sum of Seventy-five Thousand Dollars (\$75,000.00).

MISS. CODE ANN. § 85-3-21.

Madison Property. The Court entered the Order Granting Relief from Automatic Stay as to Docket No. 19 on November 6, 2015. (Dkt. 31).

4. The § 341³ meeting of creditors (the “§ 341 Meeting”) was held on October 22, 2015. At the § 341 Meeting, the Debtor testified that her brother transferred the Anguilla Property to her when she decided to file the Petition.⁴ The Debtor also testified that her homestead is the Anguilla Property.⁵ When questioned about the Madison Property, the Debtor stated that although she physically resided at the Madison Property at the time of filing, she was back and forth between both properties.⁶ When the Trustee asked the Debtor the location of her homestead a second time, the Debtor testified it was the Madison Property.⁷

5. On October 28, 2015, the Trustee filed the Objection. In the Objection, the Trustee asked the Court to deny the Debtor’s exemption of the Anguilla Property on the ground that it does not qualify as the Debtor’s homestead. The Debtor filed the Answer on November 19, 2015.

6. At the Hearing, the Trustee argued that the Debtor could not claim the Anguilla Property as exempt homestead property under MISS. CODE ANN. § 85-3-21 because she occupied the Madison Property at the time she filed the Petition. The Trustee introduced into evidence a copy of the Debtor’s Mississippi Homestead Application (the “Application”) (Ex. 1) for the Anguilla Property, which was filed on January 6, 2016. In the Application, the Debtor indicated

³ All code sections refer to the Bankruptcy Code in Title 11 of the United States Code, unless stated otherwise.

⁴ Test. of Debtor at 10:42:07.

⁵ Test. of Debtor at 10:42:36.

⁶ Test. of Debtor at 10:43:08.

⁷ Test. of Debtor at 10:43:13.

that Rickey Perkins deeded the Anguilla Property to her, and that she filed the deed with the Chancery Clerk on August 26, 2015.

7. The Debtor testified at the Hearing that she was confused by the Trustee's questions during the § 341 Meeting. She further testified that at the time of filing the Petition, she received mail at both the Madison Property and Anguilla Property. She stated that she attempted to file a homestead application for the Anguilla Property in August 2015, but the county office advised her to return in January 2016 to file an application.

8. At the Hearing, McRaney argued that because the Debtor lived at the Anguilla Property at the time she filed the Petition and continues to reside there, the Anguilla Property should be exempt.

Discussion

All legal or equitable interests of the debtor in property, subject to certain limited exceptions, become property of the bankruptcy estate upon the filing of the petition pursuant to § 541. A debtor, however, may “reclaim” certain property from the estate as exempt under § 522(b)(1). *Schwab v. Reilly*, 560 U.S. 770, 774 (2010). One of the fundamental components of a debtor's fresh start in bankruptcy “is the ‘debtor's ability to set aside certain property as exempt from the claims of creditors. Exemption of property, together with the discharge of claims, lets the debtor maintain an appropriate standard of living as he or she goes forward after the bankruptcy case.’” *In re Pace*, 521 B.R. 124, 126 (Bankr. N.D. Miss. 2014) (quoting *In re Urban*, 361 B.R. 910, 913 (Bankr. D. Mont. 2007)). The federal exemptions are enumerated in § 522(d). Pursuant to § 522(b)(2), however, states can choose to “opt out” of the federal exemptions contained in § 522(d), permitting a debtor to exempt property only under state or local law and applicable nonbankruptcy law. 4 COLLIER ON BANKRUPTCY ¶ 522.01 (16th ed.

2015). Mississippi has elected to “opt out” of the federal exemptions in favor of its own state exemption statute. MISS. CODE ANN. § 85-3-2.

The Fifth Circuit Court of Appeals and the Mississippi Supreme Court have stated that the purpose of the homestead exemption is to protect families from the imprudence and mistakes of the homeowner by ensuring families retain a residence. *Stinson v. Williamson (In re Williamson)*, 844 F.2d 1166, 1169 (5th Cir. 1988) (citing *Dogan v. Cooley*, 185 So. 783, 790-91 (Miss. 1939)). To advance this purpose, Mississippi’s exemption laws are to be liberally construed. *Dogan*, 185 So. at 790-91. Because the homestead exemption is favored by law, any doubt or ambiguity as to whether a property is or is not a homestead should be resolved in favor of the debtor. *Levis-Zukoski Mercantile Co. v. McIntyre*, 47 So. 435, 436 (Miss. 1908). Furthermore, Federal Rule of Bankruptcy Procedure 4003(c) provides that if an objection to an exemption is raised, the objecting party bears the burden of proving that the exemption is improper.

After reviewing the testimony from the § 341 Meeting and the Hearing, the Court finds that the Objection should be overruled, and the Anguilla Property should be exempt. It appears that the Debtor did not fully understand the Trustee’s mixed question of fact and law at the § 341 Meeting regarding which property is her homestead. Her confusion is evidenced by the fact that she provided different answers to essentially the same question at the § 341 Meeting.⁸ The Debtor explained at the Hearing that she was confused because she had been in the process of moving all of her belongings from the Madison Property to the Anguilla Property at the time of filing the Petition. She further testified that she received mail at both the Anguilla Property and

⁸ Test. of Debtor at 10:42:36; 10:43:13.

the Madison Property. The Court finds the Debtor's explanation of her mistake to be reasonable given the circumstances of moving amid the initiation of the Bankruptcy Case.

The Debtor owned and occupied the Anguilla Property on the date of filing the Petition, and the evidence presented at the Hearing supports the Court's conclusion. It is clear from the Application that the Debtor held title to the Anguilla Property prior to the filing of the Petition in September 2015. The Debtor testified at the Hearing that although some of her belongings remained at the Madison Property at the time of filing, she abandoned the Madison Property in August 2015 and moved to the Anguilla Property. She subsequently surrendered all rights to the Madison Property when the Motion was granted. Finally, the Petition and Statements and Schedules support the Debtor's intention to declare the Anguilla Property as her proper homestead. She listed the Anguilla Property as her street address on the Petition, and all of her belongings listed as exempt property, including her cash on hand, household goods, clothing, jewelry, and automobiles were located at the Anguilla Property according to the Statements and Schedules. (State. & Sched. at 4, 6). In weighing the evidence put forth by the Trustee and the Debtor, the Court finds that the Trustee did not meet her burden of proving the Anguilla Property is not exempt homestead property.

IT IS, THEREFORE, ORDERED that the Objection is hereby overruled.

##END OF ORDER##