

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY 04-30053

Barbara Jean Jacobson,

Debtor(s).

TRUSTEE'S TRIAL BRIEF

Trustee, by his undersigned attorney, hereby provides the following memorandum of facts and law.

STATEMENT OF FACTS

Barbara Jean Jacobson (hereinafter "Debtor"), filed the above entitled Chapter 7 proceeding on January 7, 2004.

Debtor has an ownership interest in real property located at 10845 Kingsborough Trail South, Cottage Grove, Minnesota (hereinafter "Property"). The Property is legally described as:

Lot 4, Block 3, River Oaks 2nd Addition, and Lot 3, Block 5, Sunny Acres;
Washington County, Minnesota

Debtor owns the Property jointly with Norman Jacobson II, her son. Prior to the filing of the bankruptcy the Property was held in Joint Tenancy.

The Property consists of 1.49 acres of land. The Property is within the city limits of the City of Cottage Grove. There is a house located on the Property with a 3 car garage. The house, built in 2001, includes 7 bedrooms and overlooks a golf course.

Debtor listed the Property for sale between October 18, 2001 and October 18, 2002 for the sum of \$888,888. Debtor again listed the Property for sale on June 11, 2003 for \$877,777.

The Property was appraised by D E Samuelson on March 26, 2002, for \$750,000. It was appraised by MC Brown Company on July 7, 2004 for \$845,000.

Debtor listed the Property in her bankruptcy schedules as having a value of \$690,000.

STATEMENT OF LAW

Minnesota Statute 510.01 provides in part:

“The house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon which it is situated to the amount of area and value hereinafter limited and defined, shall constitute the homestead of such debtor and the debtor's family, and be exempt from seizure or sale under legal process...”

Minnesota Statute 510.02:

“The homestead may include any quantity of land not exceeding 160 acres, and not included in the laid out or platted portion of any city. If the homestead is within the laid out or platted portion of a city, its area must not exceed one-half of an acre. The value of the homestead exemption, whether the exemption is claimed jointly or individually, may not exceed \$200,000...”

It is not disputed that the Property is within the City of Cottage Grove and is platted. Therefore, only one half acre of the Property can be claimed exempt.

The monetary exemption of the property is limited to \$200,000, whether the property is owned individually or jointly. “The value limitation cannot be "doubled" to \$400,000 in order to be concurrently utilized by both spouses..” Kipp v. Sweno, 683 N.W. 2nd 259, 266, 2004 WL 1404518 (Minn. 2004).¹

11 U.S.C. Section 522 (a)(2) provides that value, in determining exemption issues is the fair market value as of the date of the filing of the petition. The issue of value is a question of fact to be determined by the court after hearing the evidence. “(A) court must necessarily assign weight to the opinion testimony received based on its view of the qualifications and credibility of the parties' expert witnesses.” In re Smith, 267 B.R. 568, 572 (Bankr.S.D.Ohio, 2001). See also Buckland v. Household Realty Corp. (In re Buckland), 123 B.R. 573, 578 (Bankr.S.D.Ohio 1991).

Trustee believes that a review of the evidence that will presented will convince the Court that the value of this real estate substantially exceeds \$700,000.

¹ The Kipp cases have struggled with two issues. First, can the homestead be sold by a creditor of one spouse over the objection of the other spouse. That is sue is not present because the Property is not owned jointly by spouses in this case and because the Trustee is seeking to determine the exempt interest in the Property, not sell it. The second issue is whether property held in joint tenancy can be severed by a creditor of one spouse. However, Minn. Stat. 500.19 Subd. 5. specifically provides that the filing of a bankruptcy by a joint tenant severs a joint tenancy.

Hedback, Arendt & Carlson, PLLC

Dated: September 28, 2004

_____/e/ John A. Hedback_____
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