

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 7
CALVIN E. MINTZ and MARY L.)
MINTZ,) Case No. 04-10770 (MFW)
)
Debtors.)

MEMORANDUM OPINION¹

Before the Court is the Trustee's Objection to the Debtors' exemption of their residence. After a trial on the merits and briefing of the issue, we conclude that the Debtors' exemption is valid and we will, therefore, overrule the Trustee's Objection.

I. FACTUAL BACKGROUND

On March 8, 2004, Calvin and Mary Mintz (collectively, the "Debtors") filed a joint petition for relief under chapter 13. On April 5, 2004, the Debtors filed their Schedules and Statement of Financial Affairs, which listed their residence as jointly owned property in "fee simple." Those schedules also listed several unsecured debts as joint obligations.

On May 5, 2004, the case was converted to chapter 7 and George Miller was appointed trustee ("the Trustee"). On November 2, 2004, the Trustee filed an application to retain a real estate broker to sell the Debtors' residence. The Debtors objected, claiming that the property is exempt. They amended their

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

schedules on November 5, 2004, to change the ownership status of the property from jointly owned in fee simple to tenants by the entirety. At that time, they also changed their schedules to exempt that property.

A hearing was held on the Trustee's application to retain a real estate broker on December 3, 2004, at which time we requested further briefing on the exemption question. Briefs were filed and, on March 4, 2005 a further hearing was held on the issue. Testimony and evidence were presented concerning whether the Debtors had any joint debts. At the conclusion of this hearing, we directed the Debtors to present additional evidence on one of the alleged joint debts. That was provided on March 16, 2005. The matter is ripe for decision.

II. JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(b)(2)(B).

III. DISCUSSION

The issue presented is whether the Debtors' residence is exempt from sale by the Trustee. The Debtors argue that their residence is exempt under the Bankruptcy Code which allows debtors to exempt:

any interest in property in which the debtor had, immediately before the commencement of the case, an

interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

11 U.S.C. § 522(b)(2)(B).

While there was some initial confusion about the manner in which the residence is owned by the Debtors,² the evidence established that they both own it. Under Delaware law, the Property is presumed to be held as tenants by the entirety if it is owned by a husband and wife. See, e.g., Young v. Trimar Assocs., Inc., 362 A.2d 214, 216 (Del. 1976).

The Debtors and Trustee agree that, under Delaware law, individual debts may not be satisfied from property held as tenants by the entirety. See, e.g., Hurd v. Hughes, 109 A. 418, 418-19 (Del. Ch. 1920) (holding that a creditor with a judgment against a debtor may not levy against property held as tenants by the entirety by the debtor and his spouse). However, a creditor with a judgment against a debtor and his spouse may levy on property held as tenants by the entirety. See, e.g., Napotnik v. Equibank & Parkvale Savs. Assoc., 679 F.2d 316, 320 (3d Cir. 1982) (applying Pennsylvania law); In re Hovatter, 25 B.R. 123, 124 (Bankr. D. Del. 1982) (applying Delaware law).

At trial, the Trustee questioned the Debtors about the

² The residence was originally scheduled as held in "fee simple" but also listed as jointly held. The amended schedules stated that the residence was held as tenants by the entirety.

nature of their various debts. This testimony established that the debts to Cingular and Discover are individual ones. The Connectiv debt consisted of several accounts. The account servicing the Debtors' residence is a joint obligation; however, it is current. The other accounts, which were still outstanding, serviced investment properties owned only by Mary Mintz; they are individual debts.

The debt to eCast (as assignee of MBNA) was the subject of much debate. The Trustee offered into evidence the proofs of claim filed by MBNA. The Trustee argued that the documents attached to the proofs of claim list both Debtors as obligors, thus establishing that it is a joint debt. The Debtors both testified that the debts were, in fact, individual credit card accounts and not joint obligations. They noted that only Calvin Mintz's name appears in the "debtor" line on the proof of claim, supporting their position that it is an individual debt. We asked for additional proof from the Debtors as the evidence presented was not clear.

The Debtors subsequently submitted a letter from eCast's attorneys, Beckett & Lee, which states that Calvin is individually liable on one account, while Mary is individually liable on the remaining accounts. This letter, and the testimony at trial, conclusively establishes that the Debtors have no joint debts. Because individual debts may not be satisfied from

property held as tenants by the entirety, we conclude that the Debtors may exempt their residence. Accordingly, the Trustee may not sell this property to satisfy only debts owed by each individual debtor and we will overrule the Trustee's objection to their exemption.

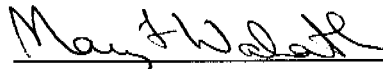
IV. CONCLUSION

For the reasons stated above, we overrule the Trustee's objection to the Debtors' exemption in their residence.

An appropriate order is attached.

Dated: March 31, 2005

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

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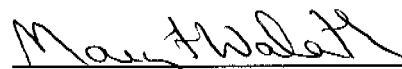
ORDER

AND NOW this 31st day of March, 2005, upon consideration of the exemption claimed by the Debtors' in their residence and the Trustee's objection thereto, the evidence presented at the trial held on March 4, 2005, and the Debtors' post-trial submissions, it is hereby

ORDERED that the objection of the Trustee to the Debtors' exemption is **OVERRULED**; and it is further

ORDERED that the Debtor's exemption of their residence is **DETERMINED TO BE VALID**.

BY THE COURT:



Mary F. Walrath
United States Bankruptcy Judge

cc: Timothy J. Weiler, Esquire¹

¹ Counsel shall serve a copy of this Opinion and Order on all interested parties, including the parties listed on the attached Service List, and file a Certificate of Service to that effect.

SERVICE LIST

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