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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In Re
GARY LYLE & ROBERTA JEAN
CHRISTIAN,
Debtors.

Chapter 7
Case No. 05-24086-SSC
MEMORANDUM DECISION

I. Preliminary Statement

This matter comes before the Court pursuant to the "Objection to Exemptions and Notice of Bar Date" and "First Amended Objection to Exemptions and Notice of Bar Date" (the "Objection to Exemptions") filed by the Chapter 7 Trustee, Charles Riley, on January 2, 2006. The Trustee objects to the Debtors' claimed homestead exemption in real property located at 28576 124th Drive, Peoria, Arizona ("the Property") on two grounds. First, the Trustee asserts that the Debtors are not entitled to the homestead exemption because they do not own the Property. Second, the Trustee states that to the extent the Debtors are entitled to an exemption, the exemption is limited to the amount of \$125,000 pursuant to 11 U.S.C. § 522(p) (2006). The Debtors assert that they are entitled to the exemption in the amount of \$150,000 pursuant to Arizona law. The Trustee sold the Property pursuant to the Court's Order of October 18, 2006, granting his Motion to Sell.¹ At the sale hearing on November 30, 2006, the parties requested the Court to rule on their pleadings concerning the Trustee's Objection, at which time the Court took the matter under advisement.

In this Memorandum Decision, the Court has now set forth its findings of fact and conclusions of law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure. The

¹ Docket Entry No. 66.

1 issues addressed herein constitutes a core proceeding over which this Court has jurisdiction.
2 28 U.S.C. §§ 1334(b) and 157(b) (West 2006).

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4 **II. Factual Discussion**

5 The facts are undisputed in this matter. The Debtors assert an interest in the
6 Property, listing it on Schedule A of their bankruptcy Schedules,² and claim a homestead
7 exemption in the Property on Schedule C, pursuant to A.R.S. § 33-1101 (2006).³ At the time
8 of filing their bankruptcy petition, the Debtors made no mention of their interest in a limited
9 partnership known as GRC Southwest Limited Partnership ("GRC").

10 The Debtors first acknowledged an ownership interest in GRC on January 25,
11 2006, when they amended their Schedule B to reflect said interest.⁴ This Amendment was
12 made on the same day that the Debtors filed their Response to the Trustee's Objections to
13 Exemptions.⁵ Through the Amended Schedules and the Response, the Debtors reveal that
14 they own a 100% interest in GRC. In turn, GRC owns a 100% interest in the Property.

15 The Property was originally purchased by Debtor Roberta J. Christian on April
16 6, 2004.⁶ Subsequently, on August 13, 2004, Ms. Christian transferred the Property, by
17 quitclaim deed, to GRC.⁷ The Debtors thereafter resided at the property until it was recently
18 sold. Prior to moving into the Property, they resided in Glendale, Arizona for five years or
19 more.
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22 ² See Docket Entry No. 1.

23 ³ See Docket Entry No. 1.

24 ⁴ See Docket Entry No. 27.

25 ⁵ See Docket Entry No. 29.

26 ⁶ See Docket Entry No. 23, Exhibit B.

27 ⁷ See Docket Entry No. 23, Exhibit A.
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1 **III. Discussion**

2 Since Arizona is an opt-out jurisdiction, the outcome of this matter is
3 predicated on whether the Debtors are entitled to a homestead exemption pursuant to A.R.S.
4 § 33-1101 (2006).⁸ The Debtors rely on the Ninth Circuit's decision of In re Casserino, 379
5 F.3d 1069 (9th Cir. 2004) as dispositive of the issues herein. They believe that the Casserino
6 Court permitted the homestead exemption claim, because the debtor actually occupied the
7 property in question.

8 In Casserino, a debtor entered into an apartment lease which required that he
9 pay the sum of \$2,000, comprised of prepaid rent and a security deposit. At the time the
10 bankruptcy petition was filed, the landlord retained the amount of \$1,150 of the total
11 deposited. The debtor claimed a homestead exemption in the \$1,150. The lower court held
12 that under Oregon law, "a homestead may be claimed in any interest in property that carries
13 with it the right of possession, including tenancy." Id. at 1071. This holding was affirmed by
14 the Bankruptcy Appellate Panel ("BAP"), and subsequently, the Ninth Circuit, which stated,
15 "because a residential lessee owned a possessory interest in the leased property, the lease fell
16 within the definition of 'homestead.'" Id. at 1072-74. The Circuit Court concluded that the
17 payment of the security deposit and prepaid rent were, in that case, an integral part of the
18 lease. Id. at 1074. Without having paid those obligations, the debtor could not have obtained

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8 11 U.S.C. § 522(b) (West 2006) allows an individual debtor to exempt certain property
22 from the estate. The debtor may choose the exemptions set forth in Subsection 522(d),
23 "unless the State law that is applicable to the debtor under paragraphs (2)(A) of this
24 subsection specifically does not so authorize." Paragraph (2)(A) provides that the state law
25 applicable to the debtor is the "State or local law that is applicable on the date of the filing of
26 the petition at the place in which the debtor's domicile has been located for the 180 days
27 immediately preceding the date of the filing of the petition." In this case, the Debtors'
28 domicile has been located in Arizona for at least 5 years. Arizona "residents . . . are not
entitled to the federal exemptions provided in 11 U.S.C. § 522(d)." A.R.S. § 33-1133(B)
(West 2006). Debtors residing in opt-out jurisdictions, such as Arizona, must proceed under
Subsection 522(b)(2)(A), which allows a debtor to exempt "any property that is exempt under
. . . State or local law that is applicable on the date of the filing of the petition."

1 a cognizable ownership right to possess the property. Thus, the debtor's payment was exempt
2 under Oregon's homestead statute. Id. at 1074-75.

3 The Debtors, in this matter, argue that Oregon law and Arizona law are
4 strikingly similar and, if anything, the Arizona homestead statute is broader. Oregon Revised
5 Statute §18.395 (West 2006) states:

6 A homestead shall be exempt from sale and execution from the lien of every
7 judgment and from liability in any form for the debts of the owner to the
8 amount in value of \$25,000, except as otherwise provided by law The
homestead must be the actual abode of and occupied by the owner, or the
owner's spouse, parent, or child.

9 Comparatively, A.R.S. § 33-1101 (West 2006) states:

10 A. Any person the age of eighteen or over, married or single, who resides
11 within the state may hold as a homestead exempt from attachment, execution
and forced sale, not exceeding one hundred fifty thousand dollars in value,
any one of the following:

12 1. The person's interest in real property in one compact body upon
13 which exists a dwelling house in which the person resides.

14 Although these statutes may appear similar, a careful review of Arizona law reveals that the
15 Casserino decision is inapplicable to the case at bar.

16 Under the Arizona statute, a person asserting a homestead exemption must
17 hold an interest in real property for the claim to be upheld. In determining whether the
18 Debtors hold an interest in the Property, the Court returns to the Debtors' Bankruptcy
19 Schedules. As reflected in Amended Schedule B, the Debtors hold an interest in GRC, which
20 is properly listed by the Debtors as an interest in personal property. Indeed, by operation of
21 Arizona law, the Debtors may only list the GRC interest as an interest in personal property.
22 See A.R.S. § 29-339 (West 2006). In order to claim a homestead exemption under Arizona
23 law, the interest held must be held in *real property*. See A.R.S. §33-1101 A (West 2006).
24 Accordingly, the Debtors' mere ownership of GRC, an interest in personal property, does not
25 meet the statutory requirements of Section 33-1101.⁹

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27 ⁹ Although not dispositive, the Oregon statute does not require a debtor to hold a similar
28 interest in real property.

1 Moreover, of critical concern to this Court is the disparity between the facts of
2 this case and those set forth in the Casserino decision. The debtor in Casserino was able to
3 rely on a written lease, which gave him a right to occupy the property in exchange for the
4 consideration he had paid. He was able to exempt that consideration, because he obtained a
5 legal right of possession of the real property as a result of the payment. Here, however, the
6 Debtors have no right of possession of the Property. They claim a real property interest in the
7 Property via their personal property interest in GRC. However, the Debtors extinguished any
8 real property interest they had in the Property when Ms. Christian transferred her ownership
9 interest to GRC, because GRC is a separate entity. See A.R.S. §10-140(22) (2006).¹⁰ Once
10 the Property was transferred, it became an asset of GRC, a limited partnership, because
11 "[p]roperty acquired by a partnership is property of the partnership and not of the partners
12 individually." A.R.S. § 29-1013 (2006). As such, the Debtors only held a personal property
13 interest in GRC. GRC, as a separate entity, held an interest in the Property. Importantly, the
14 Debtors have been unable to produce any documentation reflecting that GRC granted the
15 Debtors a legal right of possession of, or interest in, the Property. Without GRC's grant to the
16 Debtors of a right of occupancy or possession, the Debtors have no cognizable interest in the
17 Property. Thus, their reliance on a "right to possession" as giving rise to a homestead
18 exemption is misplaced.

19 Finally, it is clear that the Arizona Legislature did not intend to allow an
20 interest in a limited partnership to constitute an interest in real property under the homestead
21 exemption, because of a statutory provision allowing debtors to claim a homestead exemption
22 in property owned by a specific entity under specific circumstances. A.R.S. § 33-1104(E)

24 **10** A.R.S. § 10-140(22) (West 2006) defines "entity" as including a corporation, foreign
25 corporation, not for profit corporation, profit and not for profit unincorporated association,
26 nonprofit corporation, close corporation, corporation sole or limited liability company, a
27 professional corporation, association or limited liability company, a business trust, estate,
28 partnership, registered limited liability partnership, trust or joint venture, two or more persons
having a joint or common economic interest, any person other than an individual and a state,
the United States and a foreign government.

1 (2006) provides that, "[n]otwithstanding the provisions of subsection A, paragraph 2 of this
2 section, a transfer of the homestead . . . for conveyance under a trust . . . in which the
3 claimant retains the power to administer and revoke the trust shall not constitute an
4 abandonment of the homestead." Under this provision, the Arizona Legislature recognizes
5 that an individual's transfer of an interest in homesteaded real property shall not constitute an
6 abandonment of that interest so long as the interest is held in a revocable trust over which the
7 individual has control. The Legislature specifically stated that when an individual chooses to
8 hold real property in a specific type of trust, the individual, by virtue of the interest in the
9 trust, may claim a homestead exemption in the real property even though the individual no
10 longer holds said interest. The Legislature could have drafted an identical exception for
11 limited partnerships, or for any other entity in which real property is commonly held, but it
12 did not. Unless the real property is held by an entity within the exception created by A.R.S. §
13 33-1104(A), a debtor may not claim a homestead exemption in the property.

14 This Court is mindful that "Arizona law requires that the homestead exemption
15 be liberally construed to further its fundamental purpose: protecting the family from 'the
16 forced sale of home property.'" In re Renner, 822 F.2d 878, 880 (9th Cir. 1987) (internal
17 citations omitted). The Oregon Legislature sought a similar result. Casserino at 1073.
18 However, the Renner Court's conclusion that the Arizona homestead exemption should be
19 liberally construed is tempered with the warning that "a complete failure to comply with any
20 one of the statutory requirements contained in A.R.S. § 33-1102 renders the applicant's
21 declaration invalid." Accordingly, the Court finds that the Debtors have no homestead
22 exemption in the Property, or the sale proceeds therefrom.

23 Because the Court has found that the Debtors have no homestead exemption in
24 the Property, or the proceeds therefrom, it is unnecessary to reach a determination of the
25 applicability of 11 U.S.C. § 522(p) in this matter.¹¹

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27 ¹¹ 11 U.S.C. §522(p)(West 2006) places an exemption cap of \$125,000 on certain real
28 property which has been determined to be exempt, but has been recently acquired, so that the

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IV. Conclusion

Based upon the foregoing, the Court concludes that the property located at 28576 124th Drive, Peoria, Arizona is owned by GRC Southwest Limited Partnership. Therefore, pursuant to A.R.S. § 33-1101 (2006), the Debtors cannot claim a homestead exemption in said Property. The Trustee's Objection to Exemptions is sustained.

DATED this 13th day of December, 2006.



Honorable Sarah Sharer Curley
U. S. Bankruptcy Judge

BNC to Notice

applicable state law exemption amount may be reduced. The Court also notes that the Chapter 7 Trustee's sale of the Property apparently yielded only \$5,000 in net proceeds. Thus, even if this Court were to rule in the Debtors' favor, the amount of their exemption would be limited to the net proceeds of \$5,000.