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As of: August 19, 2019 8:45 PM Z

## In re Bernhardt

United States Bankruptcy Court for the District of Nebraska

June 17, 2008, Decided

CASE NO. BK07-42438-TLS, CH. 13

### Reporter

2008 Bankr. LEXIS 1885 \*; 2008 WL 2484582

IN THE MATTER OF: LEROY DAVID  
BERNHARDT and PATRICIA MARY BERNHARDT,  
Debtors.

### Core Terms

homestead, Exemptions, motor home, homestead exemption, dwelling house, Resistance, purposes, Vacate, occupy

### Case Summary

#### Procedural Posture

The debtors initially filed for relief under Chapter 7 of the United States Bankruptcy Code. In an earlier proceeding, while the matter was pending under Chapter 7, the court had issued an order granting a Chapter 7 trustee's objection to the debtors' claimed exemptions. The debtors filed a motion to vacate or set aside the order.

#### Overview

The Chapter 7 trustee objected to the debtors' claim of a homestead exemption in certain property. Instead of resisting, the debtors filed a motion to convert the case to Chapter 13, which was granted. An order granting objection to the exemptions was entered due to the lack of a timely resistance. The Chapter 13 trustee did not have an objection to the debtors' subsequent motion to vacate provided that the objection was heard on the merits. The trustee asserted that the motor home on the property at issue was a recreational vehicle and could not qualify for a homestead exemption. The debtors were leasing the motor home while repairs to a home on the property were made. The court noted that the motor home had been connected to water and propane on the

farm property and was serving as a temporary residence while the debtors made improvements to the house located on the same property. Pursuant to *Neb. Rev. Stat. § 40-101*, and the liberal construction of a homestead under Nebraska law, the debtors' actual occupancy on the farm property, coupled with their intent to occupy the dwelling house upon its repair, was sufficient to support the claimed homestead exemption.

#### Outcome

The court overruled the trustee's objection to the homestead exemptions.

### LexisNexis® Headnotes

Real Property Law > Exemptions & Immunities > Homestead Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

#### [HNI](#) [↓] Homestead Exemptions

A "trailer home" may qualify for a homestead exemption if it is permanently affixed to real estate that is either owned or rented.

Real Property Law > Exemptions & Immunities > Homestead Exemptions

Bankruptcy Law > Exemptions > State Law Exemptions > Specific Exemptions

#### [HN2](#) [↓] Homestead Exemptions

See [Neb. Rev. Stat. § 40-101](#).

Real Property Law > Exemptions &  
Immunities > Homestead Exemptions

Bankruptcy Law > Exemptions > State Law  
Exemptions > Specific Exemptions

### [HN3](#) [↓] **Homestead Exemptions**

The Nebraska courts have taken a liberal view of the type of improvements which satisfy the "dwelling house" requirement in [Neb. Rev. Stat. § 40-101](#). The Nebraska Supreme Court has stated that the law does not contemplate by the words "dwelling house" any particular kind of house. It may be a "brown stone front," all of which is occupied for residence purposes, or it may be a building part of which is used for banking or business purposes, or it may be a tent of cloth. All that the law requires on the subject is that the homestead claimant and his family should reside in this habitation or dwelling house, whatever be its character, on the premises claimed as a homestead.

Real Property Law > Exemptions &  
Immunities > Homestead Exemptions

Bankruptcy Law > Exemptions > State Law  
Exemptions > Specific Exemptions

### [HN4](#) [↓] **Homestead Exemptions**

The United States District Court for the District of Nebraska has observed that if a tent of cloth can have the essential attributes of a homestead, there is no apparent reason why a trailer house cannot. The court went on to discuss cases which indicate that the dwelling must be affixed to the land and stated as follows: even if the court admits that the law requires the annexation of the chattel to the land in order for the chattel to qualify for the homestead exemption, it seems clear that courts should be very liberal in determining that a sufficient attachment to the realty has occurred.

Real Property Law > Exemptions &  
Immunities > Homestead Exemptions

Bankruptcy Law > Exemptions > State Law  
Exemptions > Specific Exemptions

### [HN5](#) [↓] **Homestead Exemptions**

The law is undoubtedly settled in Nebraska that one who purchases a tract of land with the bona fide intention of making it his home, and takes such active steps as his circumstances will allow toward its occupation, and actually occupies it within a reasonable time, may claim a homestead interest therein from the date of his purchase.

**Counsel:** [\*1] For Leroy David Bernhardt, fdba Bernhardt Entp., Debtor: Kristen D. Mickey, Sorensen, Mickey & Hahn PC, Scottsbluff, NE.

For Patricia Mary Bernhardt, Joint Debtor: Kristen D. Mickey, Sorensen, Mickey & Hahn PC, Scottsbluff, NE.

Trustee: Kathleen Laughlin, Chapter 13 Trustee's Office, Omaha, NE.

U.S. Trustee: Patricia Fahey, U.S. Trustee's Office, Omaha, NE.

**Judges:** Thomas L. Saladino, United States Bankruptcy Judge.

**Opinion by:** Thomas L. Saladino

## Opinion

### ORDER

Hearing was held in Lincoln, Nebraska, on June 12, 2008, on Debtors' Motion to Vacate or Set Aside Order Granting Objection to Exemptions (Fil. # 40), a Resistance by the Chapter 13 Trustee (Fil. # 45), an Objection to Exemptions filed by the Chapter 13 Trustee (Fil. # 47), and a Resistance by Debtors (Fil. # 51). Kristen D. Mickey appeared for Debtors, and Marilyn Abbott appeared on behalf of the Chapter 13 Trustee.

On December 20, 2007, Debtors filed this case as a Chapter 7 proceeding. At the time of the Chapter 7 filing, Debtors were the owners of an undivided one-fourth interest in approximately 160 acres of real property situated in Morrill County, Nebraska ("Farm"). The total property is valued at \$ 181,785.00, and

Debtors' one-fourth interest is valued [\*2] at \$ 45,446.25.

At the time of bankruptcy filing, Debtors claimed a homestead exemption for their interest in the Farm. There are two houses situated on the Farm property, and Debtors intend to live in one of the houses. However, it is presently in a state of disrepair, and Debtors have rented a motor home which they have placed on the Farm property for their living accommodations until such time as the repairs can be completed to the house. Propane and water have been connected to the motor home.

On or about February 1, 2008, the Chapter 7 Trustee objected to Debtors' claim of homestead exemption. The objection required any resistance to be filed by February 21, 2008. Instead of resisting, on February 20, 2008, Debtors filed a Motion to Convert Case to Chapter 13 (Fil. # 29), which motion was subsequently granted (Fil. # 33). However, prior to the Order Granting Motion to Convert to Chapter 13, an Order Granting Objection to Exemptions (Fil. # 31) was entered due to the lack of a timely resistance. Accordingly, Debtors filed the pending motion to vacate or set aside the order granting the objection to exemptions.

At the hearing, the Chapter 13 Trustee indicated that she had no objection [\*3] to the motion to vacate provided that her objection to exemptions was heard on its merits. Accordingly, Debtors' Motion to Vacate or Set Aside Order Granting Objection to Exemptions (Fil. # 40) is granted and the Order Granting Objection to Exemptions (Fil. # 31) is hereby vacated.

In her objection to the claim of exemption, the Chapter 13 Trustee asserted that Debtors did not occupy the Farm on the date of bankruptcy filing as their homestead and with the intent to make it their permanent residence. Based upon the evidence and additional information provided by Debtors, the Chapter 13 Trustee now agrees that Debtors did occupy a motor home that had been placed on the Farm property as of the date of bankruptcy filing. However, the Chapter 13 Trustee asserts that the leased motor home is not affixed to the Farm property and is not a dwelling for purposes of the homestead exemption.

The Chapter 13 Trustee acknowledges that HNI[↑] a "trailer home" may qualify for a homestead exemption if

it is permanently affixed to real estate that is either owned or rented. *In re Buzzell*, 110 B.R. 440 (Bankr. D. Neb. 1990); *In re Foley*, 97 F. Supp. 843 (D. Neb. 1951). However, she asserts that the home in this [\*4] case is actually a recreational vehicle and is similar to the situation in *In re Zeleny*, Case No. 05-45008-TLS, 2006 Bankr. LEXIS 4537 (Bankr. D. Neb. Jan. 18, 2006). In that case, Chief Judge Timothy J. Mahoney denied the debtors' claim of a homestead exemption in a fifth-wheel camper and pickup truck which were not affixed to any property of the debtors. Accordingly, the Chapter 13 Trustee asserts that the motor home Debtors are leasing while they repair the home located on the Farm does not constitute a dwelling house for homestead purposes. Debtors assert that the motor home issue is a "red herring." Debtors are not asserting that the motor home is their homestead. Instead, it is a temporary living space until the dwelling house located on the Farm is habitable.

HN2[↑] *Neb. Rev. Stat. § 40-101* provides as follows: "A homestead not exceeding sixty thousand dollars in value shall consist of the dwelling house in which the claimant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land . . . ."

HN3[↑] The Nebraska courts have taken a liberal view of the type of improvements which satisfy the "dwelling house" requirement in the statute. In *Corey v. Schuster*, 44 Neb. 269, 62 N.W. 470 (1895), [\*5] the Nebraska Supreme Court stated as follows:

The law does not contemplate by the words "dwelling house" any particular kind of house. It may be a "brown stone front," all of which is occupied for residence purposes, or it may be a building part of which is used for banking or business purposes, or it may be a tent of cloth. All that the law requires on the subject is that the homestead claimant and his family should reside in this habitation or dwelling house, whatever be its character, on the premises claimed as a homestead.

*Id.* at 275, 62 N.W. at 472.

In *In re Foley*, 97 F. Supp. 843, the United States District Court for the District of Nebraska discussed the circumstances under which a trailer home could constitute a "dwelling" for homestead purposes. HN4[↑]

] That court observed "[i]f a tent of cloth can have the essential attributes of a homestead, there is no apparent reason why a trailer house cannot." *Id. at 846*. The court went on to discuss cases which indicate that the dwelling must be affixed to the land and stated as follows:

United States Bankruptcy Judge

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In view of these comments, even if we admit that the law requires the annexation of the chattel to the land in order for the chattel to qualify for the homestead [\*6] exemption, it seems clear that courts should be very liberal in determining that a sufficient attachment to the realty has occurred.

*Id. at 846-47.*

In the present case, Debtors have moved into a motor home which has been connected to water and propane on the Farm property as a temporary residence while they make improvements to the house located on the Farm property. As the Nebraska Supreme Court has held:

*HNS* [↑] The law is undoubtedly settled in this state that one who purchases a tract of land with the bona fide intention of making it his home, and takes such active steps as his circumstances will allow toward its occupation, and actually occupies it within a reasonable time, may claim a homestead interest therein from the date of his purchase.

*Hair v. Davenport, 74 Neb. 117, 103 N.W. 1042, 1043 (1905)* (citing *Hanlon v. Pollard, 17 Neb. 368, 22 N.W. 767 (1885)*).

Accordingly, given the homestead statute's liberal construction, I find that Debtors' actual occupancy on the Farm property in which they own an undivided one-fourth interest, coupled with their intent to occupy the dwelling house upon its repair, is sufficient to support their claim of a homestead exemption.

IT IS, THEREFORE, ORDERED [\*7] that the Chapter 13 Trustee's Objection to Exemptions (Fil. # 47) is overruled.

Dated: June 17, 2008.

BY THE COURT:

/s/ Thomas L. Saladino