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***Savage v. Pierson*, 123 Nev. Adv. Op. 12 (May 3, 2007)¹**

Administrative – Bankruptcy / Homestead & Dwelling Exemptions

Summary

Debtor filed Chapter 7 bankruptcy and tried to claim that the security deposit for his residential lease was exempt under Nevada's dwelling exemption. Trustee objected because debtor had no equity in the lease-hold. Due to a lack of state law precedent, the U.S. Bankruptcy Court for the District of Nevada submitted the following certified question to the Nevada Supreme Court:

Is a security deposit in a residential lease exempt from the claim of creditors either as a part of an exempt dwelling under NRS 21.090(1)(m) or as a homestead under NRS 21.090(1)(l)?

The Court concluded that it was not exempt under either statute.

Disposition

A security deposit in a residential lease is not exempt from the claim of creditors under either the homestead exemption of NRS 21.090(1)(l) or the dwelling exemption of NRS 21.090(1)(m).

Factual and Procedural History

Debtor Shawn Pierson filed voluntary Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the District of Nevada. In his petition, debtor claimed an exemption of \$500 for a security deposit in a residential lease under Nevada's dwelling exemption. Chapter 7 Trustee Savage objected on the grounds that debtor had no equity in a month-to-month residential lease. Because there was no precedent in Nevada to determine whether a security deposit in a residential lease is exempt from creditors as part of an exempt dwelling or homestead, the Bankruptcy Court submitted a certified question of law to the Nevada Supreme Court.

Discussion

Both the homestead exemption statute and the dwelling exemption statute were enacted to exempt property homesteads and dwelling from forced sale under process of law as provided by the Nevada Constitution.² A homestead can be (1) a quantify of land together with a dwelling house; (2) a mobile home whether or not the underlying land is owned by the claimant; (3) a cooperative unit; or (4) a condominium.³ The homestead exemption only protects the debtor's equity in the property.⁴ For the purposes Nevada's homestead exemption, equity is the fair market value of the property minus any encumbrances listed in NRS 115.050 or NRS 115.090.⁵ The Court determined that a security deposit in a residential lease does not meet the definition of equity. Although Nevada's dwelling exemption statute does not define equity, the Court found that the

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² NEV. CONST. art 4, § 30.

³ NEV. REV. STAT. 115.005(2) (2005).

⁴ NEV. REV. STAT. 115.010(2) (2005).

⁵ NEV. REV. STAT. 115.005(1) (2005).

statute's legislative history as well as recent legislative action to raise the equity exempted under the dwelling exemption to match the homestead exemption shows that the legislature applied the same meaning to equity in the dwelling exemption. Thus, a security deposit in a residential lease did not qualify as equity under the dwelling exemption either.

Conclusion

Security deposits on residential leases in Nevada are not exempt from creditor claims under either the homestead exemption or the dwelling exemption.