

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

In re:)
)
THELMA IRENE BURLEY,) Case No. 03-50279
)
Debtor.)
)

MEMORANDUM OPINION

The issue in this Chapter 7 case is whether the Debtor may take advantage of an increase in the Missouri homestead exemption that was enacted after the Debtor filed her original Chapter 13 petition and before her case was converted to Chapter 7.

I. BACKGROUND

The Debtor filed her Chapter 13 petition on March 12, 2003. After weathering a denial of confirmation of her Chapter 13 plan, and subsequently facing the Chapter 13 trustee's motion to dismiss her case, the Debtor filed a motion to convert to Chapter 7 on September 15, 2003. That motion was granted by the Court on the following day. While the Chapter 13 case was pending, the Missouri General Assembly increased the Missouri homestead exemption to \$15,000.00 from \$8,000.00. Upon the conversion of her case to Chapter 7, the Debtor sought to take advantage of this increase in the homestead exemption by claiming the \$15,000.00 exemption in her conversion schedules. The Chapter 7 Trustee objected.

The Court held a hearing in this matter on December 4, 2003, in St. Joseph, Missouri, and took the matter under advisement. After reviewing the arguments of the parties and the relevant case law, the Court finds that the Debtor's rights under the substantive state law and the Bankruptcy Code were established on the date she filed her original petition and that the Debtor is not entitled to claim the \$15,000.00 exemption in her homestead.

II. DISCUSSION

The Debtor admits that the \$15,000.00 homestead exemption was not in effect at the time she filed her original petition, but asserts that she is entitled to use the \$15,000.00 homestead exemption because she converted her case after the effective date of the newly enacted Mo. Rev. Stat. § 513.475. The Chapter 7 Trustee objects, arguing that the Debtor has inappropriately claimed the exemption because when the Debtor filed her original Chapter 13 petition the Missouri homestead exemption was only \$8,000.00, and that the exemption in effect at the time of the filing of the original petition is the only exemption to which the Debtor is entitled.

A. The Effective Date of the Increased Homestead Exemption

Prior to the First Regular Session of the 92nd General Assembly, § 513.475 stated that “[t]he homestead of every person, consisting of a dwelling house and appurtenances, and the land used in connection therewith, not exceeding the value of eight thousand dollars, which is or shall be used by such person as a homestead, shall, together with the rents, issues and products thereof, be exempt from attachment and execution.” The General Assembly repealed this law as part of 2003 Mo. HB 613, and enacted a new § 513.475, which increased the amount of the homestead exemption to \$15,000.00. The Governor of Missouri approved the new law on July 11, 2003. A law passed by the General Assembly “takes effect ninety days after the adjournment of the session at which it is enacted.” Mo. Rev. Stat. § 1.130.1. The General Assembly convenes at the State Capitol in Jefferson City annually on the first Wednesday after the first Monday of January. Missouri House of Representatives, *The Legislative Process in Missouri*, <http://www.house.state.mo.us/info/howbill.htm> (visited December 10, 2003). It adjourns on May 30. *Id.* Accordingly, the effective date of the newly enacted § 513.475 was August 28, 2003.

B. Significance of the Date of Filing

Because the change in Missouri’s homestead exemption law was not effective when the Debtor filed her Chapter 13 petition on March 12, 2003, but was effective when she converted her case to Chapter 7 on September 16, 2003, the Court must determine if a conversion to a case under another chapter allows the Debtor to take advantage of an interposed change in the law.

A debtor’s state law exemptions – including homestead rights – are determined by the “law that is applicable on the date of the filing of the petition.” 11 U.S.C. § 522(b)(2)(A). Thus, following the literal language of the statute, the Debtor is only entitled to an \$8,000.00 homestead exemption

because she filed her Chapter 13 petition before the effective date of the change. Pursuant to 11 U.S.C. § 348(a), a conversion of a case under one chapter of the Bankruptcy Code to a case under another chapter “does not effect a change in the date of filing of the petition, the commencement of the case or the order for relief.” Section 348 contains numerous exceptions to the retroactivity of the filing date in a converted case. For example, the date of conversion serves as the original filing date for purposes of notice and the appointment of a trustee. § 348(b). Also, Congress provided an exception for certain debts arising after the original petition but before conversion inasmuch as such debts can be treated as if they had arisen immediately before the date of filing the petition. § 348(d). Section 348 does not, however, set out any exceptions to retroactivity for exemptions that take effect after the original filing date and prior to conversion to another chapter. Under the doctrine of *expressio unius est exclusio alterius*, the inclusion of certain exceptions to a general rule is the implicit exclusion of other exceptions. *Hartford Underwriters Insurance Co. v. Magna Bank, N.A. (In re Hen House Interstate, Inc.)*, 177 F.3d 719, 723 (8th Cir. 1999), *aff’d sub. nom. Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000).

The Debtor argues that *Armstrong v. Lindberg (In re Lindberg)*, 735 F.2d 1087, 1090 (8th Cir. 1984), *cert denied*, 469 U.S. 1073, 105 S. Ct. 566, 83 L. Ed. 2d 507 (1984), supports her position that the date of conversion controls the exemptions that may be claimed in property of the estate. In *Lindberg*, the debtors owned two parcels of property – a home in which they resided at the time they filed their Chapter 13 petition and a farm. In their Chapter 13 Statement, the debtors claimed a homestead exemption in their home. After the original filing, the debtors moved their residence to their country farm. Thereafter, the debtors converted their case to Chapter 7 of the Bankruptcy Code and changed their homestead exemption from the \$20,000.00 in equity in the home to the \$80,000.00 in equity in the farm. The Eighth Circuit Court of Appeals affirmed the bankruptcy court’s decision to allow the change in the debtors’ homestead exemption, reasoning:

The bankruptcy courts are in general agreement that in a case converted from chapter 13 to chapter 7, the property of the estate consists of all property in which the debtor has an interest on the date of conversion. We believe that the same date must control in determining what exemptions the debtor may claim from the estate. Only if the same date controls what is property of the estate and what exemptions may be claimed can the debtor make full use of the exemption laws.

Id. at 1090.

After the Eighth Circuit's decision in *Lindberg*, Congress amended § 348 in 1994 to clarify that property of the estate in a converted case only consists of property of the estate as of the date of filing of the petition that remains in the possession and control of the debtor at the time of the conversion. § 348(f)(1)(A). Accordingly, the rationale for the court's holding in *Lindberg* was superceded by statute. Furthermore, the facts before the court in *Lindberg* involved a change in circumstances of the debtors, who had changed their homestead before conversion, and not a change in the law. Cases such as *In re Clark*, 186 B.R. 249, 250 (Bankr. W.D. Mo. 1995), cited by the Debtor, have followed *Lindberg* only inasmuch as it concerned a change in circumstances prior to conversion and not a change in the law.

The Court is not persuaded by the Debtor's argument that the increase in the homestead exemption constitutes property of the estate pursuant to 11 U.S.C. § 541(a)(7) on the grounds that it is an "interest in property that the estate acquires after the commencement of the case." An increase in the homestead exemption is not "acquired" by the estate. More appropriately, a homestead exemption deprives the estate of property pursuant to § 522(b) and a change in the exemption law is more properly classified as an entitlement given by the General Assembly to help debtors effectuate their fresh start. An increased dollar limit on an exemption is an interest in property acquired by the debtor, not by the estate.

Reading 11 U.S.C. § 348(a) together with § 522(b)(2)(A) leads to the inescapable conclusion that the law applicable on the date of filing of the bankruptcy petition controls the exemptions that are available to a debtor. *See Marcus v. Zeman (In re Marcus)*, 1 F.3d 1050, 1051-52 (10th Cir. 1993) (refusing to apply a change in the law effective on the date of conversion but not on the original filing date); *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1318 n.2 (9th Cir. 1992) ("Although Cal. Civ. Proc. Code § 704.730(a)(2) was amended to increase the homestead exemption to \$75,000, the Hymans are only entitled to a \$ 45,000 homestead exemption because an exemption amount is determined on the date the petition is filed."); *In re Weed*, 221 B.R. 256, 258-59 (Bankr. D. Nev. 1998) ("To hold that the law on the date of conversion controls would be tantamount to creating a new filing date, which is precluded by 11 U.S.C. § 348(a). 11 U.S.C. § 522(b)(2)(A) is clear. Exempt property is defined by the state law that is applicable on the date of the filing of the petition."); *In re Stroble*, 127 B.R. 372 (Bankr. W.D. Va. 1991) (debtors could not amend exemptions after conversion from Chapter 13 to Chapter 7 to take advantage of postpetition, preconversion change in state

exemption law). Where the statutory scheme is clear, that should end the Court's inquiry. *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 241, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989). The statutes at issue here are clear and unambiguous. Therefore, the Court finds that the applicable homestead exemption is the one in effect at the time the Debtor filed her original petition under the Bankruptcy Code.¹

III. CONCLUSION

For the foregoing reasons, the Court will sustain the Trustee's objection to the \$15,000.00 homestead exemption claimed by the Debtor. The Court finds that the Debtor is only entitled to the homestead exemption in effect at the time she filed her Chapter 13 petition regardless of an interposed change in the law that took effect prior to her conversion to Chapter 7. This opinion constitutes the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 9014(c) and 7052. A separate order shall be entered pursuant to Fed. R. Bankr. P. 9021.

ENTERED this 11th day of December 2003.

¹ Pursuant to Mo. Rev. Stat. § 1.180, "[n]o action ... pending at the time any statutory provisions are repealed shall be affected by the repeal; but the same shall proceed, in all respects, as if the statutory provisions had not been repealed, except that all proceedings had after the repeal becomes effective are governed by procedural rules and laws then in effect." Increasing the amount of a homestead exemption is a substantive change in the law, and pursuant to § 1.180, the Missouri courts would not apply a change in the substantive law to an action pending before the repeal – and later enactment – of that law. Thus, no latent ambiguity exists in this case under 11 U.S.C. § 522(b)(2)(A) over whether the law in effect at the date of the filing of the petition is simply what is reflected in the books or whether the law in effect is what a state court would do in applying the current law to a lien created prior to the effective date of the change.

The Court realizes that if the Debtor elects to dismiss her case and later file another petition, the Debtor might be able to take advantage of the increase in the homestead exemption. When that happens, the Court may be called upon to determine if the retroactive application of the homestead exemption is an impermissible impairment of the obligations of contracts. U.S. Const. Art. 1 § 13. *See e.g., Edwards v. Kearzey*, 96 U.S. 595, 607, 24 L. Ed. 793 (1878) (refusing to apply a retroactive increase in a homestead exemption); *In re Bassin*, 637 F.2d 668, 670 (9th Cir. 1980) (same); *In re Echavarren*, 2 B.R. 215, 217-18 (Bankr. N.D. Idaho 1980) (same); *contra In re Larson*, 260 B.R. 174, 202-03 (Bank. D. Col. 2001) (noting a circuit split on the issue and holding that retroactive application of increase in the amount of Colorado's homestead statute constitutes a "mere consequential incidence of a valid state regulation rather than rising to the level of a taking requiring just compensation."); *accord, Bartlett v. Giguere (In re Bartlett)*, 168 B.R. 488, 499 (Bankr. D. NH 1994); *In re Punke*, 68 B.R. 936, 943-44 (Bank. N.D. Iowa 1987); *In re Johnson*, 69 B.R. 988, 993 (Bank. D. Minn. 1987); *Macumber v. Shafer*, 637 P.2d 645, 646 (Wash. 1981); *In re Hockinson*, 60 B.R. 250, 255 (N.D. Ill. 1986); *In re Johnson*, 69 B.R. 988, 993-94 (Bankr. N.D. Minn. 1987). *See also* Mo. Rev. Stat. § 1.170 ("Repeal of law not to affect rights acquired thereunder").

/s/ Jerry W. Venters
HONORABLE JERRY W. VENTERS
UNITED STATES BANKRUPTCY JUDGE

A copy of the foregoing was served
electronically or conventionally to:
Bruce Strauss
Jason C. Amerine