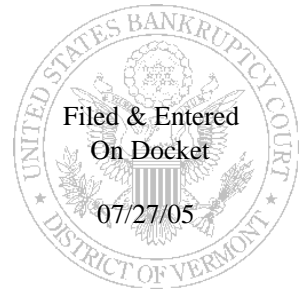


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

DONNA J. NORTON
Debtor.

Chapter 7 Case
04-11660

Appearances: *Jennifer Emens-Butler, Esq.*
 Obuchowski & Emens-Butler
 Bethel, Vt.
 For the Trustee

Grant C. Rees, Esq.
Law office of Grant C. Rees
Burlington, Vt.
For the Debtor

ORDER
DENYING TRUSTEE’S MOTION TO RECONSIDER

On July 11, 2005, the Court issued a Memorandum of Decision on Cross Motions for Summary Judgment and the Trustee’s Objection to Homestead Exemption (doc. # 26) and an Order Sustaining Trustee’s Objection to Homestead Exemption, Granting Trustee’s Motion for Summary Judgment and Denying Debtor’s Motion for Summary Judgment (doc. # 27) (cumulative “the Decision”). On July 14, 2005, the Trustee filed a motion seeking reconsideration of this decision and order (doc. # 30). The Trustee asserts that he needs clarification of the Court’s ruling so that he can understand how to compute and project the Debtor’s exemption rights in the event of a sale of the subject property. Although the Debtor filed an “Opposition” to the Trustee’s instant motion (doc. # 33), the Debtor’s argument therein seems to support the Trustee’s request for guidance with respect to how the underlying decision would affect the distribution of proceeds in the event of a sale. For the reasons set forth below the Court declines to reconsider and grant the relief sought by the Trustee and Debtor.

Issue Presented

The issue addressed in the Decision was how much value the Debtor could exempt in the homestead property that (a) she owned jointly with a non-spousal co-tenant, (b) was collateral for a mortgage on which she had joint and several liability, and (c) was the subject of an exemption in the co-tenant’s (now closed) bankruptcy case. The Court held that

- (1) the Debtor’s homestead exemption was limited to one-half of the statutory allowance (or \$37,500) because she owned only one-half of the fee,

- (2) in light of her joint and several liability on the mortgage debt, the Debtor's equity was computed by subtracting the entire mortgage debt balance from one-half the value of the total fee (yielding an equity figure of \$26,460.26),
- (3) the Debtor was therefore entitled to exempt \$26,460.26 in her bankruptcy case, and
- (4) the co-tenant's claim of exemption in this property in a previous bankruptcy case is of no consequence to the instant dispute.

Since the Debtor had sought to exempt more than \$26,460.26, the Court sustained the Trustee's objection to the Debtor's claimed homestead exemption. The parties now ask the Court to rule on the question of what exemption the Debtor would be allowed in the event the subject property was sold.

Applicable Standard

Although the Federal Rules of Bankruptcy Procedure, which incorporate certain procedural requirements of the Federal Rules of Civil Procedure, do not specifically address motions for reconsideration, Vt. LBR 9013-1(I) provides that a motion captioned as "Motion to Reconsider" shall be construed as a "Motion for Relief from a Judgment or Order." Hence, in order to prevail on a motion to reconsider, the movant must set forth grounds sufficient to satisfy the criteria of Fed. R. Bankr. P. 9023 or 9024. See Id.; see also. e.g., In re Arms, 238 B.R. 259 (Bankr. D. Vt. 1999); In re Village Craftsman, Inc., 160 B.R. 740, 744 (Bankr. D. N.J. 1993) (collecting cases). Rule 9023, through Fed. R. Civ. P. 59, sets forth a mechanism for a new trial to be granted to all or any of the parties on all or part of the issues. The Trustee does not seek a reconsideration of the legal issue presented in the context of the current facts, but rather an extrapolation of the Court's holding to facts not yet presented. This relief is outside the scope of Rule 9023.

Under Bankruptcy Rule 7060, incorporating Fed. R. Civ. P. 60, parties may seek relief from a judgment or order based on clerical mistakes, or inadvertence, excusable neglect, newly discovered evidence, or fraud. The Trustee does not allege any such grounds. His request for guidance as to the performance of his duties in the future is tantamount to a request for an advisory opinion, and that is outside the scope of Rule 7060.

Discussion

The Decision specifically held:

The Court acknowledges that the inclusion of the full debt against each half-interest is inconsistent with the reality of what would happen if the property were sold, in that a sale of the property would require satisfaction of the mortgage debt just once. However, this double-counting of the debt is the inevitable consequence of joint and several liability where multiple parties are each fully liable for the entire debt. [citations omitted]

. . . In this regard, joint and several liability is not very different from the legal fiction of a tenancy by the entirety. [footnote omitted] Whereas a divorce terminates the legal fiction of a tenancy by the entirety, it is the payment or satisfaction of the debt that terminates the legal fiction created by joint and several liability.


. . . **As noted above, it is only the satisfaction of the debt that the Debtor and Mr. Dumas owe in a joint and several capacity that extinguishes the legal fiction that requires the subject debt to be counted twice. If the debt were satisfied, the equity of both co-tenants would need to be recalculated. [emphasis added] However, the Debtor would still be subject to a cap on the exemption corresponding proportionately to her ownership in the Property, and the record reflects no intention by any Party to sell the Property or satisfy the mortgage. [emphasis added].**

In its Decision, the Court has articulated that in the event of a sale the mortgage debt would be paid just once, the remaining proceeds would be subject to each tenant's homestead exemption, each such exemption would be limited by the tenant's proportionate interest in the property, and that the record before the Court does not include any intention to sell the property and therefore no specific computation would be appropriate at this time. The motion to reconsider presents nothing new to warrant any deviation from that position.

Conclusion

The Court finds that the Trustee has failed to provide grounds for relief under Bankruptcy Rule 7059 or 7060. Therefore, the Court denies the Motion to Reconsider. To the extent the Trustee seeks, in the alternative, an advisory opinion to guide him on how to fulfill his statutory obligations in this case in the future, in the context of facts not yet presented, the Court holds that it is without authority to grant that request.

July 27, 2005
Rutland, Vermont



Colleen A Brown
United States Bankruptcy Judge