

Domicile found despite ample time out of state

Chapter 7 debtor allowed to claim homestead exemption

By: Kris Olson November 18, 2021

Despite evidence that a Chapter 7 debtor spent much of his time working in other states where he maintained residences, a federal judge has found the debtor established that his domicile remained in Massachusetts and thus could take advantage of the state's homestead exemption.

After a bankruptcy judge overruled their objections to the debtor's claimed homestead exemption, a Chapter 7 trustee and a large unsecured creditor appealed to U.S. District Court.

Judge Rya W. Zobel began her analysis by noting that Section 522 of the Bankruptcy Code allows a debtor to exempt certain property from the bankruptcy estate that would otherwise be available for distribution to creditors, and to choose between the federal bankruptcy exemptions listed or the exemptions provided by their state of residence.

To determine the debtor's domicile, U.S. Bankruptcy Court Judge Melvin S. Hoffman had looked to the place where the debtor "has his true fixed home and principal establishment and to which whenever he is absent he has the intention to returning," which Zobel agreed was the correct standard.

In the 1992 case *Bank One, Texas v. Montle*, the 1st U.S. Circuit Court of Appeals had articulated seven factors relevant to determining a person's true intent with respect to his domicile, and courts consider where a person registers to vote a "weighty" factor, Zobel noted.

Here, the debtor had proffered evidence that each *Bank One* factor pointed to Massachusetts as his domicile during the relevant period, aside from his place of business or employment.

Given that the debtor lived on Martha's Vineyard, where such opportunities are scarce, it was neither unusual nor surprising that he would have to seek employment off island, Zobel agreed.

Zobel acknowledged that the appellants had put forth evidence suggesting that the debtor's domicile was either Connecticut or Maine. But she was required to defer to Hoffman's weighing of the evidence and assessment of the witnesses' credibility, she concluded.

"Although a factfinder could reach a different conclusion, the bankruptcy judge's conclusion is a 'permissible view of the evidence,' and nothing presented provides me 'with the definite and firm conviction that a mistake has been committed,'" Zobel wrote.

The 11-page decision is *Lassman, et al. v. Angera*, Lawyers Weekly No. 02-315-21. The full text of the ruling can be found [here](#).

Marshaling the facts

The debtor's attorney, Richard N. Gottlieb of Boston, noted that *Angera* may be the first time judges in the 1st Circuit have delved into a determination of domicile in a bankruptcy exemption context since Congress amended the Bankruptcy Code more than 16 years ago.

The relevant change was designed to discourage the practice of debtors stashing assets in states with particularly generous homestead exemptions.



Represents debtor

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The 1st U.S. Circuit Court of Appeals had looked at a similar issue in the 2005 case *In re Morad*, but the relevant period to determine domicile back then was 180 days prior to filing, rather than either 730 or 910 days, depending on the circumstances, Gottlieb explained.

Gottlieb said an important initial victory was convincing Hoffman that while the trustee and objecting creditor wanted to look back much further, the judge should limit discovery to the four years before his client had filed his Chapter 7 petition.

That still left the challenge of adducing reliable evidence regarding domicile over that four-year period, and Gottlieb said he knew that courts can sometimes look askance at debtors' unsupported representations.

So, he set about subpoenaing documents such as voting records from Edgartown, records about his client's jury service from the Office of the Jury Commissioner, and registration information about his client's vehicle and watercraft from the Registry of Motor Vehicles and the Massachusetts Environmental Police.

"I think that's what really won the case," Gottlieb said.

Framingham bankruptcy attorney David A. Mawhinney said his takeaway from *Angera* is "domicile is sticky."

By that, he said he means that the creditor's burden in challenging the validity of a debtor's homestead is going to be a steep one. Here, the appellants' biggest challenge was offering compelling evidence that the debtor's actual domicile was somewhere other than Massachusetts.

"The one main thing that was missing is they did not have a better place to put him," Mawhinney said. "If you don't have a really good alternative domicile, it is going to be difficult to win these cases."

Boston bankruptcy attorney Adam J. Ruttenberg said that determinations about domicile and homestead will inevitably come down to which witness testimony a court credits. Among other things, that puts the onus on debtors' counsel to prepare their clients well for cross-examination, he said.

"This is an opportunity for an advocate to be sure the witness understands the issues and testifies the best way about it," he said.

Ruttenberg said he was not surprised that the creditor and trustee had focused their challenge on the debtor's domicile rather than arguing that he had abandoned his homestead, which had been valid when he filed the declaration.

"That's a harder thing to prove," he said.

Medway bankruptcy attorney Christine E. Devine said she was struck by the fact that Hoffman had conducted a three-day trial on the domicile issue, something that may not have happened years ago.

"It feels like bankruptcy judges are conducting more trials these days and taking more evidence," she said.

If judges are opening that door, attorneys should walk through, she suggested.

"Put it all in; don't hold back," she said.

Devine noted that the fact that the debtor in the present case had not only registered to vote but had cast ballots on Martha's Vineyard "probably gave some comfort" to Gottlieb about the strength of his case.

Nonetheless, Gottlieb had wisely gone the extra step of entering evidence on every single point of the relevant test, which made it more difficult to overturn Hoffman's decision, given the "clearly erroneous" standard of review, she said.

One of the trustee's attorneys, Alex M. Rodolakis, and the creditor's attorney, Philip G. Kent, declined to comment, citing the ongoing nature of the litigation.

Always on the move

Since 1992, debtor Andrea A. Angera Jr. has owned a home in Edgartown on Martha's Vineyard, where he began living with his wife, Barbara Sabia, and their two young children around 2005.

Angera, a licensed pilot, would commute by private plane for work outside the state. But Sabia wearied of living on the Vineyard year-round, and in 2006 the family relocated to Richfield, Connecticut.

In 2011, Angera's financial situation and marriage both began to deteriorate. At some point before 2016, Angera and Sabia began living apart.

In the years since, Angera has regularly spent time on Martha's Vineyard, while his wife and children have lived in various places in Connecticut, including a rented home where the property owner insisted Angera sign the lease as well.

By then, Angera no longer owned a plane, so he ended up staying in Connecticut for extended periods for work to avoid the hours-long commute from Martha's Vineyard.

In the first half of 2017, Angera worked as a consultant to creditor Sea Greens Holdings, LLC. But after a falling out, Angera moved his primary work location in the second half of 2017 from Connecticut to Maine, where he worked through the date he petitioned for bankruptcy.

In an amended complaint he filed pro se in a 2017 lawsuit against Sea Greens in federal District Court in Connecticut, Angera stated that he had been a resident of Massachusetts and domiciled in Maine since May 2017. But he retracted that statement in a subsequent filing.

When he filed his bankruptcy petition, Angera had a Massachusetts driver's license; owned a vehicle that he had registered and kept on Martha's Vineyard; and owned various watercraft that were titled in Massachusetts, registered with the Massachusetts Office of Environmental Affairs, and kept at the property.

Angera had been registered to vote in Edgartown since 2008 and had voted there in 2012, 2013, 2016 and 2020. He was also summoned for jury duty at the Edgartown Superior Court in 2016, 2018 and 2019.

During the relevant period, Angera maintained memberships in local organizations, had an active bank account at a local Martha's Vineyard bank, received year-round utility and internet service at the property, and paid real estate taxes on the property.

Angera filed Massachusetts resident tax returns in 2017 and 2018 and had credit card records showing that he had spent time on Martha's Vineyard during 17 of the 24 months preceding his bankruptcy.

Angera and his wife periodically allowed acquaintances to stay at the Martha's Vineyard property during the 24 months before Angera filed his bankruptcy petition. While they listed the property as rental property on their 2015, 2016 and 2017 state and federal tax returns, the couple never reported any rental income.

Angera and his wife also filed 2016, 2017 and 2018 Connecticut state tax returns prepared by their accountant, the

Lassman, et al. v. Angera

THE ISSUE: If a debtor spent much of his time during the relevant period working in other states where he also maintained residences, does he forfeit his right to claim Massachusetts as his domicile and take advantage of the state's homestead exemption?

DECISION: No, because his "true fixed home" remained in Massachusetts, and he had manifested an intent to return (U.S. District Court)

LAWYERS: Richard N. Gottlieb of Boston (debtor-appellee)
Philip G. Kent of Susman, Duffy & Segaloff, New Haven, Connecticut (creditor-appellant)
Alex M. Rodolakis and Anthony M. Moroso, of Fletcher Tilton, Centerville and Boston (Chapter 7 trustee-appellant)

first of which was a Connecticut resident return.

In an oral decision on March 16, Hoffman concluded that although Angera worked primarily first in Connecticut and then in Maine between 2017 and 2019, and maintained residences in each state while he worked there, he was domiciled in Massachusetts throughout the relevant period.

Sea Greens and Donald R. Lassman, the Chapter 7 trustee, then appealed Hoffman's order to U.S. District Court.

Other issues

In addition to challenging Angera's domicile, the appellants also challenged the validity of Angera's declaration of homestead.

But Hoffman concluded that they were making too much of the appearance of Sabia's name on the declaration, given that she was not an owner of the property and thus not obligated to sign the declaration.

While a representation on the declaration that Sabia intended for the Martha's Vineyard property to be her primary residence may have been inaccurate, that was immaterial because it was Angera, not his wife, claiming the exemption, Hoffman decided.

Hoffman also found that the record did not sufficiently establish that Angera's principal residence was Connecticut between 2014 and 2017 or that he had abandoned the property on Martha's Vineyard.

Sea Greens challenged those conclusions, but Zobel found that Hoffman had "weighed the totality of the evidence presented and made credibility determinations" before ruling that the appellants had not carried their burden.

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