CONSUMER BANKRUPTCY

Bankruptcy Trustee Gives Up Selling Former Slave's Land

Chap. 7 trustee tried to sell "Forty Acres & a Mule"

By Craig D. Robins

Our client, an African-American, had inherited some property 30 years ago that had been in his family for quite some time.

Apparently, the debtor's great grandfather was a slave in Virginia and upon his emancipation around 1865, he was given some unimproved property in that state – what was then referred to as "forty acres and a mule."

According to *Wikipedia*, "forty acres and a mule" was a practice in the 1860's of providing farmable land to black former slaves who became free as Union armies occupied areas of the Confederacy.

The combination of the land, together with army mules, was meant to provide a sound start for a family farm. Forty acres was a standard lot size for rural land, being a sixteenth of a square mile.

Over the ensuing years, the great grandfather and his descendants carved up the property several times and transferred it down family lines.

When the debtor inherited some of this property about 30 years ago from his parents, it consisted of two unimproved lots, one about two acres in size, and the other about four acres. Other family members owned adjoining parcels. The trustee assumed that six acres of property had to be worth something.

However, the property was located in a very rural area in Southern Virginia consisting primarily of farms and vacant, unused land. Neither of the debtor's parcels abutted a roadway; there were no structures on or near the land; and there was no utility service to the land. Basically, the property had very little value.

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Nevertheless, the property was not exempt under any statutory authority. Since the debtor did not reside on the land, he was unable to assert the homestead exemption to protect it, and since the bankruptcy case was filed before New York's exemption statutes changed a few months ago, the debtor could not utilize any wildcard exemption.

The debtor had hoped to keep the property for sentimental reasons, but realized that cooperating with the trustee and obtaining a discharge of his existing debts was paramount.

Nevertheless, the debtor knew that there was very little demand for such lots as there were many of them, and hoped the trustee would just abandon it.

The Chapter 7 bankruptcy trustee, known in local circles for being rather aggressive about pursuing assets, would do no such thing. The trustee brought an application to retain a local Virginia real estate broker to list and sell the property.

I initially tried to persuade the trustee to abandon the property as having no value to the bankruptcy estate. However, the trustee was somewhat adamant so I assured him that the debtor would fully cooperate with him.

The broker tried to sell the parcels for two years with no success. The trustee did not give up. In March, he fired the broker and brought an application to retain another one. That application was granted.

Then, just over a month ago, and quite unexpectedly, the trustee filed a "no-asset report" – only 24 hours after getting court approval to retain the new real estate broker.

By filing this no-asset report, otherwise known as a "Chapter 7 Trustee's Report of No Distribution," the trustee advised the bankruptcy court that there were no assets to be distributed and that the case should be closed as having been fully administered.

What happened in those 24 hours? I haven't spoken to the trustee yet, but my guess is that the trustee finally realized what the debtor had known all along – that the property had very little extrinsic value and that it would be very difficult to sell.

Out of curiosity I called the new broker who acknowledged that this property would certainly be a hard-sell.

Consequently, the debtor received his discharge (the court actually granted this over two years ago) and he was able to keep all of his assets – including the land remaining from his great grandfather's emancipation from slavery – forty acres and a mule.

The mere fact that a debtor owns an asset that has non-exempt equity does not mean that the debtor will lose it. The trustee must make a determination as to whether it is worth liquidating, based on the likelihood that the asset can be sold for an amount that will provide reasonable net proceeds to distribute to creditors.

There is no harm trying to persuade a trustee that an asset has relatively little value and that it should be abandoned. There is no bright-line value that trustees will walk away from, but most bankruptcy trustees will not bother to administer any assets that will net less than a thousand dollars, sometimes even more. Also, trustees will always entertain an offer from the debtor to permit the debtor to keep the asset.

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