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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF WISCONSIN

In the Matter of:

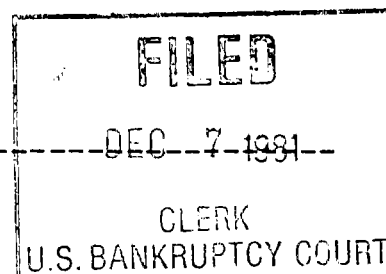
IN BANKRUPTCY NO.

RICHARD E. WEST and
BETTY A. WEST, f/d/b/a
Executive Office Equipment

EF7-81-00919

Debtors.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER



On July 21, 1981, Rockwell International Corporation filed an objection to the debtors' claim of exemptions, and specifically as to the homestead property located at Star Route #1, Sarona, Wisconsin 54870; and said objection having come on for hearing before the court, and the court having heard the testimony and the arguments of counsel, and having considered the briefs filed herein, and being fully advised in the premises, FINDS:

1. That the debtors filed a petition for relief on May 28, 1981, and on said date Lawrence J. Kaiser was appointed interim trustee, and thereafter on July 6, 1981, the trustee determined the case to be a no asset case and allowed the homestead exemption as claimed in the bankruptcy schedules.

2. That on July 21, 1981, Rockwell International Corporation filed an objection to said exemption.

3. That the debtor, Richard E. West, is a salesman and carried on a business out of the house at 175 Windsor Court, St. Paul, Minnesota; that the debtor, Betty A. West, is a housewife.

4. That said debtors claim their legal residence and homestead is at Route #1, Sarona, Wisconsin, and have specifically described the same in their schedules as their homestead claim.

5. That Mr. West carried on his business from his St. Paul address and stayed there approximately four days a week and resided the other three days at his home in Sarona, Wisconsin; that Mrs. West divided her time between the two properties.

6. That the St. Paul property was rented and was Mr. West's place of business, as above stated.

7. That the Wests did not register to vote in either Minnesota or Wisconsin after returning from Illinois; that each has a Wisconsin driver's license and their cars are registered in the State of Wisconsin. Neither of said debtors has a Minnesota driver's license. Mr. West has a Wisconsin resident hunting and fishing license.

8. Rockwell claims that the debtors are residents of the State of Minnesota, giving the St. Paul address, and a process server stated he served Mrs. West in St. Paul when she stated to him that she lived at the St. Paul address where she was served.

9. That each of the debtors testified they intended the property in Sarona, Wisconsin, to be their homestead, lived in it as their homestead and it was their intention to make it their homestead, and that the St. Paul address and the previous address in Minneapolis had been only for the purpose of carrying on his business in the area that he served as a salesman.

10. Rockwell's contention that Minnesota's homestead statute 510.01 is applicable to this case cannot be accepted; that the homestead laws of the State of Wisconsin are the applicable laws, statutes and decisions relative to the claim.

11. That each of the debtors filed their income tax returns in the State of Minnesota on the advice of their accountants as a convenience which is permitted by reciprocity by the Wisconsin and Minnesota taxing authorities.

12. Both counsel have thoroughly briefed the question of "domicile" and "residence" and a discussion in 3 Collier on Bankruptcy, §522.06, attempts to distinguish between domicile and residence and states they are often used synonymously.

13. Counsel for the debtors has relied heavily on the case of Eau Claire County v. Milwaukee County, 128 NW (2d) 666; 24 Wis. (2d) 292.

14. It is clear from the evidence that it is possible for each counsel to interpret the same facts as to the homestead exemption in a different light. Wisconsin has long adopted the rule that the Wisconsin homestead law should be liberally construed and the Bankruptcy Act for many years prior to the Bankruptcy Code of 1978, and including the Code, has included exemptions to the state law. The 1978 Code passed by Congress establishes for the first time a homestead exemption and it is noted that homestead rights can be claimed either under the state or the 1978 Bankruptcy Code.

15. That a complete analysis of the homestead statutes of Wisconsin is found in Volume 10 of Callaghan's Wisconsin Digest commencing on page 179, and at page 182 is a thorough discussion of the intention to acquire a homestead with supporting cases, and at page 183 the use of the property for homestead purposes.

CONCLUSIONS OF LAW

That an order be entered affirming the trustee's allowance of the homestead exemption claimed by the debtors and denying the motion and objection of Rockwell International Corporation to said homestead claim.

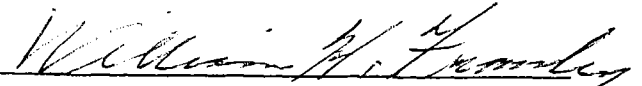
O R D E R

NOW, THEREFORE, IT IS ORDERED: That the objection of Rockwell International Corporation to the homestead exemption

claimed by the debtors in their bankruptcy schedules is denied and the determination by the trustee to the allowance of said exemption claim is hereby confirmed with costs of \$100.00 to the debtors plus any additional proper disbursements and expenses of said hearing to be taxed upon separate application to the court.

Dated: December 7, 1981.

BY THE COURT:



WILLIAM H. FRAWLEY
BANKRUPTCY JUDGE