

MASSACHUSETTS LAWYERS WEEKLY

Debtor allowed exemption for home she intends to move to Judge finds 'constructive use' of property in Chapter 7 case February 9, 2017

By: Pat Murphy February 9, 2017

A Chapter 7 debtor was entitled to exempt from her bankruptcy estate her interest in her childhood home in Swansea, even though she had not lived there full time for more than 30 years, a U.S. Bankruptcy Court judge has determined.

The trustee objected to the exemption based on the fact that the debtor did not currently "use" the home as a "residence" necessary to qualify for the exemption provided under §522(d)(1) of the Bankruptcy Code. The debtor, Mary Ann Broderick, countered that she was entitled to the exemption because, while medical issues prevented her from living in the home now, she intended to make it her permanent residence in the future. Judge Christopher J. Panos concluded that the debtor was entitled to the federal exemption under §522(d)(1), finding she established "constructive use" of the property. "Her testimony that she suffers from chronic and serious medical conditions, which impact her ability to relocate to the residence given her setbacks after a medical procedure and her need to switch medical providers if she lived full-time at the Swansea Property, demonstrated a concrete intention to occupy that property," the judge wrote. The 11-page decision is In Re: Broderick, Mary Ann, Lawyers Weekly No. 04-007-17.

Donald R. Lassman, a Needham bankruptcy attorney and trustee, said he found it interesting that the judge recognized constructive use by taking the debtor's testimony showing her actual use of the property in helping her elderly parents, who still resided in the house, combined with the testimony regarding her intent. "What the court said was there's enough actual use combined with intention to move, which demonstrated constructive use," Lassman said. On the issue of intent, Lassman said it was compelling that the debtor testified she was searching for medical providers in the region and had not renewed her lease at her current residence.