

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. RI 05-044

Bankruptcy No. 04-12764-ANV

**RICHARD FRANKLINO,
Debtor.**

**RICHARD FRANKLINO,
Appellant,**

v.

**ANDREW RICHARDSON, Chapter 7 Trustee,
Appellee.**

**Appeal from the United States Bankruptcy Court
for the District of Rhode Island
(Hon. Arthur N. Votolato, U.S. Bankruptcy Judge)**

**Before
de Jesús, Vaughn, and Carlo, United States Bankruptcy Appellate Panel Judges.**

Jeffrey C. Blake, Esq., on brief for Appellant.

Andrew S. Richardson, Esq., on brief for Appellee.

January 20, 2006

de Jesús, U.S. Bankruptcy Appellate Panel Judge.

The Debtor appeals from an order of the United States Bankruptcy Court for the District of Rhode Island sustaining the Chapter 7 Trustee’s objection to the Debtor’s homestead exemption (the “Order”). Because we conclude that the bankruptcy court’s finding that the Debtor lacks the requisite intent to occupy is not clearly erroneous, we **AFFIRM**.

JURISDICTION

A bankruptcy appellate panel is duty-bound to determine its jurisdiction before proceeding to the merits even if not raised by the litigants. See In re George E. Bumpus, Jr. Constr. Co., 226 B.R. 724 (B.A.P. 1st Cir. 1998). The panel may hear appeals from “final judgments, orders and decrees [pursuant to 28 U.S.C. § 158(a)(1)] or with leave of the court, from interlocutory orders and decrees [pursuant to 28 U.S.C. § 158(a)(3)].” Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). “A decision is final if it ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” Id. at 646 (citations omitted). An interlocutory order “only decides some intervening matter pertaining to the cause, and requires further steps to be taken in order to enable the court to adjudicate the cause on the merits.” Id. (quoting In re American Colonial Broad. Corp., 758 F.2d 794, 801 (1st Cir. 1985)). An order denying a debtor’s claimed exemption is a final, appealable order. See id. at 645.

STANDARD OF REVIEW

Appellate courts generally apply the clearly erroneous standard to findings of fact and *de novo* review to conclusions of law. See T I Fed. Credit Union v. DelBonis, 72 F.3d 921, 928 (1st Cir. 1995); Western Auto Supply Co. v. Savage Arms, Inc. (In re Savage Indus., Inc.), 43 F.3d

714, 719-20 n.8 (1st Cir. 1994). A bankruptcy court's determination of a debtor's intent is a factual finding subject to review for clear error. Gannett v. Carp (In re Carp), 340 F.3d 15, 25 (1st Cir. 2003).

A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. Anderson v. Bessemer City, 470 U.S. 564, 573 (1985); Cabral v. Shamban (In re Cabral), 285 B.R. 563, 571 (B.A.P. 1st Cir. 2002); Gray v. Travelers Ins. Co. (In re Neponset River Paper Co.), 231 B.R. 829, 830 (B.A.P. 1st Cir. 1999). If the trial court's account of the evidence is plausible in light of the record reviewed in its entirety, a reviewing court may not reverse even if convinced that it would have weighed the evidence differently as a trier of fact. Anderson, 470 U.S. at 574.

DISCUSSION

The bankruptcy court's well conceived opinion found at In re Franklino, 329 B.R. 363 (Bankr. D.R.I. 2005), adequately elucidates the facts and the legal conclusions that are controlling on the central issue presented by this appeal; i.e., whether the Debtor met his burden of showing he intended to occupy the house in which he owns a partial remainder interest. We therefore adopt that opinion as our own, as no useful purpose would be served by rehearsing those facts and reasoning here.

We have carefully reviewed the record, parties' briefs and have duly considered matters raised at oral argument. In the end, we are not left with the firm conviction that the bankruptcy court made a mistake or committed clear error when it found that the Debtor lacks the requisite intent to occupy the property as his primary residence. Our review shows this finding is plausible

in the light of the record before us. See Cabral, 285 B.R. at 571; Neponset River Paper Co., 231 B.R. at 830; Anderson, 470 U.S. at 574.

CONCLUSION

Because this appeal presents no substantial question under the clearly erroneous standard of review, we summarily affirm the judgment of the bankruptcy court, denying the Debtor's claim for a homestead exemption in the property.