

FOR PUBLICATION

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

BAP No. MW 97-056

**IN RE: MARILYN A. FRACASSO,
Debtor.**

**MARILYN A. FRACASSO,
Appellant,**

v.

**L. GEORGE REDER, TRUSTEE,
Appellee.**

**Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Henry J. Boroff, U.S. Bankruptcy Judge)**

Before

HAINES, VAUGHN and CARLO, U.S. Bankruptcy Judges

Kirk Whitaker Jones, Esq., with whom Louis S. Robin, Esq. and Fitzgerald, O'Brien, Robin & Shapiro were on brief for appellant.

L. George Reder, Esq., was on brief for appellee.

July 15, 1998

Per Curiam. The Debtor appeals the bankruptcy court's order sustaining the Chapter 7 trustee's objection to her Massachusetts homestead exemption. See In re Fracasso, 210 B.R. 221 (Bankr. D. Mass. 1997). We reverse.

JURISDICTION, STANDING, AND STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 158(a)(1). An order sustaining an objection to exemption is a reviewable final order. See In re Shubert, 106 F.3d 501, 501 (3d Cir. 1997); Slimick v. Silva (In re Slimick), 928 F.2d 304, 306-09 (9th Cir. 1990); In re Weinstein, 217 B.R. 5, 6 (D. Mass. 1998), appeal pending; see also East Cambridge Sav. Bank v. Silveira (In re Silveira), 141 F.3d 34 (1st Cir. 1998) (court of appeals reviewing lien avoidance order without discussion of jurisdiction); see generally In re Saco Local Dev. Corp., 711 F.2d 441, 442-48 (1st Cir. 1983) (Breyer, J.) (discussing bankruptcy appellate jurisdiction); Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643 (B.A.P. 1st Cir. 1998) (same).

There are no standing concerns in this appeal, as the trustee was unquestionably a proper party to assert the objection, see Edmonston v. Murphy (In re Edmonston), 107 F.3d 74, 77 (1st Cir. 1997), and the debtor's interests are unquestionably directly affected by the order challenged here. See Kehoe v. Schindler (In re Kehoe), Bap No. MB 97-112, 1998 WL 313539 (B.A.P. 1st Cir. April

23, 1998).

The appeal raises legal issues only. Our review is de novo. See Krikor Dulgarian Trust v. United Management Corp. of Rhode Island, Inc. (In re Peaberry's Ltd.), 205 B.R. 6, 7 (B.A.P. 1st Cir. 1997); see also LaRoche v. Amoskeag Bank (In re LaRoche), 969 F.2d 1299, 1301 (1st Cir. 1992).

DISCUSSION

Dispute

The Debtor claimed a homestead exemption under the Massachusetts homestead statute. See 11 U.S.C. § 522(b)(2)(A); Mass. Gen. Laws ch. 188, § 1 (Supp. 1998). The bankruptcy court sustained the trustee's objection because many, perhaps all, of the estate's creditors held claims based on contractual relations with the debtor predating her formal acquisition of a homestead estate. See Mass. Gen. Laws ch. 188, § 2; In re Fracasso, 210 B.R. at 221-22, 228. Under the Massachusetts exemption statute, which the Debtor invoked in preference to the federal exemption scheme, debts "contracted prior to the acquisition of the . . . estate of homestead" are excepted from the exemption. Mass. Gen. Laws ch. 188, § 1(2); In re Fracasso, 210 B.R. at 223.

The court below held that "§ 522(c) of the Code does not restrict the right of the Commonwealth of Massachusetts, as reserved to the states by Congress, to craft its Homestead Statute

with an exception for prehomestead debts." In re Fracasso, 210 B.R. at 228.

Disposition

We need not linger long in our de novo review. The legal issue before us was recently examined at length by another panel of this court affirming a bankruptcy judge's lien avoidance order affecting Massachusetts homestead property. See In re Leicht, BAP No. MW 97-067, 1998 WL ___ (B.A.P. 1st Cir. July 7, 1998). That panel determined that § 522(c) of the Bankruptcy Code overrides the provision in the state statute excepting from the debtor's homestead exemption contractual obligations incurred prior to acquisition of the homestead estate. The Leicht panel stated: "[T]he conclusion that the Massachusetts law 'conflicts' with the Bankruptcy Code's congressionally-intended operation, and must give way to the Code's preemptive powers, is unavoidable." Id. at * __. The result is prescribed by the federal fresh start policies embodied in § 522(c). See In re Leicht, 1998 WL ____, at *__ (citing, inter alia, In re Weinstein, 217 B.R. 5, 7-8; In re Whalen-Griffin, 206 B.R. 277, 290-92 (Bankr. D. Mass. 1997); In re Boucher, 203 B.R. 10, 12-13 (Bankr. D. Mass. 1996)). We agree.

In re Leicht is a poison pill for the Appellee. The Leicht panel expressly considered and rejected the holding now on appeal before us, see id. at *__ , stating: "We reject In re Fracasso's conclusion because it rests on a fundamental misperception

regarding the extent to which Congress truncated its deference to state exemption policy" Id.

We need say no more. The bankruptcy court's order sustaining the trustee's objection to the debtor's homestead exemption is REVERSED.
