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U.S. BANKRUPTCY COURT
DISTRICT OF HAWAII
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re	)	Case No. 02-00281
	)	Chapter 13
GEORGE KAZUO FURUYAMA and	)	
EVELYN ANNETTE FURUYAMA,	)	
	)	
Debtors.	)	

ENTERED ON DOCKET
OCT 25 2002

MEMORANDUM DECISION CONCERNING TRUSTEE'S OBJECTION TO DEBTORS' CLAIMED EXEMPTIONS 24

I. INTRODUCTION

The Amended Trustee's Objection to Debtors' Claimed Exemptions, filed on August 29, 2002, was heard on October 17, 2002. Ronald K. Kotoshirodo, Esq., appeared for the standing chapter 13 trustee, Howard M.S. Hu, and Bradley R. Tamm, Esq., appeared for Debtors George Kazuo Furuyama and Evelyn Annette Furuyama.

II. FACTUAL BACKGROUND

The Debtors filed their chapter 13 petition on January 24, 2002. The court confirmed the Debtors' chapter 13 plan on June 19, 2002. On August 14, 2002, the Debtors amended their Schedule C, Property Claimed as Exempt. On their amended Schedule C, the Debtors listed two personal injury claims as exempt pursuant to 11 U.S.C. §522(d)(11)(D).[1] In both instances, the Debtors listed the value of claimed exemption as "unknown" and the current market value of the property without deducting the exemption as "unknown."

[1]Unless otherwise indicated, all section references are to title 11 of the U.S. Code and all rule references are to the Federal Rules of Bankruptcy Procedure.

On August 29, 2002, the Trustee filed an Amended Trustee's Objection to Debtors' Claimed Exemptions. The Trustee objected to the exemptions claimed by the Debtors for the personal injury claims in "unknown" amounts because the exemption under section 522(d)(11)(D) is limited to $17,425 and covers only recoveries for actual bodily injuries. The Trustee requested that the Debtors' exemptions under section 522(d)(11)(D) be disallowed in their entirety.

In the Debtors' Response to Trustee's Objection to Debtors' Claimed Exemptions, filed on September 3, 2002, the Debtors state that they did not intend to use the term "unknown" to mean "fully exempt", but rather as a reservation of their right to assert an amount as exempt at a future date. The Debtors acknowledge that the personal injury claims belong to the bankruptcy estate and that they will not be entitled to any greater exemption than that provided by statute.

At hearing on October 17, 2002, I sustained the Trustee's objection to the extent that any recovery from the personal injury claims exceeds the exemption limitations under section 522(d)(11). As I indicated at the hearing, I am issuing this written memorandum to explain in more detail the reasons for my ruling.

III. DISCUSSION

The first question is whether the standing chapter 13 trustee needs to object to the exemptions claimed by debtors in Schedule C. The Debtors argue that a chapter 13 debtor's Schedule C "<u>does not constitute a claim of exemptions</u>." (Emphasis in original.) The Debtors argue that a chapter 13 debtor's Schedule C merely constitutes notice that, if the case were converted to chapter 7, the debtors would claim certain property as exempt, and thus permits the

court to ascertain whether the debtor's proposed plan meets the "best interests of creditors test" of section 1325(a)(4).[2]

I agree with the Debtors that Schedule C is relevant in a chapter 13 bankruptcy case primarily for purposes of the liquidation analysis. The accuracy or inaccuracy of Schedule C could become relevant for other purposes, such as when the chapter 13 case is converted to a chapter 7 liquidation case (an event that occurs all too frequently).

Rule 4003(b) sets a deadline for objecting to claimed exemptions:

> (b) Objecting to a Claim of Exemptions. A party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. . . .

Taylor v. Freeland & Kronz, 503 U.S. 638 (1992), places a premium on the timely filing of objections to claimed exemptions. In Taylor, a chapter 7 debtor claimed an exemption for "[p]roceeds from lawsuit" and listed its value as "unknown". There was no arguable basis on which the lawsuit proceeds were exempt. The Trustee did not object, however, until after the thirty day period under rule 4003(b) had expired. The Supreme Court held that a trustee can not

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[2]Section 1325(a)(4) provides that the court shall confirm a plan if (among other requirements):

> the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date . . . .

In conducting the hypothetical chapter 7 liquidation which this section requires, the court must consider what assets would be returned to the debtor, rather than liquidated for the benefit of creditors, because they are exempt.

contest the validity of a claimed exemption after the rule 4003(b) thirty-day period has expired, even though the debtor had no colorable basis for claiming the exemption.

The Debtors argue that Taylor only applies to chapter 7 cases and does not apply when a case is converted from one chapter to another. In In re Smith, 235 F.3d 472 (9th Cir. 2000), however, the Court of Appeals for the Ninth Circuit decided that the conversion of the debtor's bankruptcy from a chapter 11 reorganization to a chapter 7 liquidation does not start a new thirty-day period for objections under rule 4003(b). The court reasoned that rule 1019(2), which implements section 348, specifies new time periods for a number of events, but does not include a new time period for objections to exemptions pursuant to rule 4003(b). See also In re Kaplan, 97 B.R. 572, 575 (B.A.P. 9th Cir. 1989); In re Magallanes, 96 B.R. 253, 255 (B.A.P. 9th Cir. 1988).

Smith involved a conversion from chapter 11 to chapter 7, rather than from chapter 13 to chapter 7. There is no reason to believe, however, that the court would reach a different conclusion in the latter situation, because the court focused on the language of the relevant rules, and the rules do not draw a distinction between the various permutations of conversion from one chapter to another. One bankruptcy court has applied the rule of Smith to a conversion from chapter 13 to chapter 7. In re Rogers, 278 B.R. 201 (Bankr. D. Nev. 2002).

The Smith panel's interpretation of the applicable rules seems questionable.[3] Similarly, that interpretation seems undesirable as a matter of policy.[4] Nevertheless, it is the controlling law in this circuit. Because a chapter 7 trustee might be precluded from objecting to the exemption claims if the chapter 13 trustee did not,[5] the Trustee's precautionary objection to the Debtors' Schedule C is appropriate.

The second question is whether the Trustee's objection is well taken on the merits. There is no dispute on this question. The Debtors forthrightly acknowledge that they did not intend to exempt more than the statute permits. The Debtors are entitled to an exemption under section 522(d)(11)(D), but only to the extent provided in that section.

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[3]The court observed that section 341 provides that the first meeting of creditors must be held promptly after the order for relief, and that section 348 provides that conversion does not affect the date of the order for relief. Standing alone, these provisions do not dictate the answer to this question, because the deadline for objecting to exemptions runs, not from the date of the order for relief, but rather from the conclusion of the meeting of creditors. The court also noted that rule 1019(2), which implements section 348, provides that conversion restarts the time periods for taking certain actions, but does not restart the period for objecting to exemptions. There is a simple explanation for this difference of treatment. All of the deadlines which rule 1019(2) resets are measured from the order for relief, id. 3002(c), or from the "first date set" for the meeting of creditors, id. 4004(a), 4007(c). Because the deadline for objecting to exemptions generally runs from the date on which the meeting of creditors is "concluded," id. 4003(b), and because a new meeting of creditors is held when a case is converted, id. 1019 advisory committee note, the rule drafters probably thought that it was unnecessary to include an express extension of the deadline for objecting to exemptions in rule 1019.

[4]As noted above, Schedule C serves a different and more limited function in chapter 13 than in chapter 7. If the debtor has claimed excessive exemptions, the trustee and other parties can object to plan confirmation under section 1325(a)(4). Smith requires chapter 13 trustees to object to plan confirmation and to object to the exemption claims, and requires debtors to respond to such objections. This increases the cost of chapter 13 proceedings without providing any corresponding benefit. See In re Winchester, 46 B.R. 492, 495 (B.A.P. 9th Cir. 1984).

[5]The chapter 7 trustee might have various remedies if the chapter 13 trustee fails to object to an improper claim of exemption. Taylor, 503 U.S. at 644-45; In re Boulan, 2000 WL 33712212 (Bankr. D. Idaho July 20, 2000). I express no opinion on this subject.

The Trustee and the Debtors have devoted considerable attention to the question whether it was appropriate for the Debtors to claim an "unknown" amount as exempt. The Debtors state that they did not use the term "unknown" as shorthand for "fully exempt." There is some authority for the proposition that, where the debtor lists the exempt amount of property as unknown, the trustee may object to the amount of the exemption even after the thirty day period of rule 4003 expires, In re Wick, 276 F.3d 412 (8th Cir. 2002). This rule may not apply in all situations, however; the Wick case turned on the fact that the debtor had misled the trustee about the value of the exempt property. Further, the trustee is not required to refrain from objecting where the debtor's claim of exemptions is unclear or might be unwarranted. In order to spare all parties the expense of objections such as this one, debtors are well advised to state explicitly that they claim as exempt only the amount which the statute allows,[6] and trustees may wish to ask debtors to so stipulate.

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[6]At the hearing, the Debtors' counsel pointed out that the computer software that he uses to generate the petition and schedules only permits the user to insert a dollar amount or the word "unknown" in the space for the value of the claimed exemption. Petition preparation software serves a useful function for the bankruptcy system because it reduces the cost, and therefore increases the availability, of bankruptcy relief. If the software cannot accommodate the information that debtors must or should provide, however, the cost savings will be more than offset by other litigation costs. I am confident that counsel, perhaps with the assistance of his software vendor, will find a cost-effective solution to this problem.

IV. CONCLUSION

The Trustee's objection to the Debtors' claim that the personal injury claims are exempt is sustained to the extent that the recovery exceeds that which the Debtors are entitled to exempt under section 522(d)(11). An appropriate separate judgment will be entered.

Dated: Honolulu, Hawaii, OCT 25 2002.

Robert J. Faris
United States Bankruptcy Judge

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CERTIFICATION OF SERVICE
I HEREBY CERTIFY THAT THE ATTACHED
ORDER/JUDGMENT WAS MAILED ON
10-25-02, TO THE ABOVE
NAMED PARTIES IN INTEREST.

DEPUTY CLERK

Office of the U.S. Trustee