

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>94-11886</u>
EDWARD D. SPENCE)	
)	
Debtor)	
_____)	
EDWARD J. COLEMAN, III,)	
CHAPTER 7 TRUSTEE)	FILED
)	at 3 O'clock & 29 min. P.M.
Movant)	Date: 8-26-96
)	
vs.)	
)	
EDWARD D. SPENCE)	
)	
Respondent)	
)	

ORDER

Edward J. Coleman, III, the appointed Trustee in this Chapter 7 Case (hereinafter "Trustee") objects to the Debtor's amended Schedule of Exemptions. For the reasons that follow, the Trustee's objection is granted in part and denied in part.

The Debtor filed a Chapter 13 petition on December 2, 1994 in this Court.¹ Schedule A disclosed the Debtor's interest in his

¹The Debtor resided in Texas on the date of filing, but the petition disclosed that the Debtor's residence for 180 days prior to the filing date was within the Southern District of Georgia. This apparent conflict is not resolved.

former residence in Grovetown, Georgia subject to a first and second mortgage, the balance of which exceeded the value of the property. Schedule B listed various personal household property, but did not include a claim the Debtor held against State Farm Insurance Co. (hereinafter "State Farm"), the Debtor's homeowners insurance carrier. The claim arose from a casualty loss to the Debtor's home and his personal property contained therein. The Debtor has filed suit against State Farm in the United States District Court for the Southern District of Georgia seeking the insurance proceeds covering the Debtor's real and personal property, and asserting claims for punitive damages and attorney's fees for State Farm's bad faith failure to pay his claim.

The Debtor filed his original Schedule C claiming individual exemptions under Georgia's exemption statute [Official Code of Georgia Annotated (O.C.G.A.) Section 44-13-100], but not exempting any interest in the unsecured claim against State Farm. On October 18, 1995, the Debtor converted his case to Chapter 7. Upon conversion Mr. Coleman was appointed trustee. The Debtor was unmarried when he filed his Chapter 13 petition, but married prior to converting to Chapter 7. Upon converting his case, the Debtor filed an amended Schedule C, again utilizing Georgia's exemptions as a single individual. The Debtor later amended Schedule C to reflect the Debtor's principal residence as Texas and his new marital status, and to utilize the Texas personal property exemption statute. The Debtor also scheduled his claim against State Farm,

exempting \$51,000.00 of that claim under the available Texas personal property exemption.

The Trustee objects to the Debtor's amended Schedule C, arguing that the Debtor's marital status for exemption purposes is determined as of the original filing date. The Trustee does not object to the Debtor utilizing Texas exemptions, but does object to the applicability of the Texas personal property exemption to the Debtor's claims against State Farm.²

I. Insurance Proceeds May Be Personal Property Exemptible Under Texas Law.

The Trustee objects to the Debtor's exempting his cause of action against State Farm under the Texas personal property exemption, Tex.Prop. Code Ann. §42.002 (Vernon Supp.1996)³. The

²Although the Debtor declared in his Petition that he was a resident of Georgia for the 180 days prior to the petition filing, the Trustee agrees with the Debtor's application of the Texas exemptions, notwithstanding 11 U.S.C. §522.

³§ 42.002. Personal Property:

(a) The following personal property is exempt under Section 42.001(a):

- (1) home furnishings, including family heirlooms;
- (2) provisions for consumption;
- (3) farming or ranching vehicles and implements;
- (4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;
- (5) wearing apparel;
- (6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);
- (7) two firearms;
- (8) athletic and sporting equipment, including bicycles;
- (9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's

Trustee argues that §42.002 provides specific categories of exempted property, with no provision to exempt a claim for damages such as this Debtor's claim against State Farm. The Debtor argues that any recovery constitutes proceeds of exemptible personal property, and that these proceeds should therefore be exempt.

It is settled law in this state that the proceeds of an insurance policy due as compensation for damages to a homestead are exempt from garnishment ... and that the proceeds of a fire insurance policy on exempt household furniture are exempt from forced sale for a reasonable time. (cites omitted)

Willis v. Schoelman, 206 S.W.2d 283 at 284 (Tex. Ct. App. 1947).

The Willis court analyzed whether a creditor could garnish funds in possession of the defendant's insurance company, which funds constituted insurance proceeds of the family's damaged automobile.

license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;

(10) the following animals and forage on hand for their consumption:

(A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each;

(B) 12 head of cattle;

(C) 60 head of other types of livestock; and

(D) 120 fowl;

(11) household pets; and

(12) the present value of any life insurance policy to the extent that a member of the family of the insured or a dependent of a single insured adult claiming the exemption is a beneficiary of the policy.

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Section 9.203, Business & Commerce Code, or Sections 41 and 42, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

Because the automobile was exempt from forced sale by creditors, the court ruled that the insurance proceeds of the automobile were also exempt. Although the Willis court analyzed the predecessor to the current Texas exemption statute, the reasoning supporting the decision has not been overruled. Furthermore, a liberal interpretation of the Texas exemption statute has been consistently upheld by state and federal courts. Walden v. McGinnes (In re McGinnes), 12 F.3d 445, 448, n. 5 (5th Cir. 1994) quoting Patterson v. English 142 S.W. 18, 19 (Tex. Ct. App. 1911). Although this liberal interpretation extends the personal property exemption to proceeds of the insurance policy, the Debtor's claim for damages to the real property and punitive damages and attorney's fees are not proceeds of the Debtor's personal property and therefore would be non-exempt assets of the bankruptcy estate.

II. The Debtor's Personal Property Exemption is Limited to \$30,000.00.

Under the Texas personal property exemption statute, a debtor is entitled to exempt as a single individual, personal property with a value of \$30,000.00 but may exempt personal property valued to \$60,000.00 if a debtor has a family. Tex. Prop. Code Ann. §42.001 (Vernon Supp. 1966)⁴. Whether the Debtor is entitled to a

⁴Tex. Prop. Code Ann. §42.001 provides:
(a) Personal Property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:
(1) the property is provided for a family and has an

\$30,000.00 or \$60,000.00 exemption in personal property turns upon whether the Debtor's familial status is determined as of the petition date or as of the conversion date. Bankruptcy Code §348⁵

aggregate fair market value of not more than \$60,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$30,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

(1) current wages for personal services, except for the enforcement of court-ordered child support payments;

(2) professionally prescribed health aids of a debtor or a dependent of a debtor.

(c) This section does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are included in the aggregate.

⁵11 U.S.C. §348 provides:

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes

an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(b) Unless the court for cause orders otherwise, in sections 701(a), 727(a)(10), 727(b), 728(a), 728(b), 1102(a), 1110(a)(1), 1121(b), 1121(c), 1141(d)(4), 1146(a), 1146(b), 1201(a), 1221, 1228(a), 1301(a), and 1305(a), of this title, "the order for relief under this chapter" in a chapter to which a case has been converted under section 706, 1112, 1208, or 1307 of this title means the conversion of such case in such chapter.

(c) Sections 342 and 365(d) of this title apply in a case that has been converted under section 706, 1112, 1208, or 1307 of this title, as if the conversion order were the order for relief.

provides that converting a case from one chapter to another does not change the petition filing date. Although §348 does not specifically address whether the debtor's exemptions are established on the date of the petition or on the date of conversion, nothing in this provision suggests other than the original filing date as the date to determine the debtor's familial status for purposes of exemptions.

Bankruptcy Code §522(b)(2)(A)⁶ provides that the exemption law

(d) A claim against the estate or the debtor that arises after the order for relief but before conversion in a case that is converted under section 1112, 1208, or 1307 of this title, other than a claim specified in section 503(b) of this title, shall be treated for all purposes as if such claim had arisen immediately before the date of the filing of the petition.

(e) Conversion of a case under section 706, 1112, 1208, or 1307 of this title terminates the service of any trustee or examiner that is serving in the case before such conversion.

(f) (1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; and

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply in the converted case, with allowed secured claims reduced to the extent that they have been paid in accordance with the chapter 13 plan.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property in the converted case shall consist of the property of the estate as of the date of conversion.

⁶11 U.S.C. §522(b) provides in part:

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate, the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this

applicable to a debtor's property is the law applicable on the date of filing. (See, notes 1 & 2.) Although the "on the date of filing" clause refers to the applicable law, not to the status of a debtor, it is indicative of Congressional intent to determine the debtor's exemptions as of the date of filing, not as of some later date. See e.g., Marcus v. Zeman (In re Marcus), 1 F.3d 1050 (10th Cir. 1993) (Debtor must utilize the exemption statute in effect at the time he filed his Chapter 13 petition. The debtor cannot take advantage of the more liberal exemptions enacted after filing but prior to converting his case to Chapter 7.) Because converting a case from Chapter 13 to Chapter 7 does not change the filing date of the petition, a debtor's status for exemption purposes is determined

subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is--

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2) (A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of filing of the petition, or for a longer portion of such 180-day period than in any other place; ...

on the filing date, not on the conversion date. See, In re Finkel, 151 B.R. 779, 784 (W.D. Tex. 1993) (Familial status at filing of petition, not upon conversion of case, determined availability of business homestead exemption.)

The Debtor relies upon Armstrong v. Lindberg (In re Lindberg), 735 F.2d 1087 (8th Cir. 1984), *cert. denied* 469 U.S. 1073, 105 S.Ct. 566, 83 L.Ed.2d 507 (1987) in support of his contention that he may modify his exemptions to reflect his post filing marital status upon converting his case from Chapter 13 to Chapter 7. In Lindberg, the debtors owned a suburban house and a farm ranch on the date they filed their Chapter 13 petition. In their original schedules, the debtors utilized their homestead exemption to exempt \$20,000.00 of equity in the suburban house, their primary residence. Immediately prior to converting their case under Chapter 7, the debtors relocated from the house to the ranch. With their conversion, the debtors changed their homestead exemption from the house to the ranch to preserve over \$80,000.00 of equity in the ranch. The Court of Appeals affirmed the Bankruptcy Court's decision overruling the trustee's objection to the exemption modification. The Court found that §§348(a) and 522(b)(2)(A) conflicted with Federal Rule of Bankruptcy Procedure (FRBP) 1019(1)(A)⁷ because the code sections

⁷FRBP 1019 provides in part:
When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

- (1) Filing of Lists, Inventories, Schedules, Statements.
 - (A) Lists, inventories, schedules, and statements of financial affairs theretofore filed

suggest that a debtor must use the same exemptions upon conversion of the case, while FRBP 1019(1)(A) suggests that the debtor may use the exemptions available to him on the date of conversion. Id. at 1090. The Court also found that upon conversion to Chapter 7, property of the estate consisted of all property in which the debtor held an interest upon the date of conversion and that the debtor should claim the exemptions available to him at the time of conversion, even if those exemptions were not available to him on the petition date. Id. Neither of these arguments are persuasive. First, FRBP 1019(1)(A) does not conflict with §§348(a) and 522(b)(2)(A). FRBP 1019(a)(A) extends the time in which a debtor must file a Schedule of Exemptions under FRBP 1007(c) in a converted case if the schedule was not previously filed. FRBP 1019(1)(A) does not change the substantive law in the bankruptcy code that the relevant date for determining exemptions is the original petition date. Even if FRBP 1019 conflicts with §§348(a) and 522(b)(2)(A), the code provisions should control over the rule. 28 U.S.C. §2075⁸;

shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

⁸28 U.S.C. §2075 provides:
The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under Title 11.

Such rules shall not abridge, enlarge, or modify any substantive

See e.g., Mid-Jersey Nat. Bank v. Fidelity Mort. Investors, 518 F.2d 640 (3d Cir. 1975). (The rules are exclusively procedural and shall not abridge, enlarge, or modify any substantive rights.) Furthermore, §348(f) limits property of the Chapter 7 estate upon conversion from Chapter 13 to property of the estate as of the commencement of the case remaining in possession and control of the debtor upon conversion. This provision eliminates the Lindberg court's concern that after-acquired property of the debtor would remain property of the Chapter 7 estate upon conversion, leaving the debtor no opportunity to exempt such property. Young v. Key Bank (In re Young), 66 F.3d 376 (1st Cir. 1995) (Property acquired after the Debtor's filing a Chapter 13 petition but prior to conversion to Chapter 7 is not property of the Chapter 7 estate.) Because the after-acquired property is not property of the estate there is nothing to exempt, nor is there a need for such exemption.

It is therefore ORDERED that the Trustee's objection is granted in part and denied in part. The Debtor's claim of personal property exemption is ORDERED allowed in any recovery against State Farm to the extent the recovery is insurance proceeds of his personal property to a maximum of \$30,000.00.⁹

right.

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⁹This order does not address the extent to which any recovery constitutes property of the estate. See, Moore v. Diamond Mfg., Co., Inc. (In re Diamond Mfg. Co., Inc.), 123 B.R. 125 (S.D. Ga. 1990) *aff'd*, 959 F.2d 972 (11th Cir. 1992).

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 26th day of August, 1996.