

FILED

at 1 O'clock & 09 min. P.M

Date 4/25/88

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

MARY C. BECTON, CLERK  
United States Bankruptcy Court  
Savannah, Georgia PCB

In the matter of:	)	
	)	BANKRUPTCY NO.
MARK J. CUYLER	)	
	)	<u>287-00412</u>
Debtor	)	

ORDER ON OBJECTION TO CLAIM OF B-4 EXEMPTION

FINDINGS OF FACT

Within the original petition filed on September 4, 1987, the Debtor listed his claim of exempt property as follows:

Livingroom set	\$ 1,000.00
Bedroom set	300.00
Car	17,402.00
Clothing apparel	200.00
TOTAL	\$18,902.00

The Debtor filed on February 16, 1988, an amended claim of exempt property. The purpose of the amendment was to add a 1987 mobile home. Within the amendment the Debtor stated that the total amount claimed as exempt was raised to \$33,902.00. The Trustee filed an objection to the amended claim setting forth various reasons for the objection.

The Debtor filed on March 21, 1988, a second amended claim of exempt property in which he restated his exempt property claim as follows:

Livingroom set	\$ 1,000.00
Bedroom set	300.00
Car/Isuzu I Mark	5,000.00
Clothing apparel	200.00
Mobile Home/Celebration I	5,000.00
TOTAL	\$11,500.00

The Trustee was served with a copy of the amended claim of exempt property at the hearing on objection held on March 22, 1988. The Trustee objects to the inclusion of the mobile home (Mobile Home) and the motor vehicle (Motor Vehicle) for any purposes other than to claim equity.

CONCLUSIONS OF LAW

The State of Georgia has exercised its option to enact its own set of exemptions prescribing the limits within which a resident of Georgia may make a claim of exempt property for purposes of bankruptcy. The Debtor may claim up to \$1,000.00 in value in motor vehicles and up to \$5,000.00 in value in real property or personal property used as a residence (Official Code of Georgia Annotated §44-13-100(a)1 and 3).

The Debtor does not have the right to claim an exemption in mobile homes and motor vehicles which he has voluntarily pledged to creditors as security for debts, except that the Debtor may claim as exempt within the statutory limits any equity or value over and above the amounts owed to secured creditors. The Mobile Home was pledged as security by the

Debtor To Oakwood Acceptance Corporation (Oakwood). The Motor Vehicle was pledged as security by the Debtor to Southeast Bank of Jacksonville (Southeast).

The Trustee has filed preference actions under §547 of the Bankruptcy Code against both Oakwood and Southeast and this Court has ruled in each instance that the act of perfecting the security interest of the respective creditor was a preference. The Trustee has by this Court been recognized as having a superior claim under §544 of the Bankruptcy Code as against the Mobile Home and the Motor Vehicle. The Bankruptcy Code protects the efforts of the Trustee by disallowing a claim of exemption against property voluntarily transferred by the Debtor and recovered by the Trustee pursuant to the use of his avoiding powers. (11 U.S.C. §522(g)). There is no dispute that the debtor in this instance did so voluntarily transfer the Mobile Home and the Motor Vehicle to the respective secured creditors as security for debts owed to each. The Bankruptcy Code specifically defines "transfer" to include retaining title to property as a security interest (11 U.S.C. §101(50)).

ORDER

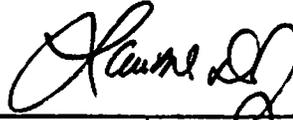
Pursuant to the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED as follows:

1) The amended claim of exempt property is allowed as to all items except the Mobile Home and the Motor Vehicle.

2) As to the Mobile Home the claim is disallowed except as it may relate to a claim of equity not to exceed \$5,000.00.

3) As to the Motor Vehicle the claim is disallowed except as it may relate to a claim of equity not to exceed \$1,000.00.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia,  
This 14<sup>th</sup> day of April, 1988.