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DEC 28 2004
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (339)

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

ENTERED

DEC 28 2004

L.O.

IN RE:

Philip Baker, SSN: XXX-XX-2855
Elouise Baker, SSN: XXX-XX-5621

129 McKenzie Loop
Lake City SC 29560-0000

Debtors.

Case No. 04-09827-jw

Chapter 7

**ORDER GRANTING TRUSTEE'S
OBJECTION TO EXEMPTIONS
CLAIMED BY DEBTORS**

This matter is before this Court upon motion of the Chapter 7 Trustee objecting to the exemptions claimed by the debtors¹. The Trustee's Motion was filed with this Court and served upon the debtors, as evidenced by the certificate of service duly filed with this Court. The debtors have filed their response to the Trustee's motion and further requested that this Court set a hearing to enforce their claimed exemptions. Additionally, the debtors have sought sanctions against the Chapter 7 Trustee, Equity One, Inc., Freedom Finance, Inc. and their respective attorneys. A hearing was held on these matters on December 14, 2004. Having heard the argument of the debtors, the Chapter 7 Trustee, and attorneys for Equity One, Inc. and Freedom Finance, Inc., this Court finds and

¹Further references to the Bankruptcy Code, 11 U.S.C. § 101, et. seq, shall be by section number only.

concludes as follows²:

1. The debtors have claimed certain exemptions as set forth on Schedule C of their amended schedules and statements for the following five particular assets:

- (A) The debtors' residence, located at 129 McKenzie Loop, Lake City, South Carolina is claimed exempt by virtue of Mrs. Baker's purported life estate interest in said property; SC CODE ANN. §§ 15-41-30 and 15-41-30(10)(B)³; Title 12 of the South Carolina Code of Laws, Annotated; and two cases, *Norwood vs. Watson, et al.*, 242 F. 885 (4th Cir. 1917), and *McCrae v. Felder*, 12 F.2d 554 (4th Cir. 1926).
- (B) The debtors' one acre of farmland located at 129 McKenzie Loop, Lake City, South Carolina which is not part of the debtors' residence is claimed exempt by virtue of Mrs. Baker's purported life estate interest in said property.
- (C) The debtors' unimproved real estate located on Stonewall Street, Winston Salem, North Carolina is claimed exempt pursuant to § 15-41-30(10)(A), as the property was purchased with Mrs. Baker's social

²The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

³Further references to the South Carolina Code of Laws, Ann., shall be by

security benefits.

(D) The debtors' 2002 Mercedes Benz CLK 320 is claimed exempt pursuant to § 15-41-30(10)(B), as debtors purchased the vehicle with Mr. Baker's veteran's benefits.

(E) The debtors' Toyota Corolla is claimed exempt pursuant to § 15-41-30(10)(B) and due to the fact that they no longer own the vehicle.

The Court denies debtors' claims for exemption of items A through E referenced above. As to items A and B, the argument that Mrs. Baker owns a life estate in debtors' residence and one acre of farmland, located at 129 McKenzie Loop, Lake City, South Carolina is not applicable to the claim of exemption. As to item A only, Title 12 of the South Carolina Code of Laws, Annotated, referencing property taxation, does not apply to the claim of exemption. As to item A only, the debtors cite two cases in support of their claim of exemption, *Norwood vs. Watson, et al.*, 242 F. 885 (4th Cir. 1917), and *McCrae v. Felder*, 12 F.2d 554 (4th Cir. 1926). The debtors claim a 100% exemption for their residence, which is not the homestead exemption that the debtors are entitled to under applicable South Carolina law. The cases cited by the debtors are inapplicable to the claimed exemption, as the Trustee does not

section number only.

dispute that the debtors are entitled to a homestead exemption in the total amount of \$10,000 (\$5,000 for Mrs. Baker and \$5,000 for Mr. Baker) pursuant to § 15-41-30(1).

As to item C, the debtors claim an exemption under § 15-41-30(10)(A), which states in pertinent part, that the debtors' right to receive a social security benefit is exempt from attachment, levy, and sale under any mense or final process issued by any court or bankruptcy proceeding. § 15-41-30(10)(A) does not state that property "traceable to" a social security benefit is exempt. The South Carolina legislature did not intend to grant an exemption for property "traceable to" a social security benefit, as it did not use that language in § 15-41-30(10)(A). See SC Code Ann. § 15-41-30(11) (the language "the debtor's right to receive or property that is traceable to" in this section does not apply to social security benefits and the legislature did not include social security benefits in this section); See also *In re Eisen*, 181 B.R. 848, 851 (1995) (" . . . the South Carolina legislature expressly incorporates specific language providing for the tracing of assets or property from another source when such a result is intended." Clearly for the Court to interpret that property traceable to exempt property pursuant to § 15-41-30(10)(E) is also exempt, would be an unwarranted expansion of the statute); See *Philpott v. Essex County Welfare Board*, 409 U.S. 413, 415-16 (1973) (no reason to imply exemptions for state welfare benefits when exemptions are expressly

provided by statute in the federal Social Security Act). By converting the social security benefit from cash into property, the debtors turned the social security benefit into non-exempt property. See *Carrier v. Bryant*, 306 U.S. 545, 549 (1939) (The distinction between benefit payments and property purchased therefrom is important, as an exemption ends when the benefits lose the quality of moneys by being converted into land and buildings.). Therefore, the debtors' argument that item C is exempt is without merit.

As to item D, the debtors claim an exemption under § 15-41-30(10)(B), which states in pertinent part, that the debtors' right to receive a veteran's benefit is exempt from attachment, levy, and sale under any mense or final process issued by any court or bankruptcy proceeding. See *Porter v. Aetna Casualty Co.*, 370 U.S. 159 (1962) (veterans benefits that are in cash or an account subject to demand and use for the support and maintenance of the veteran are exempt). § 15-41-30(10)(B) does not state that property "traceable to" a veteran's benefit is exempt. The legislature did not intend to grant an exemption for property "traceable to" a veteran's benefit, as it did not use that language in § 15-41-30(10)(B). § 15-41-30(11) (the language "the debtor's right to receive or property that is traceable to" in this section does not apply to veterans benefits and the legislature did not include veterans benefits in this section). By converting the

veteran's benefit from cash into property, the debtors turned the veteran's benefit into non-exempt property. See Carrier v. Bryant, 306 U.S. 545 (1939); See Turner v. Turner, No. 91-10825, 1992WL12004368, at *2 (Bankr. S.D. Ga. Jan. 29, 1992) (O.C.G.A. § 44-13-100(a)(2)(B) and (11) are similar to § 15-41-30(10)(B) and (11). The Georgia statute, like its South Carolina counterpart, did not specifically set forth an exemption for property traceable to veterans benefits. The Court determined that failure of the statute to include an express exemption for personal property traceable to veterans benefits meant that such property was not exempt. The Georgia case law addressed a similar issue that personal property purchased with exemptible World War Veteran's Act benefits did not come within the exemption provided for by the Act.); See also In re Eisen, 181 B.R. 848 (1995). Therefore, the debtors' argument that item D is exempt is without merit.

At the hearing, Mrs. Baker represented to the Court that she and Mr. Baker no longer owned the Toyota Corolla. Therefore, the exemption for item E is denied.

2. The debtors allege that the Chapter 7 Trustee was not timely in filing his objection to the debtors' claimed exemptions. The debtors also seek to have this Court overrule the Trustee's objection and to impose sanctions upon the Trustee pursuant to Bankruptcy Rule 9011. The debtors requested verbally at the hearing that the Trustee be found in

default for failing to timely file his objection to debtors' motion for exemptions. The debtors asserted that Bankruptcy Rule 4004(b) applied to filing objections for exemptions.

Bankruptcy Rule 4003(b) controls the filing objections to exemptions. As the debtors' 341 meeting was concluded and completed on October 29, 2004, and the Trustee filed his objection to debtors' motion for exemptions on November 27, 2004, the Court finds that the Trustee's objection was timely filed pursuant to Bankruptcy Rule 4003(b). The Court finds that the Trustee is not in default. In addition, the Court finds that the debtors have no basis for their 9011 motion against the Trustee, as the Trustee's objection was timely filed. The Court denies debtors' 9011 motion to impose sanctions against the Trustee.

3. The debtors further allege that because Equity One, Inc., Freedom Finance, Inc. nor their respective counsel filed any objection to the debtors' claimed exemptions that they should be sanctioned pursuant to Bankruptcy Rule 9011.

Bankruptcy Rule 4003(b) controls the filing of objections to exemptions. Equity One, Inc., Freedom Finance, Inc., and their respective counsel are not required to file objections to the debtors' claimed exemptions pursuant to Bankruptcy Rule 4003(b) based on the facts of this case and in light of the Trustee's timely filed objection to Debtors' exemptions. See *Matter of Pierce*, 29 B.R. 612 (E.D. NC 1983); See also *In re Franklin*, 210

B.R. 560 (N.D. Ill 1997)). In addition, the Court finds that the debtors have no basis for their 9011 motion against Equity One, Inc., Freedom Finance, Inc., or their respective counsel, as these creditors and their counsel were not required to file objections to the debtors' claimed exemptions. Nor does the failure of these secured creditors to object to the debtors' claimed exemptions in any way impair or affect their liens against the property claimed as exempt. 11 U.S.C. § 522(c); *In re Pierce*, 29 B.R. 612 (Bankr. E.D.N.C. 1983); *In re Franklin*, 210 B.R. 560 (Bankr. N.D. Ill. 1997). Both creditors, having obtained relief from the automatic stay and having prevailed in their opposition to the debtors' motions to avoid their liens, are free to seek enforcement of their secured interests in State Court. Accordingly, the Court denies debtors' 9011 motion to impose sanctions against Equity One, Inc., Freedom Finance, Inc., and their respective counsel. Therefore, based upon this Court's findings of fact and conclusions of law, it is,

ORDERED, ADJUDGED, AND DECREED the Trustee's objection to exemptions claimed by debtors is granted.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
12/28, 2004