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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re] Case No. 93-53518
Edward L. Lantz,] Chapter 7
Debtor(s).]

MEMORANDUM DECISION
OVERRULING TRUSTEE'S OBJECTION
TO EXEMPTION CLAIM
AND DENYING TRUSTEE'S MOTION
FOR TURNOVER OF PROPERTY

Edward L. Lantz is the Debtor in this Chapter 7¹ case ("Debtor") and John Richardson is the Chapter 7 Trustee ("Trustee").

Trustee has filed an objection to Debtor's exemption claim for stock of a corporation known as H.E.A.T. ("Subject Property"), and a motion for turnover of the Subject Property.

The matter has been briefed and argued, and submitted for de-

¹ This case was filed prior to the effective date of the amendments made to Title 11, United States Code ("Bankruptcy Code"), in 1994; unless otherwise noted, all statutory references are to the Bankruptcy Code as it provided prior to such amendment.

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1 cision on the threshold issue of whether Debtor amended his
2 exemption claim with respect to the Subject Property on September
3 2, 1998.

4 Debtor is represented by Kathryn M. Infante, Esq. of Campeau &
5 Thomas, L.C.; Trustee is represented by Michelle K. Rubin, Esq.

6
7 FACTS

8 The facts are undisputed.

9 Debtor filed a voluntary petition under Chapter 11 on May 27,
10 1993 and converted the case to Chapter 7 on July 10, 1998. Trustee
11 was appointed shortly after conversion.

12 During the Chapter 11 phase of the case, Debtor filed an
13 original Schedule C setting forth claims of exempt property, and an
14 amended Schedule C. The original Schedule C was filed on June 12,
15 1993 ("Original Schedule C") and did not claim the Subject Property
16 exempt. The amended Schedule C was filed on July 28, 1994 ("Amend-
17 ed Schedule C") and did claim the Subject Property exempt, pursuant
18 to California Code of Civil Procedure §703.140(a)(10)(E), which
19 shelters payments under pension plans to the extent reasonably nec-
20 essary for the support of a debtor and a debtor's dependents.

21 No objection was filed to the Amended Schedule C filed in 1994.
22 Pursuant to Bankruptcy Rule 4003², a bankruptcy trustee or any
23 creditor may file objections to exemption claims within, inter
24 alia, thirty days after the filing of an amended claim -- in 1994,

25 _____
26 ² Unless otherwise noted, all references to "Rule" or
"Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure.

1 Trustee had not yet been appointed, but no creditor filed an objec-
2 tion to the Amended Schedule C.

3 Accordingly, when the case was converted to Chapter 7 on July
4 10, 1998 and Trustee was appointed, Debtor had claimed the Subject
5 Property exempt by filing the Amended Schedule C in 1994.

6 On September 2, 1998, Debtor filed in his Chapter 7 case a doc-
7 ument entitled "STATEMENT CONCERNING STATUS OF DEBTOR'S PROPERTY IN
8 SCHEDULES A, B, AND C ON DATE OF CONVERSION OF CHAPTER 11 CASE TO A
9 CHAPTER 7 CASE" ("Statement"). The Statement includes three
10 attachments: (1) a page labeled at the top "SCHEDULE A - REAL
11 PROPERTY", listing four parcels of real property ("Attachment A");
12 (2) four pages labeled at the top "SCHEDULE B - PERSONAL PROPERTY",
13 listing 33 items of personal property ("Attachment B"); and (3) a
14 page labeled at the top "SCHEDULE C - PROPERTY CLAIMED EXEMPT"
15 ("Attachment C"), listing seven items of property (next to each
16 item is an amount claimed exempt and citations to exemption stat-
17 utes). Attachment C is not a photocopy of the Original Schedule C
18 filed in 1993 (which did not claim the Subject Property exempt),
19 but it contains the identical information as that set forth on the
20 Original Schedule C except that it eliminates three automobiles
21 listed in the Original Schedule C; like the Original Schedule C, it
22 does not include the Subject Property. Apart from Attachment C,
23 Debtor filed no Schedule C or amended Schedule C in the Chapter 7
24 case.

25 On December 18, 1998, the meeting of creditors held in Debtor's
26 Chapter 7 case pursuant to Bankruptcy Code §341 ("§341 Meeting")

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1 was concluded.³ Under Bankruptcy Rule 4003, Trustee and/or any
2 creditor could file an objection to Debtor's claim(s) of
3 exemption(s) within thirty days after conclusion of the §341
4 Meeting; no such objection was filed within that time.

5 On February 19, 1999, Trustee filed an objection to any attempt
6 that Debtor might make to claim the Subject Property exempt, on the
7 substantive basis that no exemption statute applies to the Subject
8 Property. Trustee also moved for turnover of the Subject Property,
9 on the basis that it has not been claimed exempt and is not
10 exemptable under any applicable law.

11
12 ANALYSIS

13 Trustee's position is that the Statement filed in 1998 consti-
14 tuted an amended exemption claim, which served to amend the Amended
15 Schedule C filed in 1994. The 1994 Amended Schedule C did claim
16 the Subject Property exempt, while the 1998 Statement did not claim
17 the Subject Property exempt -- if the 1998 Statement were treated
18 as an amendment of the 1994 Amended Schedule C, the result would be
19 that the Subject Property has not been claimed exempt. If Debtor
20 were to file another amendment now to claim the Subject Property
21 exempt, he would be met by Trustee's existing objection, which
22 raises the substantive issue of whether any applicable law applies
23 to exempt the Subject Property.

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³ The §341 Meeting was commenced on September 22, 1998 and
26 continued twice, first to November 20, 1998 and then to December
18, 1998.

1 Debtor's position is that the 1998 Statement was not intended
2 to be an amendment of the 1994 Amended Schedule C and does not op-
3 erate as an amendment. If the 1998 Statement were not treated as
4 an amendment of the 1994 Amended Schedule C, then the 1994 Amended
5 Schedule C would stand. The 1994 Amended Schedule C claims the
6 Subject Property exempt and was not objected to within thirty days
7 of its filing in 1994, nor within thirty days of the §341 meeting
8 in the Chapter 7 case, as required by Bankruptcy Rule 4003. Pur-
9 suant to Taylor vs. Freeland & Kronz, 503 U.S. 638, 112 S.Ct. 1644
10 (1992), an exemption claim to which no timely objection is filed is
11 allowed as made, even if the exemption claimed is not available to
12 the debtor.

13 Debtor has filed two declarations stating under penalty of
14 perjury that: he is 77 years old and retired; the Subject Property
15 is necessary to the support of himself and his wife; it has always
16 been his intent to claim it exempt; and it was not his intent when
17 signing and filing the 1998 Statement to amend his then-existing
18 exemption claim and delete the Subject Property. Trustee does not
19 contend that Debtor's intent was other than Debtor declares it to
20 have been, but argues that intent is irrelevant to whether the 1998
21 Statement constitutes an amendment of the 1994 Amended Schedule C.

22 The 1998 Statement states, in its entirety, as follows:
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STATEMENT CONCERNING STATUS OF DEBTOR'S PROPERTY
IN SCHEDULES A, B AND C ON DATE OF CONVERSION
OF CHAPTER 11 CASE TO A CHAPTER 7 CASE

Edward L. Lantz, the debtor herein, submits this Statement concerning the status of the property of the estate listed in Schedules A, B and C as of the date of conversion of the Chapter 11 case to a Chapter 7 case. The updated information is attached hereto and incorporated by reference herein. I prepared the attachments based upon my knowledge, information, and belief.

The Statement is signed by Debtor, but not under penalty of perjury; it does not state that Debtor amends the 1994 Amended Schedule C, nor does it use the word "amend" either in its title or in the body of the pleading.

The parties cite no authority concerning what is required to make an effective amendment of an exemption claim, nor has the Court found any. It is well-settled that exemption claims themselves must be stated with specificity as to what property is claimed exempt, to what extent, and pursuant to what authority, see In re Hyman, 967 F.2d 1316 (9th Cir. 1992); In re Kahan, 28 F.3d 79 (9th Cir. 1994), cert. denied, Kahan v. Seror, 513 U.S. 1150, 115 S.Ct. 1100 (1995). But the issue here is not the manner in which Debtor claimed the Subject Property exempt when he made his claim in the 1994 Amended Schedule C -- rather, it is whether the Statement filed in 1998 includes the necessary elements of an amended exemption claim that deletes a previously claimed exemption.

The Statement recites that it is a statement "concerning the

1 status of the property of the estate listed in Schedules A, B and C
2 as of the date of conversion" and refers to "updated information"
3 set forth in its attachments. Debtor's declarations referred to
4 above state that he was advised by counsel that the information in
5 the Statement had to be provided to show Trustee what estate
6 property had not been disposed of during the Chapter 11 case and
7 continued to exist in the Chapter 7 case. Debtor's declarations
8 state that the Statement includes Attachment C through inadver-
9 tence, because Attachment C is the list of exemption claims made by
10 the Original Schedule C in 1993, whereas those claims had been
11 amended by the Amended Schedule C in 1994 and were no longer appli-
12 cable at the time of conversion in 1998.

13 Objectively viewed, the Statement does not strike this Court as
14 constituting an amendment of anything. It clearly announces its
15 purpose to be stating "the status" of estate property at the time
16 of conversion, and as providing "updated information" about such
17 property as of the conversion date. The Statement serves only to
18 report which properties were in Debtor's estate as of the date of
19 conversion -- if the Statement had not been filed, Trustee would
20 have had to inquire of Debtor (or otherwise discover) which of the
21 property interests listed in the schedules filed at commencement of
22 the Chapter 11 case in 1993 were still part of Debtor's estate un-
23 der Chapter 7 in 1998. But the mere filing of an informational
24 document such as the Statement did not constitute an amendment of
25 the Schedules A and/or B that were filed at commencement of the
26 Chapter 11 case in 1993 -- in order to amend Schedules A and/or B,

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1 Debtor would have had to file amended Schedules A and/or B and sign
2 them under penalty of perjury just as original schedules are
3 required to be signed (see Official Form No. 6). For example,
4 Debtor's original Schedule A filed at commencement of the Chapter
5 11 case in 1993 lists ten parcels of real property, whereas Attach-
6 ment A to the Statement filed upon conversion lists only four of
7 those parcels -- the Statement serves to inform Trustee that six of
8 the scheduled real properties left the estate during the Chapter 11
9 case, but the Statement does not purport to amend Schedule A and it
10 does not operate to do so. Similarly, Debtor's original Schedule B
11 lists six motor vehicles, whereas Attachment B to the Statement
12 lists only two of the vehicles -- the Statement tells Trustee that
13 four motor vehicles were disposed of during the Chapter 11 case,
14 but it does not purport to amend Schedule B and it does not operate
15 to do so. Just as the Statement does not represent itself as an
16 amendment of Schedules A and/or B, and does not effect amendment of
17 those schedules, neither does it purport to amend the 1994 Amended
18 Schedule C, nor does it operate to do so.

19 It is arguable that, if a debtor files a document that could
20 reasonably be interpreted to constitute an amendment and it is
21 justifiably and detrimentally relied upon by a party in interest to
22 be an amendment, then it might be held to constitute an amendment
23 even if the debtor did not intend to amend anything by filing the
24 document. But, in this case, Trustee does not complain that the
25 Statement misled Trustee into thinking that the Subject Property
26 was not claimed exempt, so that Trustee therefore did not realize

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1 that the 1994 Amended Schedule C remained operative and had to be
2 objected to within thirty days after conclusion of the §341 Meeting
3 in the Chapter 7 case. This Court considers that such a position
4 would be untenable, because reliance by Trustee upon the Statement
5 as constituting an amendment of exemption claims would not have
6 been reasonable.⁴ As discussed above, the Statement does not refer
7 to amendment anywhere, nor is it signed under penalty of perjury as
8 schedules and amended schedules must be. Moreover, the Statement
9 puts Trustee on inquiry notice about the Subject Property, which
10 would estop Trustee from claiming that he was prejudiced by reason-
11 able reliance upon the Statement as an amended claim of exemption.
12 Attachment B to the Statement lists the Subject Property as prop-
13 erty in which Debtor held an interest at the date of conversion:

14 11. Interests in IRA, ERISA, Keogh,
15 or other pension or profit sharing plans

16 H.E.A.T. ENERGY ADVANCED TECHNOLOGY,
17 3.353% STOCK

18 Not property of Estate --
19 listed for information only
20 [Value:] \$75,000

21 The Statement was filed on September 2, 1998, some three weeks
22 prior to commencement of the §341 Meeting on September 22, 1998,
23 and the §341 Meeting was continued twice thereafter for two months.
24 If Trustee did construe the Statement as an amended Schedule C that

25 ⁴ This Court believes that, under an objective test, a
26 hypothetical reasonable bankruptcy trustee would not have been
27 misled. In this case, Trustee has many years' experience as a
28 bankruptcy trustee and can be expected to know an amendment when he
sees one, so a subjective test would yield the same result here.

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1 made no exemption claim for the Subject Property, he had every
2 opportunity to examine Debtor about the property at the §341 Meet-
3 ing. Had Trustee expressed an interest in the Subject Property at
4 that time, Debtor (who now states, plausibly and without contradic-
5 tion, that he always intended to claim it exempt) presumably would
6 have pointed out that he believed he had claimed the Subject
7 Property exempt in 1994. Trustee thereby would have been alerted
8 to the fact that an exemption claim did (or at least might) exist,
9 such that Trustee would have to file an objection to it within
10 thirty days after conclusion of the §341 Meeting if he wished to
11 challenge the applicability of available exemptions.

12
13 CONCLUSION

14 For the reasons set forth above, Trustee's objection to
15 Debtor's claim of exemption for the Subject Property is overruled.

16 Since the Subject Property is exempt, Trustee's motion for
17 turnover of such property is denied.

18 Counsel for Debtor shall submit a form of order so providing,
19 after review by counsel for Trustee as to form.

20 Dated:

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ARTHUR S. WEISSBRODT
UNITED STATES BANKRUPTCY JUDGE

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