

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:09-bk-03480-ABB
Chapter 7

HERBERT MAXWELL and
IVY MAXWELL,

Debtors.

ORDER

This matter came before the Court on the Objection to Debtors' Claim of Exemptions (Doc. No. 28) ("Objection") filed by the Chapter 7 Trustee Carla P. Musselman ("Trustee") and the Response thereto (Doc. No. 30) filed by the Debtors Herbert Maxwell and Ivy Maxwell (collectively, "Debtors"). An evidentiary hearing was held on August 31, 2009 at which the Debtors, their counsel, and counsel for the Trustee appeared. The parties filed post-hearing briefs pursuant to the Court's directive (Doc. Nos. 41, 42). The Trustee's Objection is due to be sustained for the reasons set forth herein.

The Debtors filed this case on March 20, 2009 ("Petition Date") and listed as assets in Schedule B a joint Fairwinds Credit Union money market account valued at \$6,000.00 and Mr. Maxwell's 401(k) account with an unknown value (Doc. No. 1). They claim the money market funds as fully exempt pursuant to Fla. Stat. Section 222.21(2) and the 401(k) account as exempt for an unknown amount pursuant to Fla. Stat. Sections 222.21 and 222.21(2) (Doc. No. 1, Schedule C). The money market account had a balance of \$6,008.06 on the Petition Date (Trustee's Ex. No. 2).

The Debtors transferred \$12,000.00 from the 401(k) account to the money market account on November 7, 2008 (Trustee's Ex. No. 1). They characterize the transfer as a "loan" made due to "economic distress" and assert they did not commingle the funds. Their intentions were to keep the transferred funds in reserve for emergency expenses and repay them to the 401(k) account.

The Trustee contends the \$6,008.06 in the money market account on the Petition Date originated from the \$12,000.00 transfer and the funds lost their protected status upon their deposit into the Debtors' money market account. She objects to the Debtors' claim of exemption pursuant to 11 U.S.C. Section 522(l) and must establish by a preponderance of the evidence the claim of exemption is invalid. FED. R. BANKR. P. 4003(c); In re Mohammed, 376 B.R. 38, 41 (Bankr. S.D. Fla. 2007).

The funds in the 401(k) account were exempt pursuant to 11 U.S.C. Section 522(b)(3)(C) and Fla. Stat. Section 222.21. A direct transfer of retirement funds between tax exempt accounts does not affect their exempt status. 11 U.S.C. § 522(b)(3)(C); FLA. STAT. § 222.21(2)(c). The Debtors' money market account does not constitute a tax exempt account because it is not "[m]aintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or governing instrument that has been preapproved by the Internal Revenue Service as exempt from taxation" Fla. Stat. § 222.21(2)(a)(1).

The Debtors' intentions regarding the funds are not relevant pursuant to the plain language of the governing statutes. The \$12,000.00 lost its exempt status upon the transfer of the funds into the Debtors' money market account. 11 U.S.C. § 522(b)(3)(C); Fla. Stat. §§ 222.21(2)(a)(1), (2)(c). The \$6,008.06 is not exempt pursuant to 11 U.S.C. Section 522(b)(3)(C) and Fla. Stat. Section 222.21. The Trustee's Objection to the Debtors' exemption claim in the Fairwinds Credit Union money market account is due to be sustained and the exemption is due to be disallowed.

Accordingly, it is

**ORDERED, ADJUDGED and
DECREED** that the Trustee's Objection (Doc. No. 28) to the Debtors' claim of exemption in the \$6,008.06 in the Fairwinds Credit Union money market account is hereby **SUSTAINED**; and it is further

ORDERED, ADJUDGED and DECREED that the Debtors' claim of exemption in the \$6,008.06 is hereby **DISALLOWED** and the funds constitute non-exempt property of the estate.

Dated this 5th day of October, 2009.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge