

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re:

Case No. 9:10-bk-15218-FMD
Chapter 13

Kenneth R. Adams and
Paula L. Adams,

Debtors.

**ORDER SUSTAINING
OBJECTION TO DEBTORS'
AMENDED CLAIMS OF EXEMPTION**

11 U.S.C. § 1327(a) provides that the provisions of a confirmed Chapter 13 plan bind the debtor and each creditor. In *United Student Aid Funds, Inc., v. Espinosa*,¹ the Supreme Court held that an order confirming a Chapter 13 plan is a final judgment. As such, a confirmation order is *res judicata* on all issues that could have been raised in the confirmation process. In this case, over two years after the Court confirmed their Chapter 13 plan, the Debtors filed three amendments to their *Schedule C – Property Claimed as Exempt* in order to claim an exemption for property not previously claimed as exempt. If allowed, the amendments would result in a reduction in the amount that the Debtors must pay their unsecured creditors. Because the Debtors' post-confirmation amended claim of exemption contravenes the *res judicata* effect of the confirmed plan, the Chapter 13 Trustee's objection to the amended exemption is sustained and the newly-claimed exemption is disallowed.

Background

The Debtors filed their Chapter 13 petition and schedules on June 25, 2010. On *Schedule A – Real Property*, the Debtors listed their ownership interest in real property located at 11840 Vista Ridge Drive, Fort Myers, Florida, and claimed the

property exempt as their homestead on Schedule C.² On Schedule A, the Debtors also scheduled an interest in an unencumbered vacant lot located at 11810 Vista Ridge Drive, Fort Myers, Florida (the "Vacant Lot") which they valued at \$5,000.³ The Debtors did not claim the Vacant Lot as exempt on Schedule C.

In their Chapter 13 plan (the "Plan"), the Debtors proposed to pay an estimated dividend to unsecured creditors of \$20,741.00.⁴ On April 18, 2011, the Court entered its order confirming the Plan (the "Confirmation Order").⁵ The Confirmation Order provided for distribution to unsecured creditors of \$20,741.00.⁶ As required by § 1325(a)(4),⁷ the Confirmation Order included a specific finding that the value, as of the effective date of the Plan, of property to be distributed to unsecured creditors was not less than the amount that would have been paid on their claims if the Debtors' estates were liquidated under Chapter 7.⁸ Section 1325(b)(4) is commonly referred to as "the best interest of creditors test" or "liquidation analysis." Because the Vacant Lot was not claimed as exempt by the Debtors, it would have been available for liquidation in a Chapter 7 case. The inference can fairly be drawn that the liquidation value to be paid to unsecured creditors through the Debtors' Plan included the \$5,000 value of the Vacant Lot. No party timely appealed the Confirmation Order.

Over two years later, the Debtors filed amended Schedules A and C.⁹ On their Amended Schedule A, the Debtors listed the 11840 and 11810 Vista Ridge Drive properties as a single "homestead property with contiguous lot." On their Amended Schedule C, Debtors claimed the newly-combined property as exempt homestead property. The Chapter 13 Trustee filed an

² Doc. No. 1, pp. 11, 17.

³ Doc. No. 1, p. 11.

⁴ Doc. No. 2, p. 3.

⁵ Doc. No. 35.

⁶ Doc. No. 35, p. 8.

⁷ Unless otherwise stated, all statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

⁸ Doc. No. 35, para. D.

⁹ Doc. No. 44.

¹ 559 U.S. 260, 130 S. Ct. 1367 (2010).

objection to the amended exemption.¹⁰ Subsequently, the Debtors filed two more Amended Schedule C's, each of which incorporated the newly-claimed exemption for the combined "homestead property with contiguous lot," and also increased the amount of the Debtors' exemption in a 2006 Chevrolet Silverado from \$1,000.00 to \$2,000.00.¹¹ Again, the Chapter 13 Trustee objected.¹²

Legal Analysis

The issue presented by the Chapter 13 Trustee's objections is whether the Debtors may amend their exemptions post-confirmation, amendments that would result in a reduction of the \$20,741.00 that the Confirmation Order requires them to pay into the Plan for distribution to their unsecured creditors. The Debtors could have claimed the Vacant Lot as part of their exempt homestead property prior to confirmation, but they chose not to do so. Because the Confirmation Order is *res judicata* on all issues that could have been raised prior to confirmation, including the value of the Debtor's non-exempt property that is included in the calculation of the "best interest of creditors test," the Debtors may not amend their schedules to increase their exemptions.

The Court's conclusion rests upon the interplay of § 1327(a) with Fed. R. Bankr. P. 1009. That rule states in relevant part that a "schedule . . . may be amended by the debtor as a matter of course at any time before the case is closed." Absent a showing of bad faith or prejudice to creditors, courts routinely permit debtors to amend their claim of exemption.¹³ But, as addressed by the court in *In re Wolfberg*,¹⁴ there is a difference between exercising the right to amend exemptions under Rule 1009 and actually being entitled to the exemption claimed in the amendment. The procedural right to amend is subordinate to the substantive *res judicata* effect of a confirmation order.

In *Wolfberg*, the debtors scheduled their home as having a value of \$13,000,000, and did not claim the residence as exempt homestead property. Their Chapter 11 plan, providing for the payment of unsecured creditors in full from the sale of their home, was confirmed. The plan also provided that if the residence was not sold by a certain date, a Chapter 11 trustee would be appointed. Ultimately, a trustee was appointed who sold the house for \$10,000,000. The debtors then sought to amend their Schedule C to claim a \$125,000 homestead exemption under California law. In sustaining the trustee's objection to the amended claim of exemption, the court held

Section 1141(a), like § 1327 in a chapter 13 case, "precludes a creditor from asserting, after confirmation, any other interest than that provided for it in the confirmed plan." *In re Evans*, 30 B.R. 530, 531 (9th Cir. BAP 1983) (applying § 1327). The debtor is bound the same as a creditor. Thus, the debtor cannot assert any interest other than that provided in the plan.

As with the debtors in *Wolfberg*, the Debtors here did not claim the Vacant Lot as exempt prior to confirmation. Because they could have done so prior to confirmation, the *res judicata* effect of the Confirmation Order bars them from claiming that exemption now.

The court in *Wolfberg* noted in dicta that the few cases which held that a Chapter 13 debtor can amend schedules post-confirmation to add exemptions did not discuss the interplay between Rule 1009(a) and § 1327(a). In fact, the courts in *In re Dodd*¹⁵ and *Combs v. Combs*¹⁶ merely address a debtor's ability to amend Schedule F to add unsecured creditors post-confirmation. And the court in *In re Tippins*¹⁷ held that a debtor who amended schedules, post-confirmation, to add causes of action and to exempt those causes of action, had standing to prosecute the causes of action, primarily because no party had objected to the amended claim of exemption. This Court, like

¹⁰ Doc. No. 49.

¹¹ Doc. Nos. 59 and 61.

¹² Doc. Nos. 65 and 71.

¹³ *Matter of Doan*, 672 F.2d 831 (11th Cir. 1982).

¹⁴ 255 B.R. 879 (B.A.P. 9th Cir. 2000).

¹⁵ 46 B.R. 335 (Bankr. E.D. Va. 1985).

¹⁶ 34 B.R. 597 (Bankr. S.D. Ohio 1983).

¹⁷ 221 B.R. 11 (Bankr. N.D. Ala. 1998).

Wolfberg, does not find those cases relevant to the issue at hand.

Conclusion

For the foregoing reasons, the Court concludes that by operation of § 1327(a), the Debtors may not amend their claim of exemption to include an exemption that could have been claimed prior to confirmation. Accordingly, it is

ORDERED that the Chapter 13 Trustee's objections to the Debtors' amended claims of exemption are **SUSTAINED**.

Dated: February 4, 2014

/s/
Caryl E. Delano
United States Bankruptcy Judge

Trustee Jon Waage is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.