UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re	)	
	)	
JORGE RIVERA-CINTRON and	)	Case No. 6:14-bk-12581-KSJ
VIVIAN VARGAS-MARTIN,	)	Chapter 7
	)	
Debtors.	)	
	)	

ORDER OVERRULING TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTION AND DENYING MOTION FOR TURNOVER OF PROPERTY

The Chapter 7 Trustee, Richard Webber, seeks turnover of $9,741.79 (the "Funds") held by the Debtors, Jorge Rivera-Cintron and Vivian Vargas-Martin (the "Debtor"[1]), in their Chase Individual Retirement Account ("Chase IRA").[2] Debtors claim the Funds in the Chase IRA are held in retirement accounts exempted by § 222.21(2) of the Florida Statutes.[3] The Trustee objects to the Debtors' claim of exemptions, arguing the Chase IRA does not qualify as exempt because it was not properly funded by a rollover contribution as defined by the Internal Revenue Code[4]

[1] For ease of reference, and because the issues raised only relate almost exclusively to Mrs. Vargas-Martin, the Court uses the term "Debtor" to refer only to her.
[2] Motion for Turnover, Doc. No. 8; Debtor's Response, Doc. No. 16.
[3] Amended Schedule C, Doc. No. 14.
[4] Internal Revenue Code or IRC refers to 26 U.S.C. §§ 1 *et seq*.

("IRC").[5] The Court finds the Trustee failed to meet his burden to prove the Funds are not exempt, overrules the Trustee's objection, and denies his motion for turnover.

Debtor worked as a teacher for the Puerto Rican government for nearly five years. During this time, she contributed to the Puerto Rico's Teachers Retirement System ("Retirement System")[6] and accumulated $9,629.37 in her retirement account ("Retirement Account").[7] Sometime before the Debtors filed their bankruptcy petition, the Debtor received a $9,741.79 distribution from her Retirement Account. Debtor deposited this distribution in a Chase savings account, then, on August 5, 2014, withdrew the $9,741.79 and deposited the sum into the Chase IRA. Debtors filed their Chapter 7 bankruptcy petition on November 14, 2014.[8]

Debtors in bankruptcy are permitted to claim certain property as exempt from creditors in order to facilitate their "fresh start."[9] A debtor's claim of exemptions is presumptively valid unless and until a party-in-interest, such as the Trustee, objects.[10] The Trustee must establish by a preponderance of evidence that the debtor's exemptions are not properly claimed.[11] "Once the objecting party has made a prima facie showing, the burden shifts to the Debtor to prove his entitlement to the exemption."[12] "If, however, 'the trustee fails to carry the burden of proving by a preponderance of the evidence that the exemption should be disallowed, the exemption will stand.'"[13]

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[5] Trustee's Objection to Debtor's Exemption, Doc. No. 18.
[6] The official Spanish name of the Retirement System is the "Systema de Retiro para Maestros". *See* Debtor's Exhibits 1 & 2.
[7] Debtor's Exhibit 1.
[8] Doc. No. 1.
[9] *In re Dowell*, 456 B.R. 578, 580 (Bankr. M.D. Fla. 2011) (citing *United States v. Sec. Indus. Bank*, 459 U.S. 70, 83, 103 S. Ct. 407, 415, 74 L. Ed. 2d 235 (1982) (Blackmun, J., concurring)).
[10] *See* 11 U.S.C. § 522(l).
[11] Fed. R. Bankr. P. 4003(c); *In re Pettit*, 224 B.R. 834, 840 (Bankr. M.D. Fla. 1998).
[12] *In re Rightmyer*, 156 B.R. 690, 692 (Bankr. M.D. Fla. 1993).
[13] *In re Waller*, 424 B.R. 306, 311 (Bankr. S.D. Ohio) (quoting *aff'd*, 464 B.R. 62 (B.A.P. 6th Cir. 2010).

Section 522 contains its own exemption scheme, but the Code permits states to opt out of the federal exemptions and require debtors in their states to use the state exemptions.[14] Florida elected to opt out of the federal exemptions and has established its own set of exemptions applicable to debtors, like the Debtors here, domiciled in Florida.[15] Debtors claim the Chase IRA is exempt under § 222.21(2) of the Florida Statutes.

Section 222.21(2) exempts a debtor's funds from creditors' claims if the funds are "held in in a fund or account that is maintained as an IRA pursuant to a plan or governing instrument that is exempt from taxation under certain provisions of the Internal Revenue Code."[16] Section 222.21(2) specifically mentions funds exempt from taxation under § 408 of the IRC. Section 408 of the IRC in turn exempts from taxation IRAs that meet a set of six requirements.

The Trustee argues the Debtors' Chase IRA does not qualify as exempt from taxation under § 408 of the IRC because it was not funded directly by a rollover contribution from the Debtor's Retirement Account, but rather passed briefly through her Chase savings account. Section 408(a)(1) states acceptable methods for funding an IRA:

> Except in the case of a rollover contribution described in subsection (d)(3) in section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).[17]

The Trustee, with little elaboration, contends that the Chase IRA was not funded by a rollover from a qualified trust under § 402(c) of the IRC. Therefore, he argues, the Chase IRA does not meet § 408(a)(1)'s requirements.

[14] 11 U.S.C. § 522(b)(2), (3). The domicile test laid out in § 522(c)(3)(A) dictates which state's exemptions apply. Here, Florida exemptions apply.
[15] Fla. Stat. § 222.20(2) (2014).
[16] *Robertson v. Deeb*, 16 So. 3d 936, 937–38 (Fla. 2d DCA 2009).
[17] 26 U.S.C. § 408(a)(1).

The Trustee however has failed to establish why the Debtor's cash funding of the Chase IRA is not a properly funded exempt retirement account. In the Trustee's own words, "§ 408 offers several methods for establishing an IRA or funding an existing IRA."[18] A rollover from § 402(c) is only one of many different ways to fund an IRA. For example, § 408(a)(1) plainly states that "*cash contributions*" are acceptable with some limitations.[19] So, even if the Debtor's initial deposit of the Funds did not comply with § 402(c)'s rollover requirements, the Funds could constitute a cash contribution allowed under § 408(a)(1). The Trustee does not mention or negate this possibility.

The Trustee also does not articulate any credible argument showing *why* the Debtor's funding of the Chase IRA did come from a "qualified trust" or constitute a proper rollover. Section 403(c) defines an "eligible rollover distribution" in part as "any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust."[20] The Trustee notably does not argue that the Debtor's Puerto Rican Retirement Account fails to meet the requirements of a qualified trust. The Trustee only argues that the funds did not come directly from a qualified trust because, as he alleges, the Debtor received the funds over seven years ago, in 2007, and commingled them with other funds in her savings account prior to funding the Chase IRA. Debtor paints an entirely different picture, claiming she only recently received the Funds from her Retirement Account in June 2014.[21]

The Trustee has not produced any evidence to support his contention that the Debtor received the distribution from the Retirement Account in 2007, other than a letter from the

[18] Doc. No. 23 at 3.
[19] Whether Ms. Vargas-Martin incurred tax liability for the disbursement from her Retirement Account is an entirely different issue unrelated to whether the IRA, as of the petition date, was compliant with § 408(a) of the IRC.
[20] 26 U.S.C. § 403(c)(1); *In re Hickox*, 215 B.R. 257, 259 (Bankr. M.D. Fla. 1997). "Qualified trust" is defined by 26 U.S.C. § 401(a). *See* 26 U.S.C. § 402(c)(8)(A). The Trustee did not show why the Retirement System fails to meet the requirements.
[21] Doc. No. 24 ¶ 10.

Retirement System dated June 1, 2007, that provides the balance of the Debtor's account on that date.[22] Debtor, on the other hand provided a Puerto Rican tax return form that confirms she received the Funds in 2014. The form, titled "Informative Return – Retirement Plans and Annuities,"[23] shows the Debtor received a distribution of $9,741.79—the exact amount she placed in the Chase IRA—in 2014. The Informative Return, at the very least, shifts the preponderance of evidence in the Debtor's favor to support her contention that she received the Funds from her Retirement Account in June 2014.[24]

What is more, the commingling of the Debtor's Funds from her Retirement Account with other monies does not *per se* defeat her claim of exemption. Indeed, this view finds support from a case cited by the Trustee, *In re Hickox*.[25] The Trustee mentions *In re Hickox* only to follow with a conclusory statement that the facts differ from the present case. To the contrary, a closer examination of *In re Hickox* reveals a striking similarity. The debtor in *Hickox* received a disbursement from her 401(k) savings plan, deposited the funds into her checking account along with other monies, transferred the funds to her mother, and then, after receiving the funds back from her mother, placed only a portion of the funds received from the 401(k) into an IRA.[26] The court overruled the Trustee's objection to the debtor's exemption, holding that "[d]espite the

[22] Debtor's Exhibit 1.
[23] Debtor's Exhibit 2. The top left of the form states "Rev. 09.14". Although no testimony was introduced in evidence, in her brief, the Debtor claims she received the return in 2015.
[24] No testimony was elicited by either party. The only evidence as to the time frame of the distribution are these two documents, Debtor's Exhibits 1 and 2. The precise timing of the distribution from the Debtor's Retirement Account could be important. To satisfy § 402(c), an eligible rollover distribution must transferred into the subsequent eligible retirement plan, here the Chase IRA, within 60 days of its initial receipt. 26 U.S.C. § 402(c)(3). The Trustee did not discuss this requirement given the transfer to the Chase IRA on August 5, 2014. And, in any event, the Debtor's June 2014 receipt date tends to support compliance with this provision. The Trustee simply failed to prove an improper rollover.
[25] 215 B.R. 257 (Bankr. M.D. Fla. 1997).
[26] *Id.* at 258.

commingling, the 401(k) funds can be traced and separated from non-exempt monies" and "the monies used to open the IRA are traceable to the 401(k) funds."[27]

The Court finds *Hickox* persuasive and indistinguishable from the present case. Debtor received a distribution from her Retirement Account, an undisputed "qualified trust." She deposited the Funds into her savings account because, as she claims, the Puerto Rican system would not allow her directly to roll over the funds directly into an IRA. The record is unclear on exactly when she received the distribution, but as discussed above, the Court finds the evidence supports the Debtor's claimed receipt date of June 2014. Debtor then transferred the exact sum she received from her Retirement Account into the Chase IRA. The Funds are traceable to a "qualified trust"—the Retirement Account—and the Debtor's subsequent commingling does not affect her claim of exemption.

The Trustee lastly argues that the Debtor's failure to initially list the Chase IRA on her schedules supports sustaining his objection. The Trustee cites *In re Stevenson* for support.[28] There, the "documents initially filed by the Debtor were replete with material omissions and misstatements," which caused the court to "take statements by the Debtor with a proverbial grain of salt." [29] The facts in *Stevenson* were far more egregious than this case; here, the Debtor inadvertently failed to list only the Chase IRA on her Schedules, but quickly disclosed the asset at her first meeting with the Trustee. The court in *Stevenson* moreover did not view the debtor's failure to initially list the assets as dispositive of the trustee's objection, but rather took the abundant material omissions to impugn the debtor's credibility.

Significantly, the Trustee has not identified any provision of the Bankruptcy Code which allows the Court to disallow the Debtor's claim of exemption based solely on her initial omission

[27] *Id.* at 260.
[28] 374 B.R. 891, 895 (Bankr. M.D. Fla. 2007).
[29] *Id.* at 895.

of the Chase IRA from her schedules. Until a few years ago, an Eleventh Circuit decision, *Matter of Doan*,[30] allowed bankruptcy courts to deny a debtor's claim of an exemption if an asset is not initially disclosed based on a "showing of the debtor's bad faith or of prejudice to creditors."[31]

However, the continuing validity of that Eleventh Circuit ruling is dubious at best after the Supreme Court's decision in *Law v. Siegel*.[32] In *Law v. Siegel*, the Supreme Court, specifically mentioning *Doan*, struck down any notion of a bankruptcy court's "general, equitable power . . . to deny exemptions based on a debtor's bad-faith conduct," holding that "*federal law* provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code."[33] The Trustee has not identified any such Code provision or state law doctrine to support denial of the Debtor's exemption due to bad faith. The Court moreover would conclude that the Debtor has not acted evasively, in bad faith or to the prejudice of creditors. She simply forgot to schedule an exempt retirement account and quickly divulged its existence at her first meeting with the Trustee.

The Trustee failed to meet his burden to prove that the Debtor is not entitled to her claimed exemption. The Debtor received the Funds from her qualified Puerto Rican Retirement Account in June 2014, and then deposited those funds into the Chase IRA. The Funds are traceable to a "qualified trust," the Chase IRA complies with § 408(a)(1) of the IRC, and the Debtors satisfy the exemption requirements of § 222.21(2) of the Florida Statutes. The Trustee's Objection is overruled.[34]

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[30] 672 F.2d 831 (11th Cir. 1982).
[31] *In re Green*, 268 B.R. 628, 655 (Bankr. M.D. Fla. 2001) (quoting *Matter of Doan*, 672 F.2d 831, 833 (11th Cir. 1982)).
[32] *See Law v. Siegel*, 571 U.S. ___, 134 S. Ct. 1188, 1196–97, 188 L. Ed. 2d 146 (2014); *In re Saldana*, 531 B.R. 141, 161 (Bankr. N.D. Tex. 2015) (recognizing *Law v. Siegel*'s implied abrogation of *Matter of Doan*) *aff'd in part, remanded on other grounds*, No. 3:15-CV-0362-G, 2015 WL 4429419 (N.D. Tex. July 20, 2015).
[33] *Law v. Siegel*, 134 S. Ct. at 1197.
[34] Doc. No. 18.

Luis F. Vega Alicea, Attorney for Debtors, is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of this order.