


ORDERED.

Dated: August 13, 2018


Cynthia C. Jackson
United States Bankruptcy Judge

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

GIULIO RUOCCO and
BETTY RUOCCO,

Case No. 6:17-bk-07294-CCJ
Chapter 7

Debtors.

AMENDED ORDER SUSTAINING TRUSTEE'S
OBJECTION TO EXEMPTION CLAIMED BY DEBTORS

This case came before the Court on the Trustee's Objection to Exemption Claimed by Debtors (Doc. No. 16; the "Objection") and the Response by the Debtors to the Objection (Doc. No. 18; the "Response"). Having considered the pleadings and argument of counsel, the Court sustains the Objection for the reasons stated below.

Background

The facts are not in dispute. On November 20, 2017, the Debtors filed for relief under Chapter 7 of the Bankruptcy Code. The Debtors' bankruptcy schedules list a 2017 Tax Refund with an "unknown" value (the "Tax Refund"), and claim that "\$0.00" of the Tax Refund is exempt as tenants by the entirety ("TBE") under Section 522(b)(3)(B) of the Bankruptcy Code.¹ The Debtors' bankruptcy schedules also list approximately \$10,500 of joint unsecured debt.² The

Trustee concluded the meeting of creditors and did not object to the Debtors' claim of exemption for the Tax Refund within 30 days, as required by Rule 4003(b)(1). The Debtors subsequently amended their bankruptcy schedules (the "Amendment").³ The Amendment changes the value of the Tax Refund to \$3,613.00, and claims that \$3,379.82 of the Tax Refund is exempt as TBE.⁴ Within 30 days of the Debtors filing the Amendment, the Trustee filed this Objection.

By the Objection, the Trustee argues that the Debtors may not claim the Tax Refund as exempt as TBE due to the existence of joint unsecured debt in excess of the amount of the Tax Refund. According to the Trustee's calculations, the pre-petition portion of the Tax Refund that is property of the estate totals \$3,007.86. The Debtors ask the Court to overrule the Objection as untimely. In addition, the Debtors contend that the Objection should be overruled because the Debtors are entitled to the exemption notwithstanding the existence of joint debt, citing as support, *In re Smith*.⁵

Discussion

As to the timeliness of the Objection, Rule 4003(b)(1) of the Federal Rules of Bankruptcy Procedure provides that, "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under §341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later."⁶

When considering objections to exemptions based on amended bankruptcy schedules, courts have applied two different interpretations of Rule 4003(b)(1).⁷ Under a restrictive interpretation, filing an amended schedule does not reopen the time to object to *all* exemptions--the "objection may only go to those exemptions affected by the amendment."⁸ Alternatively, the less restrictive interpretation allows an interested party to "object to *any* claimed exemption within 30 days of an amendment to the schedules."⁹

Here, the Trustee filed the Objection timely. The Trustee filed the Objection within 30 days of the Amendment. By the Amendment, the Debtors affected the TBE exemption for the Tax Refund by changing the TBE *exemption value* from \$0 to \$3,379.82.¹⁰ Accordingly, the Objection is timely even under the restrictive interpretation of Rule 4003(b)(1).

With respect to the validity of the Objection, a party objecting to a debtor's claim of exemption has the burden to prove that the exemption is not properly claimed.¹¹ Under Section 522 of the Bankruptcy Code, a debtor may exempt from property of the estate "any interest in property which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety... to the extent that such interest as a tenant by the entirety . . . is exempt from process under applicable nonbankruptcy law."¹² Under Florida law, property held as TBE belongs to neither spouse individually.¹³ As a result, TBE property "is exempt from process to satisfy debts owed to individual creditors of either spouse."¹⁴ TBE property, however, "is not exempt from process to satisfy *joint debt* of both spouses."¹⁵ Here, the Debtors bankruptcy schedules list joint unsecured debt exceeding \$10,500. As a result, the Tax Refund (\$3,007.86) is not exempt from process to satisfy the Debtors' joint debt.

The Debtors assert that despite the existence of joint debt, they are entitled to the exemption under the authority of *In re Smith*. *In re Smith* provides no such authority. Indeed in that case, Judge May concludes to the contrary, stating that TBE "is not exempt from process to satisfy joint debt of both spouses."¹⁶ Accordingly, for the reasons stated above it is

ORDERED:

1. The Objection (Doc. No. 16) is sustained.
2. The Tax Refund is not exempt as tenants by the entirety to the extent of the Debtors' joint unsecured debts.

3. The non-exempt portion of the Tax Refund (\$3,007.86) shall be disbursed to the Debtors' joint creditors only.

Trustee, Marie E. Henkel 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.

¹ See Doc. No. 1, pg.14, pg.18.

² See Doc. No. 1, pgs. 20-49. The Debtors' unsecured debts total over \$100,000.

³ See Doc. No. 14.

⁴ See Doc. No. 14.

⁵ *In re Smith*, 2016 WL 675806 (Bankr. M.D. Fla. Feb. 18, 2016)(May, J.)

⁶ Fed. R. Bankr. P. 4003.

⁷ *In re Woerner*, 483 B.R. 106, 109 (Bankr. W.D. Tex. 2012).

⁸ *In re Kazi*, 985 F.2d 318, 323 (7th Cir. 1993); *See also In re Grueneich*, 400 B.R. 680,684 (8th B.A.P. 2009)("The filing of an amended schedule does not open the time to object to the original exemptions."); *In re Bernard*, 40 F.3d 1028, 1032 (9th Cir. 1994)(creditors' objections to exemptions untimely because the objections didn't pertain to exemptions added by the amendment); *In re Walker*, 505 B.R. 217,222 (if an amended schedule results in a change of an exemption or another exemption is added, a creditor has 30 days to object to the new exemption claim).

⁹ *Woerner*, 483 B.R. at 109 (emphasis added); *See also In re Allen*, 454 B.R. 894, 896 (Bankr. S.D. Fla. 2011)(an interested party may object to any claimed exemption even if the challenged exemption is not the subject of the amendment); *In re Ronk*, 2006 WL 2385240 (Bankr. N.D. Tx. 2006) (plain reading of Rule 4003(b) allows 30 days to object to any exemptions upon filing of amended schedules).

¹⁰ *See In re Larson*, 2013 WL 4525214 (Bankr. D. N.D. 2013)(debtor's amendment to increase value of exemption reopened the deadline to object to the exemption).

¹¹ See Fed. R. Bankr. P. 4003(c).

¹² 11 U.S.C. § 522(b)(3)(B).

¹³ *See In re Smith*, 2016 WL 675806 (Bankr. M.D. Fla. Feb. 18, 2016)(May, J.); *See also In re Daniels*, 309 B.R. 54, 56 (Bankr. M.D. Fla. 2004)(Jennemann, J.)

¹⁴ *Smith* at *1; *See also Daniels*, 309 B.R. at 56.

¹⁵ *Id.*

¹⁶ *Smith* at *1