

ORDERED.

Dated: March 25, 2019



Catherine Peek McEwen
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re: Case No. 8:18-bk-06760-CPM
Lois Mae Wright, Chapter 13
Debtor.

**SUPPLEMENTAL ORDER GRANTING MOTION TO VACATE
ORDER ON TRUSTEE'S APPLICATION TO RETAIN REAL ESTATE SERVICES**

THIS CASE came on for hearing on October 18, 2018, for consideration of the Debtor's Motion to Vacate Court's Order on Trustee's Application to Retain Real Estate Services (the "Motion") (Doc. 27). The Debtor objected to the employment application because the Debtor had listed as exempt of her Schedule C the real property (the "Property") that the professionals the Trustee sought to retain were to sell. The Trustee took the position that because the Debtor listed the Property on Schedule C as having a "Current value of the portion you own" ("Current Value") of \$75,000 and an "Amount of the exemption you claim" ("Exempt Amount") of \$5,639, the Trustee could sell the Property and distribute for the benefit of creditors the sale proceeds less the Exempt Amount.¹

¹ The Debtor's Schedule D lists a debt of \$69,361 owed to Wells Fargo and secured by the Debtor's residence. Thus, the amount reflected on her Schedule C as the Exempt Amount (\$5,639) appears to represent the Debtor's equity in the property (i.e., \$75,000 less \$69,361).

Instructions accompanying Schedule C: The Property You Claim as Exempt (Official Form 106(C)) explain that although debtors must specify the amount of the exemption claimed, “in some circumstances, the amount of the exemption claimed might be indicated as 100% of fair market value.” The Instructions continue, “For example, a debtor a might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.” Here, however, the Debtor’s authority for the exemption is Article X, Section 4 of the Florida Constitution, pursuant to which the Property qualifies for exemption based solely on its size (measured by acreage), making monetary values irrelevant.² Thus, even though the Debtor erroneously listed on her Schedule C a Current Value and an Exempt Amount,³ such inclusion did not defeat her right to claim the entire value of her homestead as exempt (subject only to the applicable size limitations.)⁴ Consequently, on October 29, 2018, the Court entered an order (Doc. 36) permitting the Debtor to amend her Schedule C to omit the stated values.

At the conclusion of the October 18th hearing, the Court provided the Trustee an opportunity to file an application for quantum meruit fees incurred in connection with her efforts to market the Debtor’s homestead. The Court also gave the parties 30 days to submit case law on the reasonableness of the Trustee’s having incurred such fees in reliance upon the

² Article X, Section 4 of the Florida Constitution states: (a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, . . . the following property owned by a natural person: (1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner’s consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner’s family;

³ A better practice would be to insert “N/A” (for not applicable) for both value columns on Schedule C when claiming a homestead exemption under the Florida Constitution. Alternatively, the debtor might insert “100%” (for 100 percent of the property as allowed under the Florida Constitution).

⁴ In the Debtor’s supplemental filing of authority (Doc. 43), the Debtor cites, among other cases, *In re Stoney*, 445 B.R. 543, 550 (E.D. Va. 2011). There, the court held that with respect to exemptions that were unlimited by monetary value under applicable Virginia law (e.g., a family bible and wedding and engagement rings), the debtor’s inclusion of dollar values for such items did not defeat the debtor’s entitlement to exempt these items in their entirety.

Debtor's counsel having erroneously inserted values for the property on the Debtor's Schedule C. As of the date of entry of this order, the Trustee has filed neither a quantum meruit fee application nor any case law in support thereof. Based on the nature of Florida's homestead exemption and the Trustee's failure to show that she reasonably relied upon the Debtor's Schedule C to conclude that the Trustee could sell the Debtor's homestead property, the Court finds that an award of quantum meruit fees is not warranted. Accordingly, it is

ORDERED that the Chapter 7 Trustee is not entitled to an award of quantum meruit fees incurred in connection with efforts to sell the Debtor's homestead.

Service by CM-ECF only.