

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	
)	Case No. 6:15-bk-00535-KSJ
CHERISE A. BARR,)	Chapter 7
)	
)	
Debtor.)	

ORDER GRANTING DEBTOR’S EMERGENCY MOTION TO COMPEL TRUSTEE TO RELEASE TO DEBTOR EXEMPT EARNINGS (DOC. NO. 12) AND OVERRULING TRUSTEE’S OBJECTION TO DEBTOR’S CLAIM OF EXEMPTIONS (DOC. NO. 19)

This case came on for consideration on the Debtor’s Emergency Motion to Compel Trustee to release to Debtor Exempt Earnings (Doc. No. 12) (the “Motion to Compel”), along with the Trustee’s Objection to Debtor’s Claim of Exemptions (Doc. No. 19) (the “Objection to Exemptions”). The Debtor claims an exemption under Section 222.11(2)(c) of the Florida Statutes for funds she contends represent “earnings” she received as an employee of Reminder Milly, LLC (“RM”). The Chapter 7 trustee objects, arguing the Debtor cannot claim the exemption under Section 222.11(2)(c) of the Florida Statutes because the Debtor is not an employee of RM, but an independent contractor.¹ Because the Court concludes the Debtor was an employee of RM

¹ This case was heard on February 20, 2015, on the Debtor’s Emergency Motion to Compel Trustee to Release to Debtor exempt Earnings (Doc. No. 12) and the Trustee’s Objection to Exemptions (Doc. No. 19) at which the Honorable Arthur B. Briskman presided and took the matter under advisement permitting the Parties to submit any additional pleadings in support of their respective positions on or before February 24, 2015. The Debtor and the Trustee each submitted a memorandum of law in support of their respective positions (Doc. Nos. 23 and 20, respectively).

and not an independent contractor, the Trustee's objection is due to be overruled and the Debtor's motion is due to be granted.

Findings of Fact

The Debtor filed this chapter 7 case on January 2, 2015 listing on Schedule "B" a checking account with Wells Fargo reflecting a balance of \$14,279.12 (the "Funds").² The Debtor claimed an exemption of 75% of the Funds in her Schedule "C" pursuant to Section 222.11(2)(c) of the Florida Statutes.³ Wells Fargo issued the Funds to the Trustee upon receiving notice of the filing of this case. The Funds represent commissions earned from an oral agreement with RM whereby the Debtor would obtain a cash infusion from an investor for RM in exchange for 5% of the investment made (the "Agreement").⁴

The Debtor had previously been employed by The Imagination House ("TIH") as the Director of New Business and Sales.⁵ The principals of TIH are the same and current principals of RM. Since Debtor's employment ended at TIH, the Debtor has had medical problems making her unable to work since 2013, receiving worker's compensation as her only income through 2014 until the Agreement with RM that same year. The Debtor successfully secured an investment of \$500,000.00 in RM and, pursuant to Agreement, the Debtor earned a \$25,000.00 commission.⁶ The \$25,000.00 income was reported using a Form 1099.⁷

²The Parties agree the amount at issue totals \$10,568.33 (Doc. No. 23 at 3). The Debtor had also claimed an additional \$3,569.78 exempt pursuant to Fla. Stat. § 222.24(4) which the Trustee had not objected to and has released to the Debtor for her use (Doc. No. 23 at 2-3).

³ Bankruptcy Code Section 522(b) allows states to opt out of the exemption scheme provided by the the Code. Florida has opted out through provisions of the Florida Constitution and Florida Statute Sections 222.201–222.30.

⁴ Doc. No. 23 at ¶¶ 2-4.

⁵ Doc. No. 23 at ¶ 4.

⁶ The Debtor's Statement of Financial Affairs indicates the Debtor received the commission in two payments: \$12,500.00 in 2014 and the remaining \$12,500.00 in 2015 (Doc. No. 1 at 29).

⁷ Form 1099 is the IRS tax form a company files for nonemployees. *Kane Furniture Corp. v. Miranda*, 506 So. 2d 1061, 1066 (Fla. Dist. Ct. App. 1987).

Contentions of the Parties

Although the Debtor identifies her income for 2014 and 2015 to be from work as an “independent contractor,”⁸ the Debtor now asserts she was the functional equivalent of an employee of RM who received a commission for her work. In support of this position, the Debtor represents she provided personal marketing and sales services related to obtaining outside investment at the direction of RM, utilizing RM’s resources, and with RM paying all expenses.

Under the terms of the Agreement the Debtor identified a potential investor, communicated regularly with the potential investor, convinced the investor to vet RM’s product with his staff, attended meetings with the investor and RM, and assisted in closing the investment in RM. The Debtor represents her efforts were done using materials prepared by RM and that RM paid expenses related to the Debtor’s work including paying for a dinner between the Debtor, the investor, and RM as well as for a Christmas gift to the investor on behalf of RM and the Debtor.⁹

The Trustee does not dispute these claims by the Debtor, but asserts the terms of the Debtor’s duties and compensation make clear that the Debtor worked as an independent contractor for RM.

Conclusions of Law

Section 222.11(2)(c) of the Florida Statutes provides “[d]isposable earnings of a person other than a head of family may not be attached or garnished in excess of the amount allowed under the Consumer Credit Protection Act, 15 U.S.C. s. 1673.” “Earnings” is defined as “compensation paid or payable, in money of a sum certain, for personal services or labor whether

⁸ Schedule I and Statement of Financial Affairs (Doc. No. 1 at 24 and 29).

⁹ Doc. No. 23 at ¶¶ 5-9.

denominated as wages, salary, commission, or bonus.”¹⁰ It is well settled the exemptions provide in Section 222.11 of the Florida Statutes do not extend to earnings of an independent contractor.¹¹ However, there is “no hard and fast rule...to control the determination of the question as to whether one occupies the status of an employee or that of an independent contractor.”¹² Each case must stand on its own facts.¹³ The inquiry is not determined by whether the debtor was labeled an employee or an independent contractor solely¹⁴ and although there is no absolute rule for determining whether a debtor received compensation as an independent contractor or an employee, the typical indicia that a debtor was an independent contractor include:

the existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price, the independent nature of his business or his distinct calling, his employment of assistants with the right to supervise their activities, his obligation to furnish necessary tools and supplies, his right to control the progress of the work except as to the final results, the time for which the workman is employed, the method of payment, whether by time or by job, and whether the work is part of the regular business of the employer.¹⁵

Applying these principles to the facts of this case, the Debtor was an employee of RM and the Funds are subject to exemption. Although the Debtor is labeled an independent contractor and her compensation was limited to the scope and success of a specific charge, her activities were

¹⁰ Fla. Stat. 222.11(1)(a) (2015).

¹¹ *In re Schlien*, 8 F. 3d 745 (11th Cir. 1993).

¹² *Magarian v. Southern Fruit Distributors, et al.*, 146 Fla. 773, 778 (Fla. 1941).

¹³ *Id.*

¹⁴ *In re Pettit*, 224 B.R. 834, 839 (Bankr. M.D. Fla. 1998) (citing *In re Zamora*, 187 B.R. 783 (Bankr.M.D.Fla.1995)).

¹⁵ *In re Moriarty*, 27 B.R. 73, 74 (Bankr. M.D. Fla. 1983) (citing *Magarian v. Southern Fruit Distributors, et al.*, 146 Fla. 773 (Fla. 1941)). See also *Cantor v. Cochran*, 184 So.2d 173 (Fla.1966) (adopting the Restatement (Second) of Agency § 220 (1958) for determining whether one is an employee or independent contractor: the extent of control which, by the agreement, the master may exercise over the details of the work; whether or not the one employed is engaged in a distinct occupation or business; the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; the skill required in the particular occupation; whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; the length of time for which the person is employed; the method of payment, whether by the time or by the job; whether or not the work is a part of the regular business of the employer; whether or not the parties believe they are creating the relationship of master and servant; and whether the principal is or is not in business).

essentially a job and not in the nature of running a business. The Debtor previously worked for the principals of RM as an employee prior to becoming ill and, when her health improved, continued work for the same principals in a position with similar responsibilities and tasks as her previous employment. The Debtor never owned her own business to provide her personal skills and expertise to other individuals or entities. The Debtor's duties and compensation were dictated by the terms of an arm's length employment agreement. RM, not the Debtor, provided materials and paid expenses to enable the Debtor to perform her duties and RM oversaw the Debtor's progress.

Circumstances where other courts have found a debtor to be an independent contractor rather than an employee include fact patterns in which a debtor operated his own insurance brokerage firm earning commissions on the renewals of life insurance;¹⁶ a debtor worked as a real estate agent earning commission on sales, but responsible for his own expenses, travel, and all other overhead;¹⁷ a debtor with a law practice earning contingency fees.¹⁸ The Debtor and her relationship with RM are distinguishable from the facts of these other cases where the debtors were engaged in the running of a business and not solely in the performance of a job. The Debtor was an employee of RM, not an independent contractor.

Accordingly it is,

ORDERED, ADJUDGED and DECREED that the Trustee's Objection to Debtor's Claim of Exemptions (Doc. No. 19) is hereby **OVERRULED**; and it is further

¹⁶ *In re Lee*, 204 B.R. 78 (Bankr. M.D. Fla. 1996).

¹⁷ *In re Hanick*, 164 B.R. 165 (Bankr. M.D. Fla. 1994).

¹⁸ *In re Tobkin*, No. 11-34669-BKC-LMI, 2013 WL 1292679 (Bankr. S.D. Fla. Mar. 26, 2013).

ORDERED, ADJUDGED and DECREED that the amount of \$10,568.33 is exempt from claims of creditors under Section 222.11(2)(c) of the Florida Statutes; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Emergency Motion to Compel Trustee to release to Debtor Exempt Earnings (Doc. No. 12) is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that the Trustee shall turn over to the Debtor the balance of the Funds in the agreed amount of \$10,568.33.

Dated this 19th day of March, 2015.

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