

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

JANEMARIE BURZEE,

Case No. 6:04-bk-06902-ABB

Chapter 7

Debtor.

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ORDER

This matter came before the Court on the Objection to Debtor's Amendment of Claim of Exemption (Doc. No. 127) ("Objection") filed by Park Avenue Insurance Agency, Inc. ("Park Avenue") objecting to certain exemptions claimed by Janemarie Burzee, the Debtor herein ("Debtor"). A final evidentiary hearing was held on December 17, 2007 at which the Debtor, counsel for the Debtor, a representative of Park Avenue, and Park Avenue's counsel appeared. The parties were granted leave to file post-hearing briefs. They rely on evidence presented at the evidentiary hearing of the adversary proceeding *Park Avenue Insurance Agency, Inc. v. Janemarie Burzee*, Adv. Pro. No. 6:05-ap-00323-ABB.

The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

The Debtor filed an individual Chapter 13 case on June 15, 2004 ("Petition Date"), which she voluntarily converted to Chapter 7 on September 13, 2005. She is not married. Some of her assets are jointly owned with Richard Zika ("Zika"), who is the father of the Debtor's minor daughter.

The Debtor filed her original Schedules on June 30, 2004 (Doc. No. 7). She listed her homestead as the sole asset on Schedule A and listed as assets in Schedule B:

- (i) “Central Florida Educators Credit Union 1200 Weber Street, Orlando, FL 32801 Savings and Checking Account #34302” owned jointly with Zika valued at \$10.00;
- (ii) jointly owned furnishings valued at \$965.00;
- (iii) jointly owned books, pictures, clothing valued at \$175.00;
- (iv) jointly owned “watch, bracelets, earrings and necklace” valued at \$500.00; and
- (v) a jointly owned 1996 Mercedes C280 valued at \$6,000.00.

Each of these assets, except the car, was claimed as exempt in Schedule C.¹

The Debtor, shortly after engaging new counsel, filed Amended Schedules B and C on October 18, 2007 (Doc. No. 121). Schedule B was amended to include:

- (i) “Navy Federal Credit Union #2925197” with a value of \$25.15;
- (ii) “USAA Federal Credit Union (Savings Account) #085-1790-8” with a value of \$54.64;
- (iii) “USAA Federal Credit Union (Savings Account) #085-1789-4” with a value of \$79.33; and
- (iv) “USAA Investment Account/401K” with a value of \$6,857.73.

The Central Florida Educators Credit Union Account #34302 listing from original Schedule B was amended to increase its value from \$10.00 to \$2,560.08, consisting of a “(Savings Account) #34302” of \$270.16 and a “(Checking Account) #343020” of \$2,289.92. New exemptions were claimed in Schedule C pursuant to Florida statutory law and the Florida Constitution:

¹ The Debtor turned the car over to the Trustee and it was sold at auction.

<i>Description</i>	<i>Exemption Basis</i>	<i>Value Claimed Exempt²</i>
“Navy Federal Credit Union #2925197”	Fla. Stat. § 222.11	\$25.15
“USAA Federal Credit Union (Savings Account)#085-1790-8”	Fla. Stat. §222.11	\$54.64
“USAA Federal Credit Union (Savings Account)#085-1789-4”	Fla. Stat. §222.11	\$79.33
“Central Florida Educators (Savings Account) #34302”	Fla. Const. Art. X, §4(a)(2)	\$270.16
“Central Florida Educators (Checking Account) #343020”	Fla. Stat. §222.11	\$2,289.92
“USAA Investment Account/401K”	Fla. Stat. §222.21(2)	\$6,857.73

Park Avenue asserted two objections in its written Objection:

- a. Park Avenue objects to the Debtor’s claim of exemption as to the 401K because there was a fraudulent conversion of non-exempt income into an exempt pension plan.
- b. Park Avenue objects to the Debtor’s claim of exemption for the bank accounts because the Debtor has exceeded her allowable personal property exemption.

Park Avenue went beyond these objections in its presentation at the hearing and its post-hearing brief. It did not amend its Objection. Park Avenue is the only party that objected to the Debtor’s exemptions.

Burdens

All of the Debtor’s legal and equitable interests in real and personal property become property of the bankruptcy estate on the Petition Date pursuant to 11 U.S.C. Section 541(a), except for those items specifically excluded by Sections 541(b), (c), and (d). Section 522(b) of the Bankruptcy Code allows a debtor to claim as exempt property interests constituting property of the estate. Debtors filing for bankruptcy protection in

² Schedule C contains a column titled “Current Market value without exemption,” but no market value information was provided.

Florida are entitled to the Florida state law exemptions due to Florida's opt-out of the federal exemption scheme.³

A debtor's claim of exemption is presumptively valid. 11 U.S.C. § 522(l) ("the property claimed is exempt"). Park Avenue carries the burden of establishing, by a preponderance of the evidence, the exemptions claimed by the Debtor are not properly claimed. Fed. R. Bankr. Pro. 4003(c) (2005); In re Petit, 224 B.R. 834, 840 (Bankr. M.D. Fla. 1998). The Debtor objected to the "expanded" objections contained in Park Avenue's post-hearing brief. Park Avenue is limited to the objections raised in its written Objections.

USAA Investment Account/401K

The Debtor's USAA account titled "USAA FED SVGS BNK CUST ROLLOVER OF JANE M BURZEE"⁴ with a balance of \$6,857.73 on the Petition Date constitutes a qualified 401K retirement plan, as defined by the Internal Revenue Code. The Debtor described the account as "USAA Investment Account/401K" and claimed it as exempt pursuant to Section 222.21(2), Florida Statutes. Park Avenue objected to the exemption asserting "there was a fraudulent conversion of non-exempt income into an exempt pension plan." Park Avenue provided no legal basis for this contention in the Objection.

The Debtor was not required to claim the 401K account as exempt because the account is excluded from property of the estate pursuant to 11 U.S.C. Section 541(c)(2) (2005); Patterson v. Shumate, 504 U.S. 753, 765-66 (1992). Park Avenue's objection is

³ FLA. STAT. § 222.20 (1998). 11 U.S.C. § 522(b) provides that states can prohibit their citizens from using the federal exemptions and limit them to applicable state law exemptions.

⁴ Plaintiff's Exh. No. 23 in AP No. 6:05-ap-00323-ABB.

due to be overruled based on the account, as an excluded asset, never became property of the estate. 11 U.S.C. § 541(c)(2).⁵

Park Avenue referenced Section 222.30, Florida Statutes, in its post-hearing brief. Section 222.30(2) sets forth a conversion by a debtor of an asset with “the intent to hinder, delay, or defraud the creditor” resulting in the asset becoming exempt constitutes a “fraudulent asset conversion.” Park Avenue failed to present evidence establishing the Debtor transferred funds into her 401K account with the intent to hinder, delay, or defraud Park Avenue. Park Avenue’s “supplemented” objection contained in its post-hearing brief is due to be overruled.

“Bank Accounts”

Park Avenue broadly objected to “the Debtor’s claim of exemption for the bank accounts” on the basis she “exceeded her allowable personal property exemption.” It failed to identify what bank accounts are at issue and any legal basis for its objection. Park Avenue, presumably, objects to the exemptions claimed in all of the Debtor’s remaining accounts:

(i) Navy Federal Credit Union #2925197 with a balance of \$25.15 on the Petition Date⁶;

(ii) USAA Federal Credit Union (Savings Account) #085-1790-8 with a balance of \$54.64⁷;

(iii) USAA Federal Credit Union (Savings Account) #085-1789-4 with a balance of \$79.33⁸;

⁵ Section 522(b) of the Bankruptcy Code provides: “Notwithstanding section 541 of this title, an individual may exempt *from property of the estate* the property listed in either (1) or, in the alternative, paragraph (2) of this subsection.” 11 U.S.C. § 522(b) (2005) (*emphasis added*).

⁶ Plaintiff’s Exh. No. 19.

⁷ Plaintiff’s Exh. No. 20.

⁸ Id.

(iv) Central Florida Educators (Savings Account) #34302 with a balance of \$270.16; and

(v) Central Florida Educators (Checking Account) #343020 with a balance of \$2,289.92.

Minimal dollar amounts are at issue given the low account balances and the Debtor's joint ownership of three of the accounts. The Debtor, on the Petition Date, owned a divisible one half interest in the \$25.15 Navy Federal Credit Union #2925197 account balance, a divisible one half interest in the \$270.16 Central Florida Educators (Savings Account) #34302 account balance, and \$2,289.92 in the Central Florida Educators (Checking Account) #343020 account balance.

The Debtor is the daughter's custodian and caregiver. The Debtor provides virtually all of the financial and nonfinancial support for the daughter. Zika provides support sporadically for the daughter. He claimed a dependency deduction for the daughter once for the tax year 2004. The Debtor is the head of household pursuant to Section 222.11(c), Florida Statutes.

Park Avenue raised no objection to the Debtor's Section 222.11, Florida Statutes, exemption claims in its Objection. The Debtor's claims of exemption made pursuant to Section 222.11 are presumptively valid and are due to be allowed.

Park Avenue's written objection apparently relates to the Central Florida Educators (Savings Account) #34302 with a balance of \$270.16, which the Debtor claimed as exempt pursuant to Fla. Const. art. X, § 4(a)(2). Article X, section 4(a)(2) of the Florida Constitution allows for the exemption of "personal property to the value of one thousand dollars." The Debtor properly exempted the full balance of \$270.16 pursuant to Article X, section 4(a)(2) of the Florida Constitution, leaving an unused and available personal property exemption of \$729.84.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that Park Avenue's objections to the Debtor's claims of exemption are **OVERRULED** and the Debtor's claims of exemption are hereby **ALLOWED** and such assets constitute exempt property of the estate, with the exception of the USAA Rollover Account/401K which is excluded from property of the estate pursuant to 11 U.S.C. Section 541(c)(2).

Dated this 4th day of February, 2008.

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