

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

IN RE:

CASE NO. 11-913-3F7

JOHN WILLIAM PACE,

Debtor.

**ORDER SUSTAINING TRUSTEE'S OBJECTION TO CLAIM OF
EXEMPTIONS REGARDING PRENEED FUNERAL CONTRACT**

This case came before the Court upon the Trustee's Objection to Claim of Exemptions Regarding Preneed Funeral Contract. Upon a review of the applicable statute, the Court finds it appropriate to sustain the objection.

Background

On February 15, 2011 Debtor filed a Chapter 7 bankruptcy petition. On his Schedule C Debtor claimed an SCI prepaid funeral contract as exempt under § 497.456 of the Florida Statutes. On April 15, 2011 the Trustee filed an Objection to Claim of Exemptions and Notice of Preliminary Hearing on June 1, 2011. At the June 1, 2011 hearing the Trustee informed the Court that the parties had agreed to brief the matter and sought to file simultaneous briefs on July 11, 2011. On June 6, 2011 the Court entered Order Directing Parties to Brief Legal Issues Regarding Trustee's Objection to Claim of Exemptions. The Order provided as follows: "[t]he trustee and debtor's attorney shall brief the issues presented by the pending Objection to Claim of Exemption. The parties shall file their briefs with the court on or before July 11, 2011. No responses to the briefs shall be allowed."

On July 11, 2011 the Trustee filed Brief Regarding Objection to Claim of Exemptions Regarding Preneed Funeral Contract. On July 22, 2011 Debtor filed

Memorandum in Response to Trustee's Brief Regarding Objection to Claim of Exemptions Regarding Preneed Funeral Contract. On July 27, 2011 the Court entered an order striking Debtor's Memorandum because it was not timely filed and was a response to the Trustee's brief rather than a simultaneous submission.

Discussion

A preneed funeral contract is an agreement or contract by which an individual pays in advance for goods or services he or she will receive upon death. Preneed Funeral and Burial Agreements, Sharon Hermanson, AARP Public Policy Institute, June 1, 1999. Any person who sells a preneed contract must obtain a preneed license. Fla. Stat. § 497.452. A preneed licensee must deposit an amount ranging from \$2.50 to \$10.00 for each preneed contract sold into the Preneed Funeral Contract Consumer Protection Trust Fund (the "Trust Fund"). Fla. Stat. § 497.456(2),(4). The purpose of the Trust Fund is to provide restitution to preneed contract purchasers and their estates due to a preneed licensee's failure to provide the benefits of a preneed contract or the failure to refund the appropriate principal amount by reason of the cancellation of the preneed contract. Fla. Stat. § 497.456(6). The amounts deposited into the Trust Fund are not proceeds from the sale of a preneed contract and the contract purchaser does not have any vested rights in the Trust Fund. Fla. Stat. § 497.456(5),(8). While the moneys deposited in the Trust Fund are not subject to "any liens, charges, judgments, garnishments, or other creditor's claims against ... any purchaser of a preneed contract", there is no provision in the Florida Statutes which makes the preneed contract itself, the contract between the debtor and the preneed licensee, and the rights flowing from that contract, exempt from the creditors of a purchaser of a preneed contract. Accordingly, it is

ORDERED:

1. Trustee's Objection to Claim of Exemptions Regarding Preneed Funeral Contract is sustained.

2. Debtor's SCI prepaid funeral contract is not exempt.

DATED this 29 day of September, 2011 in Jacksonville, Florida.

/s/ Jerry A. Funk

JERRY A. FUNK
United States Bankruptcy Judge

Copies Furnished To:

Debtor
Robert Wilcox, Attorney for Debtor
Gregory K. Crews, Chapter 7 Trustee