UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Bankruptcy Judge Joseph G. Rosania, Jr.

In re: MARK MCLAIN, SSN: xxx-xx-2530 Debtor.	Case No. 18-14463-JGR Chapter 7

ORDER SUSTAINING
TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION

The Court frequently finds itself in the difficult position of making rulings which drastically affect the lives of consumer debtors. While the Court sympathizes with the frail current financial position of the debtor, it must interpret the law accurately as written by the legislature.

Mark McLain filed his voluntary petition under Chapter 7 of the Bankruptcy Code on May 23, 2018. Jeffrey Hill was appointed to serve as the Chapter 7 Trustee for the case ("Trustee"). Among the assets disclosed by Mr. McLain was an ownership interest in a 1994 Allegro Bay motor home ("Allegro Bay") valued at $5,000.00. The Allegro Bay was claimed as exempt. After conducting an examination of Mr. McLain at his Section 341 Meeting of Creditors, the Trustee timely filed an objection to the claimed exemption. Mr. McLain responded to the objection, and the Court conducted an evidentiary hearing on the matter. Following the hearing, the Trustee and Mr. McLain submitted briefs.

The dispute involves the allowance or disallowance of a claimed exemption in property of the bankruptcy estate. The Court has subject matter jurisdiction over this contested matter under 28 U.S.C. § 1334, 28 U.S.C. § 157(a), and 28 U.S.C. §§ 157(b)(1), (b)(2)(A)(B) and (O).

Mr. McLain has difficulty hearing and nominal assets. In addition to the Allegro Bay, he lists various items of household goods valued at $500.00, wearing apparel valued at $200.00, jewelry and a watch valued at $100.00, and bank accounts totalling $8.00. Mr. McLain also lists an interest in a 2002 Dodge Ram 1500 truck valued at $2,000.00. An amended Schedule A/B reflects that Mr. McLain owns the Ram truck jointly with his daughter.

Through the bankruptcy, Mr. McLain discharged $2,363.00 of medical collection debts, $12,252.85 of other collection debts, obligations to On Tap Credit Union totalling $2,476.00, and a judgment in favor Ralston Park Apartments of approximately $3,618.00. The bankruptcy filing appears to have been precipitated by the collection activities of

Ralston Park Apartments. The bankruptcy filing stayed a writ of continuing garnishment and the ongoing attachment of Mr. McLain's wages.

Mr. McLain claimed the Ram truck and Allegro Bay as exempt motor vehicles under C.R.S. 13-54-102(1)(j)(I), (III). The statute provides:

> (I) Up to two motor vehicles or bicycles kept and used by any debtor in the aggregate value of seven thousand five hundred dollars;
> …
>
> (III) The exemption provided in this paragraph (j) does not apply to snowmobiles, all-terrain vehicles, golf carts, boats or other watercraft, travel trailers, tent trailers, or motor homes.

The Trustee's objection is premised on the argument that the Allegro Bay is a motor home and expressly excluded from the motor vehicle exemption.

At the evidentiary hearing, Mr. McLain conceded that the Allegro Bay is in fact a motor home under the applicable Colorado statutory definition. Mr. McLain testified that in addition to driving to and from work, he lives in the Allegro Bay at a mobile home park a few miles away from the WalMart where he is employed.

Mr. McLain explained that at the time the bankruptcy case was filed, the Ram truck was not registered because he could not afford the associated fees. Mr. McLain indicated that the truck is now registered and operational.

Mr. McLain argues that while the Allegro Bay is a motor home, it is also a motor vehicle and used as his primary means of transportation. As such, the Allegro should be exempt.

Prior to 2015, C.R.S. § 13-54-102(1)(j)(I) allowed for the exemption of "[o]ne or more motor vehicles or bicycles kept and used by any debtor in the aggregate value of five thousand dollars." In 2015 the Colorado Legislature enacted Senate Bill 15-283. Section 2 of the Bill increased the amount of the exemption under subpart (I) to seven thousand five hundred dollars. However, the Bill also limited the number of vehicles that could be claimed as exempt to no more than two, and a new subsection (III) was added: "The exemption provided in this paragraph (j) does not apply to snowmobiles, all-terrain vehicles, golf carts, boats or other watercraft, travel trailers, tent trailers, or motor homes." The *quid pro quo* was: in exchange for the higher monetary amount, the exemption was limited in number and excluded certain types of vehicles.

The Court is cognizant that "the Colorado Constitution and an unbroken line of Colorado cases instruct that Colorado exemptions are to be construed liberally in favor of Colorado residents claiming such exemptions." *In re Romero*, 533 B.R. 807, 811 (Bankr. D. Colo. 2015) *aff'd Romero v. Tyson (In re Romero)* 579 B.R. 551 (D. Colo. 2016) (Internal citations omitted). However, here, the legislature clearly and unambiguously excluded motor homes from the motor vehicle exemption. The Court must defer to the

policy decisions of the state legislature and cannot interlineate exceptions to the express language of the statute. *In re Galvin*, 583 B.R. 262, 268 (Bankr. D. Colo. 2018). The Allegro Bay does not qualify for the motor vehicle exemption.

Alternatively, Mr. McLain argues the Allegro Bay also qualifies for the "tools of trade" exemption under C.R.C. § 13-54-102(1)(l) because he uses it to get to and from work. This argument is problematic. Mr. McLain did not claim the tools of trade exemption with respect to the Allegro Bay on his Schedule C filed with the Court. Moreover, "[t]he mere use of a vehicle for transportation to and from work is not 'use for carrying on a gainful occupation,' as intended by the Colorado legislature in the exemption of section 13-54-102(1)(i)." *In re Black*, 280 B.R. 258, 260 (Bankr. D. Colo. 2002).

The facts establish that the Allegro Bay is used by Mr. McLain for transportation. The facts establish that the Allegro Bay is important to Mr. McLain because he utilizes it as his residence. It is equally clear that the Allegro Bay does not qualify as an exempt asset under the applicable Colorado statutes. The bargain of Chapter 7 is, in exchange for the fresh start afforded by the discharge of debts, non-exempt property (or the value of the property) must be turned over to the Trustee to pay creditors.

Accordingly, it is

ORDERED the Trustee's Objection to Debtor's Claim of Exemption (Docket #19) is SUSTAINED. The Debtor's Response (Docket #21) is OVERRULED.

Dated this 14th day of November, 2018.

BY THE COURT:

Joseph G. Rosania, Jr.
United States Bankruptcy Judge