

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**IN RE: JANETTE MARIE COCKRUM, Debtor**

**No. 5:18-bk-73275  
Chapter 11**

**ORDER TO AMEND SCHEDULE C**

Before the Court is the *Objection to Exemptions or, in the alternative, to Compel Debtor to Amend Exemption Election* [objection and motion] filed by Neil Deininger & Company [NDC] on January 14, 2020. The Court held a telephonic hearing on NDC's objection and motion on March 18, 2020 [March 18 hearing]. David G. Nixon appeared on behalf of the debtor. Stephen L. Gershner appeared on behalf of NDC. At the conclusion of the hearing, the Court took the matter under advisement. For the reasons stated below, the Court denies NDC's objection to exemptions but grants NDC's motion to compel the debtor to amend her exemption election on Schedule C.

The debtor filed her chapter 11 petition and schedules on December 11, 2018. On Schedule C—The Property You Claim as Exempt, the debtor elected the Arkansas state exemptions rather than the federal exemptions. On the first page of Schedule C, the debtor listed 1202 NE Bayleaf Ct, Bentonville AR, 72712-8442 [the property]. She valued the property at \$240,975.00 and claimed an exemption in the amount of \$240,975.00 under Arkansas Constitution Article 9, § 5 [homestead exemption]. On the second page of Schedule C, the debtor marked the box next to “no” in response to the question “[a]re you claiming a homestead exemption of more than \$160,375?”.

The debtor's § 341(a) meeting of creditors [meeting of creditors] was concluded on January 29, 2019. On January 14, 2020, NDC filed its objection and motion, alleging in paragraph 4 that “[t]he debtor acquired the property she claims as her homestead within 1215 days prior to filing her petition. Pursuant to 11 U.S.C. § 522(p) the debtor's

homestead exemption is limited to \$160,375.”<sup>1</sup> Section 522(p)(1) provides, in relevant part:

[A]s a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$160,375 in value in

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence[.]

11 U.S.C. § 522(p)(1)(A).

During the March 18 hearing, debtor’s counsel responded to NDC’s objection to the debtor’s exemptions by arguing that NDC’s objection was untimely. The Court agrees with the debtor. Federal Rule of Bankruptcy Procedure 4003(b)(1) provides:

**(b) Objecting to a Claim of Exemptions.**

(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Fed. R. Bankr. P. 4003(b)(1). In this case, NDC did not object to the debtor’s exemptions until January 14, 2020—almost one year after the conclusion of the debtor’s meeting of creditors on January 29, 2019. No party in interest requested that the Court extend the time for filing objections and, to date, the debtor has filed no amended schedules that would trigger a new 30-day objection period. For these reasons, the Court finds that it is too late for NDC to object to the debtor’s exemptions and the Court overrules NDC’s objection on that basis.

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<sup>1</sup> Although § 522(p) has since been amended, NDC appropriately cited the statute as it read on the date the debtor filed her petition. *See In re Gardner*, 139 B.R. 460, 461 (Bankr. E. & W.D. Ark. 1991) (“A debtor’s right to exemptions is generally determined as of the date the bankruptcy petition is filed[.]”)

Although the Court finds that NDC missed its window to object to the debtor's exemptions, NDC also asked the Court to compel the debtor to amend her Schedule C. In support of its alternative request for relief, NDC alleged:

2. In Schedule C of her petition the debtor claims her interest in her residence at 1202 NE Bayleaf Court, Bentonville, Arkansas exempt as a homestead pursuant to Art 9 § 5 of the Arkansas Constitution in the amount of \$240,975 (doc. 1 page 26).

3. The debtor goes on to contradict her homestead exemption in the amount of \$240,975 by stating in response to question 3 of Schedule C that she is not claiming an exemption in excess of \$160,375 (doc. 1 page 27).

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6. In the alternative, due to the debtor's contradictory homestead exemption claim, the debtor should be ordered to amend her exemption election to state the amount she claims to be exempt.

During the March 18 hearing, debtor's counsel argued that even if the debtor was not entitled to claim a homestead exemption of \$240,975, no one lodged a timely objection and, as a result, the debtor cannot now be deprived of the exemption under *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643-44 (1992). The Court would be inclined to agree with the debtor's argument if the debtor had claimed an exemption of \$240,975 on page 1 of Schedule C and then—consistent with her claim on page 1—answered “yes” to the question on page 2 of Schedule C that required her to disclose if she was claiming an exemption in excess of \$160,375. However, that did not happen—the debtor answered “no” to the question on page 2 and, in doing so, created uncertainty regarding whether the debtor's homestead exemption is \$240,975 or \$160,375. Based on the debtor's contradictory statements on Schedule C, either number—\$240,975 or \$160,375—could fairly be interpreted as the “correct” exemption amount.<sup>2</sup> Therefore, the Court finds that

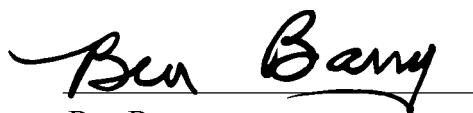
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<sup>2</sup> Debtor's counsel argued during the March 18 hearing that the debtor simply made an error when she checked the box next to “no” on page 2 of Schedule C and that she intended to claim a homestead exemption of \$240,975 as she stated on page 1. However, the Court has no evidence to that effect and, even if it did, any ambiguities in a debtor's schedules must be construed against the debtor because the debtor is the party in control of the information placed on the schedules. *See, e.g., In re Sherbahn*, 170 B.R.

the debtor's Schedule C is ambiguous and requires correction. *See In re Kuhn*, 322 B.R. 377, 387 (Bankr. N.D. Ind. 2005) (quoting *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (“a debtor controls the schedules and bears the burden of enabling trustees and creditors ‘to determine precisely whether a listed asset is validly exempt simply by reading a debtor’s schedules[.]’”))

For these reasons, the Court grants NDC's motion to compel the debtor to amend Schedule C. *See* Fed. R. Bankr. P. 1009(a) (“[o]n motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended . . . .”) The Court directs the debtor to file her amended Schedule C within 14 days of the date of the entry of this order and to serve all creditors and parties in interest with the amendment together with a 30-day notice of opportunity to object to the amendment pursuant to Rule 4003(b)(1).

IT IS SO ORDERED.

  
Ben Barry  
United States Bankruptcy Judge  
Dated: 03/26/2020

cc: David G. Nixon, attorney for debtor  
Stephen L, Gershner, attorney for NDC  
United States Trustee

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137, 139 (Bankr. N.D. Ind. 1994).