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

IN RE: ALEXANDER FIGUEROA, Debtor **No. 5:11-bk-74710**
Ch. 7

ORDER

Before the Court is the chapter 7 trustee's Objection to Amended Exemptions filed on January 17, 2012. The Court held a trial on the objection on March 21, 2012, at which the debtor appeared and testified. At the conclusion of the trial, the Court took the matter under advisement. For the reasons stated below, the Court overrules the trustee's objection to the debtor's amended exemptions.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(B). This order constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

The trustee's objection specifically concerns the debtor's treatment of a 2003 Mitsubishi Lancer. According to the trustee, the debtor has amended his schedules in an attempt to mislead the trustee. Further, the amendments and the debtor's attempt to mislead the trustee are indicia of the debtor's bad faith, which is sufficient for the Court to sustain the trustee's objection and cause the debtor's claimed exemption in the Lancer to remain as initially filed.[1] The debtor acknowledged that mistakes were made and that he is trying to correct them, but stated that he did not act in bad faith or with an intent to deceive the trustee or any of his creditors.

[1] Based on the trustee's closing remarks at the conclusion of the trial, the Court is also aware that the trustee's objection generally expresses the trustee's frustration with many debtors' apparent inability to disclose information accurately on their petitions prior to the trustee's independent research and verification of the information. Although the Court may be sympathetic to the trustee's frustration and admonishes debtors' counsel to be more diligent in their investigation and the initial reporting of accurate information, the Court must view the circumstances surrounding Mr. Figueroa's case without regard to the trustee's frustration.

According to the Federal Rules of Bankruptcy Procedure, debtors have a general right to amend their petition and schedules "as a matter of course at any time before the case is closed." Fed. R. Bankr. P. 1009(a). However, the Eighth Circuit recognizes two exceptions to the general rule: bad faith on the part of the debtor and prejudice to the creditors. *Kaelin v. Bassett* (*In re Kaelin*), 308 F.3d 885, 889 (8th Cir. 2002). In this case, prejudice to the creditors is not at issue; rather, the trustee has alleged that the debtor has amended his exemptions in bad faith. According to the Eighth Circuit, bad faith is determined by "an examination of the totality of the circumstances." *Id.* The trustee, as the objecting party, has the burden of establishing bad faith by a preponderance of the evidence. Fed. R. Bankr. P. 4003(c); *Barrows v. Christians* (*In re Barrows*), 408 B.R. 239, 243 (B.A.P. 8th Cir. 2009) (citing *Grogan v. Garner*, 498 U.S. 279 (1991)).

As previously stated, the trustee's objection primarily concerns the debtor's treatment of a 2003 Mitsubishi Lancer [Lancer] in the debtor's schedules. The debtor filed his chapter 7 voluntary petition on October 19, 2011, and listed the Lancer on Schedule B--Personal Property with a value of $8200.00.[2] He also listed the Lancer on Schedule C--Property Claimed as Exempt and claimed an exemption under § 522(d)(5) in the amount of $2938.00. Finally, he listed First Security Bank [FSB] on Schedule D--Creditors Holding Secured Claims as a secured creditor with a security interest in the Lancer in the amount of $5262.00. The trustee conducted the meeting of creditors on December 20, 2011. Based on the trustee's independent investigation of the debtor's financial affairs prior to the meeting, the trustee was not able to verify that the debtor had an obligation to FSB and discovered that the Lancer was not used as collateral at the bank. When questioned, the debtor said that when he filed his petition and schedules he believed the Lancer was collateral for the debt to FSB; he only learned that it was not collateral for the first time at the meeting of creditors. He also testified that because he thought there was an obligation to FSB secured by the Lancer, he did not claim his entire interest in the Lancer exempt on his initial Schedule C.[3]

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[2] At trial, the debtor testified that the car was probably worth less than the amount listed and gave it an approximate value of $5600.00.

[3] On December 29, 2011, the debtor amended Schedule C and claimed an exemption for the Lancer in the amount of $6273.00. He also amended Schedule D and

The debtor also included a 2007 Yamaha YZF-R1 motorcycle [Yamaha] on his schedules. The debtor listed the motorcycle on Schedule B with a value of $8900.00 and claimed an exemption on Schedule C in the amount of $3450.00 under § 522(d)(2) and $5450.00 under (d)(5). Additionally, the debtor listed HSBC on Schedule F as an unsecured creditor with a $9166.00 deficiency on a "stolen 2007 Yamaha YZF-R1."

On January 16, 2012, the debtor filed an amended Schedule C for a third time and claimed an exemption for the Lancer under § 522(d)(2) in the amount of $3450.00 and under (d)(5) for an "unknown" amount. The debtor also made the following statement on Schedule C in reference to the exemption: "Fully Exempt-100% of FMV-Debtor believes the amount of his available exemptions exceeds the present value of the property, and that the property is therefore removed from the estate." Also on Schedule C, the debtor deleted a reference to the Yamaha. The debtor also filed an amendment to Schedule B, indicating that a co-debtor "absconded to Mexico" with the Yamaha more than a year prior to the debtor filing his petition, and an amendment to Schedule D, reflecting the deletion of FSB[4] and adding HSBC as a secured creditor in relation to the 2007 Yamaha. The trustee filed his objection to the amended exemptions that are currently before the Court on January 17, 2012.

It is apparent to the Court that the debtor was befogged regarding the initial loan on the Lancer and, perhaps, his current obligation. He testified that he believed there was a debt related to the Lancer with FSB, that he signed for the note, and that his parents helped him. He later discovered that the initial note was paid and testified he did not know that his parents had satisfied the debt until the meeting of creditors occurred. He testified that he continues to make payments in the amount of $300.00 a month for the Lancer either directly to his parents or to FSB for an obligation of his parents that is secured by a Certificate of

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removed FSB from the list of secured creditors. On January 4, 2012, the trustee again objected to the debtor's claim of exemption in the Lancer. However, based on the debtor's subsequent amendments on January 16, 2012, the trustee provided the Court with precedent overruling his January 4 objection as moot.

[4] FSB was actually deleted with the debtor's second amendment. However, those amended schedules are not before the Court.

Deposit. The debtor was also confused concerning the listing of the Yamaha as evidenced by his claiming an exemption for the motorcycle even though it was no longer in his possession.

The debtor's testimony was credible and the Court does not believe the debtor's confusion rises to the level of obfuscation that is required for the Court to find that the debtor has acted in bad faith. The debtor has not attempted to hide any of his assets, and, although confused, has not mislead the trustee with purpose. Accordingly, the Court overrules the trustee's objection to the debtor's amended exemptions.[5]

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 04/03/2012

cc: William M. Clark Jr.
Forrest L. Stolzer
U.S. Trustee

[5] At the conclusion of closing argument, the debtor's counsel also asked the Court to find the Lancer fully exempt based on the statement included on the debtor's last amendment: "Fully Exempt-100% of FMV." This language comes from a recent Supreme Court case in which the Court stated, in dicta,

> Where, as here, it is important to the debtor to exempt the full market value of the asset or the asset itself, our decision will encourage the debtor to declare the value of her claimed exemption in a manner that makes the scope of the exemption clear, for example, by listing the exempt value as "full fair market value (FMV)" or "100% of FMV." Such a declaration will encourage the trustee to object promptly to the exemption if he wishes to challenge it and preserve for the estate any value in the asset beyond relevant statutory limits.

Schwab v. Reilly, 130 S.Ct. 2652, 2668 (2010) (footnote omitted). In the case before this Court, according to the debtor's amended Schedule C, the debtor has a sufficient "wild card" exemption remaining under a relevant statutory limit--§ 522(d)(5)--that the Court does not have to determine whether the debtor is entitled to a full exemption based on the use of the statement, "Fully Exempt-100% of FMV."