UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

Case No. HG 06-05774

MICHAEL J. SNYDER and
ROBERTA J. SNYDER,

Debtors.
_____/

NOT FOR PUBLICATION

OPINION

Appearances:

Roger G. Cotner, Esq., Grand Haven, Michigan, attorney for the Debtors
Mitchell J. Hall, Esq., Wyoming, Michigan, attorney for the Chapter 7 Trustee
Jeff A. Moyer, Chapter 7 Trustee

Michael and Roberta Snyder ("Debtors") filed a Chapter 7 petition for relief on November 10, 2006. Jeff A. Moyer is the panel trustee appointed to administer their case.

On March 16, 2007, Mr. Moyer filed an objection to various exemptions claimed by Debtors. Those exemptions had been set forth in the Schedule C Debtors filed simultaneously with their November 10, 2006 petition.[1] Mr. Moyer's objection prompted the issuance of an order setting forth my preliminary determinations as to the disposition of his stated objections. However, the preamble of the order also clearly stated that all determinations in that order were provisional and that each party could request an actual hearing if desired.

Debtors did in fact make a timely request for a hearing. That request also set forth Debtors' reasons for both contesting Mr. Moyer's original objections to their claimed exemptions and my proposed disposition of those objections.

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[1]11 U.S.C. § 521 and FED.R.BANKR.P. 1007 require a debtor at the outset of the case to file schedules concerning his assets and liabilities. Schedule C is the schedule used to identify the property the debtor intends to claim as exempt. FED.R.BANKR.P. 4003(a).

A hearing was first held on April 19, 2007. The hearing was then adjourned to June 21, 2007 and then adjourned again to July 12, 2007. Both parties filed briefs in support of their respective positions. I took the matter under advisement after hearing argument at the July 12, 2007 hearing.

DISCUSSION

Mr. Moyer's March 16, 2007 objection focuses on eight different items Debtors claimed as exempt in their November 10, 2006 Schedule C.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
18034 Egret Lane, Spring Lake, MI	11 U.S.C. § 522(d)(5)	100%	351,000.00
Lot 114 Nugent Hills, Baldwin, MI	11 U.S.C. § 522(d)(1)	17,500.00	17,500.00
Chase - checking	11 U.S.C. § 522(d)(5)	100%	0.00
Lawn care equipment	11 U.S.C. § 522(d)(3)	500.00	500.00
Fishing equipment	11 U.S.C. § 522(d)(3)	50.00	50.00
Pellet gun	11 U.S.C. § 522(d)(3)	10.00	10.00
Land contract 3/2006: $35,000 divided by 5 co-owners; wife's share is $7,000, payable @ $63/month (315/5), discounted to present value.	11 U.S.C. § 522(d)(5)	4,000.00	4,000.00
2006 Federal and State tax refunds, pro rated to date of filing: Debtors do not anticipate any 2006 income tax refund due to retirement withdrawals and penalties on those withdrawals	11 U.S.C. § 522(d)(5)	100%	0.00

The substantive issues concerning these contested exemptions have been narrowed considerably. First, Mr. Moyer has withdrawn his objection concerning the Debtors' claimed exemption of what amounts to nothing more than their possessory rights in Debtors' over-encumbered former Spring Lake residence. Second, Debtors have withdrawn their claimed Section 522(d)(3) exemption of the pellet gun and fishing equipment.[2]

The parties also now agree that Mr. Moyer's objections with respect to Debtors' claimed exemptions of their current Baldwin residence, the Chase checking account, and the land contract receivable all turn on whether the values given by Debtors to those interests in their Schedule C are accurate. For example, Mr. Moyer's concern regarding the Baldwin residence is only that the value of Debtors' interest is greater than the collective Section 522(d)(1) exemptions allowed to Debtors.[3] Consequently, my inclination with respect to this group of concerns remains the same: to simply extend the time within which Mr. Moyer may object to those exemptions so that Mr. Moyer can complete his due diligence regarding the potential value of the items claimed.

Debtors' claimed exemption of their 2006 federal and state tax refunds presents a more difficult problem. Debtors maintain that no refund is due and that their 2006 tax returns show that Debtors owed more in taxes than had been withheld for that year. However, Debtors still want to

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[2]11 U.S.C. § 522(d)(3). Section 522 addresses a debtor's right to exempt, or set aside, property included in the bankruptcy estate for purposes of facilitating his own "fresh start." Section 522 includes both a "state" and "federal" scheme of available exemptions and subpart (d) of the section sets forth the federal scheme. The Section 522(d)(3) exemption permits the debtor to exempt household goods and similar amounts subject to certain monetary limitations.

[3]11 U.S.C. § 522(d)(1). Section 522(d)(1) permits the debtor to exempt his residence subject, however, to a monetary limit. In November 2006, that limit was $18,450.00 per debtor. Since Debtors in this instance have both claimed a Section 522(d)(1) exemption in their Baldwin residence, the monetary limit on their exemption is $36,900.00.

claim whatever might be received as a refund should they ever by chance be entitled to one. The easy solution would be for Debtors to withdraw their claimed exemption at this time with the reservation that they would be able to amend their Schedule C at a later date should a refund ever in fact become a reality. However, given that Debtors are not willing to do so, my solution would be to extend indefinitely Mr. Moyer's right to object to this claimed exemption. Such an extension would be fair given that Mr. Moyer at this point has no practical way of assessing what, if any, amount Debtors might finally receive as a refund should, for example, Debtors amend their 2006 tax returns at some later date.

What is left substantively, then, is only Mr. Moyer's objection to Debtors' claimed $500 Section 522(d)(3)[4] exemption in the lawn equipment. However, both Debtors and Mr. Moyer have also raised procedural issues. For example, Mr. Moyer complains that some of the issues that Debtors have identified during the course of their challenge to his objections are untimely because Debtors did not identify these issues in their original April 1, 2007 request for a hearing. However, nothing in the provisional order required Debtors to set forth the reasons why they disagreed with the proposed disposition. Rather, Debtors were obligated only to notify the court that they wished to have an actual hearing concerning the objections Mr. Moyer had raised. That Debtors chose to describe some of the reasons for their request should not preclude them outright from later identifying other issues as part of the administration of Mr. Moyer's objection. Moreover, Mr. Moyer has not shown any prejudice resulting from Debtors having raised other issues subsequent to their initial request for a hearing.

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[4]Unless otherwise indicated, all remaining citations to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq*. will be "Section _____."

As for Debtors, they first complain that my March 21, 2007 attempt through a provisional order to resolve Mr. Moyer's objections to the claimed exemptions denied them their right to be heard regarding those objections. In support, Debtors cite FED.R.BANKR.P. 4003(c): "[a]fter hearing on notice, the court shall determine the issues presented by the objections [exemptions]." Debtors, though, ignore, Section 102(1):

> (1) "after notice and a hearing", or a similar phrase—
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> (A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but
>
> (B) authorizes an act without an actual hearing if such notice is given properly and if—
>
> (i) such a hearing is not requested timely by a party in interest; or
>
> (ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

11 U.S.C. § 102(1).

I use provisional orders in instances involving objections to exemptions whenever it appears from the face of the objection itself and the exemption claimed that the dispute may be able to be adjudicated without any hearing. Such orders offer the parties the opportunity to have the matter resolved without having to expend either the time or money to actually appear before me. However, the provisional orders I issue do not become final until each party affected by the order has had an opportunity to review it and to request an actual hearing if desired. Indeed, in this instance Debtors availed themselves of this opportunity and, as a result, not one, but two hearings have been held.

Nor, as Debtors contend, did the provisional order issued cause the burden of proof to shift from Mr. Moyer. One of Debtors' reasons for rejecting the provisional order may have been that the proposed disposition unfairly favored Mr. Moyer. However, Debtors' timely rejection of the

provisional order without question invokes Rule 4003(c)'s requirement that Mr. Moyer bear the burden of proof with respect to any hearing now held. Consequently, Debtors themselves have remedied whatever unfairness they may have perceived.

Debtors also contend that Mr. Moyer's objections should be denied because Mr. Moyer did not in fact serve his objections upon Debtors personally as required by Rule 4003(b).

> Copies of the objections shall be delivered or mailed to the trustee, **the person filing the list**, and the attorney for that person.

FED.R.BANKR.P. 4003(b) (emphasis added).

However, Debtors agree that Mr. Moyer did serve their attorney with his written objections and that their attorney thereafter filed a timely request for a hearing on their behalf.

I find nothing within Rule 4003(b) itself to support Debtors' contention that a trustee's failure to serve a debtor personally with his objection is categorically fatal to proceeding further with that objection. There is no question that instances will arise from time to time where the absence of such personal service could impose a hardship upon the debtor. For example, a missed deadline might have been avoided had the debtor also been served with the objection. However, it is likely that some remedy short of denial of the objection altogether, such as an extension or waiver of the deadline, would suffice to remove that hardship. Moreover, there is no apparent hardship in this instance from Mr. Moyer's failure to personally serve the Debtors with his objection given that Debtors' attorney, who was served, acted promptly to protect their rights.

Debtors' primary procedural complaint, though, is that Mr. Moyer's objection was not timely in the first place. Rule 4003(b) requires that an objection to a claimed exemption must be filed by either the trustee or other party in interest "within 30 days after the meeting of creditors held under § 341(a) **is concluded**" (emphasis added). Debtors and Mr. Moyer agree that the required meeting

of creditors, which is often called the "Section 341 meeting,"[5] was scheduled and then held on December 19, 2006. They also agree that Mr. Moyer did not request an adjournment of the meeting either when the December 19, 2006 meeting itself finished or at any time between then and when Mr. Moyer finally reported to the court on February 15, 2007 that the meeting had concluded.

Mr. Moyer contends that his March 16, 2007 objection to Debtors' claimed exemptions was timely because he filed it only 29 days after he made his February 15, 2007 report. However, Debtors contend that their Section 341 meeting was in fact concluded when the parties finished their face-to-face discussion on December 19, 2006. Consequently, Debtors argue that Mr. Moyer's March 16, 2007 objection was filed well outside the 30-day deadline set by Rule 4003(b).

In re Cherry, 341 B.R. 581 (Bankr. S.D. Tex. 2006) identifies three different approaches used by the courts to measure when the deadline has run for purposes of objecting under Rule 4003(b) to an exemption claimed. One approach, which *Cherry* described as the "bright line rule," treats the meeting as having been concluded unless the trustee announces within 30 days of the last meeting held his intention to continue the meeting to a later date. *See, e.g.*, *In re Levitt*, 137 B.R. 881, 883 (Bankr. D. Mass. 1992). A second approach requires the debtor in effect to either secure the trustee's acknowledgment that the Section 341 meeting has been concluded or to seek a declaration of the same from the court. *See, e.g.*, *In re DiGregorio*, 187 B.R. 273, 276 (Bankr. N.D. Ill. 1995).

The third approach is based upon consideration of the facts pertinent to each case.

> Here, courts consider the facts and circumstances of a particular case to determine whether the filing of an objection to the debtor's claim

[5]The United States Trustee is required to convene a meeting of creditors "[w]ithin a reasonable time after the order for relief in a case. . . ." 11 U.S.C. § 341(a).

> of exemptions is timely and reasonable under the circumstances. *See, e.g., In re James*, 260 B.R. 368, 372 (Bankr.E.D.N.C.2001) (trustee's conduct unreasonable when trustee indefinitely continued meeting and filed an objection to exemptions eleven months after last meeting); *In re Brown*, 221 B.R. 902, 905 (Bankr.M.D.Fla.1998) (trustee acted reasonably, despite failure to reconvene the § 341 meeting, when he filed a report concluding the meeting of creditors less than four months after the initial meeting).

In re Cherry, 341 B.R. at 586.

I have previously stated from the bench and restate now that the case-by-case approach is the most reasonable of those discussed in *Cherry*. I also adopt Judge Isgur's explanation for why he too selected that approach.

> This Court is persuaded that a case-by-case approach is most appropriate. Such an approach affords a trustee discretion in complicated cases yet restrains a trustee's ability to indefinitely postpone a meeting of creditors. Under this construction of the rule, a trustee may continue the § 341(a) examination only while there are legitimate grounds for believing that further investigation will prove beneficial or when the circumstances surrounding a case require the meeting be continued. *See, e.g., In re Bernard*, 40 F.3d 1028, 1031 n. 4 (9th Cir. 1994). A case-by-case approach supports that policy of protecting debtors from indefinitely adjourned creditors' meetings yet affords the trustee time to thoroughly review a debtor's financial affairs to best administer the bankruptcy case.
>
> By adopting this approach, the Court refuses to impose a strict 30-day time period when Congress declined to impose a per se deadline when it adopted § 341. A strict rule could impede justice in complex cases when a trustee needs further time and information to fully understand a debtor's financial affairs, especially when the debtor agrees to a continuance or refuses to cooperate, and where no evidence of unjustified delay is present. Placing the burden on the debtor to obtain a court order in every case is also unreasonable. Although anecdotal, there are reports that trustees in some areas of the country routinely continue § 341 meetings solely for the purpose of extending various deadlines under the Code and the Rules. *See, e.g., In re Vance*, 120 B.R. 181 (Bankr.N.D.Okla.1990). Such conduct is intolerable and could lead a court to conclude that the meeting was-in-fact-concluded at the end of the initial meeting of

> creditors. Only a case-by-case analysis places the burden fairly on the trustee and leaves sufficient flexibility to allow meetings to be continued in appropriate circumstances.

Id. at 587 (footnotes omitted).

The issue in *Cherry* was, as is the case here, whether the trustee's ultimate objection to the debtor's claimed exemptions was timely. The focus, though, in *Cherry* was not on whether the original meeting had concluded. Rather, it was upon whether that meeting had been properly adjourned.

> In his response, the Debtor contends, among other defenses, that the Trustee's objection is untimely since the multiple adjournments of the meeting of creditors were not in accordance with Bankruptcy Rule 2003(e).

Id. at 584.

However, in this instance, Mr. Moyer agrees that he never intended to reconvene the December 19, 2006 meeting. He did not express to Debtors at either the completion of that meeting or at any time thereafter that he intended to continue at a later date. Indeed, his only declaration at the meeting was that "he was finished questioning the Debtors at that time." 7/5/07 Brief, p. 5.

In effect, Mr. Moyer advocates an approach that would allow the trustee to keep quiet as to whether the meeting of creditors will be concluded or not and that would otherwise place the burden squarely on the debtor to seek a declaration from the court if he wished to force the trustee's hand. However, what Mr. Moyer proposes is nothing more than a variant of the *DiGregorio* approach that both *Cherry* and I have rejected. Moreover, I see no basis under the case-by-case approach adopted by both *Cherry* and me for determining that Debtors' Section 341 meeting concluded on any date other than December 19, 2006, especially in light of Mr. Moyer's concession that he never intended to adjourn the December 19, 2006 meeting.

Mr. Moyer argues, though, that he did not have to seek an adjournment of the December 19, 2006 meeting in order for it to have remained open beyond that date. Rather, it is Mr. Moyer's contention that a Section 341 meeting is concluded only when the trustee files his own report with the court to that effect. He points out that various post-judgment deadlines and other events are measured by the date that the court's decision is entered on the court's docket as opposed to some earlier date. Should not the same be true, Mr. Moyer queries, with respect to his own decision regarding the conclusion of a Section 341 meeting?

However, the analogy does not fit. First, the rules themselves suggest that the only control that a trustee may exercise concerning when a Section 341 meeting may be concluded is through his ability to adjourn the meeting either orally at the meeting or in writing thereafter. If he does neither, then common sense alone leads to the conclusion that the meeting ended when the parties last met at a scheduled time.

A second problem is that the rules concerning judgments are quite clear that it is the entry of the judgment that is the defining event for purposes of measuring the applicable deadline or other event. For example, Rule 8002(a) provides that a party's notice of appeal must be filed "within 10 days of the date of entry of the judgment, order, or decree." Similarly, Rule 9023(b) provides that a motion for a new trial "must be filed no later than 10 days after entry of the judgment." *See also,* FED.R.BANKR.P. 7062, 7069, and 9022(a). It certainly was within the power of the drafters to rely upon the filing of the trustee's report as the triggering event under Rule 4003(b). For example, Rule 4003(b) could have provided that "[a] party in interest may file an objection... within 30 days after the trustee has reported to the court that the meeting of creditors held under § 341(a) has concluded." However, that is not how Rule 4003(b) is written. Rather, Rule 4003(b) focuses on the meeting

itself. If anything, the absence of any reference in Rule 4003(b) to the trustee's report reinforces the interpretation that the Section 341 meeting is concluded for purposes of Rule 4003(b) on the date the initially scheduled meeting finished unless the trustee announced an adjournment during the meeting or adjourned it in writing within a reasonable time period thereafter.

The final difficulty with Mr. Moyer's argument is that a trustee's decision as to when to file his report is unregulated. While the rules do focus upon entry of a judgment as opposed to its execution for measuring relevant post-judgment deadlines, the rules also require courts to enter judgments "promptly." FED.R.BANKR.P. 9021 and FED.R.CIV.P. 58(a)(2). The rules, though, impose no corresponding obligation upon the trustee with respect to whatever report he is to file with respect to the Section 341 meeting. Indeed, there is no requirement under the rules for the trustee to even file a report concerning the closure of the Section 341 meeting.[6] Consequently, basing the conclusion of the Section 341 meeting upon when the trustee ultimately chooses to file his report regarding that meeting would put the debtor in the position of having to compel the trustee to file that report in instances where the trustee was being dilatory. However, as *Cherry* points out, imposing that type of burden on the debtor is unfair.

CONCLUSION

Although there remain at least some substantive disputes between Debtors and Mr. Moyer concerning the exemptions Debtors have claimed, those disputes are rendered moot because Mr. Moyer did not file a timely objection to the exemptions claimed. The uncontested facts establish that Mr. Moyer allowed the December 19, 2006 Section 341 meeting to finish without announcing

[6]In comparison, Rule 2003 does require the United States Trustee to file a report with the court whenever an election of a trustee is disputed. FED.R.BANKR.P. 2003(d)(2).

at that meeting that he intended to continue the meeting and without otherwise giving later written notice that he intended to continue that meeting. Rather, Mr. Moyer simply waited for 87 days to file his objection, which is well outside the 30 days permitted by Rule 4003(b).

Therefore, Mr. Moyer's objections to the exemptions claimed by Debtors must be denied. A separate order consistent with this opinion will enter.

/s/
Hon. Jeffrey R. Hughes
United States Bankruptcy Judge

Signed this 19th day of September, 2007
at Grand Rapids, Michigan.