Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
February 27, 2015

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

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In re: KATHRYN A. BAILEY and BRIAN A. VOLPE, Debtors.	Case No.: 13-17059-MKN Chapter 13 Date: March 18, 2014 Time: 9:30 a.m.

MEMORANDUM DECISION ON TRUSTEE'S OBJECTIONS TO DEBTORS' CLAIMED EXEMPTIONS[1]

Baloo the Bear, Justice Thomas, Brett Favre, and when worlds collide...

INTRODUCTION

On October 18, 1967, Walt Disney studios released the animated children's film "The Jungle Book," featuring a character named "Baloo' the Bear" whose voice was captured by actor Phil Harris.

On June 17, 2010, the United States Supreme Court issued its decision in Schwab v. Reilly, 560 U.S. 770, 130 S.Ct. 2652 (2010), with the majority opinion authored by Justice Thomas and a dissent authored by Justice Ginsburg.

On January 17, 2011, Brett Favre ("Favre") submitted his retirement papers to the

[1] In this Memorandum Decision, all references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. Documents filed in other bankruptcy cases will bear the same reference preceded by the primary name of the case. All references to "Section" are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to "NRS" are to the provisions of the Nevada Revised Statutes. All references to "FRBP" are to the Federal Rules of Bankruptcy Procedure.

National Football League ("NFL") finally signaling the probable end of his long and distinguished professional football career.

On August 16, 2013, Kathryn A. Bailey ("Kathryn") and Brian A. Volpe ("Brian") filed a joint petition for relief under Chapter 13, along with a proposed Chapter 13 Plan #1 ("Plan"). (ECF No. 7).

On March 18, 2014, Baloo the Bear, Justice Thomas's opinion in Schwab v. Reilly, and Favre were all mentioned during a hearing on the Objection to Debtors' Claimed Exemptions ("Exemption Objections") brought by the bankruptcy trustee in the above-captioned case.[2]

BACKGROUND

When Kathryn and Brian (jointly "Debtors") filed their bankruptcy petition, they also filed their schedules of assets and liabilities. (ECF No. 1). On their personal property Schedule "B", Debtors listed various assets described as miscellaneous furniture, appliances and computers, a printer, a collectible helmet, clothing, jewelry, craft supplies, and a 2008 Jeep Wrangler. On their Schedule "C", Debtors claimed these items as exempt under various provisions of Nevada law.

Schedule "C" requires a debtor to provide four categories of information: a description of the property claimed as exempt, the specific law providing for each exemption, the value of the claimed exemption, and the current value of the property without deducting the exemption. On their schedule ("Original Schedule "C"), Debtors claimed the furniture, appliances and computers as exempt under NRS 21.090(1)(b), the printer as exempt under NRS 21.909(1)(d), the collectible helmet as exempt under NRS 21.090(1)(b), the clothing as exempt under NRS 21.090(1)(b), the jewelry as exempt under NRS 21.090(1)(a), the craft supplies as exempt under NRS 21.090(1)(b), and the Jeep Wrangler as exempt under NRS 21.090(1)(f). After each citation to the statute providing for the exemption, Debtors added the notation "100% FMV." Except with respect to the Jeep Wrangler, for each item of property, Debtors then listed a value of the claimed exemption as well as a current value of the property. As to the Jeep Wrangler,

[2] The objections appear in the Trustee's Opposition to Confirmation of Plan #1 Combined with Trustee's Recommendation for Dismissal. (ECF No. 14).

Debtors listed the value of the claimed exemption as "unknown" but listed a current value of the vehicle as $20,000. In table form, Debtors' Original Schedule "C" therefore provided the following information:

Description of Property	**Specify Law Providing Each Exemption**	**Value of Claimed Exemption**	**Current Value of Property Without Deducting Exemption**
Checking, Savings, or Other Financial Accounts, Certificates of Deposit Nevada State Bank Checking 3847	Nev.Rev.Stat. § 21.090(1)(g)	75%	5,500.00
Security Deposits with Utilities, Landlords, and Others Deposit on Rental House	Nev.Rev.Stat. § 21.090(1)(n)	4,200.00	4,200.00
Household Goods and Furnishings Furniture, Appliances, Computers	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	2,000.00	2,000.00
Printer	Nev.Rev.Stat. § 21.090(1)(d) 100% FMV	30.00	30.00
Books, Pictures and Other Art Objects; Collectibles Collectable Helmet	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	500.00	500.00
Wearing Apparel Clothing	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	500.00	500.00
Furs and Jewelry Jewelry	Nev.Rev.Stat. § 21.090(1)(a) 100% FMV	200.00	200.00
Firearms and Sports, Photographic and Other Hobby Equipment Craft Supplies	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	1,000.00	1,000.00
Interests in IRA, ERISA, Keough, or Other Pension or Profit Sharing Plans 401k With work	Nev.Rev.Stat. § 21.090(1)(r) 100% FMV	38,000.00	38,000.00
Automobiles, Trucks, Trailers, and Other Vehicles Chevey Avalance 2006	Nev.Rev.Stat. § 21.090(1)(f) 100% FMV	12,000.00	12,000.00
2008 Jeep Wrangler	Nev.Rev.Stat. § 21.090(1)(f) 100% FMV	Unknown	20,000.00

Except with respect to the added notation "100% FMV" and the value "Unknown", the parties do not dispute that the information provided by the Debtors is required by the official Schedule "C" form.

Because the Debtors' income is above median for this judicial district, see Plan § 1.03, the applicable commitment period for their Plan is five years pursuant to Section 1325(b)(4). See Plan § 1.02. Debtors proposed to pay $1,020 into their Plan each month for a total of $61,200 over the life of the Plan. See Plan § 1.08. Debtors assert in their Plan that the liquidation value of their non-exempt assets is zero. See Plan § 1.04.

On October 9, 2013, Rick A. Yarnall, the Chapter 13 trustee assigned to the case ("Trustee"), filed the Exemption Objections that are included in his opposition to confirmation of the Debtors' proposed Plan.

On December 17, 2013, an order was entered approving a briefing schedule for the Exemption Objections. (ECF No. 20). On January 16, 2014, an order was entered approving an amended briefing schedule. (ECF No. 22).

On January 31, 2014, the Trustee filed his brief in support of his Exemption Objections ("Trustee Brief"). (ECF No. 23).

On February 26, 2014, Debtors filed amendments to their Schedules "B" and "C". (ECF No. 24). In their Amended Schedule "C", Debtors claimed their exemptions under different statutory provisions. For the printer, the law specified for the exemption claim was changed from NRS 21.090(1)(d) to NRS 21.090(1)(b). For the collectible helmet, the law specified for the exemption was changed from NRS 21.090(1)(b) to NRS 21.090(1)(a). As with their Original Schedule "C", Debtors added to their Amended Schedule "C" the notation "100% FMV" after the reference to the statutory provision. None of the values of the claimed exemptions or the values of the properties were changed. In table form, Debtors' Amended Schedule "C" therefore provided the following information:

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
<u>Checking, Savings, or Other Financial Accounts, Certificates of Deposit</u> Nevada State Bank Checking 3847	Nev.Rev.Stat. § 21.090(1)(g)	75%	5,500.00
<u>Security Deposits with Utilities, Landlords, and Others</u> Deposit on Rental House	Nev.Rev.Stat. § 21.090(1)(n)	4,200.00	4,200.00
<u>Household Goods and Furnishings</u> Furniture, Appliances, Computers	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	2,000.00	2,000.00
Printer	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	30.00	30.00
<u>Books, Pictures and Other Art Objects; Collectibles</u> Collectable Helmet	Nev.Rev.Stat. § 21.090(1)(a) 100% FMV	500.00	500.00
<u>Wearing Apparel</u> Clothing	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	500.00	500.00
<u>Furs and Jewelry</u> Jewelry	Nev.Rev.Stat. § 21.090(1)(a) 100% FMV	200.00	200.00
<u>Firearms and Sports, Photographic and Other Hobby Equipment</u> Craft Supplies	Nev.Rev.Stat. § 21.090(1)(b) 100% FMV	1,000.00	1,000.00
<u>Interests in IRA, ERISA, Keough, or Other Pension or Profit Sharing Plans</u> 401k With work	Nev.Rev.Stat. § 21.090(1)(r) 100% FMV	38,000.00	38,000.00
<u>Automobiles, Trucks, Trailers, and Other Vehicles</u> Chevey Avalance 2006	Nev.Rev.Stat. § 21.090(1)(f) 100% FMV	12,000.00	12,000.00
2008 Jeep Wrangler	Nev.Rev.Stat. § 21.090(1)(f) 100% FMV	Unknown	20,000.00

Except with respect to the added notation “100% FMV” and the value “Unknown”, the parties do not dispute that the information provided by the Debtors is required by the official Schedule “C” form.

On February 27, 2014, Debtors filed their brief in response to the Exemption Objections ("Debtors Brief"). (ECF No. 25).

On March 7, 2014, the Trustee filed a brief in reply to the Debtors Brief. ("Trustee Reply"). (ECF No. 26).

On March 18, 2014, the court heard oral arguments on the Exemption Objections.[3] The appearances of counsel were noted on the record. After the hearing, the matter was taken under submission.

DISCUSSION

Exemptions are intended to preserve property interests essential for an individual to survive. An individual who is subject to collection proceedings is able to retain such essential items by claiming exemptions. See In re Bower, 234 B.R. 109, 112 (Bankr. D. Nev. 1999) ("The historical purpose of exemptions in Nevada is to protect a debtor by permitting him to retain the basic necessities of life so that he and his family will not be left destitute."). See also In re Fox, 302 P.2d 1137, 1139 (Nev. 2013) ("The legislative purpose of NRS 21.090 is 'to secure to the debtor the necessary means of gaining a livelihood, while doing as little injury as possible to the creditor.'"). The list of items considered to be essential varies widely from State to State. See generally BANKR. EXEMPTION MANUAL APPENDIX B (2014 ed. West Bankruptcy Series). When individuals file for bankruptcy protection, their property interests become property of their bankruptcy estate under Section 541(a). See Rousey v. Jacoway, 544 U.S. 320, 325-26, 125 S.Ct. 1561, 1565-66 (2005).

Section 522(b)(1) authorizes an individual debtor to exempt property of the bankruptcy estate. Section 522(d) sets forth a variety of specific exemptions that may be claimed in bankruptcy cases, but Section 522(b)(2) allows individual States to "opt out" of those exemptions so that their residents may claim only the exemptions provided under state law and non-bankruptcy federal law. Under NRS 21.090(3), Nevada has "opted out" of the federal

[3] Although the hearing on the objection had been continued several times, neither the Debtors nor the Trustee suggested that an evidentiary hearing is necessary to resolve any material factual issues.

bankruptcy exemptions. See Leavitt v. Alexander (In re Alexander), 472 B.R. 815, 821 (B.A.P. 9th Cir. 2012).

Section 522(l) requires an individual debtor to file a list of the property he or she claims as exempt. FRBP 4003(a) requires the list to be included in the schedules of information that the debtor is required to file under Section 521(a)(1)(B)(i). Section 522(l) also specifically provides that "Unless a party in interest objects, the property claimed as exempt on such list is exempt." The official form on which the list of exempt property must appear is Schedule "C".

Section 341(a) provides that a meeting of creditors must be held within a reasonable time after a voluntary bankruptcy proceeding is commenced. FRBP 2003(a) requires that the meeting of creditors in a Chapter 13 case be conducted no fewer than 21 days and no more than 50 days after the commencement of the case.

FRBP 4003(b)(1) allows any party in interest, including a bankruptcy trustee, to object to the list of exempt property, but requires the objection to be filed within 30 days after the conclusion of the meeting of creditors. Because Section 522(l) specifically provides that absent an objection "the property claimed as exempt on such list **is** exempt" (emphasis added), the consequence of failing to timely object to an exemption is harsh: the property listed on Schedule "C" is exempt regardless of whether the claimed exemption has a colorable legal basis. See Taylor v. Freeland & Kronz, 503 U.S. 638, 643, 112 S.Ct. 1644, 1648 (1992).[4] See also In re Anderson, 2012 WL 1110056 at *3 (Bankr. D. Mont. Apr 2, 2012); In re Gardner, 417 B.R. 616, 621 (Bankr. D. Idaho 2009)(failure to timely object to baseless exemption results in "exemption by default"); In re Grimes, 2009 WL 960143 at *5 (Bankr. D. Ore. Feb 5, 2009); In re Bush, 346 B.R. 523, 524 (Bankr. E. D. Wash. 2006); In re Virissimo, 332 B.R. 201, 205-06 (Bankr. D. Nev. 2005). As a result, the listed property "is exempt from property of the estate and passes to the

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[4] At the time Taylor was decided, FRBP 4003(b) provided that "The trustee or any creditor may file objections" to a debtor's exemptions. In 2000, FRBP 4003(b) was amended to provide that "A party in interest may file an objection" to a debtor's exemptions. In 2008, FRBP 4003(b) was further amended into four subparts, with FRBP 4003(b)(1) continuing to allow "a party in interest" object to a debtor's exemptions, and with FRBP 4003(b)(2) added to allow only a bankruptcy trustee up to one year to object to a fraudulently claimed exemption.

debtor upon expiration of the time to object." In re Mwangi, 473 B.R. 802, 809 (D. Nev. 2012). Because Chapter 13 trustees, as well as all other bankruptcy trustees, have a fiduciary duty to creditors, they have an obligation to scrutinize a debtor's schedules to ensure that property otherwise available for liquidation are not improperly claimed as exempt.[5]

In the present case, the Trustee objects to the Debtors' list of exempt property on four grounds: (1) that the notation "100% FMV" forces him to object in the event that a claimed item appreciates in value postpetion beyond the amount allowed by the applicable exemption statute; (2) that the exemption under NRS 21.090(1)(b) for "necessary" household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment does not encompass the craft supplies or the printer; (3) that the exemption under NRS 21.090(1)(a) for family pictures and keepsakes does not encompass the collectible helmet, and (4) that the exemption under NRS 21.090(1)(f) for one vehicle does not encompass a vehicle having an unknown value.[6] See Trustee Brief at 2:10-15.

As to the first ground, the Trustee concedes that personal property values listed by the Debtors are well within the monetary limits of the Nevada statutory provisions on which the Debtors claim their exemptions. The Trustee fears, however, that by including the notation

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[5] See KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, 3D ED., § 161.1 at 161-4 (2000 & Supp. 2004) ("Creditors and the Chapter 13 trustee must diligently police exemptions within 30 days after the meeting of creditors else those exemptions will be beyond attack as confirmation under § 1325(a)(4). [footnote] A successful objection to exemptions is a predicate to a best-interest-of-creditors-test objection to confirmation; [footnote] but the reverse is not always true - a best-interests-of-creditors-test objection to confirmation will be lost if it is based on an objection to exemptions that becomes untimely when raised at confirmation."). Compare Andrews v. Loheit (In re Andrews), 49 F.3d 1404, 1406-08 (9th Cir. 1995) (Chapter 13 trustee has standing to object to plan confirmation on any grounds under Section 1325). See, e.g., In re Sas, 488 B.R. 178 (Bankr. D. Nev. 2013) (relief from administrative abandonment denied where debtor's schedules included sufficient information to place Chapter 7 trustee on inquiry notice of value of prepetition personal injury claim).

[6] Elsewhere on Schedule "C", Debtors also assert an exemption under NRS 21.090(1)(f) for a 2006 Chevrolet Avalanche in the exemption amount of $12,000 with the vehicle having a value of $12,000. Although NRS 21.090(1)(f) specifically refers to only one vehicle, it has been interpreted to allow each individual debtor in a joint bankruptcy case to exempt a separate vehicle. See In re Longmore, 273 B.R. 633 (Bankr. D. Nev. 2001).

"100% FMV" the Debtors are attempting to exempt the entire asset regardless of whether its actual value is or appreciates beyond the limit permitted by the statute. See Trustee Brief at 6:16 to 13:7. At the hearing, the Trustee expressed the fear that if he does not object to an exemption and the case is later converted to Chapter 7, he risks potential liability for failing to object if the value of the exempt property turns out to be greater than the limit allowed by the applicable statute. For that reason, the Trustee requests "that this Honorable Court **strike the "100% FMV" language from Schedule C and sustain Trustee's objections** to the Debtors' claimed exemption." Id. at 15-16 (emphasis added).

Debtors apparently hope that inclusion of that notation will prevent the Trustee from ever asserting a further interest in the subject properties should they appreciate in value before the bankruptcy case is concluded. See Debtors Brief at 2:22 to 5:7. As the Debtors explain:

> The reason the Debtor has listed both the perceived value of the item, as well as the applicable exemption amount and the 100% FMV language, is to put the Trustee on notice that should the Trustee believe the item is more valuable than the Debtor has indicated or believes, the Trustee must move forward and object to the exemption, obtain his or her own appraisal of the item, and make a determination as to what if any value the trustee claims is above the exemption amount of the debtor.

Id. at 7:16-22. At the hearing, counsel for the Debtors explained that the notation "100% FMV" is intended to provide notice that the Debtors intend to claim the entire asset as exempt, not merely the dollar value provided by the Nevada exemption statute. The justification for doing so was the Debtors' fear that if an exempt asset appreciates in the future beyond the dollar limit of the exemption, a subsequent conversion from Chapter 13 to Chapter 7 would expose them to liability to the Chapter 7 trustee for the appreciated value.[7] In other words, the Debtors supposed fears are the mirror image of the Trustee's, i.e., the financial exposure created if the case is converted to Chapter 7. Both parties refer to language from Justice Thomas's majority opinion in Schwab to support their positions.

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[7] As an example, Debtors' counsel hypothesized that if Brian wanted to sell the Favre Helmet in the future, but it significantly increases in value, he does not want to be compelled to turnover the otherwise non-exempt value to a subsequent trustee. Thus, he wants to achieve a removal of the entire Favre Helmet from the bankruptcy estate rather than its value.

At the hearing, counsel for the Debtors also described the "collectible helmet" listed in Schedule "C" as a helmet from Favre who played quarterback for the Green Bay Packers ("Packers").[8] While it currently has an estimated value of $500.00, well within any applicable exemption available under Nevada law[9], Debtors' counsel speculated that the helmet ("Favre Helmet") may increase substantially in value depending on future events, e.g., the induction of Favre into the NFL Hall of Fame.[10] For that reason, Debtors seek to exempt the Favre Helmet in its entirety so that its full monetary value is available to them in the future.

As to the latter grounds, counsel for the Trustee focused on the "necessary" requirement under NRS 21.090(1)(b) in arguing that the craft supplies are not "bare necessities" that the Nevada legislature intended to protect.[11] Counsel for the Trustee conceded that a Favre Helmet may have immense sentimental value to a sports fan, but does not qualify as a "keepsake". Moreover, the Trustee maintains that the applicability of the vehicle exemption cannot be determined if the value of the Jeep Wrangler is stated to be unknown.

As to the latter arguments, the Debtors of course assert that strict necessity for an item was not intended when the Nevada legislature added the word "necessary" to the beginning of NRS 21.090(1)(b). They argue that the Favre Helmet has deep sentimental value to Brian, who

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[8] Counsel did not represent that Favre had given the helmet to Brian or that it had been autographed by Favre. Debtor's counsel had to describe the helmet because at one point earlier in the hearing, the Trustee's counsel thought it was a Pittsburgh Steelers helmet perhaps worn by former running back Rocky Bleier.

[9] Debtors originally claimed the helmet as exempt under NRS 21.090(1)(b) which has a value limit of all items of $12,000. Now they claim an exemption under NRS 21.090(1)(a) which has a value limit of $5,000 but which arguably has no value limit for a family keepsake. Debtors did not claim a "wildcard" exemption under NRS 21.090(1)(z) which would permit them to exempt any property up to $1,000 in total value.

[10] Favre also has appeared in or been the subject of popular films, e.g., "There's Something About Mary" (1998), popular music, e.g., "Get High Rule the World" (Li'l Wayne, 2007), and commercials, e.g., Wrangler Jeans (2014) and Footlocker (2014).

[11] At the hearing, counsel withdrew any objection to the exemption claimed in the printer.

is a long time fan of the Packers.[12] Finally, the Debtors maintain that there currently is no equity in the Jeep Wrangler because more is owed to the secured creditor than the $20,000 value shown on their Schedule "B".[13] As a result, Debtors contend that they are not required to state a current value of the claimed exemption because no equity will exist until the amount owed to the creditor is less than the future value of the Jeep Wrangler.

1. The Inclusion of "100% FMV" on Debtors' Schedule "C".

On its face, the Trustee's request to "strike the "100% FMV" language from Schedule C and sustain Trustee's objections" serves no purpose because the Trustee in fact has objected to various exemptions where the language appears. The validity of the claimed exemptions are being determined in this proceeding. Striking the language does nothing. If the Trustee's request is to prevent the Debtors or their counsel from using similar language in any future Schedule "C" forms filed in this case or any other cases, the request is misguided. Likewise, if the Debtors or their counsel's intention is to obtain approval of such language in any future Schedule "C" forms filed in this case or any other cases, they are mistaken. A closer look at Justice Thomas's opinion in Schwab, as well as his prior opinion in Taylor, dictates this conclusion.[14]

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[12] Followers of the Packers professional football team often are used to illustrate that the term "fan" has its origin in the term "fanatic." Although situated in the city of Green Bay, Wisconsin, which has the smallest population of any major professional sports franchise, the team holds the distinction of winning more championships than any other NFL franchise. The team plays in a stadium known as Lambeau Field and has a worldwide fan base. Packers fans are known to proudly wear all nature of unusual garb (including yellow, styrofoam hats shaped as a wedge of cheese), to outnumber local fans at visiting stadiums, and to have many families who hold and pass on season tickets from generation to generation. Followers of hopeful but less distinguished NFL franchises in Chicago, Minneapolis and Detroit have bitter rivalries with Green Bay fans that border on the comical.

[13] According to Debtors' secured creditor Schedule "D", creditor TD Auto Finance has a claim in the amount of $23,000 secured by the Jeep Wrangler. Under section 2.16 of the proposed Plan, Debtors will make direct payments to TD Auto Finance in the amount of $455 each month until the amount owed is paid off.

[14] To be clear, Justice Thomas's opinions in Schwab and Taylor were the majority opinions of the Court in both instances. Nor were they the only opinions by Justice Thomas on the subject of exemptions in bankruptcy. See Rousey v. Jacoway, 544 U.S. at 334-35, 125 S.Ct.

In Schwab, the Court reversed three lower court decisions that denied a Chapter 7 trustee's motion to sell certain property that the individual debtor had claimed as exempt. The debtor lived in Pennsylvania which allows its residents to use the bankruptcy exemptions under Section 522(d). The bankruptcy court determined, and the district court agreed, that the subject property could not be sold because the Chapter 7 trustee had failed to object to the claimed exemption, thereby removing the property from the estate. The lower courts relied on the Court's previous decision in Taylor, where the bankruptcy court had ordered the debtor and her attorneys to turnover certain proceeds from the settlement of an employment discrimination claim that had been exempted without objection.[15] In Taylor, the Third Circuit reversed and the Supreme Court affirmed the circuit court. The Court reached that result in Taylor even though the legal basis for the exemption claimed by the debtor was invalid. Because the Chapter 7 trustee did not object within the deadline prescribed by FRBP 4003(b), the Court in Taylor concluded that the settlement proceeds were exempt under Section 522(l) and did not have to be turned over to the Chapter 7 trustee.

In Schwab, Justice Thomas compared the individual debtor's listing of exempt property against the list provided by the debtor in Taylor, who also was a Pennsylvania resident using the bankruptcy exemptions under Section 522(d). 560 U.S. at 788-89, 130 S.Ct. at 2665-67. When

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at 1571(upholding Chapter 7 debtor's exemption of individual retirement accounts under Section 522(d)(10)(E)).

[15] See Taylor v. Freeland & Kronz (In re Davis), 105 B.R. 288 (Bankr.W.D. Pa. 1989). In Taylor, the debtor (Emily Davis) claimed an exemption of the proceeds of the employment discrimination claim under then-Section 522(d)(11) which exempted a "payment in compensation for loss of future earnings of the debtor...to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." Id. at 293. The debtor disclosed on her Chapter 7 schedules an employment discrimination claim in which she was represented by at law firm of Freeland & Kronz. The bankruptcy trustee (Robert Taylor) did not object to the exemption and the debtor received her discharge. After the deadline to object had expired, the claim was settled and the proceeds disbursed to Freeland & Kronz. Thereafter, Taylor commenced an adversary proceeding against the debtor as well as Freeland & Kronz for turnover of the proceeds. In spite of Taylor's failure to timely object to the exemption, the bankruptcy court determined that $23,483.75 of the settlement were not lost future earnings and could not be exempted under Section 522(d)(11). Id. at 294. It therefore entered judgment in favor of Taylor directing the debtor as well as Freeland & Kronz to turnover such funds.

Taylor was decided in 1992, the Schedule "C" form for an individual debtor to list property claimed as exempt did not require the debtor to state the current market value of the property without deducting exemptions. It did, however, require the debtor to "specify the statute creating the exemption" and to specify the "value claimed exempt." 560 U.S. at 788, 130 S.Ct. at 2665. The debtor in Taylor described the exempt property as a "claim for lost wages", the statutory basis as "11 U.S.C. 522(b)(d)", but declared the "value claimed exempt" as "unknown." This declaration of the value of the claimed exemption was important because the parties on appeal agreed that it made the claim of exemption under Section 522(d) objectionable on its face. See Schwab, 560 U.S. at 789, 130 S.Ct. at 2666; Taylor, 503 U.S. at 642, 112 S.Ct. at 1647.

Justice Thomas then contrasted the listing in Taylor to that in Schwab. In Schwab, the debtor described the exempt property as "see attached list of business equipment," the statutory bases as "11 U.S.C. § 522(d)(6) and 11 U.S.C. § 522(d)(5)", and declared the values claimed as exempt as "1,850 and 8,868" respectively. 560 U.S. at 781, 130 S.Ct. at 2661 and Appendix to opinion. Because those dollar amounts were facially within the then-existing limits of Section 522(d)(6) and Section 522(d)(5)[16], Justice Thomas concluded that there were "no warning flags

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[16] In Schwab, the debtor, Nadejda Reilly, filed a voluntary Chapter 7 petition on April 21, 2005, prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). At the time she filed, Section 522(d)(6) allowed her to exempt her "aggregate interest, not to exceed $1,850 in value, in any implements, professional books, or tool, of the trade of the debtor or the trade of a dependent of the debtor." Section 522(d)(5) allowed her to exempt her "aggregate interest in any property, not to exceed in value $975 plus up to $9,250 of any unused amount of the exemption provided under paragraph(1) of this subsection." "Paragraph (1) of this subsection" was a reference to Section 522(d)(1) which allowed the debtor to exempt her "aggregate interest, not to exceed $17,425 in value, in real property of personal property that the debtor or a dependent of the debtor uses as a residence..." Because Section 522(d)(5) refers to "any property" it is commonly referred to as the "wildcard" exemption, i.e., applicable to any form of property. The maximum amount of the federal wildcard exemption available to the debtor in Schwab was $10,225. Since the time the Schwab bankruptcy proceeding was commenced, the dollar limits in Sections 522(d)(6) and 522(d)(5) have increased, respectively, to $2,300, $1,225 and $11,500.

that warranted an objection." 560 U.S. at 789, 130 S.Ct. at 2666.[17]

Justice Thomas further discussed in Schwab what would raise a "warning flag" to a trustee or other party in interest. His language, seized upon by the Debtors in this case and feared by the Trustee, was as follows:

> Where, as here, it is important to the debtor to exempt the full market value of the asset or 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**.

560 U.S. at 792-93, 130 S.Ct. at 2668 (footnotes omitted)(emphasis added).

In this case, the Debtors included "100% FMV" only in their specification of the law providing for their claimed exemptions, but not in the value of their claimed exemptions. Under Schwab, no warning flag is raised because the specific properties listed by the Debtors are subject to exemptions under Nevada law in amounts not exceeded by the values claimed. Moreover, it is well-established that the absence of a colorable legal basis for an exemption does not preclude an exemption from being allowed under Section 522(l). The addition of "100% FMV" to the specification of the legal basis for the claimed exemption indicates nothing of consequence other than perhaps a debtor's misunderstanding of the monetary limits of a particular exemption statute.[18] Under these circumstances, the Trustee simply was not required

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[17] Justice Thomas also observed that the "current market value of the property claimed as exempt without deducting exemptions" is not the basis for a bankruptcy trustee to evaluate the exemptions listed on Schedule "C" because the determination is controlled by the value claimed as exempt under the statutory provision asserted by the debtor. 560 U.S. at 785, 130 S.Ct. At 2663. The current market value estimate provided by the debtor was relegated to assisting the trustee in evaluating the potential non-exempt value of the property of the estate. 560 U.S. at 785-86 & n.11, 130 S.Ct. at 2663-64 & n.11. Debtors' belief that their "perceived value" of the items claimed as exempt somehow is a warning flag requiring the Trustee to object, see discussion at 9, supra, is simply erroneous.

[18] In Schwab, Justice Thomas noted that a bankruptcy trustee who is alerted that the debtor's exemptions might exceed the scope allowed by applicable law has discretion whether to object. He observed that the Chapter 7 trustee could have objected to the debtor's exemption of various items, the aggregate of which exceeded the federal wildcard exemption under Section

to object under Schwab and the Debtors are limited to the values of their claimed exemptions, if any.

The scope of the remedies available to parties in interest where debtors or their counsel insert "100% FMV" as the value of the claimed exemption, when the underlying statute contains a dollar limit, may well depend on the type of bankruptcy proceeding. In Taylor, Justice Thomas addressed the prospect of exemption abuse as follows:

> Taylor suggests that our holding will create improper incentives. He asserts that it will lead debtors to claim property exempt on the chance that the trustee and creditors, for whatever reason, will fail to object to the claimed exemption on time. He asserts that only a requirement of good faith can prevent what the Eighth Circuit has termed "exemption by declaration." Peterson, supra, at 1393. This concern, however, does not cause us to alter our interpretation of § 522(l).
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> Debtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings. See, e.g., 11 U.S.C. § 727(a)(4)(B) (authorizing denial of discharge for presenting fraudulent claims); Rule 1008 (requiring filings to "be verified or contain an unsworn declaration" of truthfulness under penalty of perjury); Rule 9011 (authorizing sanctions for signing certain documents not "well grounded in fact and ... warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law"); 18 U.S.C. § 152 (imposing criminal penalties for fraud in bankruptcy cases). These provisions may limit bad-faith claims of exemptions by debtors. To the extent that they do not, Congress may enact comparable provisions to address the difficulties that Taylor predicts will follow our decision. We have no authority to limit the application of § 522(l) to exemptions claimed in good faith.

503 U.S. at 644, 112 S.Ct. at 1648-49 (Emphasis added).[19]

522(d)(5). 560 U.S. at 793 n.20, 130 S.Ct. at 2668 n.20. The aggregate value of the items debtor claimed as exempt was $10,930, id., while the federal wildcard at that time was $10,225. See discussion at note 16, supra.

[19] In Law v. Siegel, 134 S.Ct. 1188 (2014), the Court reversed three lower court decisions authorizing a Chapter 7 trustee to surcharge the full amount of an abusive debtor's homestead exemption. The Court held that there was no basis to deny an exemption on any ground not specified by Congress in Section 522. Id. at 1196-98. As it did in Taylor, the Court suggested other means of addressing improper debtor conduct as follows:

> Our decision today does not denude bankruptcy courts of the essential "authority to respond to debtor misconduct with meaningful sanctions." Brief for United States as Amicus Curiae 17. There is ample authority to deny the dishonest debtor a discharge. See § 727(a)(2)-(6). (That sanction lacks bite here,

In Schwab, Justice Thomas recognized that debtors may be encouraged to insert "100% FMV" or similar language to force bankruptcy trustees or other interest parties to timely object. 560 U.S. at 792, 130 S.Ct. at 2668. Arguably, this recognition in Schwab may make it more difficult for parties in interest to seek sanctions against a debtor or counsel under FRBP 9011 for claiming an exemption without proper legal basis.[20] But exemptions are available to individuals in four types of bankruptcy cases: Chapter 7, Chapter 11, Chapter 12, and Chapter 13. Exemptions play an important role in all four chapters, and solutions to deter abusive exemption claims, in addition to sanctions requested under FRBP 9011, are available.

In Chapter 7, a bankruptcy trustee is appointed in every case and exemptions facilitate an

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> since by reason of a postpetition settlement between Siegel and Law's major creditor, Law has no debts left to discharge; but that will not often be the case.) In addition, Federal Rule of Bankruptcy Procedure 9011—bankruptcy's analogue to Civil Rule 11—authorizes the court to impose sanctions for bad-faith litigation conduct, which may include "an order directing payment...of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." Fed. Rule Bkrtcy. Proc. 9011(c)(2). The court may also possess further sanctioning authority under either § 105(a) or its inherent powers. Cf. Chambers, 501 U.S., at 45-49, 111 S.Ct. 2123. And because it arises postpetition, a bankruptcy court's monetary sanction survives the bankruptcy case and is thereafter enforceable through the normal procedures for collecting money judgments. See § 727(b). Fraudulent conduct in a bankruptcy case may also subject a debtor to criminal prosecution under 18 U.S.C. § 152, which carries a maximum penalty of five years' imprisonment.
>
> But whatever other sanctions a bankruptcy court may impose on a dishonest debtor, it may not contravene express provisions of the Bankruptcy Code by ordering that the debtor's exempt property be used to pay debts and expenses for which that property is not liable under the Code.

Id. at 1198.

[20] The other penalties suggested in Taylor also are problematic. Adversary proceedings to deny discharge under Section 727(a)(4)(B) ordinarily must be brought within 60 days after the first date set for a meeting of creditors under FRBP 4004(a), while the 30-day deadline to object to a claim of exemptions will not commence under FRBP 4003(b)(1) until after the meeting of creditors is concluded. FRBP 1008 already requires bankruptcy petitions, lists, schedules, statements and amendments to be verified under penalty of perjury. See, e.g., Declaration Concerning Debtor's Schedules. (ECF No. 1). Criminal prosecutions for bankruptcy fraud under 18 U.S.C. § 152 are rare due to, inter alia, limited prosecutorial resources. BAPCPA was enacted in 2005, more than twelve years after Taylor was decided, but Section 522(l) was left untouched.

individual debtor's fresh start by allowing the debtor to keep sufficient assets with which to live after the Chapter 7 discharge is entered. The discharge is to be entered "forthwith" after the deadline to object to discharge elapses. FED. R. BANKR. P. 4004(c)(1). The trustee presides over the meeting of creditors and determines when to conclude the meeting. The deadline to object to exemptions does not commence until the meeting of creditors is concluded. Section 522(l) places the burden on parties in interest to object to a debtor's claimed exemptions. The Chapter 7 trustee is a party in interest with standing to object[21]. When a debtor is permitted to retain otherwise non-exempt property, the Chapter 7 trustee has fewer assets to liquidate and distribute to creditors, and the trustee's commissions are reduced. 11 U.S.C. § 326(a). A Chapter 7 trustee has the means and incentive to fully investigate a debtor's claim of exemptions even if the trustee might not be able to delay or prevent a discharge.

In Chapter 11, the available exemptions also facilitate an individual debtor's fresh start but the discharge is not entered until after all payments under a confirmed Chapter 11 plan are completed. 11 U.S.C. § 1141(d)(5). Section 522(l) also places the burden on parties in interest to object to the individual Chapter 11 debtor's claimed exemptions, but there is no bankruptcy trustee appointed in most Chapter 11 cases. A Chapter 11 debtor in possession has certain rights and duties of a Chapter 11 trustee, but not all of them. 11 U.S.C. § 1107(a). Likewise, a Chapter 11 trustee, if appointed, has certain duties of a Chapter 7 trustee, but not all of them. 11 U.S.C. § 1106(a)(1). Notably absent for a Chapter 11 debtor in possession or a Chapter 11 trustee is a Chapter 7 trustee's duty under Section 704(a)(1) to collect and reduce to money property of the estate. The absence of a bankruptcy trustee in Chapter 11 who would object to a debtor's exemptions is partially ameliorated because a proposed Chapter 11 plan may be confirmed only if each holder of a claim in a dissenting class receives a distribution "as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor

[21] This appears to be consistent with the Chapter 7 trustee's statutory duties to collect and reduce to money property of the estate, to be accountable for property of the estate, and to investigate the financial affairs of the debtor. 11 U.S.C. §§ 704(a)(1, 2 and 4).

were liquidated under chapter 7...on such date." 11 U.S.C. § 1129(a)(7)(A)(ii).[22] This provision should require a determination of the assets that an individual Chapter 11 debtor could validly claim as exempt.[23] Likewise, the absence of a bankruptcy trustee in Chapter 11 is partially ameliorated by the requirement that the individual Chapter 11 debtor, like all Chapter 11 debtors, must propose the Chapter 11 plan in good faith. 11 U.S.C. § 1129(a)(3). An individual who seeks a fresh start through Chapter 11 may not have a bankruptcy trustee to satisfy, but parties in interest have additional grounds to prevent and discourage improper exemption claims.

In Chapter 12, the available exemptions also facilitate the fresh start of an individual family farmer or an individual fisherman, but the discharge is not entered until after all of the confirmed Chapter 12 plan payments have been completed. 11 U.S.C. § 1228(a).[24] Section 522(l) also places the burden on parties in interest to object to an individual Chapter 12 debtor's exemptions. Unlike a typical Chapter 11 proceeding where the debtor remains in possession of property of the estate in lieu of a bankruptcy trustee, a Chapter 12 trustee is appointed who has

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[22] Section 1129(a)(7)(A)(ii) generally is known as the "best interest of creditors" test. Because the test is restricted to an analysis of what creditors would receive if the debtor's estate was liquidated in a chapter 7 **on the effective date of the proposed plan**, however, it arguably excludes even non-exempt property for which no timely objection was filed. Much may depend on when the effective date occurs under the proposed plan. This concern would arise because it is highly unlikely that plan confirmation could occur before completion of the meeting of creditors and the expiration of the 30-day deadline to object to an individual Chapter 11 debtor's claim of exemptions.

[23] This is made more difficult for the individual Chapter 11 context because an individual Chapter 11 debtor's postpetition income is considered to be property of the bankruptcy estate under Section 1115. Upon conversion from Chapter 11 to Chapter 7, the postpetition income likely becomes the individual debtor's postpetition Chapter 7 income that would not be property of the Chapter 7 estate under Section 541(a)(6). See Wu v. Markosian (In re Markosian), 506 B.R. 273, 276-77 (B.A.P. 9th Cir. 2014)(reconversion of individual's case from Chapter 11 back to Chapter 7 results in postpetition income reverting back to debtor). Thus, determining what creditors would receive on the effective date of an individual Chapter 11 debtor's plan if the case were liquidated under Chapter 7 should account for the loss of the individual debtor's postpetition income.

[24] Section 101(18A) defines a family farmer to include an individual or individual and spouse engaged in a farming operation. Section 101(19A) defines a fisherman to include an individual or individual and spouse engaged in a commercial fishing operation.

some of the duties of a Chapter 11 trustee and some of the duties of a Chapter 7 trustee. 11 U.S.C. § 1202(b).[25] A Chapter 12 debtor also has some but not all of the duties of a Chapter 11 trustee. 11 U.S.C. § 1203. Notably absent for a Chapter 12 debtor or a Chapter 12 trustee is a Chapter 7 trustee's duty under Section 704(a)(1) to collect and reduce to money property of the estate. A Chapter 12 trustee is required, however, to appear and be heard at any hearing on the confirmation of a Chapter 12 plan. 11 U.S.C. § 1202(b)(3)(B). Similar to Chapter 11, a proposed Chapter 12 plan may be confirmed only if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7...on such date." 11 U.S.C. § 1225(a)(4).[26] This provision requires a determination of the assets that an individual Chapter 12 debtor could validly claim as exempt. Likewise, the individual Chapter 12 debtor must propose the Chapter 12 plan in good faith. 11 U.S.C. § 1225(a)(3). An individual family farmer or individual fisherman who seeks a fresh start through Chapter 12 therefore has additional hurdles that would prevent and discourage improper exemption claims.

In a Chapter 13, the available exemptions also facilitate the fresh start of an individual with regular income, but the discharge is not entered until after all of the confirmed Chapter 13 plan payments have been completed. 11 U.S.C. § 1328(a). Section 522(l) also places the burden on parties in interest to object to an individual Chapter 13 debtor's exemptions. Unlike a typical Chapter 11 proceeding, a Chapter 13 trustee is appointed who has some of the duties of a Chapter 7 trustee. 11 U.S.C. § 1302(b)(1). Notably absent for a Chapter 13 trustee is a Chapter 7 trustee's duty under Section 704(a)(1) to collect and reduce to money property of the estate. A

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[25] Even though there is a Chapter 12 trustee assigned to the case, the Chapter 12 debtor remains in possession of property of the estate. 11 U.S.C. § 1207(b).

[26] Under Section 1207(a)(2), the postpetition earnings of a Chapter 12 debtor are property of the estate. As in the case of an individual Chapter 11 debtor, see note 22, supra, determining what unsecured creditors would receive on the effective date of a Chapter 12 debtor's plan if the case were liquidated under Chapter 7 likely would have to account for the loss of the individual family farmer's or individual fisherman's postpetition income.

Chapter 13 trustee is required, however, to appear and be heard at any hearing on the confirmation of a Chapter 13 plan. 11 U.S.C. § 1302(b)(2)(B). Similar to Chapter 11 and Chapter 12, a proposed Chapter 13 plan may be confirmed only if "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7...on such date." 11 U.S.C. § 1325(a)(4).[27] This provision should require a determination of the assets that an individual Chapter 13 debtor could validly claim as exempt. Likewise, the individual Chapter 13 debtor must propose the Chapter 13 plan in good faith. 11 U.S.C. § 1325(a)(3). An individual with regular income who seeks a fresh start through Chapter 13 therefore has additional hurdles that would prevent and discourage improper exemption claims.

Considering the various ways in which an individual debtor's exemptions are subject to scrutiny and possible objection, the court concludes that there is no reason to bar a debtor from declaring the value of the claimed exemption as "100% FMV" or even "full fair market value (FMV)." Inasmuch as Taylor was decided more than twenty years ago, Chapter 7 trustees and other parties in interest have long understood the consequences of failing to timely object to an improper claim of exemption. Schwab did not change that. Likewise, there is no reason to excuse a debtor from the consequences of claiming an exemption to which the debtor is not legally entitled.[28] In Chapters 11, 12 and 13, a debtor can win the exemption battle but lose the

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[27] The interplay between a Chapter 13 debtor's exemptions, the best interests test, and the effective date of the proposed plan is discussed at length in the leading Chapter 13 treatise. See KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, supra, §§ 160.1 and 161.1.

[28] Since Taylor was decided, Chapter 7 trustees and other parties in interest have an even greater reason to carefully scrutinize an individual debtor's schedules. Individual debtors in Chapter 7 are required to file statements of intention with respect to whether they will retain or surrender property securing creditor claims. 11 U.S.C. § 521(a)(2)(A). A Chapter 7 trustee has a duty to ensure that the individual debtor performs under the statement of intention. 11 U.S.C. § 704(a)(3). In 2005, BAPCPA added Section 362(h)(1), which dictates two consequences when an individual debtor fails to timely file the statement of intention: the automatic stay is terminated with respect to personal property securing the claim, and the personal property is no longer property of the bankruptcy estate. 11 U.S.C. § 362(h)(1)(A). Only the Chapter 7 trustee is permitted to file a timely motion seeking to have the personal property delivered to the trustee

confirmation war through a properly supported good faith, best interests, or other objections. Additionally, counsel whose fees are subject to scrutiny and allowance are well aware that the reasonableness their attorney's fees under Section 330(a)(1) takes into account whether counsel's services "were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion" of the case. 11 U.S.C. § 330(a)(3)(C). In the face of a timely objection, and possibly even the prospect of a timely objection, counsel who maintain a facially invalid exemption claim risk disallowance of their fees under Section 330(a). More important, counsel who continue to later advocate in favor of a facially invalid exemption claims also risk the imposition of sanctions under FRBP 9011. Compare In re Aston-Nevada Ltd. P'ship, 391 B.R. 84, 101-02 (Bankr. D. Nev. 2006), vacated on other grounds, 409 Fed.Appx.107 (9th Cir. 2010).

The Trustee's concern over potential liability for failing to object to an improper exemption upon conversion to Chapter 7 also is not changed by Schwab. Nor is the Debtors' concern over liability for postpetition appreciation of exempt property after conversion changed by Schwab.[29] The same concerns exist regardless of the bankruptcy chapter as long as Section 522(l) continues to provide that property claimed as exempt is exempt in absence of a timely objection.[30] In Taylor, the Court observed that relief from these consequences must be obtained

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upon proof of value to the estate and protection of the secured creditor's interest. 11 U.S.C. § 362(h)(2). In this circuit, personal property securing the claim is no longer property of the estate under Section 362(h)(1) even if the property was not listed on the debtor's schedules. See Samson v. W. Capital Partners, LLC (In re Blixseth), 684 F.3d 865, 871-72 (9th Cir. 2012). There is an anomaly in Section 1302(b)(1) that imposes a duty upon Chapter 13 trustees to perform the duties under Section 704(a)(3). As the latter section refers to statements of intention that are filed only in Chapter 7 proceedings, inclusion in Section 1302(b)(1) is presumed to be a drafting error. See 8 COLLIER ON BANKRUPTCY, ¶ 1302.03[1][b] (Alan N. Resnick and Henry J. Sommer, eds., 16th ed. 2014).

[29] Concerns over the future appreciation of even exempt property can be addressed through an appropriate abandonment motion brought by a party in interest under Section 554(b). See Gebhart v. Gaughan (In re Gebhart), 621 F.3d 1206, 1212 n.6 (9th Cir. 2010).

[30] One court has rejected any suggestion that Schwab tacitly endorsed the practice of claiming "100% of FMV" in the face of contrary state exemption law. See In re Stoney, 445 B.R. 543 (Bankr. E.D. Va. 2011). The court observed that endorsing such a practice "would

from Congress. See discussion at 15, supra. Deference to the specific exemption language chosen by Congress was reiterated in Schwab, 560 U.S. at 791, 130 S.Ct. at 2667, and more recently repeated by the Court in Law v. Siegel, 134 S.Ct. at 1197-98.

Based on the foregoing, the court will deny the Trustee's request to strike the "100% FMV" language from Debtors' Schedule "C" inasmuch as the merits of the exemptions are presently before the court.[31]

2. The Craft Supplies as Necessary Items under NRS 21.090(1)(b).

NRS 21.090(1)(b) exempts from execution "**[n]ecessary** household goods, furnishings, electronics, wearing apparel, **other personal effects** and yard equipment, not to exceed $12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, **to be selected by the judgment debtor**."[32]

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permit a judicial superseding of the state statutory requirements for exemptions and functionally negate the express authority of a state to opt out and impose its exemption limitations - as well as the procedural and substantive requirements necessary to perfect those exemptions - on debtors who are citizens of the opt-out state." Id. at 552.

[31] Where "100% of FMV" was claimed as exempt by individual debtors in several Chapter 7 and Chapter 13 cases, one court concluded that the claims were facially invalid under either the Texas exemption statutes or the federal bankruptcy exemptions. The court sustained the bankruptcy trustees' objections but allowed the debtors to amend their schedules to specify a dollar value. See In re Salazar, 449 B.R. 890 (Bankr. N.D. Tex. 2011). Citing Gebhart, the Salazar court specifically suggested a motion to compel abandonment under Section 554(b) as a means to address issues regarding postpetition appreciation of exempt property. 449 B.R. at 899.

[32] The underscored language, which appears in both NRS 21.090(1)(b) as well as NRS 21.090(1)(a), was previously discussed by this court in In re Dipak Desai, Case No. 10-13050-MKN. In that proceeding, the court sustained the Chapter 7 trustee's objection to exemptions claimed by a non-debtor spouse, granted the trustee's request to sell the debtor's non-exempt assets, and denied the trustee's request to include the debtor's exempt assets within the sale. See Order on Trustee's Application to Employ Auctioneer, Conduct Sale of Personalty Property, and Objection to Claim of Exemption of Kusum Desai. (Desai ECF No. 987). In a separate memorandum decision accompanying that order ("Desai Memorandum") (Desai ECF No. 986), the court addressed the personal property exemptions claimed by the debtor under NRS 21.090(1)(a) and (b). The trustee was attempting to sell even the exempt personal property of the debtor and then provide the debtor with the exempt amount set forth in those statutory provisions. See Desai Memorandum at 7:1-5. Because these Nevada exemptions expressly allow the debtor to select the items claimed, up to the statutory limit in each category, the trustee's request to auction all of the property - both exempt and non-exempt - was denied. Id. at

Debtors argue that the craft supplies are personal effects that are necessary to Kathryn's well-being. The craft supplies apparently consist of glass beads, thread and related items that she uses to make necklaces, bracelets, and similar items for herself and others. See Debtors Brief at 11:24-26. Counsel for the Debtors represented at the hearing that Kathryn uses the craft supplies as a means of relaxation. As NRS 21.090(1)(b) authorizes the debtor to select the items encompassed by the statute, Debtors further argued at the hearing that the selection language was intended to allow the debtor to determine what items are considered to be "necessary." They assert that this conclusion follows from the prefatory language of NRS 21.090(1) stating that "The following property is exempt from execution..."[33]

The Trustee acknowledges that the craft supplies may be exempted under the Nevada "wildcard" exemption provided under NRS 21.090(1)(z). See Trustee Brief at 13:22-23. That provision prevents execution on "any property" up to a value of $1,000. Because the Debtors for some reason refuse to claim that exemption, however, the Trustee maintains that the craft supplies are not basic necessities of life intended for protection by the Nevada legislature. In arguing that the Debtors could do without such items at the hearing, the Trustee's counsel referred to the song "The Bare Necessities" as performed by the aforementioned Baloo the Bear.[34] Essentially, the Trustee's legal position is that if a debtor can live without the particular household goods, furnishings, electronics, wearing apparel, personal effects or yard equipment claimed, the items claimed simply are not "necessary" within the meaning of NRS 21.090(1)(b).

Suffice it to say, Debtors' interpretation of the term necessary renders it meaningless. In their view, any described item that makes their lives more enjoyable would be exempt if within the dollar limits of the statute and selected by the debtor. If the Nevada legislature meant to

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10:12-16.

[33] Section 522(d) similarly states "The following property may be exempted..." before delineating the specific categories of property that may be claimed.

[34] Presumably, counsel was referring to the lyric: "When you find out you can live without it, and go along not thinkin' about it, I'll tell you something true, the bare necessities of life will come to you."

allow the debtor to select any item encompassed by the statute, however, then the addition of the term necessary was superfluous. Likewise, the prefatory language, i.e., "[t]he following property is exempt" hardly means that the express language of the subsequent provisions of NRS 21.090(1) are to be ignored.

The Trustee's Jungle Book interpretation, while amusing, actually is closer to the common dictionary meaning of the word necessary: "so important that you must do it or have it: absolutely needed." See, e.g., Merriam-Webster Dictionary (2014), online at www.merriam-webster.com/dictionary/necessary. Compare Dictionary.com (2014), online at http://dictionary.reference.com/browse/necessary ("being essential, indispensible, or requisite"). As the Nevada legislature did not provide additional modifiers such as "reasonably" or "substantially" to the term necessary, the dictionary meaning appears to be more appropriate.

Under these circumstances, the Debtors' view is unpersuasive and does not comport with a reasonable interpretation of the statute. The Trustee's objection to the exemption of the craft supplies will be sustained without prejudice.

3. The Favre Helmet as a Keepsake or Work of Art under NRS 21.090(1)(a).

Debtors concede that while the Favre Helmet is an item that can be worn, it is not "wearing apparel" encompassed by NRS 21.090(1)(b). Debtors maintain, however, that the Favre Helmet is encompassed by NRS 21.090(1)(a). That provision exempts from execution "[p]rivate libraries, **works of art**, musical instruments and jewelry not to exceed $5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, **to be selected by the judgment debtor**, **and all** family pictures and **keepsakes**."

Brian maintains that the Favre Helmet is a keepsake within the meaning of the statute because it is a momento that serves as a reminder of his favorite sports team. See Debtors Brief at 11:13-14. Alternatively, Brian argues that the Favre Helmet is a work of art that provides aesthetic pleasure separate from its utility as protective headgear. Id. at 11:14-19. Unfortunately, just as it did not provide guidance as to the term "necessary" under NRS 21.090(1)(b), the Nevada legislature did not define the meaning of a "keepsake" or "works of art" as used in NRS 21.090(1)(a). Nor are there any reported decisions by Nevada courts interpreting this language. Two decisions by the bankruptcy courts in Nevada, however, are instructive.

In In re Hantges, Case No. 07-13163-LBR, a Chapter 11 trustee objected to the individual debtor's attempt to exempt two 1919 "Liberty" Dimes[35] as keepsakes under NRS 21.090(1)(a). The trustee objected, arguing that the two coins were collectibles rather than keepsakes. (Hantges ECF No. 549). The bankruptcy court agreed and sustained the objection. (Hantges ECF No. 580). The district court affirmed on appeal. (Case No. 2:08-cv-01018-LRH-PAL, Order entered September 17, 2009, as Docket No. 23). The Ninth Circuit also affirmed. See Hantges v. Carmel, 422 Fed.Appx. 623 (2011).

In In re Molasky, Case No. 08-14517-MKN, a Chapter 11 debtor attempted to exempt a 1968 Shelby Cobra automobile valued at $125,000 as a keepsake under the same Nevada statute. While the individual debtor had been given a Shelby Cobra as a teenager by his father, creditors objected because the debtor had sold the original vehicle and was attempting to exempt a replacement Shelby Cobra that he had purchased within six years of filing for bankruptcy protection. (Molasky ECF Nos. 170, 262). Because there were no Nevada statutory provisions or cases interpreting the meaning of a keepsake, the court looked to decisions from states that recognized an exemption for "items of sentimental value" or "heirlooms," e.g., In re Dillon, 113

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[35] "Liberty" dimes were produced by the United States Mint between 1916 and 1945 and are embossed with an image of Lady Liberty with wings on the side of her head. The collectors' value of such coins typically depends on whether the coin was placed in circulation, or was held without being used as currency.

B.R. 46 (Bankr. D. Utah 1990)[36] and In re Pullman, 317 B.R. 324 (Bankr. E. D. Va. 2004)[37]. As the debtor had purchased the replacement vehicle himself, there was no history of passing the original Shelby Cobra from one generation to another in spite of his expressed intention of passing the replacement vehicle to his children. Moreover, the 1968 Shelby Cobra had a significant economic value far beyond a sentimental attachment normally associated with a family heirloom or keepsake. Under those circumstances, the court sustained the objections. (Molasky ECF No. 525).

In the instant case, the Favre Helmet was acquired by Brian as a fan of the Green Bay Packers. There obviously are no prior generations of ownership as he is the first member of his family to own it. There also is no assurance that he even intends to pass the Favre Helmet along to future generations: Debtors' counsel speculated at the hearing that the Debtors may want to sell the helmet in the future but for the possible liability for appreciation if they convert to Chapter 7. To even call an item a keepsake, one presumably intends to keep it; but just because a debtor wants to keep an item, does not make it a keepsake. Under the circumstances, the Favre Helmet has no inter-generational history as in Molasky. It also appears to be no more than a collectible as in Hantges, and possibly even an investment, rather than a keepsake. The court therefore concludes that the Favre Helmet is not a keepsake within the meaning of NRS

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[36] In Dillon, the Utah exemption statute allowed debtors to exempt property valued up to $500 consisting of a family heirloom "or other item of particular sentimental value." 113 B.R. at 49. The debtor attempted to exempt a 1983 Pontiac vehicle that was won in a contest as well as a hunting rifle she purchased to replace another rifle she had owned as a child. The bankruptcy court denied the debtors' motion to avoid a judicial lien on the vehicle and rifle under Section 522(f)(1) because they did not qualify as items of particular sentimental value under Utah law. The court explained that "sentimental value" must be measured on an objective standard, "lest every debtor suddenly develop a sentimental attachment triggered more by the bankruptcy filing than by any pre-petition life events." 113 B.R. at 49, quoting In re Leva, 96 B.R. 723, 729 (W.D. Tex. 1989).

[37] In Pullman, the Virginia exemption statute allowed debtors to exempt "family heirlooms not to exceed $5,000.00 in value." 317 B.R. at 325. The debtor had business dealings with certain sports figures and had acquired various sports memorabilia. Because the debtor received the memorabilia on his own rather than from an ancestor with the intention that it remain in the family, the court concluded that the sports memorabilia was not within the heirloom exemption provided by Virginia law. Id. at 326.

21.090(1)(a).

Absent a Nevada statute or caselaw establishing the meaning of works of art under NRS 21.090(1)(a), Debtors suggest the use of an online dictionary definition: a work of art is "a product that gives aesthetic pleasure and that can be judged separately from any utilitarian considerations." Debtors Brief at 11:15-17.[38] On its face, it seems unlikely that a Favre Helmet would be described as a work of art, although many opposing fans might have described Favre himself as a piece of work. Presumably, the original helmet was mass produced by the original manufacturer and likely was never worn by Favre. At the hearing, Debtors' counsel argued that works of art can be in any medium, e.g., a football helmet, as long as it meets the dictionary definition of producing aesthetic pleasure separate from its actual usefulness. But like their view of the terms "necessary" and "keepsake," Debtors' interpretation of "works of art" under NRS 21.090(1)(a) is limitless. If Brian was an avid follower or even a participant in off-road racing, would the Jeep Wrangler be a work of art because it gives him aesthetic pleasure even when parked in his driveway? No doubt Kathryn receives aesthetic pleasure from looking at the glass beads she uses to make necklaces and bracelets, but not even the Debtors have suggested that the craft supplies constitute a work of art.

More important, that a Packers fan would get aesthetic pleasure from gazing at the Favre Helmet does not make the athletic headgear a work of art any more than the aesthetic pleasure experienced from gazing at a rare $5,000 bill.[39] While a $5,000 bill would fall within the monetary limits of NRS 21.090(1)(a), it would hardly qualify as a work of art merely because it

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[38] The Trustee did not suggest a contrary definition or meaning, <u>see</u> Trustee Reply at 2:18-23, not even a definition sung by Baloo the Bear.

[39] "On July 14, 1969, David M. Kennedy, the 60th Secretary of the Treasury, and officials at the Federal Reserve Board announced that they would immediately stop distributing currency in denominations of $500, $1,000, $5,000 and $10,000. Production of these denominations stopped during World War II. Their main purpose was for bank transfer payments. With the arrival of more secure transfer technologies, however, they were no longer needed for that purpose. While these notes are legal tender and may still be found in circulation today, the Federal Reserve Banks remove them from circulation and destroy them as they are received." U.S. Department of Treasury Resource Center, found at http://www.treasury.gov/resource-center/faqs/Currency/Pages/denominations.aspx

might be pleasing to the viewer's eye. The "aesthetic pleasure" standard suggested by the Debtors simply invites the "eye of the beholder" subjectivity applied to descriptions like beautiful, obscene, and "greatest of all time." In this instance, Brian does not even allege that he has had the Favre Helmet appraised as a work of art, that he has had it insured as a work of art, or that he even secures it as a work of art. There simply is no objective indication that the Favre Helmet is regarded as a work of art even by the Debtors.[40] Under these circumstances, the court concludes that the Favre Helmet is not a work of art within the meaning of NRS 21.090(1)(a).

4. Unknown Value of the Jeep Wrangler.

As set forth above, in addition to adding "100% FMV" to their specification of NRS 21.090(1)(f) as the basis for their exemption of the Jeep Wrangler, Debtors list the value of the claimed exemption as "unknown." See discussion at 5, supra. Debtors maintain that there currently is no equity in the Jeep Wrangler because more is owed to the secured creditor than the estimated $20,000 value shown on Schedule "B."[41] Also as mentioned above, Debtors maintain that they are not required to state a value of their claimed exemption because they will not have equity in the Jeep Wrangler until the amount owed to the secured creditor is reduced below the estimated value. See discussion at 11, supra.

Because the value of the claimed exemption is unknown, the warning flag that arose in Taylor also arises in the instant case. Consistent with Schwab, the Trustee has appropriately objected. The Trustee apparently does not object to the Debtors exempting any equity in the

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[40] Under the circumstances, characterization of the Favre Helmet as a work of art actually may be a "Hail Mary" pass. See United States v. George, 676 F.3d 249, 251 (1st Cir. 2012)("A Hail Mary pass in American football is a long forward pass made in desperation at the end of a game, with only a small chance at success."); Nyunt v. Chairman, Broad. Bd. of Governors, 589 F.3d 445, 449 (D.C. Cir. 2009)("Given that very stringent standard, a Leedom v. Kyne claim is essentially a Hail Mary pass - and in court as in football, the attempt rarely succeeds."); In re Lionel Corp., 722 F.2d 1063, 1072 (2nd Cir. 1983)(Winter, J., dissenting)("The courts below were quite right in not treating their arguments seriously for they are the legal equivalent of a 'Hail Mary pass' in football.").

[41] As previously discussed at note 13, supra, Debtors scheduled creditor TD Auto Finance as having a claim in the amount of $23,000 secured by the Jeep Wrangler. Their Plan proposes to retain the vehicle until it is paid off at payments of $455 each month.

vehicle that is less than the $15,000 limit under NRS 21.090(1)(f). In this case, however, the Debtors concede that they have no equity in the Jeep Wrangler. Because NRS 21.090(1)(f) specifically refers to equity in the vehicle claimed as exempt, the statute is inapplicable on its face. Compare Messer v. Maney (In re Messer), 2012 WL 762828 at *4 & n.4 (B.A.P. 9th Cir. Mar 9, 2012) ("Technically, because debtor's vehicle was overencumbered, she had no equity or 'interest' in her vehicle to remove from her estate."). Under these circumstances, the objection must be sustained irrespective of the purported "Unknown" exempt value of the Jeep Wrangler.[42]

CONCLUSION

For the reasons discussed above, the Trustee's objections to the Debtors' specific exemption claims will be sustained. The Trustee's request to strike the "100% FMV" language from the Debtors' Schedule "C" will be denied as moot. A separate order has been entered contemporaneously with this Memorandum Decision.

Notice and Copies sent through:

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KATHRYN A. BAILEY
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210 W. ROCHELLE DR.
HENDERSON, NV 89015

# # #

[42] Because there is no equity in the Jeep Wrangler, its liquidation value or lack thereof likely will not impact the confirmability of the Plan under Section 1325(a)(4) except with respect to feasibility of the proposed monthly payments for the vehicle. In a Chapter 7 context, a trustee presumably would abandon the Jeep Wrangler under Section 554(a) or the Debtors would seek to redeem it under Section 722.