



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 29, 2015

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No.: 14-14403-MKN
)	Chapter 7
ROBERT M. BOLLINGER and)	
JACQUELINE D. BOLLINGER,)	
)	Date: June 24, 2015
Debtors.)	Time: 2:30 p.m.

ORDER ON MOTION TO: (1) SELL INTEREST IN SEVEN TEN EQUITIES, LLC FREE AND CLEAR OF LIENS TO PURCHASER OR OVERBIDDER AT AN AUCTION TO BE HELD ON THE HEARING ON THIS MOTION, AND (2) ALLOW BREAK UP FEE¹

On June 24, 2015, the court heard the Motion to: (1) Sell Interest in Seven Ten Equities, LLC Free and Clear of Liens to Purchaser or Overbidder at an Auction to Be Held on the Hearing on this Motion, and (2) Allow Break Up Fee (“Sale Motion”) brought by the bankruptcy trustee in the above-captioned case.

BACKGROUND

On June 26, 2014, when Robert M. Bollinger and Jacqueline D. Bollinger (jointly “Debtors”) filed their voluntary Chapter 7 bankruptcy petition, they also filed their schedules of assets and liabilities (“Schedules”). (ECF No. 1). On their personal property Schedule “B,” Debtors listed an asset under the category of “Stock and Interests in Businesses” described as

¹ In this Order, 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. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “NRS” are to provisions of the Nevada Revised Statutes. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 Seven Ten Equities LLC. On the same Schedule “B,” Debtors also listed under the category of
2 “Other personal property of any kind not already listed” an asset described as “Interest in a Trust
3 (Trust contains LLC interest).”

4 On their Schedule “C,” Debtors claimed Seven Ten Equities LLC as exempt under NRS
5 21.090(1)(bb). In addition to specifying the law providing for the claimed exemption, Schedule
6 “C” also specified the Value of the Claimed Exemption as “100%” and the Current Value of
7 Property Without Deducting Exemption as 0.00. On their Schedule “C,” Debtors do not claim
8 an exemption in the Interest in a Trust listed on their Schedule “B.”

9 The Chapter 7 case was assigned to Shelley D. Krohn as bankruptcy trustee (“Trustee”)
10 and a meeting of creditors required by Section 341(a) (“341 Meeting”) was scheduled for July
11 30, 2014. (ECF No. 8). The 341 Meeting was continued to September 10, 2014. (ECF No. 13).
12 The 341 Meeting was concluded and the Trustee filed an initial asset report on September 15,
13 2014. (ECF No. 19). Debtors received their discharge on September 30, 2014. (ECF No. 20).

14 The instant Sale Motion was filed by the Trustee on April 27, 2015. (ECF No. 29). By
15 this motion, the Trustee seeks to sell the Debtors’ interest in Seven Ten Equities LLC to third
16 parties free and clear of any liens or interests pursuant to Section 363(f). The Sale Motion was
17 noticed to be heard on May 28, 2015. (ECF No. 31). Opposition was filed by the Debtors in pro
18 se on May 11, 2015. (ECF No. 36). Thereafter, a formal opposition was filed by the Debtors
19 through their bankruptcy counsel on May 26, 2015. (ECF No. 39).²

20 At the initial hearing on the Sale Motion, the court directed counsel for the Trustee and
21 the Debtors to file supplemental briefs. The hearing on the Sale Motion was continued to June
22 24, 2015. The Trustee filed an “Objection to Exemptions and Reply to Opposition to Trustee’s
23

24 ² On the same date, Debtors’ counsel also filed an amended exemption Schedule “C” on
25 behalf of the Debtors. (ECF No. 38). In the amendment (“Amended C Schedule”), Debtors
26 claim an exemption in their “Interest in a Trust (Trust contains LLC interest)” pursuant to NRS
27 21.090(1)(dd), NRS 21.090(1)(cc), and NRS 21.080.2. For each statutory provision, the Value
28 of Claimed Exemption is shown as “100%.” The Current Value of Property Without Deducting
Exemption is shown as 0.00. As an additional basis for claiming an exemption in Seven Ten
Equities LLC, the amendment also refers to NRS 86.401 as an additional law providing for the
exemption. The Value of Claimed Exemption under this additional statutory provision is shown
as “100%”.

1 Motion to Sell Free and Clear of Liens” (ECF No. 41), accompanied by the Declaration of
2 Rebecca Webb (ECF No. 42), on June 11, 2015. On the same date, the Debtors filed their
3 further opposition to the Sale Motion. (ECF No. 43).³ The Trustee filed her reply brief (ECF
4 No. 44), accompanied by the Supplemental Declaration of Shelley D. Krohn (ECF No. 45) on
5 June 18, 2015. On the same date, Debtors filed their reply brief. (ECF No. 46).⁴

6 At the continued hearing, counsel for the parties submitted the matter on the written
7 arguments presented.

8 APPLICABLE LEGAL STANDARDS

9 Section 363(b) authorizes a bankruptcy trustee to use, sell or lease property of the
10 bankruptcy estate. Included within that authorization, subject to certain conditions, is the ability
11 under Section 363(f) to sell property of the estate free and clear of the interests of other parties.
12 See, e.g., In re Duncan, 406 B.R. 904 (Bankr.D.Mont. 2009)(sale of boats and household
13 furnishings).

14 Section 541(a) defines property of a bankruptcy estate to include all legal and equitable
15 interests held by a debtor as of the time the bankruptcy proceeding is commenced. When
16 individuals file for bankruptcy protection, their property interests become property of their
17 bankruptcy estate under Section 541(a). See Rousey v. Jacoway, 544 U.S. 320, 325-26 (2005).

18 Section 522(b)(1) authorizes an individual debtor to “exempt” property of the bankruptcy
19 estate. Exemptions are intended to preserve property interests essential for an individual to
20 survive. An individual who is subject to collection proceedings is able to retain such essential
21 items by claiming exemptions. See In re Bower, 234 B.R. 109, 112 (Bankr. D. Nev. 1999) (“The
22 historical purpose of exemptions in Nevada is to protect a debtor by permitting him to retain the
23 basic necessities of life so that he and his family will not be left destitute.”). See also In re Fox,

24
25 ³ In this Order, these documents filed on June 11, 2015, will, if necessary, be referred to,
26 respectively, as “Trustee Brief,” “Webb Declaration” and “Debtors Brief.” To the extent the
27 “Objection to Exemptions” are included as part of the Trustee Brief, this Order will resolve that
objection as well.

28 ⁴ These documents filed on June 18, 2015, will, if necessary, be referred to respectively,
as “Trustee Reply,” “Krohn Declaration” and “Debtors Reply.”

1 302 P.2d 1137, 1139 (Nev. 2013) (“The legislative purpose of NRS 21.090 is ‘to secure to the
2 debtor the necessary means of gaining a livelihood, while doing as little injury as possible to the
3 creditor.’”). The list of items considered to be essential varies widely from State to State. See
4 generally BANKR. EXEMPTION MANUAL APPENDIX B (2014 ed. West Bankruptcy Series). In
5 bankruptcy proceedings, the effect of an exemption is to “withdraw from the estate” the property
6 claimed as exempt. See Rousey, 544 U.S. at 325. See also Schwab v. Reilly, 560 U.S. 770, 775-
7 76 (2010)(“...a claimed exemption will exclude the subject property from the estate even if the
8 exemption’s value exceeds what the Code permits.”); Taylor v. Freeland & Kronz, 503 U.S. 638,
9 642 (1992)(“The Code...allows the debtor to prevent the distribution of certain property by
10 claiming it as exempt.”); U.S. v. Security Indus. Bank, 459 U.S. 70, 71 n.1 (1982)(“The
11 exemptions were designed to permit individual debtors to retain exempt property...”).

12 Section 522(d) sets forth a variety of specific exemptions that may be claimed by
13 individual bankrupt debtors, but Section 522(b)(2) allows individual States to “opt out” of those
14 exemptions so that their residents may claim only the exemptions provided under state law and
15 non-bankruptcy federal law. Under NRS 21.090(3), the State of Nevada has “opted out” of the
16 federal bankruptcy exemptions. See Leavitt v. Alexander (In re Alexander), 472 B.R. 815, 821
17 (B.A.P. 9th Cir. 2012).

18 Section 522(l) requires an individual debtor to file a list of the property he or she claims
19 as exempt. FRBP 4003(a) requires the list to be included in the Schedules that a debtor is
20 required to file under Section 521(a)(1)(B)(i). Section 522(l) also specifically provides that
21 “Unless a party in interest objects, the property claimed as exempt on such list is exempt.”
22 (Emphasis added.) The official form on which the list of exempt property must appear is
23 Schedule “C.”

24 Section 341(a) provides that a meeting of creditors must be held within a reasonable time
25 after a voluntary bankruptcy proceeding is commenced. FRBP 2003(a) requires that the 341
26 Meeting in a Chapter 7 case be conducted no fewer than 21 days and no more than 50 days after
27 the commencement of the case.

28 FRBP 4003(b)(1) allows any party in interest, including a bankruptcy trustee, to object to

1 the list of exempt property, but requires the objection to be filed within 30 days after the
2 conclusion of the 341 Meeting. Because Section 522(l) specifically provides that absent an
3 objection “the property claimed as exempt on such list is exempt” (emphasis added), the
4 consequence of failing to timely object to an exemption is harsh: the property listed on Schedule
5 “C” is exempt regardless of whether the claimed exemption has a colorable legal basis. See
6 Taylor, 503 U.S. at 643.⁵ See also In re Anderson, 2012 WL 1110056 at *3 (Bankr. D. Mont.
7 Apr 2, 2012); In re Gardner, 417 B.R. 616, 621 (Bankr. D. Idaho 2009)(failure to timely object
8 to baseless exemption results in “exemption by default”); In re Grimes, 2009 WL 960143 at *5
9 (Bankr. D. Ore. Feb 5, 2009); In re Bush, 346 B.R. 523, 524 (Bankr. E. D. Wash. 2006); In re
10 Virissimo, 332 B.R. 201, 205-06 (Bankr. D. Nev. 2005); In re Furuyama, 2002 WL 32332546 at
11 *2 (Bankr.D.Haw. Oct 25, 2002). As a result, the listed property “is exempt from property of the
12 estate and passes to the debtor upon expiration of the time to object.” In re Mwangi, 473 B.R.
13 802, 809 (D. Nev. 2012) (Emphasis added). Because Chapter 7 trustees, as well as all other
14 bankruptcy trustees, have a fiduciary duty to creditors, they have an obligation to scrutinize a
15 debtor’s schedules to ensure that property otherwise available for liquidation is not improperly
16 claimed as exempt.⁶

17 _____
18 ⁵ At the time Taylor was decided, FRBP 4003(b) provided that “The trustee or any
19 creditor may file objections” to a debtor’s exemptions. In 2000, FRBP 4003(b) was amended to
20 provide that “A party in interest may file an objection” to a debtor’s exemptions. In 2008, FRBP
21 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.

22 ⁶ See, e.g., In re Sas, 488 B.R. 178 (Bankr. D. Nev. 2013) (relief from administrative
23 abandonment denied where debtor’s schedules included sufficient information to place Chapter 7
24 trustee on inquiry notice of value of prepetition personal injury claim exempted by the individual
25 debtors). Compare KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, 3D ED., § 161.1 at 161-4
26 (2000 & Supp. 2004) (“Creditors and the Chapter 13 trustee must diligently police exemptions
27 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
28 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.”). See also
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).

DISCUSSION

1
2 In the present case, the Trustee seeks to sell the Debtors' interest in Seven Ten Equities
3 LLC⁷ even though the Debtors claimed Seven Ten Equities LLC as exempt on their Schedule
4 "C." The law on which the Debtors claim their exemption of Seven Ten Equities LLC is NRS
5 21.090(1)(bb) which exempts from execution "stock in a corporation described in subsection 2
6 of NRS 78.746 except as set forth in that section." The latter provision provides for the issuance
7 only of a charging order against the stock of a shareholder for the payment of an unsatisfied
8 judgment, and no other remedy.

9 Inasmuch as the 341 Meeting was concluded on or about September 10, 2014, and no
10 objections to the Debtors' exemptions were ever filed, the Debtors oppose the Sale Motion,
11 asserting that the Trustee is attempting to sell assets that are no longer property of the
12 bankruptcy estate. The Trustee, however, maintains that no objection to the exemption of Seven
13 Ten Equities LLC appearing on Schedule "C" was required in this case.

14 The Trustee argues that because the Debtors' Schedule "C" specified "0.00" as the
15 "Current Value of the Property Without Deducting Exemption," the Debtors are entitled to only
16 that amount, i.e., zero dollars, from the Trustee's sale of the estate's interest in Seven Ten
17 Equities LLC. See Trustee Brief at 4:4 to 7:14; Trustee Reply at 3:6 to 4:3. The Trustee
18 concedes, however, that because of the Court's decision in Taylor, Debtors' exemption of any
19 interest in Seven Ten Equities LLC is now valid because the Trustee did not object to the claim
20 of exemption. See Trustee Brief at 7:7-9. Nonetheless, the Trustee maintains that the failure to
21 object to the validity of the exemption does not preclude her from now objecting to the amount
22 of the exemption because the Debtors stated on their Schedule "C" that the value of the claimed
23 exemption is 0.00. Id. at 7:10-12.

24
25
26 ⁷ The Trustee attests that Seven Ten Equities LLC has substantial value based on its
27 interest, if any, in an apartment complex located in the State of Washington, and that she has
28 received several offers from third parties to purchase the bankruptcy estate's interest. See Krohn
Declaration at ¶¶ 5, 6, 7, 8, and 9. The Debtors argue that the Trustee's assumptions are
factually incorrect and maintain that Seven Ten Equities LLC owns nothing at all and therefore
has no value. See Debtors Brief at (unnumbered) 4:11 to 5:11.

1 Fatal to the Trustee’s argument, however, is the consequence of the admittedly valid
2 exemption: the interest in Seven Ten Equities LLC has been “withdrawn” and “excluded” from
3 the bankruptcy estate. See discussion at 4, supra. As a result, the amount of the exemption is
4 immaterial. The language of Justice Thomas’s opinion in Schwab, as well as the prior opinion
5 by Justice Thomas in Taylor, dictates this conclusion.⁸

6 In Schwab, the Court reversed three lower court decisions that denied a Chapter 7
7 trustee’s motion to sell certain property that the individual debtor had claimed as exempt. The
8 debtor lived in Pennsylvania which allows its residents to use the bankruptcy exemptions under
9 Section 522(d). The bankruptcy court determined, and the district court agreed, that the subject
10 property could not be sold because the Chapter 7 trustee had failed to object to the claimed
11 exemption, thereby removing the property from the estate. The lower courts relied on the
12 Court’s previous decision in Taylor, where the bankruptcy court had ordered the debtor and her
13 attorneys to turnover certain proceeds from the settlement of an employment discrimination
14 claim that had been exempted without objection.⁹ In Taylor, the Third Circuit reversed and the
15 Supreme Court affirmed the circuit court. The Court reached that result in Taylor even though
16

17 ⁸ To be clear, Justice Thomas’s opinions in Schwab and Taylor were the majority
18 opinions of the entire Court in both instances. Nor were they the only opinions by Justice
19 Thomas on the subject of exemptions in bankruptcy. In Rousey, Justice Thomas also authored
20 the Court’s opinion that upheld a Chapter 7 debtor’s exemption of individual retirement accounts
under Section 522(d)(10)(E). 544 U.S. at 334-35.

21 ⁹ See Taylor v. Freeland & Kronz (In re Davis), 105 B.R. 288 (Bankr.W.D. Pa. 1989). In
22 Taylor, the debtor (Emily Davis) claimed an exemption of the proceeds of the employment
23 discrimination claim under then-Section 522(d)(11) which exempted a “payment in
24 compensation for loss of future earnings of the debtor...to the extent reasonably necessary for the
25 support of the debtor and any dependent of the debtor.” Id. at 293. The debtor disclosed on her
26 Chapter 7 schedules an employment discrimination claim in which she was represented by the
27 law firm of Freeland & Kronz. The bankruptcy trustee (Robert Taylor) did not object to the
28 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.

1 the legal basis for the exemption claimed by the debtor was invalid. Because the Chapter 7
2 trustee did not object within the deadline prescribed by FRBP 4003(b), the Court in Taylor
3 concluded that the settlement proceeds were exempt under Section 522(l) and did not have to be
4 turned over to the Chapter 7 trustee.

5 In Schwab, Justice Thomas compared the individual debtor's listing of exempt property
6 against the list provided by the debtor in Taylor, who also was a Pennsylvania resident using the
7 bankruptcy exemptions under Section 522(d). 560 U.S. at 788-89. When Taylor was decided in
8 1992, the Schedule "C" form for an individual debtor to list property claimed as exempt did not
9 require the debtor to state the Current Market Value of Property Without Deducting Exemptions.
10 It did, however, require the debtor to "specify the statute creating the exemption" and to specify
11 the "value claimed exempt." 560 U.S. at 788 (Emphasis added). The debtor in Taylor described
12 the exempt property as a "claim for lost wages" and the statutory basis as "11 U.S.C. 522(b)(d),"
13 but declared the "value claimed exempt" as "unknown." This declaration of the value claimed
14 exempt was important because the parties on appeal agreed that it made the claim of exemption
15 under Section 522(d) objectionable on its face. See Schwab, 560 U.S. at 789; Taylor, 503 U.S.
16 at 642.

17 Justice Thomas in Schwab then contrasted the listing in Taylor to that before the Court in
18 Schwab. In Schwab, the debtor described the exempt property as "see attached list of business
19 equipment," the statutory bases as "11 U.S.C. § 522(d)(6) and 11 U.S.C. § 522(d)(5)," and
20 declared the values claimed as exempt as "1,850 and 8,868" respectively. 560 U.S. at 781 and
21 Appendix to opinion. Because those dollar amounts were facially within the then-existing limits
22 of Section 522(d)(6) and Section 522(d)(5),¹⁰ Justice Thomas concluded that there were "no

23
24 ¹⁰ In Schwab, the debtor, Nadejda Reilly, filed a voluntary Chapter 7 petition on April 21,
25 2005, prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection
26 Act of 2005 ("BAPCPA"). At the time she filed, Section 522(d)(6) allowed her to exempt her
27 "aggregate interest, not to exceed \$1,850 in value, in any implements, professional books, or
28 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

1 warning flags that warranted an objection.” 560 U.S. at 789 (Emphasis added).

2 Justice Thomas concluded in Schwab that the Chapter 7 trustee “was entitled to evaluate
3 the propriety of the claimed exemptions based on three, and only three, entries on [the debtor’s]
4 Schedule C: the description of the business equipment in which [the debtor] claimed the exempt
5 interests; the Code provisions governing the claimed exemptions; and the amount [the debtor]
6 listed in the column titled ‘value of claimed exemption.’” 560 U.S. at 785 (Emphasis added).

7 Justice Thomas also observed in Schwab that the “current market value of the property claimed
8 as exempt without deducting exemptions” is not the basis for a bankruptcy trustee to evaluate the
9 exemptions listed on Schedule “C” because the determination is controlled by the value claimed
10 as exempt under the statutory provision asserted by the debtor. 560 U.S. at 785. The current
11 market value estimate provided by the debtor was relegated to assisting the trustee in evaluating
12 the potential non-exempt value of the property of the estate. 560 U.S. at 785-86 & n.11. Thus,
13 in the instant case, the Trustee’s focus on the Debtors’ statement of current value of Seven Ten
14 Equities LLC as somehow dictating whether she should have objected, see Trustee Brief at 7:5-
15 7, is simply erroneous.¹¹

16 Justice Thomas further discussed in Schwab the circumstances that would raise a
17 “warning flag” to a trustee or other party in interest. His language was as follows:

18 Where, as here, it is important to the debtor to exempt the full
19 market value of the asset **or asset itself**, our decision will

20 property or personal property that the debtor or a dependent of the debtor uses as a residence...”
21 Because Section 522(d)(5) refers to “any property” it is commonly referred to as the “wildcard”
22 exemption, i.e., applicable to any form of property. The maximum amount of the federal
23 wildcard exemption available to the debtor in Schwab was \$10,225. Since the time the Schwab
24 bankruptcy proceeding was commenced, the dollar limits in Sections 522(d)(6) and 522(d)(5)
25 have increased, respectively, to \$2,300, \$1,225 and \$11,500.

26 ¹¹ Justice Thomas’s observation regarding the impact of a debtor’s statement of current
27 market value of the property claimed as exempt is not surprising. The bankruptcy appellate
28 panel for this circuit has long recognized that objections to the value of property claimed as
exempt also are subject to the 30-day deadline under FRBP 4003(b). See In re Morgan-Busby,
272 B.R. 257, 265 (B.A.P. 9th Cir. 2002). Thus, exemptions that are completely baseless as to
both the stated value of the exemption and the stated value of the subject property are valid if no
timely objection is filed. See In re Wright, 525 B.R. 464, 470 (Bankr. D. Mont. 2015), citing
Morgan-Busby, Taylor, and Schwab.

1 encourage the debtor to **declare the value of her claimed**
 2 **exemption** in a manner that makes the scope of the exemption
 3 clear, for example, by **listing the exempt value** as “full fair market
 4 value (FMV)” or “100% of FMV.” **Such a declaration will**
 5 **encourage the trustee to object promptly to the exemption if he**
 6 **wishes to challenge it and preserve for the estate any value in**
 7 **the asset beyond relevant statutory limits.**

8 560 U.S. at 792-93 (footnotes omitted)(emphasis added).

9 In this case, the Debtors included “100% “ in their specification of the value of their
 10 claimed exemption of their listed asset, i.e., Seven Ten Equities LLC. A warning flag was raised
 11 because the specific property listed by the Debtors was claimed as exempt under a Nevada
 12 statute that is not limited to a specific dollar amount, but is limited to a specific type of property.
 13 As the Trustee actually argues in the instant proceeding, the only statutory basis claimed by the
 14 Debtors in their original Schedule “C,” i.e., NRS 21.090(1)(bb), may not even be applicable to
 15 Seven Ten Equities LLC. See Trustee Brief at 6:25 to 7:5; 8:7-16.¹² It is well-established that
 16 the absence of a colorable legal basis for an exemption does not preclude an exemption from
 17 being allowed under Section 522(l).¹³

18 The scope of the remedies available to parties in interest where debtors or their counsel
 19 insert “100% ” as the Value of the Claimed Exemption may well depend on the type of
 20 bankruptcy proceeding. In Taylor, Justice Thomas addressed the prospect of exemption abuse as
 21 follows:

22 ¹² In her brief, the Trustee devotes significant discussion to attacking the validity of all of
 23 the statutory bases set forth in the Amended C Schedule including NRS 21.090(1)(bb), see
 24 discussion at note 2, supra, which amendment was filed in response to the Sale Motion. See
 25 Trustee Brief at 8:17 to 11:1. Included in that discussion is the “Interest in a Trust (Trust
 26 contains LLC interest)” that the Debtors listed as exempt on their Amended C Schedule but not
 27 their original Schedule “C.” There is no apparent dispute, however, that no such trust even
 28 exists. See Webb Declaration at ¶¶ 2 and 3.

¹³ 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
 522(d)(5). 560 U.S. at 793 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 10,
supra.

1 Taylor suggests that our holding will create improper incentives.
 2 He asserts that it will lead debtors to claim property exempt on the
 3 chance that the trustee and creditors, for whatever reason, will fail
 4 to object to the claimed exemption on time. He asserts that only a
 5 requirement of good faith can prevent what the Eighth Circuit has
 6 termed “exemption by declaration.” Peterson, *supra*, at 1393. This
 7 concern, however, does not cause us to alter our interpretation of §
 8 522(1).

9 Debtors and their attorneys face penalties under various provisions
 10 for engaging in improper conduct in bankruptcy proceedings. See,
 11 e.g., 11 U.S.C. § 727(a)(4)(B) (authorizing denial of discharge for
 12 presenting fraudulent claims); Rule 1008 (requiring filings to “be
 13 verified or contain an unsworn declaration” of truthfulness under
 14 penalty of perjury); Rule 9011 (authorizing sanctions for signing
 15 certain documents not “well grounded in fact and ... warranted by
 16 existing law or a good faith argument for the extension,
 17 modification, or reversal of existing law”); 18 U.S.C. § 152
 18 (imposing criminal penalties for fraud in bankruptcy cases). These
 19 provisions may limit bad-faith claims of exemptions by debtors.
 20 To the extent that they do not, Congress may enact comparable
 21 provisions to address the difficulties that Taylor predicts will
 22 follow our decision. We have no authority to limit the application
 23 of § 522(1) to exemptions claimed in good faith.

24 503 U.S. at 644 (emphasis added).¹⁴

25 ¹⁴ In *Law v. Siegel*, ___ U.S. ___, 134 S.Ct. 1188 (2014), the Court reversed three lower
 26 court decisions authorizing a Chapter 7 trustee to surcharge the full amount of an abusive
 27 debtor’s homestead exemption. The Court held that there was no basis to deny an exemption on
 28 any ground not specified by Congress in Section 522. *Id.* at 1196-98. As it did in *Taylor*, the
 Court suggested other means for addressing improper debtor conduct as follows:

19 Our decision today does not denude bankruptcy courts of the essential
 20 “authority to respond to debtor misconduct with meaningful sanctions.” Brief for
 21 United States as Amicus Curiae 17. There is ample authority to deny the
 22 dishonest debtor a discharge. See § 727(a)(2)-(6). (That sanction lacks bite here,
 23 since by reason of a postpetition settlement between Siegel and Law’s major
 24 creditor, Law has no debts left to discharge; but that will not often be the case.) In
 25 addition, Federal Rule of Bankruptcy Procedure 9011—bankruptcy’s analogue to
 26 Civil Rule 11—authorizes the court to impose sanctions for bad-faith litigation
 27 conduct, which may include “an order directing payment...of some or all of the
 28 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

1 In Schwab, Justice Thomas also recognized that debtors may be encouraged to insert
2 “100% FMV” or similar language to force bankruptcy trustees or other interest parties to timely
3 object. 560 U.S. at 792. Arguably, this recognition in Schwab may make it more difficult for
4 parties in interest to seek sanctions against a debtor or counsel under FRBP 9011 for claiming an
5 exemption without a valid legal basis because they will simply assert that they are following
6 Justice Thomas’s advice.¹⁵ But the validity of claimed exemptions is an important consideration
7 in all four of the types of bankruptcy proceedings that may be initiated by an individual debtor:
8 Chapter 7, Chapter 11, Chapter 12, and Chapter 13. In each of these chapters, mechanisms are
9 available to deter or prevent abusive exemption claims, in addition to sanctions requested under
10 FRBP 9011.

11 In Chapter 7, a bankruptcy trustee is appointed in every case and exemptions facilitate an
12 individual debtor’s fresh start by allowing the debtor to keep sufficient assets with which to live
13 after the Chapter 7 discharge is entered. The discharge is to be entered “forthwith” after the
14 deadline to object to discharge elapses. FED. R. BANKR. P. 4004(c)(1). The trustee presides over
15 the 341 Meeting and determines when to conclude the meeting. The deadline to object to
16 exemptions does not commence until the 341 Meeting is concluded. Section 522(l) places the

17
18 maximum penalty of five years’ imprisonment.

19 But whatever other sanctions a bankruptcy court may impose on a
20 dishonest debtor, it may not contravene express provisions of the Bankruptcy
21 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.

22 Id. at 1198.

23 ¹⁵ The other penalties suggested in Taylor also are problematic. Adversary proceedings
24 to deny discharge under Section 727(a)(4)(B) ordinarily must be brought within 60 days after the
25 first date set for a meeting of creditors under FRBP 4004(a), while the 30-day deadline to object
26 to a claim of exemptions will not commence under FRBP 4003(b)(1) until after the 341 Meeting
27 is concluded. FRBP 1008 already requires bankruptcy petitions, lists, schedules, statements and
28 amendments to be verified under penalty of perjury. See, e.g., Declaration Concerning Debtor’s
Schedules (Petition page 43 of 64). (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. An additional decade has elapsed and the language of Section 522(l) remains intact.

1 burden on parties in interest to object to a debtor's claimed exemptions. The Chapter 7 trustee is
2 a party in interest with standing to object.¹⁶ When a debtor is permitted to retain otherwise non-
3 exempt property, the Chapter 7 trustee has fewer assets to liquidate and distribute to creditors,
4 and the trustee's commissions are reduced. 11 U.S.C. § 326(a). A Chapter 7 trustee clearly has
5 both the means and the incentive to fully investigate a debtor's claim of exemptions even if the
6 trustee might not be able to delay or prevent a discharge.

7 In Chapter 11, the available exemptions also facilitate an individual debtor's fresh start
8 but the discharge is not entered until after all payments under a confirmed Chapter 11 plan are
9 completed. 11 U.S.C. § 1141(d)(5). Section 522(l) also places the burden on parties in interest
10 to object to the individual Chapter 11 debtor's claimed exemptions, but there is no bankruptcy
11 trustee appointed in most Chapter 11 cases. A Chapter 11 debtor in possession has certain rights
12 and duties of a Chapter 11 trustee, but not all of them. 11 U.S.C. § 1107(a).¹⁷ Likewise, a
13 Chapter 11 trustee, if appointed, has certain duties of a Chapter 7 trustee, but not all of them. 11
14 U.S.C. § 1106(a)(1). Notably absent for a Chapter 11 debtor in possession or a Chapter 11
15 trustee is a Chapter 7 trustee's duty under Section 704(a)(1) to collect and reduce to money
16 property of the estate. The absence of a bankruptcy trustee in Chapter 11 who would object to a
17 debtor's exemptions is partially ameliorated because a proposed Chapter 11 plan may be
18 confirmed only if each holder of a claim in a dissenting class receives a distribution "as of the
19 effective date of the plan, that is not less than the amount that such holder would receive or
20 retain if the debtor were liquidated under chapter 7...on such date." 11 U.S.C. §

21
22 ¹⁶ This is consistent with the Chapter 7 trustee's statutory duties to collect and reduce to
23 money property of the estate, to be accountable for property of the estate, and to investigate the
24 financial affairs of the debtor. 11 U.S.C. §§ 704(a)(1, 2 and 4). In light of these duties, a
25 Chapter 7 trustee is described as a fiduciary charged with protecting the interests of all creditors
of the estate. See In re Wisdom, 478 B.R. 394, 399 (Bankr. D. Idaho 2012). See also In re
Johnson, 2015 WL 128031 at * 12 (Bankr.C.D.Cal. 2015).

26 ¹⁷ An essential feature of Chapter 11 is that a debtor in possession has a fiduciary duty of
27 care and loyalty to all creditors of the estate. See Thompson v. McConville (In re McConville),
110 F.3d 47, 50 (9th Cir. 1997); In re Woodson, 839 F.2d 610, 614 (9th Cir. 1988). Arguably,
28 an individual Chapter 11 debtor who claims exemptions to which he or she is not entitled has
violated that duty.

1 1129(a)(7)(A)(ii).¹⁸ This provision should require a determination of the assets that an individual
2 Chapter 11 debtor could validly claim as exempt.¹⁹ Likewise, the absence of a bankruptcy
3 trustee in Chapter 11 is partially ameliorated by the requirement that the individual Chapter 11
4 debtor, like all Chapter 11 debtors, must propose the Chapter 11 plan in good faith. 11 U.S.C. §
5 1129(a)(3). An individual who seeks a fresh start through Chapter 11 may not have a
6 bankruptcy trustee to satisfy, but parties in interest have additional grounds to prevent and
7 discourage improper exemption claims.

8 In Chapter 12, the available exemptions also facilitate the fresh start of an individual
9 family farmer or an individual fisherman, but the discharge is not entered until after all of the
10 confirmed Chapter 12 plan payments have been completed. 11 U.S.C. § 1228(a).²⁰ Section
11 522(l) also places the burden on parties in interest to object to an individual Chapter 12 debtor's
12 exemptions. Unlike a typical Chapter 11 proceeding where the debtor remains in possession of

13 _____
14 ¹⁸ Section 1129(a)(7)(A)(ii) generally is known as the "best interest of creditors" test.
15 Because the test is restricted to an analysis of what creditors would receive if the debtor's estate
16 was liquidated in a chapter 7 on the effective date of the proposed plan, however, it arguably
17 excludes even non-exempt property for which no timely objection was filed. Much may depend
18 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.

19 ¹⁹ This is made more difficult for the individual Chapter 11 context because an individual
20 Chapter 11 debtor's postpetition income is considered to be property of the bankruptcy estate
21 under Section 1115. Upon conversion from Chapter 11 to Chapter 7, the postpetition income
22 likely becomes the individual debtor's postpetition Chapter 7 income that would not be property
23 of the Chapter 7 estate under Section 541(a)(6). See Wu v. Markosian (In re Markosian), 506
24 B.R. 273, 276-77 (B.A.P. 9th Cir. 2014)(reconversion of individual's case from Chapter 11 back
25 to Chapter 7 results in postpetition income reverting back to debtor). Compare Harris v.
26 Viegelahn, ___ U.S. ___, 135 S.Ct. 1829, 1837 (U.S. 2015)(upon conversion from Chapter 13 to
Chapter 7, undistributed funds from postpetition earnings must be returned to individual debtor
rather than distributed to creditors under confirmed Chapter 13 plan). 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.

27 ²⁰ Section 101(18A) defines a family farmer to include an individual or individual and
28 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.

1 property of the estate in lieu of a bankruptcy trustee, a Chapter 12 trustee is appointed who has
2 some of the duties of a Chapter 11 trustee and some of the duties of a Chapter 7 trustee. 11
3 U.S.C. § 1202(b).²¹ A Chapter 12 debtor also has some but not all of the duties of a Chapter 11
4 trustee. 11 U.S.C. § 1203. Notably absent for a Chapter 12 debtor or a Chapter 12 trustee is a
5 Chapter 7 trustee's duty under Section 704(a)(1) to collect and reduce to money property of the
6 estate. A Chapter 12 trustee is required, however, to appear and be heard at any hearing on the
7 confirmation of a Chapter 12 plan. 11 U.S.C. § 1202(b)(3)(B). Similar to Chapter 11, a
8 proposed Chapter 12 plan may be confirmed only if "the value, as of the effective date of the
9 plan, of property to be distributed under the plan on account of each allowed unsecured claim is
10 not less than the amount that would be paid on such claim if the estate of the debtor were
11 liquidated under chapter 7...on such date." 11 U.S.C. § 1225(a)(4).²² This provision requires a
12 determination of the assets that an individual Chapter 12 debtor could validly claim as exempt.
13 Likewise, the individual Chapter 12 debtor must propose the Chapter 12 plan in good faith. 11
14 U.S.C. § 1225(a)(3). An individual family farmer or individual fisherman who seeks a fresh start
15 through Chapter 12 therefore has additional hurdles that would prevent and discourage improper
16 exemption claims.

17 In a Chapter 13, the available exemptions also facilitate the fresh start of an individual
18 with regular income, but the discharge is not entered until after all of the confirmed Chapter 13
19 plan payments have been completed. 11 U.S.C. § 1328(a). Section 522(l) also places the burden
20 on parties in interest to object to an individual Chapter 13 debtor's exemptions. Unlike a typical
21 Chapter 11 proceeding, a Chapter 13 trustee is appointed who has some of the duties of a
22 Chapter 7 trustee. 11 U.S.C. § 1302(b)(1). Notably absent for a Chapter 13 trustee is a Chapter
23

24 ²¹ Even though there is a Chapter 12 trustee assigned to the case, the Chapter 12 debtor
25 remains in possession of property of the estate. 11 U.S.C. § 1207(b).

26 ²² Under Section 1207(a)(2), the postpetition earnings of a Chapter 12 debtor are property
27 of the estate. As in the case of an individual Chapter 11 debtor, see note 18, supra, determining
28 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.

1 7 trustee's duty under Section 704(a)(1) to collect and reduce to money property of the estate. A
2 Chapter 13 trustee is required, however, to appear and be heard at any hearing on the
3 confirmation of a Chapter 13 plan. 11 U.S.C. § 1302(b)(2)(B). Similar to Chapter 11 and
4 Chapter 12, a proposed Chapter 13 plan may be confirmed only if "the value, as of the effective
5 date of the plan, of property to be distributed under the plan on account of each allowed
6 unsecured claim is not less than the amount that would be paid on such claim if the estate of the
7 debtor were liquidated under chapter 7...on such date." 11 U.S.C. § 1325(a)(4).²³ This provision
8 should require a determination of the assets that an individual Chapter 13 debtor could validly
9 claim as exempt. Likewise, the individual Chapter 13 debtor must propose the Chapter 13 plan
10 in good faith. 11 U.S.C. § 1325(a)(3). An individual with regular income who seeks a fresh start
11 through Chapter 13 therefore has additional hurdles that would prevent and discourage improper
12 exemption claims.

13 In this instance, the Trustee suggests an additional mechanism or remedy, not discussed
14 above, nor mentioned or discussed in Schwab or Taylor, to address an improper claim of
15 exemptions. See Trustee Reply at 4:4-23. The Trustee refers to FRBP 4003(b)(2) which
16 provides as follows:

17 The trustee may file an objection to a claim of exemptions at any time prior to one
18 year after the closing of the case if the debtor fraudulently asserted the claim of
19 exemption. The trustee shall deliver or mail the objection to the debtor and the
debtor's attorney, and to any person filing the list of exempt property and that
person's attorney.

20 (Emphasis added). In her reply in support of the Sale Motion, the Trustee suggests that by
21 inserting on their Schedule C a value of 0.00 for Seven Ten Equities LLC, "the Debtors have
22 employed a 'mechanism tantamount to fraud' to mislead the Trustee and cause the Trustee not to
23 object to the exemption." Trustee Reply at 4:20-21.

24 As previously discussed in note 5, supra, FRBP 4003(b)(2) was adopted in 2008, see 9
25 COLLIER ON BANKRUPTCY, ¶ 4003.RH[5] (Alan N. Resnick and Henry J. Sommer, eds., 16th ed.

27 ²³ The interplay between a Chapter 13 debtor's exemptions, the best interests test, and the
28 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.

1 2010), well after Taylor was decided, i.e., 1992, and well after the debtor in Schwab filed her
2 Chapter 7 petition, i.e., 2005. See note 10, supra. Where an exemption is fraudulently claimed
3 by a debtor, the objection deadline otherwise applicable under FRBP 4003(b)(1) is abrogated
4 only as to the bankruptcy trustee²⁴ as long as the trustee files the objection within one year after
5 the bankruptcy case is closed.

6 Obviously, this basis for an objection is not properly before the court as it does not
7 appear in the Sale Motion, did not appear even in the Trustee's initial brief, appears only in the
8 Trustee's reply, and the Debtors have not had an opportunity to respond. Should the Trustee
9 desire to pursue relief under FRBP 4003(b)(2), she is not time-barred from doing so inasmuch as
10 the case has never been closed, but she would bear the burden of demonstrating that the Debtors'
11 exemption of Seven Ten Equities LLC was fraudulently asserted. See In re Lacounte, 342 B.R.
12 809, 814 (Bankr. D. Mont. 2005). Notwithstanding this procedural anomaly, the Trustee's
13 mention of FRBP 4003(b)(2) supports the conclusion that even more remedies are available to
14 address abusive exemption claims than those referenced by Justice Thomas in Taylor and
15 Schwab.

16 Considering the various ways in which an individual debtor's exemptions are subject to
17 scrutiny and possible objection in bankruptcy proceedings, the court concludes that the Debtors
18 were not precluded from specifying the Value of Claimed Exemption as 100% for the property
19 listed as Seven Ten Equities LLC. Inasmuch as Taylor was decided more than twenty years ago,
20 bankruptcy trustees and other parties in interest have long understood the consequences of
21 failing to timely object to an improper claim of exemption. Schwab did not change that.²⁵

23 ²⁴ The objection deadline under FRBP 4003(b)(1) applies to any "party in interest" while
24 the additional time under FRBP 4003(b)(2) applies to "[t]he trustee."

25 ²⁵ In this district, a Chapter 13 trustee objected to a joint debtors' claim of exemptions,
26 and also sought an order striking "100% FMV" from the debtors' existing and any future
27 Schedule C filed with the court. See In re Kathryn A. Bailey and Brian A. Volpe, Case No. 13-
28 17059-MKN. This court sustained the Chapter 13 trustee's objections on the merits, but denied
the additional relief as moot for reasons similar to those discussed in the instant Order. See
Memorandum Decision on Trustee's Objections to Debtors' Claim Exemptions, filed February
27, 2015, Docket No. 45, at 11:6 to 22:6.

1 Likewise, there is no reason to shield a debtor from the consequences of claiming an
 2 exemption to which the debtor is not legally entitled.²⁶ In Chapters 11, 12 and 13, a debtor can
 3 win the exemption battle but lose the confirmation war through a properly supported good faith,
 4 best interests of creditors, or other objections. Additionally, counsel whose fees are subject to
 5 scrutiny and allowance are well aware that the reasonableness their attorney's fees under Section
 6 330(a)(1) takes into account whether counsel's services "were necessary to the administration of,
 7 or beneficial at the time at which the service was rendered toward the completion" of the case.
 8 11 U.S.C. § 330(a)(3)(C). In the face of a timely objection, and possibly even just the prospect
 9 of a timely objection, counsel who maintain a facially invalid exemption claim risk disallowance
 10 of their fees under Section 330(a). More important, counsel who continue to later advocate in
 11 favor of a facially invalid exemption claim also risk the imposition of sanctions under FRBP
 12 9011 regardless of whether their fees are subject to allowance under Section 330(a). Compare In
 13 re Aston-Nevada Ltd. P'ship, 391 B.R. 84, 101-02 (Bankr. D. Nev. 2006), vacated on other
 14 grounds, 409 Fed.Appx.107 (9th Cir. 2010).²⁷

15 _____
 16 ²⁶ Since Taylor was decided, Chapter 7 trustees and other parties in interest have an even
 17 greater reason to carefully scrutinize an individual debtor's schedules. Individual debtors in
 18 Chapter 7 are required to file statements of intention with respect to whether they will retain or
 19 surrender property securing creditor claims. 11 U.S.C. § 521(a)(2)(A). A Chapter 7 trustee has
 20 a duty to ensure that the individual debtor performs under the statement of intention. 11 U.S.C.
 21 § 704(a)(3). In 2005, BAPCPA added Section 362(h)(1), which dictates two consequences when
 22 an individual debtor fails to timely file the statement of intention: the automatic stay is
 23 terminated with respect to personal property securing the claim, and the personal property is no
 24 longer property of the bankruptcy estate. 11 U.S.C. § 362(h)(1)(A). Only the Chapter 7 trustee
 25 is permitted to file a timely motion seeking to have the personal property delivered to the trustee
 26 upon proof of value to the estate and protection of the secured creditor's interest. 11 U.S.C. §
 27 362(h)(2). In this circuit, personal property securing the claim is no longer property of the estate
 28 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).

²⁷ 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

1 It bears repeating that the consequences for bankruptcy trustees as well as for any other
2 party in interest who fails to timely object to an improper exemption is harsh: a debtor can end
3 up with an exemption to which the debtor is not otherwise legally entitled outside of bankruptcy.
4 This is the result regardless of the bankruptcy chapter as long as Section 522(l) continues to
5 provide that property claimed as exempt is exempt in absence of a timely objection. In Taylor,
6 the Court observed that relief from these consequences must be obtained from Congress. See
7 discussion at 10, supra. Deference to the specific exemption language chosen by Congress was
8 reiterated in Schwab, 560 U.S. at 791, and more recently repeated by the Court in Law v. Siegel,
9 134 S.Ct. at 1197-98.

10 In the present case, there was no timely objection under FRBP 4003(b)(1) to the Debtors'
11 exemption of 100% of Seven Ten Equities LLC. As a result, the subject property, Seven Ten
12 Equities LLC, was withdrawn and excluded from the bankruptcy estate. As a further result, the
13 Trustee has no authority to sell Seven Ten Equities LLC under Section 363(b) as that
14 authorization is limited to property of the estate.²⁸

15 **IT IS THEREFORE ORDERED** that the Motion to: (1) Sell Interest in Seven Ten
16 Equities, LLC Free and Clear of Liens to Purchaser or Overbidder at an Auction to Be Held on
17 the Hearing on this Motion, and (2) Allow Break Up Fee, Docket No. 29, be, and the same
18 hereby is, **DENIED**.

19 **IT IS FURTHER ORDERED** that the Objection to Exemptions, Docket No. 41, be, and
20 the same hereby is, **OVERRULED**.

21 _____
22 B.R. 543 (Bankr. E.D. Va. 2011). The court observed that endorsing such a practice “would
23 permit a judicial superseding of the state statutory requirements for exemptions and functionally
24 negate the express authority of a state to opt out and impose its exemption limitations - as well as
25 the procedural and substantive requirements necessary to perfect those exemptions - on debtors
26 who are citizens of the opt-out state.” Id. at 552.

26 ²⁸ Because the personal property described as Seven Ten Equities LLC is no longer
27 property of the bankruptcy estate that can be exempted under Section 522(b)(1), the Debtors'
28 filing of the Amended C Schedule was a nullity. The Trustee's objections to the statutory bases
set forth in the Amended C Schedule, see discussion at 10 & n.12, supra, therefore are
immaterial.

1 Copies sent to all parties via BNC

2 # # #

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28