



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
October 17, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

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<p>In re:</p> <p>JORGE A. ACOSTA aka JORGE A. ACOSTA-BONILLA and BEATRIZ FONSECA,</p> <p style="text-align: center;">Debtors.</p>	<p>) Case No.: 17-15347-MKN</p> <p>) Chapter 7</p> <p>)</p> <p>)</p> <p>) Date: October 9, 2019</p> <p>) Time: 2:30 p.m.</p> <p>)</p> <p>)</p>
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**ORDER ON TRUSTEE’S OBJECTION TO EXEMPTION AND/OR MOTION TO
EXTEND TIME TO OBJECT TO EXEMPTION UNDER BANKRUPTCY RULE 4003¹**

On October 9, 2019, the court heard the Trustee’s Objection to Exemption and/or Motion to Extend Time to Object to Exemption Under Bankruptcy Rule 4003 (“Exemption Objection”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On October 4, 2017, a voluntary, joint Chapter 7 petition was filed in pro se by Jorge A. Acosta aka Jorge A. Acosta-Bonilla (“Husband”) and Beatriz Fonseca (“Wife”). (ECF No. 1). The case was assigned for administration to Chapter 7 trustee Briand D. Shapiro (“Trustee”). Along with their Chapter 7 petition, Husband and Wife (“Debtors”) filed their schedules of

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, et seq. All references to “NRS” are to the Nevada Revised Statutes.

1 assets and liabilities (“Original Schedules”), in addition to their statement of financial affairs
2 (“SOFA”) and other information.

3 On March 1, 2018, an Order of Discharge was entered. (ECF No. 28).

4 On March 16, 2018, a final decree was entered closing the Chapter 7 case. (ECF No. 30).

5 On June 18, 2018, Debtors filed a motion to reopen the Chapter 7 case through
6 bankruptcy counsel. (ECF No. 32).

7 On July 25, 2018, an order was entered reopening the case. (ECF No. 36).

8 On July 31, 2018, Debtors filed an amended property Schedule “A/B” disclosing a claim
9 described as “Mesh Case against Johnson & Johnson” (“Mesh Claim”)² as having an unknown
10 value, along with an amended Schedule “C” asserting separate exemptions in the Mesh Claim in
11 the amounts of \$30,200 and \$20,000 (“Mesh Exemptions”). The larger amount is claimed under
12 NRS 21.090(1)(u) while the smaller amount is claimed under NRS 21.090(1)(z).³ The Mesh
13 Claim had not been disclosed in the Original Schedules filed by the Debtors in pro se, nor were
14 any lawsuits regarding the Mesh Claim disclosed in the SOFA.

15 On August 10, 2018, Debtors filed another amended property Schedule “C” that again
16 included the same Mesh Exemptions in the Mesh Claim. (ECF No. 40).

17 On September 10, 2018, the Trustee filed the instant Exemption Objection. (ECF No.
18 41). A hearing on the Exemption Objection was noticed for October 11, 2018 (ECF No. 42), but
19 was continued on multiple occasions.
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21 On September 5, 2019, Debtors filed an opposition to the Exemption Objection
22 (“Opposition”). (ECF No. 51).
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25 ² Unlike the Debtors’ listing of their real property and automobiles, Schedule A/B does
26 not identify whether the interest in the Mesh Claim is held by the Debtors individually or as
community property.

27 ³ The exemptions available to a judgment debtor under Nevada law apply in bankruptcy
28 cases because the State of Nevada has “opted out” of the federal bankruptcy exemptions set forth
in Section 522(d). See NRS 21.090(3).

1 On September 25, 2019, an order was entered continuing the hearing to October 9, 2019.
2 (ECF No. 53).

3 On October 2, 2019, the Trustee filed a reply (“Reply”). (ECF No. 54).

4 DISCUSSION

5 The parties do not dispute that the Mesh Claim is a personal injury action against the
6 manufacturer of a vaginal mesh surgically placed in the Wife years before the bankruptcy case
7 was filed. She retained legal counsel to pursue a claim against the manufacturer in 2014, but did
8 not disclose the Mesh Claim in the Original Schedules that the Debtors filed in pro se. The Mesh
9 Claim is the subject of a class action lawsuit being pursued against the manufacturer. The parties
10 do not dispute that any funds received by the Wife from the Mesh Claim are her sole and
11 separate property under NRS 123.130.⁴

12 As a result of a settlement, Wife will receive approximately \$70,000, out of which
13 approximately \$28,000 will be paid for attorney’s fees. From the balance of approximately
14 \$42,000, the Debtors and the Trustee do not dispute that \$16,150 may be exempted by the Wife
15 under NRS 21.090(1)(u) and an additional \$10,000 may be exempted by the Wife under NRS
16 21.090(1)(z). After those amounts are deducted, the parties do not dispute that \$15,850 is left.
17 Husband does not dispute that the \$10,000 exemption under NRS 21.090(1)(z) is not available to
18 him.

19 The Trustee maintains that the remaining \$15,850 from the settlement of the Wife’s Mesh
20 Claim belongs to the bankruptcy estate and is available for distribution to creditors. The
21 Husband asserts that the remaining \$15,850 from his Wife’s settlement of her Mesh Claim is
22 exempt under NRS 21.090(1)(u) and belongs to him. That provision exempts from execution a
23 variety of property, including:
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27 ⁴ NRS 123.130 is entitled “Separate property of each spouse” and expressly states in
28 pertinent part: “All property of a spouse owned by him or her before marriage, and that was
acquired by him or her afterwards...by an award of personal injury damages,...is his or her
separate property.”

1 Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not
2 including pain and suffering or actual pecuniary loss, by the judgment debtor or by a person
3 upon whom the judgment debtor is dependent at the time the payment is received.

4 (Emphasis added).

5 There is no dispute that the Wife already will be receiving \$16,150 from the Mesh Claim
6 settlement under NRS 21.090(1)(u). Husband maintains that he too is a “judgment debtor”
7 within the meaning of the statute. The Trustee maintains that the statute permits only one
8 judgment debtor to claim the exemption. Neither the Debtors nor the Trustee cite to any
9 controlling decision by the Nevada Supreme Court or any other court with respect to their
10 positions.

11 Having considered the written and oral arguments of counsel, along with the record in
12 this proceeding, the court concludes that the Exemption Objection must be granted for several
13 reasons.

14 First, the Husband’s essential argument is that a married couple is permitted to “stack”
15 the exemption provided by NRS 21.090(1)(u). This court has allowed married couples in
16 Chapter 7 to each claim an exemption in the same vehicle under then-NRS 21.090(1)(f), see In re
17 Longmore, 273 B.R. 633, 635 (Bankr. D. Nev. 2001), but has disallowed efforts by married
18 couples in a joint Chapter 7 to each claim a homestead exemption in the same residence under
19 then-NRS 115.010. See In re Lenox, 58 B.R. 104, 106 (Bankr.D.Nev. 1986). Under a “plain
20 reading” of NRS 21.090(1)(u), the court finds nothing in the language that permits married
21 couples to stack an exemption especially when the underlying asset, i.e., the Mesh Claim, is the
22 sole and separate property of one spouse under NRS 123.130.⁵ This is hardly surprising
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26 ⁵ There is no suggestion that the Husband has, or retained counsel, to pursue a separate
27 claim against the manufacturer for loss of consortium or similar cause of action. Likewise, no
28 suggestion is made that the Mesh Claim or any portion of the class action settlement is allocated
to resolving independent claims asserted by the Husband. Finally, the amended Schedules filed
by the Debtors do not suggest that the Wife has assigned or transferred any of her separate
property interest in the Mesh Claim to her Husband.

1 inasmuch as compensation for personal injuries tend to be exactly that: personal to the injury
2 victim.

3 Second, NRS 21.090(1)(u) includes the word “or” to describe two alternative persons
4 who might be protected. The first person is a judgment debtor who actually receives payments
5 for a personal injury. The statute prevents the holder of a judgment, i.e., a judgment creditor,
6 from executing on payments received by the judgment debtor as long as the payments are
7 compensation for personal injury. The second person is not the judgment debtor itself, but a
8 person who is a dependent of the judgment debtor “at the time the payment is received.” NRS
9 21.090(1)(u) specifically prevents the judgment creditor from executing on payments received by
10 “a person upon whom the judgment debtor is dependent.” The latter provision permits the
11 compensation awarded to a judgment debtor to be held by another party for the benefit of the
12 judgment debtor, e.g., personal injury compensation received by a parent on behalf of minor
13 children. The Nevada legislature could have specified that a judgment creditor is prevented from
14 executing on payments received by the judgment debtor and any dependent of the judgment
15 debtor, but it did not do so.

17 Third, even if the exemptions available under the Bankruptcy Code treats spouses as
18 dependents of each other “whether or not actually dependent,” see 11 U.S.C. §522(a)(1), the
19 language of NRS 21.090(1)(u) requires a finding that the person claiming the exemption is
20 dependent at the time payment is received. So even if the Wife is a person with whom the
21 Husband has the status of a dependent, the exemption does not apply unless he is actually
22 dependent on the Wife at the time the Mesh Claim settlement payments are received.⁶ No
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24 ⁶ In Weinstein v. Fox (In re Fox), 302 P.3d 1137 (Nev. 2013), the Nevada Supreme Court
25 addressed the vehicle exemption available under NRS 21.090(1)(f) and the “wildcard”
26 exemption available under NRS 21.090(1)(z). While the court acknowledged that non-debtor
27 spouses are considered to be dependents under Section 522(a)(1) of the Bankruptcy Code, see
28 302 P.3d at 1140 n.3, it did not suggest any implications from the term because the word
“dependent” does not appear in either of the exemptions in question. Id. at 1140. By contrast,
the term “dependent” does appear in NRS 21.090(1)(u), along with additional language requiring
the claimant to be dependent at the time payments on a personal injury claim are received by
another party.

1 suggestion has been made nor has any evidence been presented that the Husband currently is or
2 will be dependent upon his Wife at the time the personal injury settlement payments are
3 received.

4 Finally, Nevada's policy of liberal construction of its exemptions is important, see In re
5 Alexander, 472 B.R. 815, 821 (B.A.P. 9th Cir. 2012), but the policy does not permit the creation
6 of exemptions where none exist. As this court previously has observed, "Although exemptions
7 are to be liberally construed in favor of the debtor, the Court must not depart from the statutory
8 language or extend the legislative grant." In re Lenox, 58 B.R. 106.

9 Based on the foregoing, the court concludes that the Husband's claim under NRS
10 21.090(1)(u), to the \$15,850 remaining in dispute, is without merit.

11 **IT IS THEREFORE ORDERED** that Trustee's Objection to Exemption and/or Motion
12 to Extend Time to Object to Exemption Under Bankruptcy Rule 4003, Docket No. 41, be, and
13 the same hereby is, **SUSTAINED**.

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15 Copies sent via CM/ECF ELECTRONIC FILING

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17 Copies sent via BNC to:
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