

Objection to Exemption
11 U.S.C. § 522(d)(5)
11 U.S.C. § 522(g)(1)(A)

In re Yarber, Case No. 14-32582-rld7

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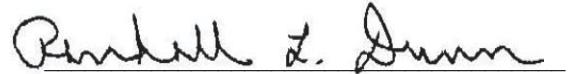
Prepetition, the debtors made an \$8,500 deposit in lieu of a bail bond to the Washington County Sheriff's office. When the debtors filed their chapter 7 bankruptcy petition, they listed and claimed the deposit as exempt in both their original and amended schedules under § 522(d)(5). The chapter 7 trustee ("Trustee") objected, arguing that, under § 522(g)(1)(A), the debtors could not exempt the deposit because they had voluntarily transferred it prepetition.

The debtors contended that the deposit of bail money with a court or jail is not a transfer to a creditor, but rather is an amount of money deposited or pledged to a court to persuade it to release a defendant from custody and to secure the defendant's appearance at all required hearings and trial. Citing Sticka v. Casserino (In re Casserino), 379 F.3d 1069 (9th Cir. 2004), they analogized the deposit to an exempt security deposit held by a landlord.

At the final hearing, counsel for the debtors confirmed, without dispute from the Trustee, that payment of the deposit was the only way that the debtor, Mr. Yarber, could avoid being incarcerated on a criminal charge, that subsequently was dropped. Following the final hearing, the bankruptcy court found that, under the specific circumstances, the transfer of the deposit did not constitute a voluntary transfer. The bankruptcy court therefore overruled the Trustee's objection to the debtors' claimed exemption.

P14-6(11)

Below is an Opinion of the Court.



RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
) No. 14-32582-rld7
RYAN CHRISTOPHER YARBER)
ALLANIA SHARDAY YARBER,)
) MEMORANDUM OPINION
) Debtors.)

The chapter 7¹ trustee Stephen Arnot ("Trustee") objected ("Objection") to the exemption claimed by the debtors Ryan and Allania Yarber (collectively, "Debtors") in an \$8,500 bail bond deposit ("Deposit") made prepetition to the Washington County Sheriff's office. The parties filed legal memoranda and a "Stipulated Statement of Undisputed Material Facts" ("Stipulated Facts") with respect to this contested matter. At a hearing on the Objection on October 21, 2014 ("Hearing"), after confirming some additional facts, the court overruled

¹ Unless otherwise indicated, all chapter and section references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-1532; all "Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037; and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

1 the Objection orally. This Memorandum Opinion sets forth the court's
2 findings of fact and conclusions of law under Civil Rule 52(a),
3 applicable with respect to this contested matter under Rules 7052 and
4 9014.

5 FACTUAL BACKGROUND

6 The relevant facts are few and undisputed. The Debtors filed
7 their chapter 7 petition on May 2, 2014. In the schedules filed
8 contemporaneously with their petition, the Debtors listed and clearly
9 identified the Deposit on their Schedule B and claimed an exemption in
10 the Deposit in their Schedule C under § 522(d)(5).² The Debtors
11 subsequently amended their Schedules B and C on July 17, 2014, but again,
12 clearly identified the Deposit on their amended Schedule B and claimed
13 the Deposit as exempt under § 522(d)(5) in their amended Schedule C.

14 In the meantime, on July 7, 2014, the Trustee filed the
15 Objection, arguing that under § 522(g), the Debtors could not exempt the
16 Deposit voluntarily transferred to Washington County prepetition.
17 Section 522(g)(1) provides in relevant part that:

18 [T]he debtor may exempt . . . property that the
19 trustee recovers under [various sections] of this
20 title, to the extent that the debtor could have
21 exempted such property under subsection (b) of this
22 section if such property had not been transferred, if
- (1)(A) such transfer was not a voluntary transfer of

23 ² The Debtors consistently claimed federal exemptions under
24 § 522(d) in their Schedule C, as authorized under current Oregon law.
25 See ORS § 18.300. Section 522(d)(5) provides an exemption for "[t]he
26 debtor's aggregate interest in any property, not to exceed in value
\$1,225 plus up to \$11,500 of any unused amount of the exemption provided
under paragraph (1) of this subsection." There is no issue in this case
as to the amount of the Deposit fitting within the § 522(d)(5) exemption
amount limits.

1 such property by the debtor; and (B) the debtor did
2 not conceal such property

3 In light of the Debtors' disclosure of the Deposit from day one in their
4 schedules, concealment is not an issue. Accordingly, the focus is on
5 whether the Debtors' prepetition transfer of the Deposit to the
6 Washington County Sheriff's office was voluntary.

7 In their Response to the Objection filed on July 28, 2014, the
8 Debtors argued that a debtor's exemption claims should be interpreted
9 liberally and argued that, "Deposit of a bail bond with a court or jail
10 is not a transfer to a creditor. Bail is simply an amount of money
11 deposited or pledged to a court to persuade the court to release a
12 defendant from custody and to secure the defendant's appearance at all
13 required hearings and trial." See Docket No. 15, at 2. The Debtors
14 analogized the Deposit to an exempt security deposit held by a landlord,
15 citing Sticka v. Casserino (In re Casserino), 379 F.3d 1069 (9th Cir.
16 2004).

17 The Trustee filed a Reply on September 16, 2014, noting that
18 there was no dispute that the Debtors had transferred the Deposit to
19 Washington County and argued that by voluntarily transferring the
20 otherwise exempt Deposit, the Debtors effectively waived their exemption
21 claim. See Fox v. Smoker (In re Noblit), 72 F.3d 757, 758 (9th Cir.
22 1995). The Trustee further argued that he could recover the Deposit for
23 the benefit of the bankruptcy estate under § 542, even though, as yet, he
24 had not done so. Finally, the Trustee argued that the Ninth Circuit's
25 decision in In re Casserino was both "factually inapposite" and not
26 relevant to the legal issues addressed in the Objection. See Docket No.

1 20, at 1-2.

2 The parties filed the Stipulated Facts on September 26, 2014.
3 See Docket No. 24.

4 At the Hearing, counsel for the Debtors confirmed, without
5 dispute from the Trustee, that the Debtors paying the Deposit by
6 certified funds to the Washington County Sheriff's office on or about
7 June 13, 2013, was the only way that Mr. Yarber could avoid being
8 incarcerated on a criminal claim, that subsequently was dropped.

9 JURISDICTION

10 I have jurisdiction to resolve the issues raised by the
11 Objection under 28 U.S.C. §§ 1334, 157(b)(1) and 157(b)(2)(B).

12 DISCUSSION

13 The Debtors do not contest that the Trustee would have the
14 authority to recover the transfer of the Deposit under § 542, and it is
15 undisputed that the Debtors did not conceal either the Deposit or its
16 transfer. Therefore, the only issue for the court to decide is whether
17 the Debtors' transfer of the Deposit to the Washington County Sheriff's
18 office prepetition was "voluntary" for purposes of § 522(g)(1)(A).

19 I cannot find that transferring the Deposit to the sheriff's
20 office specifically to keep Mr. Yarber from being incarcerated
21 constituted a voluntary transfer. There was nothing about the transfer
22 of the Deposit that was voluntary other than the fact that the Debtors
23 made it. I therefore conclude that it was not voluntary.

24 The term "voluntary" with respect to transfers is not defined
25 in the Bankruptcy Code; so, its interpretation varies depending on the
26 facts presented. "For example, in most instances, the granting of a

1 mortgage or security interest in the debtor's property is
2 voluntary. . . . At the other end of the extreme, a payment to a
3 creditor to obtain the release of a wage garnishment is an involuntary
4 transfer." 4 Collier on Bankruptcy ¶ 522.12[2][b], at 522-114 (Alan N.
5 Resnick & Henry J. Sommer eds, 16th ed. 2014). See, e.g., Via v.
6 Colonial American Nat'l Bank (In re Via), 107 B.R. 91, 94-95 (Bankr. W.D.
7 Va. (1989) (transfer involuntary where debtor responded to a garnishment
8 notice by obtaining a loan to pay the creditor in order to avoid
9 garnishment). Comparing the threat of garnishment to the threat of
10 incarceration, if anything, the essential involuntariness of the transfer
11 in this case is even stronger than in In re Via.

12 My ultimate conclusion is that the Debtors' prepetition
13 transfer of the Deposit to the Washington County Sheriff's office in lieu
14 of a bail bond to keep Mr. Yarber out of jail was not a voluntary
15 transfer for purposes of § 522(g)(1)(A), and I overrule the Objection.
16 The court will prepare the order overruling the Objection for the reasons
17 stated in this Memorandum Opinion.

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19 cc: Jacob D. Braunstein, Esq.
20 Stephen P. Arnot, Trustee

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