



**IT IS ORDERED as set forth below:**

**Date: April 1, 2015**

**W. Homer Drake  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBERS</b>
	:	
LARRY ADOLPHUS BURROUGHS,	:	BANKRUPTCY CASE
	:	NO. 14-12573-WHD
Debtor.	:	
_____	:	
	:	
THEO D. MANN, Chapter 7 Trustee	:	<b>CONTESTED MATTER</b>
for the estate of Larry Adolphus	:	
Burroughs,	:	
	:	
Movant.	:	
	:	
v.	:	
	:	
LARRY ADOLPHUS BURROUGHS,	:	<b>IN PROCEEDINGS UNDER</b>
	:	<b>CHAPTER 7 OF THE</b>
Respondent.	:	<b>BANKRUPTCY CODE</b>

**ORDER**

The above-styled case comes before the Court on *Objection to Debtor's Property Claimed*

as *Exempt* (hereinafter the “Objection”), filed by Theo D. Mann, Chapter 7 Trustee for the estate of Larry Adolphus Burroughs (hereinafter the “Trustee”). The Trustee seeks an order from the Court denying the Debtor’s exemptions to the extent that the “wildcard” exemption<sup>1</sup> exceeds \$600, the maximum allowable exemption when a debtor simultaneously retains no unused portion of Georgia’s “homestead exemption.”<sup>2</sup> At a hearing scheduled for March 25, 2015, the Debtor opposed the Trustee’s Objection as resolved by amendment and otherwise untimely.<sup>3</sup> This Court has subject matter jurisdiction over the matter pursuant to 28 U.S.C. § 157(b)(1) and 28 U.S.C. § 1334, as a core proceeding defined under 28 U.S.C. §§ 157(b)(2)(A) & (B).

### **Background**

The Debtor filed for relief under Chapter 7 of the Bankruptcy Code<sup>4</sup> (hereinafter the “Code”) on November 12, 2014. The meeting of creditors, required by Section 341 of the Code, was scheduled and concluded on December 12, 2014. The Debtor’s initial schedules indicate an aggregate claim of exemption under the “wildcard” provision of \$6,025 and under the “homestead” provision of \$43,000. See Debtor’s Schedule C, Dkt. No. 1. The Trustee filed his Objection on December 30, 2014, objecting solely to the extent that the value of the property claimed as exempt under O.C.G.A. § 44-13-100(a)(6) exceeds \$600. See Trustee’s Objection, Dkt. No. 16. The Debtor amended his exemptions on January 17, 2015, whereby the Debtor

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<sup>1</sup> Official Code of Georgia Annotated (hereinafter “O.C.G.A.”) § 44-13-100(a)(6).

<sup>2</sup> O.C.G.A. § 44-13-100(a)(1).

<sup>3</sup> Debtor’s attorney conceded the fact that the Debtor claims more than the allowable amount under O.C.G.A. § 44-13-100(a)(6). Hr’g Tr. 10:48:25-10:49:10, March 25, 2015.

<sup>4</sup> 11 U.S.C. § 101 *et. seq.*

indicates an aggregate claim of exemption under the “wildcard” provision of \$4,525 and under the “homestead” provision of \$38,475. See Debtor’s Am. Schedule C, Dkt. No. 24. This Court scheduled the matter for hearing on February 4, 2015 and ultimately heard the matter on March 25, 2015.

### **Discussion**

Assuming certain domiciliary prerequisites are met, the Code permits a Debtor to exempt certain property from the bankruptcy estate under Georgia’s exemption statute.<sup>5</sup> See 11 U.S.C. § 522(b). Notwithstanding certain exceptions, unless a case is dismissed, property removed from the estate via exemption cannot be liable during or after the case for any prepetition debt. See 11 U.S.C. § 522(c). Because of the significant impact to creditors, parties in interest are entitled to file objections, if warranted, which are governed by Rule 4003(b) of the Federal Rules of Bankruptcy Procedure. Rule 4003(b) provides as follows:

[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded **or** within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.

FED. R. BANKR. P. 4003(b)(1) (emphasis added).

The Debtor contends that by amending his schedules, the Trustee was required to make a subsequent objection to the exemptions within 30 days or otherwise waive the right to object thereafter. The Debtor is correct in that the Trustee cannot raise an objection either not raised within 30 days from the conclusion of the meeting of creditors or within 30 days from the filing

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<sup>5</sup> O.C.G.A. § 44-13-100(a)(1), *et. seq.*

of the amended objections.<sup>6</sup> Id. However, objections originally filed within the deadline, and not otherwise withdrawn or substantively resolved, are pending until the Court rules upon them. In re Wright, 99 B.R. 339, 341 (Bankr. N.D. Tex. 1989). Clearly, no purpose would be served and unnecessary burdens would be imposed by requiring a party in interest to refile an objection to an improperly claimed exemption that is not corrected by the amendment which brings about a second objection period. See id.

As to the substance of the objection, the Court agrees with the Trustee. Under the Georgia Code, a debtor in bankruptcy is allowed to exempt under the “wildcard” provision “[t]he debtor's aggregate interest, not to exceed \$600.00 in value *plus any unused amount* of the exemption, not to exceed \$5,000.00, provided under paragraph (1) of this subsection, in any property.” O.C.G.A. § 44-13-100(a)(6) (emphasis added). Paragraph (1) permits a debtor to exempt “[t]he debtor's aggregate interest, not to exceed \$21,500.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence. . . . In the event title to property used for the exemption provided under this paragraph is in one of two spouses who is a debtor, the amount of the exemption hereunder shall be \$43,000.00.” O.C.G.A. § 44-13-100(a)(1).

In the current matter, the Debtor claims an exemption of \$4,525 in value under the “wildcard” provision and an exemption of \$38,475 in value under the “homestead” provision. Accordingly, a determination as to whether the Debtor appropriately uses his “wildcard”

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<sup>6</sup> For instance, the Trustee cannot object to the value claimed under the “homestead” exemption or to the Debtor’s claim of an exemption in a 2007 Chevrolet Silverado as a “tool[] of the trade of the debtor” under O.C.G.A. § 44-13-100(a)(7).

exemption depends upon a determination as to whether there is any “unused amount” in his “homestead” exemption.

Bankruptcy courts in Georgia have consistently held that the last sentence of O.C.G.A. § 44-13-100(a)(1) permits a debtor to double the individual “homestead” allotment only where the debtor is married and the home is titled solely in a filing spouse’s name. See In re Taylor, 320 B.R. 214 (Bankr. N.D. Ga. 2005) (Mullins, B.J.); In re Neary, 2004 Bankr.Lexis 617 (Bankr. N.D. Ga. 2004) (Diehl, B.J.); In re Burnett, 303 B.R. 684 (Bankr. M.D. Ga. 2003); In re Hartley, Case No. 01-13332-WHD, slip op. at Doc. No. 21 (Bankr. N.D. Ga., July 18, 2002) (Drake, B.J.) (unpublished). These holdings are premised on reading the intention of the statute as being an attempt to protect the “equitable interest” of a non-debtor spouse in the residence” from actions taken solely by the Debtor’s creditors. In re Taylor, 320 B.R. at 219 (citing In re Neary and In re Hartley). In the instant case, the Debtor owns only 50% of the residence, with the remaining 50% interest held by a living trust established for the benefit of Valerie Burroughs. See Debtor’s Am. Schedule C, Dkt. No. 24. It appearing that Valerie Burroughs is the non-filing spouse of the Debtor, see Debtor’s Statement of Financial Affairs, Dkt. No. 1, at ¶ 19, the trust’s having title in half of the property protects Mrs. Burroughs’ interest. The Debtor is therefore not entitled to double the exemption provided for under O.C.G.A. § 44-13-100(a)(1). Accordingly, because the Debtor has claimed value over-and-above the amount provided under O.C.G.A. 44-13-100(a)(1), there is no “unused” portion of that exemption that trickles down to the “wildcard” exemption. See O.C.G.A. § 44-13-100(a)(6).

**Conclusion**

For the reasons state above, the Court finds the Debtor's claim of exemption under O.C.G.A. § 44-13-100(a)(6) should be limited to the value of \$600. Accordingly, it is hereby

**ORDERED** that the Trustee's Objection is **SUSTAINED**. The exemption claimed in various assets pursuant to O.C.G.A. § 44-13-100(a)(6) is disallowed to the extent that the value of such assets exceeds the amount allowed by law of \$600.

The Clerk is **DIRECTED** to serve a copy of this Order on the Debtor, the Debtor's attorney, and the Trustee.

**END OF DOCUMENT**