

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
ERWIN COPELAND	)	CASE NO. 03-60407-MHM
	)	
Debtor	)	
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	)	
C. BROOKS THURMOND, III, Trustee	)	
	)	<b>CONTESTED MATTER</b>
Movant	)	
v.	)	
	)	
ERWIN COPELAND	)	
	)	<b>ORDER</b>
Respondent	)	

This case is before the court on the Chapter 7 Trustee's objection to Debtor's exemptions. Debtor initially opposed the Chapter 7 Trustee's objection on the ground that it was not timely filed. That issue was resolved in favor of the Trustee by order entered October 1, 2004. Further hearing on Trustee's objection was held December 14, 2004. The parties were allowed to file post-hearing briefs.

This case commenced as a Chapter 13 case January 6, 2003. At the time of filing, Debtor owned his residence and two additional rental properties located at 1556 SE Van Epps Street, Atlanta, Georgia (the "Van Epps Property"), and 276 Holly Road, Atlanta, Georgia (the "Holly Road Property"). Debtor disclosed the residence and the Van Epps Property in his Chapter 13 Schedules<sup>1</sup> but did not disclose the Holly Road Property. At the §341(a) meeting of

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<sup>1</sup>Bankruptcy Rule 1007 requires a debtor to file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs (the "Schedules").

creditors in the Chapter 13 case, the Chapter 13 Trustee discovered the Holly Road Property and filed an objection to confirmation because it was not disclosed in the Schedules. Consequently, Debtor filed an amendment to the Schedules disclosing the Holly Road Property but claimed no exemption in that property.

Debtor's Chapter 13 case was confirmed, but when Debtor became delinquent in his plan payments, on February 18, 2004, the case was converted to a Chapter 7 case. Following conversion, on March 21, 2004, Debtor filed amended Schedules in which for the first time Debtor claimed a \$5,000 homestead exemption in the Holly Road Property. Debtor also included in his Statement of Intention<sup>2</sup> that he intended to surrender the Holly Road Property. Following the Chapter 7 §341(a) meeting of creditors, the Chapter 7 Trustee filed an objection to the exemption on the Holly Road Property.

While the Trustee's objection was pending, on or about June 28, 2004, Debtor sold the Holly Road Property without the knowledge of the Trustee and without authority from the bankruptcy court. The settlement statement from the closing of that sale shows the Holly Road Property was sold for \$140,000. After payoff of the first mortgage and other expenses connected with the sale, the settlement statement showed the net cash to seller was \$91,359.24. Debtor deposited \$26,359.24 in his checking account. Debtor subsequently testified that he received an additional check for \$65,000, which he endorsed and turned over to the purchaser. Trustee learned of the sale shortly after the closing, seized Debtor's checking account and on or about July 9, 2004, recovered the \$26,359.24. Debtor claims \$5,000 of that amount as his exempt property. The Trustee asserts Debtor's exemption in the Holly Road Property should be denied.

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<sup>2</sup> Bankruptcy Rule 1007(b)(2) requires an individual debtor in a Chapter 7 case to file a Statement of Intention as required by §521(2), in which the debtor states with respect to all property of the estate that secures consumer debts whether the debtor intends to reaffirm the debt, redeem the property, or surrender the property.

Bankruptcy Rule 1009 provides that a debtor's Schedules may be amended "as a matter of course at any time before the case is closed." The permissive approach of Bankruptcy Rule 1009 does not, however, deprive the bankruptcy court of the discretion not to allow amendments if the amendment would prejudice creditors; if the debtor has acted in bad faith; or if the debtor concealed assets. *In re Talmo*, 185 B.R. 637 (Bankr.S.D.Fla.1995). Concealment of an asset can bar exemption of that asset. *Doan v. Hudgins*, 672 F.2d 831 (11th Cir.1982); *In re Yonikus*, 996 F.2d 866 (7th Cir.1993); *Henkel v. Green*, B.R. 628 (Bankr. M.D. Fla.2001); *In re St. Angelo*, 189 B.R. 24 (Bankr.D.R.I. 1995); *In re Lundy* 216 B.R. 609 (Bankr. E.D. Mich. 1998). *See also*, *In re Williams*, 197 B.R. 398 (Bankr.M.D.Ga.1996); *In re Snow*, B.R. 598 (Bankr.E.D.Cal.,1982).


In the instant case, Debtor disclosed his interest in the Holly Road Property only after it was discovered by the Chapter 13 Trustee. Debtor claimed an exemption in the Holly Road Property only after the case was converted to a Chapter 7 case. Later, Debtor undertook to sell the Holly Road Property without notice to the Chapter 7 Trustee, the bankruptcy court or creditors, and engaged in a transaction which bears indicia of mortgage fraud. Debtor's conduct supports an inference that he has acted in bad faith with an intent to conceal assets and abuse the bankruptcy system. Disallowance of his exemption in the Holly Road Property is warranted. Accordingly, it is hereby

ORDERED that the Trustee's objection to Debtor's \$5,000 exemption in the Holly Road Property is sustained and the exemption is disallowed, and it is further

ORDERED that the circumstances of the sale of the Holly Road Property, which appear to indicate mortgage fraud, shall be reported to the U.S. Attorney by the U.S. Trustee.

The Clerk is directed to serve a copy of this order upon Debtor, Debtor's attorney, the U.S. Trustee, the U.S. Attorney, and all creditors and parties in interest.

IT IS SO ORDERED, this the 1<sup>st</sup> day of July, 2005.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE