

10/1/04

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	)	
	)	
Movant	)	
v.	)	<b>CONTESTED MATTER</b>
	)	
ERWIN COPELAND	)	
	)	<b>ORDER ON TRUSTEE'S</b>
Respondent	)	<b>OBJECTION TO EXEMPTIONS</b>

This case is before the court on the Chapter 7 Trustee's objection to Debtor's exemptions. At the hearing held June 14, 2004, Debtor opposed Trustee's objection on the grounds that it was not timely filed, citing *In re Ferretti*, 230 B.R. 883 (Bankr. S.D. Fla. 1996). The hearing was suspended to allow Trustee the opportunity to file a written memorandum of law in response to Debtor's argument.

This case commenced as a Chapter 13 case January 6, 2003. The case was converted to a Chapter 7 case February 18, 2004. On March 21, 2004, Debtor filed amended Schedules,<sup>1</sup>

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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"). Bankruptcy Rule 1019(5)(B) requires a debtor, upon conversion from Chapter 13 to Chapter 7, to file a schedule of unpaid debts incurred after the filing of the petition and before conversion. Bankruptcy Rule 1009 allows amendments to the Schedules at any time before the case is closed.

including Schedule C, Property Claimed as Exempt. In amended Schedule A - Real Property, and amended Schedule C, Debtor included a parcel of real property which he had not included in the initial Schedules filed in his Chapter 13 case. The §341 meeting of creditors in the converted Chapter 7 case was held March 24, 2004. Trustee filed his objection to Debtor's exemptions April 23, 2004, which was 33 days after the date Debtor filed his amended Schedules, and 30 days after the §341 meeting.

Bankruptcy Rule 4003(b) provides:

A party in interest may file an objection to the list of property claimed as exempt only 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. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension....

In the instant case, Debtor argues that because Trustee failed to file his objection to exemptions within 30 days after the amended Schedules were filed, and also failed to file a motion to extend the time for filing an objection to exemptions, Trustee's objection was not timely filed and, in accordance with *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S.Ct. 1644 (1992), is barred, so that, pursuant to §522(l), Debtor's claimed exemption must be allowed.

At the hearing on Trustee's objection to exemptions, Debtor relied upon the case of *In re Ferretti*, 230 B.R. 883 (Bankr. S.D. Fla. 1996) (J. Schermer).<sup>2</sup> The *Ferretti* court held that, in a case converted from Chapter 13 to Chapter 7, the Bankruptcy Rule 4003(b) deadline objections to Debtor's exemptions expired at the conclusion of the §341 meeting in the

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<sup>2</sup> The *Ferretti* opinion was affirmed without opinion *sub nom Dibraccio v. Ferretti*, 268 F. 3d 1065 (11<sup>th</sup> Cir. 2001). An unpublished opinion is not binding precedent. 11<sup>th</sup> Cir. R. 36-2.

Chapter 13 case and only if the debtor files amended schedules is the right to file objections revived. The issue addressed in the *Ferretti* opinion, however, is *not* well-settled law.

Three Circuit courts have addressed the issue. In *Alexander v. Jensen-Carter*, 236 F. 3d 431 (8<sup>th</sup> Cir. 2001), the court concluded that a Chapter 7 trustee in a converted case is allowed 30 days after the conclusion of the §341 meeting *in the converted case* in which to file an objection to the debtor's exemptions. In *Bell v. Bell*, 225 F. 3d 203 (2d Cir. 2000), and *Smith v. Kennedy*, 235 F. 3d 472 (9<sup>th</sup> Cir. 2000), however, the courts concluded that conversion does not give rise to a new 30 day period for filing objections to exemptions.<sup>3</sup>

The bankruptcy courts that have addressed the issue are almost evenly split. Together with *Ferretti*, four other bankruptcy courts have concluded that no new period for objecting to exemptions is available in a converted case: *In re Rogers*, 278 B.R. 201 (Bankr. D. Nev. 2002)(J. Riegle); *In re Page*, 240 B.R. 548 (Bankr. W.D. Mich. 1999)(J. Gregg); *In re Beshirs*, 236 B.R. 42 (Bankr. D. Kan. 1999)(J. Pusateri); and *In re Brown*, 178 B.R. 722 (Bankr. E.D. Tenn. 1995)(J. Cook). Six bankruptcy courts have concluded that a new 30 day period for objections to exemptions is triggered by the §341 meeting in a converted case: *In re Lang*, 276 B.R. 716 (Bankr. S.D. Fla. 2002)(J. Ray); *In re Fish*, 261 B.R. 754 (Bankr. M.D. Fla. 2001)(J. Paskay); *In re Mims*, 249 B.R. 378 (Bankr. D. N.J. 2000)(J. Stripp); *In re Wolf*, 244 B.R. 754 (Bankr. E.D. Mich. 2000)(J. Shapero); *In re Havanec*, 175 B.R. 920 (Bankr. N.D. Ohio 1994)(J. Snow); and *In re Jenkins*, 162 B.R. 579 (Bankr. M.D. Fla. 1993)(J. Paskay).

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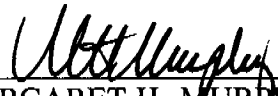
<sup>3</sup> The court in the *Bell* case did note, however, the Bankruptcy Rule 4003 clearly allows 30 days within which to object to exemptions when the debtor files amended schedules.

The undersigned is persuaded by the opinions which conclude that the Chapter 7 trustee is allowed a new 30 day period after the §341 meeting in a converted case within which to file objections to exemptions. Therefore, Trustee's objection to Debtor's exemptions was timely filed. Accordingly, it is hereby

ORDERED and NOTICE IS HEREBY GIVEN that a continued hearing on Trustee's objections to Debtor's exemptions will be held at 11:00 a.m. on the 18 day of November, 2004, in Courtroom 1204, U.S. Courthouse, 75 Spring Street, Atlanta, Georgia.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.**

IT IS SO ORDERED, this the 30<sup>th</sup> day of September, 2004.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE