

IT IS ORDERED as set forth below:



Date: November 1, 2013

A handwritten signature in black ink, appearing to read "W. Homer Drake", is written over a horizontal line.

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

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

IN THE MATTER OF:	:	CASE NUMBERS
	:	
ATUL KUMAR DEY,	:	BANKRUPTCY CASE
INDU DEY,	:	NO. 11-13465-WHD
	:	
Debtors.	:	
_____	:	
	:	
ATUL KUMAR DEY,	:	
INDU DEY,	:	
	:	
Movants,	:	CONTESTED MATTER
	:	
v.	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
PEOPLES COMMUNITY	:	BANKRUPTCY CODE
NATIONAL BANK, N.A.,	:	
	:	
Respondent.	:	

ORDER

Before the Court is the Motion for Reconsideration, filed by Atul Kumar Dey and

Indu Dey (hereinafter the "Debtors"). The Motion seeks reconsideration of an Order entered by the Court on October 7, 2013, in which the Court granted in part and denied in part the Debtors' Motion to Avoid a Judicial Lien (hereinafter "October 7th Order") against Peoples Community Bank, N.A. (hereinafter the "Respondent") pursuant to 11 U.S.C. § 522(f)(1)(A). This matter arises in a core proceeding, over which this Court has subject matter jurisdiction. See 28 U.S.C. §§ 157(b)(2)(B); 1334.

PROCEDURAL HISTORY AND FINDINGS OF FACT

On October 18, 2011, the Debtors filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code. On January 5, 2012, the Debtors' Chapter 13 Plan was confirmed by order of this Court. (Doc. No. 36.) Thereafter, the Debtors filed a First Request to convert the case from Chapter 13 to Chapter 7, and the case was converted on August 16, 2013. On August 28, 2013, the Debtors filed a Motion to Avoid a Judicial Lien held by the Respondent pursuant to 11 U.S.C. § 522(f)(1)(A). According to Debtors' schedules and the Motion, the Debtors were indebted to Respondent in the amount of \$39,619.00, which was reduced to a judgement in the State Court of Spalding County, Georgia. The judicial lien in favor of the Respondent was properly recorded and filed of record on the General Execution Docket of the Spalding County Superior Court on August 30, 2011 at Book 339, Page 124. See Debtors' Mot. to Avoid Judicial Lien. (Doc. No. 93.)

The Court entered the October 7th Order pursuant to 11 U.S.C. § 522(f)(2) on the grounds that the lien impaired the Debtors' exemption to the extent of \$37,584.00, leaving in place a lien of \$2,035.00. See October 7th Order. (Doc. No. 99.) The Court noted that the

Debtors' schedules indicated that Atul Dey (hereinafter "Debtor-Husband") owned a 2008 Honda CR-V with a value of \$10,900.00. See Debtors' Am. Schedule B & C. (Doc. No. 85.) The Debtor-Husband claimed an exemption of \$5,000 pursuant to Official Code of Georgia Annotated (hereinafter "O.C.G.A.") § 44-13-100(a)(3).¹ See id. However, the Court determined that the maximum exemption amount available to the Debtor-Husband was \$3,500.00 pursuant to O.C.G.A. § 44-13-100(a)(3).

The Debtor-Husband also attempted to exempt \$5,570.00 of the value of the 2008 Honda CR-V using O.C.G.A. § 44-13-100(a)(6). See id. This provision provides that each debtor is allowed to exempt an aggregate interest of \$600 plus any "unused amount," not to exceed \$5,000, from Section 44-13-100(a)(1). See O.C.G.A. § 44-13-100(a)(6). As the Court noted in the October 7th Order, "[s]ince the Debtors did not claim any exemptions under O.C.G.A. § 44-13-100(a)(1) and used \$330.00 of the exemption under O.C.G.A. § 44-13-100(a)(6) on the United Bank account,² the most that [could] be exempted under this provision [was] \$5,270.00." See October 7th Order. (Doc. No. 99.)

Additionally, Indu Dey (hereinafter the "Debtor-Wife") claimed an exemption of \$54.00 pursuant to O.C.G.A. § 44-13-100(a)(6) for her BB&T checking account, while also

¹ Effective July 1, 2013, the exemption amount allowed pursuant to O.C.G.A. § 44-13-100(a)(3) for a debtors interest in motor vehicles increased from \$3,500.00 to \$5,000.00. See O.C.G.A. § 44-13-100(a)(3).

² The Debtors argue in their Motion to Reconsider that the \$330.00 exemption pursuant to O.C.G.A. § 44-13-100(a)(6) was a scrivener's error and should have been \$30.00. However, this Court uses the amounts provided by the Debtors when determining whether a lien is avoidable pursuant to 11 U.S.C. § 522(b) and FED. R. BANKR. P. 4003.

indicating that her interest in the BB&T checking account totaled \$235.00. See Debtors' Am. Schedules A & B. (Doc. No. 85.) Neither the 2008 Honda CR-V nor the BB&T checking account were subject to secured liens. See Debtors' Schedules (Doc. No. 80.)

The Court performed the requisite calculation in accordance with Section 522(f)³ and determined the following:

the amount secured by the Respondent's lien is \$39,619.00, the amount of all other liens on the property is \$0.00⁴, and the Debtors have allowable exemptions in the amount of \$9,100.00⁵ in the Property. The sum of these items is \$48,719.00 and exceeds the value that the Debtors' interest in the Property would have in the absence of any liens (\$11,135.00) by only \$37,584.00, leaving in place a lien in the amount of \$2,035.00.

October 7th Order. (Doc. No. 99.)

On October 9, 2013, the Debtors filed a Motion to Reconsider the Order entered on

³ Under Section 522(f)(2), a lien will be found to impair the debtor's exemption to the *extent* that: “the sum of– (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.” 11 U.S.C. § 522(f)(2)(A).

⁴ Pursuant to § 522(f)(2)(B), the Court did not consider the judicial lien in favor of United Bank as it was already avoided in its entirety. See 11 U.S.C. § 522(f)(2)(A).

⁵ The Court determined that the maximum exemption amount allowed was the sum of \$3,500.00 (pursuant to O.C.G.A. § 44-13-100(a)(3)), \$5,270 (pursuant to O.C.G.A. § 44-13-100(a)(6)), and \$330.00 (pursuant to the exemption amount listed by the Debtors using the O.C.G.A. § 44-13-100(a)(6) exemption), which totaled \$9,100.00.

October 7, 2013. Specifically, the Debtors request that the Court reconsider the issue of the applicable exemption value allowed for the Debtors pursuant to O.C.G.A. § 44-13-100(a)(3), for the reason that the Debtors converted their case from a Chapter 13 case to a Chapter 7 case on August 16, 2013 and should therefore be allowed to use the increased exemption values which became effective on July 1, 2013.

CONCLUSIONS OF LAW

Rule 59(e) of the Federal Rules of Civil Procedure grants bankruptcy courts license to alter or amend an order or a judgment after its entry. See FED. R. CIV. P. 59(e) (made applicable to bankruptcy proceedings by Rule 9023 of the Federal Rules of Bankruptcy Procedure); see also In re International Fibercom, Inc., 503 F.3d 933, 946 (9th Cir. 2007) (9th Cir. 2007) ("Under Rule 59(a), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9023, a court has the discretion to reopen a judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions."). "The rule permits a court to correct its own errors, 'sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.'" In re E-Z Serve Convenience Stores, Inc., 2004 WL 3095842 (Bankr. M.D.N.C. 2004) (citing Russell v. Delco Remy Div. of Gen. Motors Corp., 51 F.3d 746, 749 (7th Cir.1995)). This provision is limited, however, to the correction of any manifest errors of law or misapprehension of fact. See In re Kellogg, 197 F.3d 1116, 1120 (11th Cir. 1999); Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993); Lux v. Spotswood Constr. Loans, 176 B.R. 416, 420 (E.D. Va.), aff'd, 43 F.3d 1467 (4th Cir. 1994). It is not to be used

simply to obtain a "second bite at the apple" or to make new arguments that should have been made to the Court in the first instance.

The Court will address the Debtors' request in the context of a reconsideration of a manifest error of law. Specifically, the Debtors argue that the Debtor-Husband is entitled to the enlarged \$5,000 exemption applicable to his interest in motor vehicles pursuant to O.C.G.A. § 44-13-100(a)(3), as amended, which became effective on July 1, 2013.

Section 522 of the Bankruptcy Code defines the property of the debtor that may be claimed as exempt. See generally, 11 U.S.C. § 522. While subsection (d) of Section 522 specifies the type of property that debtor may exempt, subsection (b) allows states to "opt out" of this federal exemption scheme and enact state exemption provisions. In re Taylor, 320 B.R. 214, 216 (Bankr. N.D. Ga. 2005)(Mullins, B.J.). Georgia has opted out of the federal exemptions and codified state bankruptcy exemptions in Section 44-13-100(a) of the O.C.G.A. Id. Georgia's motor vehicle exemption is set forth in O.C.G.A. 44-13-100(a)(3).

On October 18, 2011, the date that the Debtors filed for protection under Chapter 13, the applicable exemption statute, O.C.G.A. § 44-13-100(a)(3), provided that "any debtor who is a natural person may exempt ... the debtor's interest, not to exceed the total of \$3,500.00 in value, in all motor vehicles." O.C.G.A. § 44-13-100(a)(3). However, this statute was amended to increase the exemption amount allowed to a debtor from \$3,500.00 to \$5,000.00 with an effective date of July 1, 2013. See, O.C.G.A. § 44-13-100(a)(3).

The Debtors argue that the \$5,000.00 exemption is the correct exemption amount for the Debtor-Husband because the conversion of the Debtors' case from Chapter 13 to Chapter

7 created a "new order for relief" under 11 U.S.C. § 348, and as a result of the conversion, the Debtors should be able to use the applicable exemption amounts with regard to estate property as of the date of the conversion.⁶ The Debtors cite the District Court of Colorado case of In re Marcus for the proposition that "when a debtor converts a chapter 13 proceeding to one under chapter 7, the debtor's exemptions shall be determined as of the date of conversion, not the date of the original filing of the chapter 13 petition." In re Marcus, 140 B.R. 803, 806 (D. Colo. 1992). However, the District Court of Colorado was reversed by the Tenth Circuit Court of Appeals which held that exempt property is "defined by State or local law that is applicable *on the date of the filing of the petition*". In re Marcus, 1 F.3d 1050, 1051 (10th Cir. 1993)(emphasis in original).

This Court has consistently held that the date for determining allowed exemptions is the date on which the petition is filed. See In re Boozer, 4 B.R. 524, 526 (Bankr. N.D.Ga. 1980)(Robinson, B.J.); see also In re Burnham, 12 B.R. 286, 298 (Bankr. N.D.Ga., 1981)(Robinson, B.J.); see also In re Taylor, 320 B.R. 214, 216 (Bankr. N.D.Ga., 2005)(Mullins, B.J.). Furthermore, this Court is persuaded by the Southern District's reasoning in In re Coleman, which held that because the conversion "of a Chapter 13 to a Chapter 7 does not change the filing date of the petition, a debtor's status for exemption purposes is determined on the filing date, not on the conversion date." In re Coleman, 1996 WL 33401896 (Bankr. S.D. Ga., 1996)(Dalis, B.J.)(citing In re Finkel, 151 B.R. 779, 784 (W.D. Tex. 1993)).

⁶ The case was converted from Chapter 13 to Chapter 7 on August 16, 2013.

The present case greatly resembles the Coleman case, in that the Chapter 13 case was converted to a Chapter 7 case, and the debtors claimed that the proper exemption amount should be determined as of the date of the conversion rather than the date of the filing of the petition. However, the Debtors here, just like those in Coleman, fail to recognize that there is a distinction between the terms "order for relief," "filing of a petition," and "commencement," and that the terminology should not be conflated with one another. See British Aviation Ins. Co. v. Menut, 873 F.2d 264, 268 (11th Cir. 1989).

For the reasons stated above, the Court concludes that the Debtors are entitled to the exemptions allowed pursuant to O.C.G.A. § 44-13-100(a) as of the date of the filing of the petition, which would be October 18, 2011. Consequently, the Debtors are not entitled to the motor vehicles exemption in the amount of \$5,000.00.

However, it appears the Court erred when it calculated the \$9,100.00 exemption using the figure of \$330.00 instead of using the \$54.00 exemption claimed by the Debtor-Wife in her BB&T Checking Account. Consequently, the total exemptions should be reduced leaving a greater lien than was originally adjudicated. The Court, therefore, finds that the correct allowable exemption amount is the sum of \$3,500.00, \$5,270.00, and \$54.00, which totals \$8,824.00. Consequently, a lien will remain in the amount of \$2,311 on the Debtors' Property.

CONCLUSION

For the reasons stated above, the Court amends the October 7th Order to reflect that **a lien in the amount of \$2,311.00** remains on Debtors' Property. Accordingly, the Debtors'

Motion to Reconsider is **DENIED IN PART AND GRANTED IN PART.**

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