

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

In re:

GORDON ALLEN McELHANEY, SR.,  
and JEANNIE MARIE McELHANEY,

Debtors.

Case No. A03-01134-DMD  
Chapter 7

**Filed On  
10/4/05**

**MEMORANDUM RE OBJECTIONS TO EXEMPTIONS  
AND DEBTORS' MOTION FOR RELEASE OF EXEMPT FUNDS**

A hearing on the debtors' motion for release of funds and the trustee's objection to the debtors' amended claim of exemptions was held on September 20, 2005. Jeff Carney appeared for the debtors, who were also present. Gary Spraker appeared on behalf of the trustee. Having reviewed the debtors' amended schedules B and C, the trustee's and the debtors' motions and responses, and considered the comments of counsel made at the hearing, I have concluded that the trustee's objections to the debtors' revised exemptions should be overruled, except as to Mr. McElhaney's exemption of his Exxon claims under 11 U.S.C. § 522(d)(11)(E). The debtors' motion for release of exempt funds will be granted, provided that they can establish that the Exxon funds being held by the trustee are not subject to a federal tax lien. An order will be entered consistent with this memorandum.

**Discussion**

The trustee previously objected to exemptions taken by Ms. McElhaney in two assets belonging to her husband: his 2003 PFD and certain Exxon oil spill claims. These

objections were sustained by the court because exemptions are personal to the debtor and can only be taken in assets which comprise that debtor's estate.<sup>1</sup> Both debtors' exemptions in Exxon oil spill claims under 11 U.S.C. § 522(d)(11)(E) were disallowed. The trustee's objection to Mr. McElhaney's exemption of a Dodge Ram as a tool of the trade under § 522(d)(6) was overruled. None of the other claims of exemption initially taken by the debtors were contested. More specifically, none of Mr. McElhaney's wild card exemptions were contested, nor were Ms. McElhaney's with respect to property in which she held an interest.

After the court determined the trustee's objections, the debtors amended their schedules B and C. They said the amendments were necessary because they had discovered that they didn't qualify for their 2003 PFDs and had recently received information regarding the exact amount of Mr. McElhaney's Exxon claim (the non-punitive damage portion). Each of the debtors reallocated portions of their wild card exemption, 11 U.S.C. § 522(d)(5), in order to maximize Mr. McElhaney's exemption in the non-punitive portion of his Exxon claims.<sup>2</sup> For example, Ms. McElhaney applied \$2,675.00 of her wild card exemption, a large portion of which had previously been applied against both of the debtors' 2003 PFDs, against the Dodge Ram owned jointly by the debtors, and Mr. McElhaney reallocated some of the

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<sup>1</sup> See Mem. re Objections to Exemptions and Debtors' Mot. to Avoid Judicial Lien, entered Dec. 16, 2004 (Docket No. 29), at pp. 4-5.

<sup>2</sup> Mr. McElhaney had previously claimed this asset exempt under subsections § 522(d)(5) and (d)(11)(E) in an unknown amount.

wild card exemption he had previously taken in the Dodge Ram and other assets to his Exxon claim.

As a result of the amendments to the schedules, Mr. McElhaney exempted his Exxon non-punitive claim, in the specific sum of \$7,115.37, under 11 U.S.C. § 522(d)(5) and/or (d)(11)(E). The trustee received this amount from the Exxon Qualified Settlement Fund Administrator in July, 2005. The McElhaney's have moved for the release of these funds from the trustee. The trustee opposes their motion and objects to the amended exemptions on the grounds that the amendments are barred under the doctrine of *res judicata*.

The trustee relies on a decision of the BAP, *Magallanes v. Williams (In re Magallanes)*,<sup>3</sup> to support his position. In that case, the BAP recognized that amendments to a debtor's exemptions "should be liberally allowed at any time absent a showing of bad faith or prejudice to third parties."<sup>4</sup> In addition, the doctrine of *res judicata* will preclude a debtor from amending exemptions which have been the subject of a prior objection and which have been judicially determined.<sup>5</sup> *Res judicata* will not, however, bar the amendment of an exemption which was not the subject of a prior judicial determination, if such amendment is otherwise appropriate under applicable state or federal exemption law.<sup>6</sup>

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<sup>3</sup> 96 B.R. 253 (B.A.P. 9th Cir. 1988).

<sup>4</sup> *Id.* at 256.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 256-57.

The *Magallanes* case is factually distinguishable from the McElhaneys' situation. In that case, unsecured creditors objected to debtor Fernando Magallanes' claims of exemption while his case was pending under chapter 11. Among the assets Magallanes had claimed exempt were a 1970 Porsche 914; a 1983 VW Van, clothing and firearms, furniture, and shares of stock. The bankruptcy court disallowed all of the debtor's exemptions after both he and his counsel failed to appear at the trial on the creditors' objections to the exemptions. Magallanes thereafter voluntarily converted his case to one under chapter 7 and filed amended schedules, including amended exemptions. He again took exemptions in the Porsche, clothing and firearms, and furniture. He also claimed a homestead exemption for his half interest in a condominium. The trustee objected to the amended exemptions, arguing that they were barred by the court's prior ruling disallowing all of the debtor's exemptions.

The BAP concluded that *res judicata* barred "all but one of the debtor's amended claims of exemption."<sup>7</sup> That doctrine precluded the debtor's re-assertion of exemptions in the Porsche, clothing and firearms, and furniture because those assets were listed on his initial claim of exemptions, which had been disallowed in its entirety. The debtor was not barred from claiming a homestead exemption, though, because "[t]hat property interest was not included in the original schedule of exemptions and thus could not have been disallowed by the bankruptcy judge's order."<sup>8</sup>

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<sup>7</sup> *Magallanes*, 96 B.R. at 256.

<sup>8</sup> *Id.* at 256-57.

The trustee argues here that the McElhaney's amended exemptions should be disallowed because they previously litigated their exemptions and lost. But not all of the debtors' exemptions have been previously litigated. "A debtor's assertion of a legal right to an exemption, as a basis for taking an asset out of the bankruptcy estate pursuant to 11 U.S.C. § 522(b), is a 'claim' for the application of the preclusion doctrine of *res judicata*."<sup>9</sup> Here, objections were made to just four of the debtors' originally claimed exemptions, and those four claims alone were litigated.<sup>10</sup> *Res judicata* now precludes Mr. McElhaney from again exempting his Exxon claims under § 522(d)(11)(E), as this claim of exemption was encompassed in the prior order on exemptions. Ms. McElhaney is also precluded from seeking to apply her wild card exemption to any other assets belonging to her husband. But the trustee's objection to Mr. McElhaney's exemption of a Dodge Ram as a tool of the trade under § 522(d)(6) was overruled, and none of the debtors' other claimed exemptions were at issue. This limited ruling on 4 claims of exemption does not preclude the debtors from

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<sup>9</sup> *In re Walls*, 249 B.R. 506, 508-09 (Bankr. D. Minn. 2000) [citations omitted].

<sup>10</sup> Each individual claim of exemption is treated as a separate claim, for purposes of *res judicata*. See, e.g., *Ladd v. Ries (In re Ladd)*, 319 B.R. 599 (B.A.P. 8th Cir. 2005) [after trustee's objection to debtors' federal homestead exemption was sustained, *res judicata* barred debtors from subsequently amending their exemptions to claim a state homestead exemption; debtors should have raised any and all theories for their entitlement to homestead exemption at the hearing on the initial objection to their homestead exemption]; *In re Walls*, 249 B.R. 506, 508-09 (Bankr. D. Minn. 2000) [debtors precluded from claiming IRA exempt under state exemption laws after their exemption of IRA using federal exemptions had been disallowed]; *In re Marshall*, 224 B.R. 399, 400 (Bankr. D. Minn. 1998) [disallowance of exemption of sexual harassment suit under state law precluded debtor from subsequently amending his exemptions to claim this asset exempt using federal exemptions]. None of these cases suggest that disallowance of one claim of exemption precludes a debtor from amending his claimed exemptions as to other assets.

amending their other, uncontested exemptions.<sup>11</sup> Nor is there some other basis, such as bad faith or prejudice to creditors, that would justify denying the amended exemptions. A further exemption of the debtors' wild card exemptions would be precluded, however, because they have now been litigated here.

### Conclusion

The trustee's objection to the debtors' amended exemptions will be overruled. Mr. McElhaney's exemption of the non-punitive portion of his Exxon claim, in the amount of \$7,115.37, under § 522(d)(5) will be allowed. The trustee has received this sum from the Exxon Qualified Settlement Fund Administrator.

The debtors have moved for an order requiring the trustee to release these funds to them. Although these funds are exempt, they may be subject to a federal tax lien. Before the debtors can receive these funds from the trustee, they must supplement the record to establish that the funds are not encumbered by a tax lien.

An order will be entered consistent with this memorandum.

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<sup>11</sup> No objection was previously made to Mr. McElhaney's use of his "wild card" exemption against his Exxon claims (in an unknown amount) or any of the debtors' other assets. The objection was solely as to Ms. McElhaney's use of her wild card exemption in her spouse's asset.

DATED: October 3, 2005

BY THE COURT

/s/ Donald MacDonald IV  
DONALD MacDONALD IV  
United States Bankruptcy Judge

Serve: J. Carney, Esq.  
G. Spraker, Esq.  
D. Clark, Esq.  
Internal Revenue Service (courtesy copy)  
W. Barstow, Trustee  
U. S. Trustee

10/4/05