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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re	Case No. 00-16745-A-7
	DC No. CPL-A [sic] ¹
ORON L. AUSTIN and	FINDINGS OF FACT AND
JOANNE LOVEL AUSTIN,	CONCLUSIONS OF LAW
	REGARDING OBJECTION TO
Debtor.	AMENDMENT TO CLAIM
_____ /	OF EXEMPTION

A hearing on the objection of Textron Financial Corporation ("Textron") to the amendment of claim of exemption filed by debtors Oron and Joanne Austin (the "Debtors") was held June 29, 2005. Following the hearing, the court took the matter under submission. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(B).

The Debtors filed this chapter 7 bankruptcy case on August 28, 2000. Along with their petition, they filed a Schedule C listing property claimed exempt. The Debtors chose to claim exemptions utilizing the exemptions provided by California Code of Civil Procedure § 703.140(b). Among the exemptions was an

¹The docket control number is incorrectly stated. Pursuant to Local Rule 9014-1(c)(3), the docket control number should have been CPL-1.

1 exemption of property located at 3199 Mount Whitney Avenue,
2 Riverdale, California. Textron objected to that claim of
3 exemption, to which the Debtors had ascribed a value of \$15,000.
4 The court sustained Textron's objection. The case was closed on
5 December 26, 2000.

6 On February 25, 2005, the Debtors moved to reopen the case
7 to avoid liens. The motion to reopen the case said nothing about
8 amending exemptions. The court granted, on an ex parte basis,
9 the motion to reopen the case, and the Debtors proceeded to move
10 to avoid judgment liens impairing their exemption of real
11 property located at 21334 South Pleasant, Riverdale, California
12 (their residence). They had valued this exemption in their
13 schedules at the amount of \$800. In the Debtors' opinion, this
14 real property did not have a value, at the time of the filing of
15 the bankruptcy case, that exceeded the amount of consensual liens
16 on the property.

17 Textron opposed the motion to avoid its lien; the Bank of
18 America opposed the motion to avoid its lien; and the motions to
19 avoid lien have been continued from time to time pending
20 discovery and the outcome of Textron's objection to claim of
21 exemption.

22 On May 18, 2005, the Debtors filed an amended Schedule C.
23 In the amended Schedule C, they utilized the California homestead
24 exemption provided by California Code of Civil Procedure
25 § 704.730(a)(2) to exempt \$125,000 of value of their residence at
26 21334 South Pleasant, Riverdale, California. It is this amended
27 exemption to which Textron has objected.

28 Textron's objection is that since the Debtors have had the

1 benefit of one set of exemptions for five years, they should not
2 now be allowed to change to a separate set of exemptions.
3 According to Textron, this has the effect of allowing the Debtors
4 to "stack" their exemptions. Textron observes that while the
5 trustee might have liquidated the property that Debtors
6 originally claimed exempt, the trustee will be unlikely to be
7 able to liquidate that property now. In opposition, the Debtors
8 observe that the court sustained the objection of Textron to
9 their "wild card exemption" under California Code of Civil
10 Procedure § 703.140(b) of \$15,000. They also observe that except
11 for the homestead exemption, the other exemptions are largely
12 equivalent, regardless of which exemption scheme is utilized.
13 Finally, the Debtors state that under In re Gaswami, 304 B.R. 386
14 (9th Cir. B.A.P. 2003), the Debtors have the right to amend their
15 claims of exemption.

16 The recent decision by the Ninth Circuit Bankruptcy
17 Appellate Panel in In re Gaswami does resolve this matter. The
18 Bankruptcy Appellate Panel stated in that case that the debtor
19 has the absolute right to amend exemptions prior to the closure
20 of the case, and that there is no difference between an open case
21 and a reopened case with respect to amendments to claims of
22 exemption. The only exception is that debtors may not amend
23 their claims of exemption if they have acted in bad faith or if
24 prejudice would result. There is no indication of bad faith in
25 this case. The only potential problem with the amendment is that
26 there has been no notice to the United States Trustee of the
27 amended claims of exemption, and thus no ability of the United
28 States Trustee to determine if it is necessary to appoint a

1 chapter 7 trustee so that the assets which were previously
2 claimed exempt (but are not now) could be administered, if there
3 are any such assets. The ex parte motion to reopen the case was
4 made on the basis that the Debtors wished to avoid liens. The
5 amendment to Schedule C was not served on the United States
6 Trustee. There is no evidence of any bad faith or attempt to
7 conceal here. Rather, the United States Trustee simply was not
8 served.

9 Therefore, the court will overrule the objection to the
10 amended claim of exemption, provided, however that the United
11 States Trustee shall have thirty (30) days from the date of entry
12 of this order to determine if it is appropriate to appoint a
13 chapter 7 trustee.

14 Counsel for the Debtors may submit an appropriate form of
15 order.

16 DATED: July 13, 2005.

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WHITNEY RIMEL, Judge
United States Bankruptcy Court
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1 PROOF OF SERVICE BY MAIL

2 STATE OF CALIFORNIA)
3 COUNTY OF FRESNO) ss.

4 I am a citizen of the United States and a resident of the
5 county aforesaid; I am over the age of eighteen years and not a
6 party to the within above-entitled action; my business address is
7 2656 U.S. Courthouse, 1130 O Street, Fresno, California, 93721.
8 On July 13, 2005, I served the within document on the interested
9 parties in said action by placing a true copy thereof enclosed in
10 a sealed envelope with postage thereon fully prepaid, in the
11 United States mail at Fresno, California, addressed as follows:

12 David R. Jenkins, Esq.
13 P. O. Box 1406
14 Fresno, California 93716

14 Debra D. Lew, Esq.
15 COOK, PERKISS & LEW
16 333 Pine Street, Suite 300
17 San Francisco, California 94104

16 Jeffrey J. Lodge, Esq.
17 Office of the United States Trustee
18 1110 U. S. Courthouse
19 1130 O Street
20 Fresno, California 93721

20 I certify (or declare), under penalty of perjury, that the
21 foregoing is true and correct. Executed on July 13, 2005, at
22 Fresno, California.

23
24 _____
25 Kathy Torres, PLS
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