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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8)
9 In re) Case No. 05-30388-A-7
10 MARIA ANGELICA MORENO,) Docket Control No. SF-3
11 Debtor.) Date: March 27, 2006
12) Time: 9:00 a.m.
13)

13 **MEMORANDUM¹**

14 The chapter 7 trustee, Lawrence Gray, objects to the
15 debtor's claim of exemption of an 18.2% fractional interest in
16 real property located at 2402 Polk Way, in Stockton, California
17 ("Property"). The debtor, Maria Moreno, has claimed the
18 exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2), in
19 the amount of \$55,000.

20 The trustee's objection to this objection will be overruled.

21 The trustee alleges that the debtor's interest in the
22 Property "is attributable to property that the debtor disposed of
23 within 10 years of the petition date with the intent to hinder,
24 delay, or defraud a creditor and is attributable to property that
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26 ¹ This Memorandum includes the court's findings of fact
27 and conclusions of law. It supplants the findings and
28 conclusions contained in the Final Ruling appended to the minutes
of the hearing.

1 the debtor could not otherwise exempt." See 11 U.S.C. § 522(o).

2 In the context of a marital dissolution proceeding
3 ("Dissolution"), the debtor received an equalization payment of
4 \$62,500 from her former husband. The source of this equalization
5 payment was the sale or refinance of the debtor's former
6 residence which she had owned with her former husband. In
7 connection with the Dissolution, the debtor vacated that
8 residence, deeded her interest in the residence to her former
9 husband, and her former husband then refinanced the residence in
10 order to pay the debtor the equalization payment.

11 The court in the Dissolution determined that unsecured debts
12 of approximately \$30,097 were the debtor's separate obligations.
13 The trustee claims that "instead of paying her [these
14 obligations] . . . , the [d]ebtor paid \$55,000 to . . . Jesus
15 Soltero," thereby purchasing 18.2% interest in the Property. She
16 purchased it on August 11, 2005, 13 days before filing her
17 petition on August 24, 2005.

18 The debtor opposes the objection, arguing that it is
19 untimely because the trustee concluded the debtor's meeting of
20 creditors on September 23, 2005 and objections to exemption
21 claims were due on October 23, 2005 as prescribed by Fed. R.
22 Bankr. P. 4003(b). In the alternative, the debtor contends that
23 the trustee has not carried the burden of proving she converted
24 nonexempt property into exempt property with the intent to
25 hinder, delay, or defraud creditors.

26 The court agrees with the debtor that the trustee concluded
27 the meeting of creditors on September 23, 2005 and, thus, the
28 instant objection is untimely under Fed. R. Bankr. P. 4003(b).

1 Rule 4003(b) provides that a party in interest has 30 days after
2 the meeting of creditors or "any amendment to the list or
3 supplemental schedules is filed, whichever is later," to object
4 to a claim of exemption.

5 Fed. R. Bankr. P. 2003(e) allows a trustee to adjourn (i.e.,
6 continue) a creditors' meetings "from time to time by
7 announcement at the meeting of the adjourned date and time
8 without further written notice." The trustee, thus, can continue
9 a meeting of creditors by adjourning it and announcing at the
10 meeting the date and time for the continued meeting. The rule
11 does not require the trustee to give written notice of the
12 continuance. See In re Clark, 262 B.R. 508, 514 (B.A.P. 9th Cir.
13 2001).

14 A trustee may also announce a continuance at the meeting
15 without specifying the date and time of the continued meeting.
16 The trustee must later give written notice of the date and time
17 of continued meeting. However, that notice must be given within
18 a reasonable time after the prior meeting. The Ninth Circuit has
19 ruled that reasonable time means at least within 30 days after
20 the last meeting. See In re Smith, 235 F.3d 472, 476 (9th Cir.
21 2000).

22 This is to ensure that a trustee does not continue a
23 meetings solely for the purpose of extending the 30-day deadline
24 of Fed. R. Bankr. P. 4003(b). See In re Smith, 235 F.3d 472, 476
25 (9th Cir. 2000). If the trustee only needs an extension, the
26 trustee must seek one from the court. See Fed. R. Bankr. P.
27 4003(b).

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1 In the present case, the trustee held the meeting of
2 creditors on September 23, 2005 ("September meeting"). The
3 debtor attended that meeting, but the parties dispute whether the
4 trustee concluded it.

5 The transcript of the September meeting shows that the
6 trustee concluded the meeting. The trustee said "I don't have
7 any other questions. Thank you. Thanks. Chuck."

8 On September 26, 2005, the trustee filed with the court a
9 report of the September meeting, noting a continuance of the
10 meeting to October 21, 2005 ("October meeting").

11 These facts are different from the facts in Smith and Clark.
12 In both Smith and Clark, the trustees did not orally conclude the
13 meeting. They merely failed to announce the date and time of a
14 continued meeting. Here, on the other hand, the trustee
15 concluded the September meeting and thereafter unilaterally
16 decided to continue it despite in effect telling the debtor it
17 had been concluded.

18 The trustee's intent with regard to conclusion of the
19 September meeting is reflected by his actions in the months after
20 that meeting. Although the debtor did not attend the October
21 meeting, the trustee did not request the court to issue an Order
22 to Show Cause as is the practice in this court when a debtor
23 fails to appear at the meeting of creditors.

24 When the debtor did not appear at the third and last
25 scheduled creditors' meeting, on November 18, 2006 ("November
26 meeting"), the trustee concluded the meeting. Once again, the
27 trustee did not seek the issuance of an Order to Show Cause.

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1 On December 19, 2005, the last day to file an objection to
2 an exemption claim based on the conclusion of the November
3 meeting, the trustee filed the instant objection. These facts
4 suggest that the trustee continued the September and October
5 meetings for one purpose only, to extend the deadline for filing
6 objections to exemption claims.

7 This conclusion is further supported by the trustee's motion
8 to extend the deadline for filing complaints under 11 U.S.C. §
9 727. In that motion, filed on November 22, 2005, the trustee did
10 not cite the debtor's failure to attend creditors' meetings as
11 basis for an extension. Instead, he cited a failure by the
12 debtor to respond to a document production request. The court
13 ruled against the trustee, however, making the following
14 findings:

15 *"After reviewing the record, the court agrees with*
16 *the debtor, that her response to the document*
17 *production requests did not cause a delay to the*
18 *trustee's investigation. The trustee made only one*
19 *document production request [of] the debtor, after the*
20 *September 23, 2005 meeting, on September 26, 2005. In*
21 *this request, the trustee sought tax returns, giving*
22 *the debtor 30 days to respond. The debtor responded*
23 *timely on October 19, 2005. In the same request, the*
24 *trustee wrote "[i]n addition, my attorney will be*
requesting additional documents for my review." This
means that the document production request by the
trustee's counsel was not out of "frustrat[ion]" with
the debtor, but was anticipated even at the time the
trustee made his request. Based on this, the court
finds the representations of the trustee's counsel not
to be credible and further finds that the debtor
complied with the trustee's request of documents."

25 Based on these facts, the court finds that the trustee first
26 concluded the September meeting and then decided to continue it,
27 not to examine the debtor, but solely for the purpose of
28 extending the deadline for filing an objection to the debtor's

1 exemptions without compliance with Fed. R. Bankr. P. 4003(b).
2 The court reaches the same conclusion with respect to the October
3 and November meetings. Such conduct is inappropriate and
4 impermissible. See In re Smith, 235 F.3d at 476.

5 The court finds that the trustee concluded the creditors'
6 meeting on September 23. Hence, the deadline for objections to
7 exemption claims expired on October 23, 2005, 30 days after the
8 September Meeting. Accordingly, the objection will be overruled
9 as untimely.

10 In the alternative, the court will also address the merits
11 of the objection.

12 Rights to exemptions of property are determined as of the
13 date the petition is filed. See In re Kim, 257 B.R. 680, 685
14 (B.A.P. 9th Cir. 2000); In re Kolsch, 58 B.R. 67, 68 (Bankr. D.
15 Nev. 1986). 11 U.S.C. § 522(o), applicable to cases filed on or
16 after April 20, 2005, provides that a homestead exemption must be
17 reduced by the value attributable to property disposed of by the
18 debtor with the intent to hinder, delay, or defraud creditors
19 during the 10 years prior to the petition date, to the extent
20 that property was not otherwise exempt.

21 Section 522(o), however, does not abrogate existing case law
22 to the effect that the mere conversion of non-exempt to exempt
23 assets is insufficient, as a matter of law, to establish an
24 intent to hinder, delay, or defraud creditors. See In re Stern,
25 345 F.3d 1036, 1044 (9th Cir. 2003); In re Jackson, 472 F.2d 589,
26 590 (9th Cir. 1973). See also, In re Maronde, 332 B.R. 593, 600
27 (Bankr. D. Minn. 2005) (a post-April 2005 case, stating that "[a]
28 debtor may still convert non-exempt assets into exempt assets on

1 the eve of bankruptcy, but the conversion must not be done with
2 intent to defraud creditors manifested by extrinsic evidence.”
3 Citing Federal Sav. & Loan Ins. Corp. v. Holt (In re Holt), 894
4 F.2d 1005, 1008 (8th Cir. 1990); In re Vangen, 334 B.R. 241, 247
5 (Bankr. W.D. Wis. 2005)).

6 This interpretation of section 522(o) is consistent with its
7 statutory language. The section does not state that it applies
8 to all dispositions of property within 10 years of the petition
9 date. It applies only to dispositions made “with the intent to
10 hinder, delay, or defraud a creditor.” If Congress desired to
11 change the rule permitting the conversion of non-exempt to exempt
12 assets, it would have provided that the mere conversion rises to
13 a presumption of an intent to hinder, delay or defraud, or it
14 would have stated outright that such conversion is impermissible.

15 Instead, Congress specifically provided in section 522(o)
16 that there be both a conversion of nonexempt property to exempt
17 and an “intent to hinder, delay, or defraud.”

18 Moreover, section 522(o) applies to dispositions of property
19 within 10 years of the petition date. If the court reads intent
20 to hinder, delay, or defraud into every conversion of non-exempt
21 to exempt property, without additional extrinsic evidence of such
22 intent, almost no property would be exemptible because most
23 property debtors claim as exempt is converted from non-exempt
24 property within ten years before the petition date. Such
25 interpretation of section 522(o) would defeat its purpose, to
26 eradicate only conversions made with the intent to hinder, delay,
27 or defraud.

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1 The trustee's only evidence of intent to hinder, delay, or
2 defraud creditors is that the debtor took a portion of the money
3 she received in the Dissolution and bought an exempt interest in
4 a home even though she owed money to creditors. It is important
5 to note, however, that the trustee has not demonstrated that the
6 debtor incurred new debt and used that debt to finance the
7 purchase of a new residence, or to finance other expenses thereby
8 permitting the debtor to use the Dissolution payment to buy a
9 house. The debts the debtor did not pay were the same debts that
10 the debtor owed when she owned the former residence with her
11 spouse.

12 The trustee also suggests that the consensual Dissolution
13 judgement is evidence of an intent to hinder, delay or defraud
14 creditors because it allocated debts to the debtor which she
15 intended to discharge in a bankruptcy. However, if the debtor's
16 former husband was personally liable to a creditor, merely
17 allocating the debt to the debtor did not terminate the former
18 husband's personal liability. See Cal. Fam. Code. § 916(a)(1).
19 In that situation, the former husband remains personally liable
20 despite the Dissolution judgment.

21 As to the former community property of the debtor and her
22 former husband, the Dissolution judgment conceivably might have
23 had more of an impact on the rights of creditors.

24 The former community property awarded in the divorce to the
25 debtor is not liable for debts incurred by her former husband
26 before or during marriage to the extent those debts are not
27 allocated to the debtor by the Dissolution judgment. See Cal.
28 Family Code § 916(a)(2).

1 Likewise, the former community property awarded in the
2 divorce to the debtor's former husband is not liable for debts
3 incurred by the debtor before or during marriage to the extent
4 those debts are not allocated to the former husband by the
5 Dissolution judgment. See Cal. Family Code § 916(a)(2).

6 So, by awarding \$62,500 of the former community property to
7 the debtor in the Dissolution judgment, any creditor owed a debt
8 incurred by the former husband could not pursue the \$62,500
9 unless the Dissolution judgment also allocated that debt to the
10 debtor. However, there is no evidence that any such creditors
11 exist. In fact, it appears the opposite occurred. The
12 Dissolution judgment allocated all of the unsecured debts to the
13 debtor as well as the equity from her former residence.² Absent
14 this bankruptcy and/or a claim of exemption, all creditors, even
15 those whose debts were incurred by the former husband, could have
16 satisfied their claims from the \$62,500. The trustee, then, is
17 really complaining that the debtor invested the \$62,500 in a new
18 residence and then exempted her interest in the residence. As
19 discussed herein, merely claiming an exemption is not enough to
20 prove an intent to hinder, delay or defraud creditors.

21 If the debtor had purchased her former husband's interest in
22 their residence, instead of him buying out her interest in the
23 residence, the debtor would have continued to live at that
24 residence and would have claimed the same exemption albeit in a
25 different property. Such an exemption would not have involved

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27 ² There is no evidence that the former husband received
28 any equity in the residence by virtue of the Dissolution
judgment.

1 any transfers of property by the debtor and the trustee would not
2 have been able to argue that the debtor disposed of property
3 within 10 years of the petition date under section 522(o). But,
4 because the debtor was not in a financial position to purchase
5 her interest in the residence she occupied with her former
6 husband, he purchased her interest by paying her \$62,500, which
7 she used to purchase an interest in the Property. See
8 Declaration of Maria Moreno, filed February 13, 2006, ¶ 5. Just
9 because the debtor was not in a financial position to purchase
10 her former husband's interest and retain that residence, her
11 conversion of her exemptible interest in that residence into an
12 exemptible interest in the Property is not evidence of intent to
13 hinder, delay or defraud creditors.

14 Although the trustee alleges that the debtor defeneded
15 collection lawsuits, "fac[ed] mounting debt pressures," and
16 received collection notices, this is not evidence of, or
17 persuasive evidence of, an intent to hinder, delay, or defraud
18 creditors. Were this evidence, in and of itself, of such an
19 intent, few debtors would be able to claim exemptions. After
20 all, exemptions are provided so that persons with debt problems
21 may preserve for themselves basic and necessary assets for their
22 maintenance, support and livelihood. They are afforded to
23 debtors precisely because they are in financial trouble. If a
24 debtor's financial distress meant that an exemption could not be
25 claimed, the very purpose of permitting exemptions would be
26 frustrated.

27 It must also be mentioned that the money used by the debtor
28 to buy her new house, was derived from her former residence.

1 Because the debtor vacated her former residence in connection
2 with the Dissolution, it is likely the proceeds were not exempt.
3 Nonetheless, it is difficult for the court to conclude (and it
4 will not conclude) that the debtor was hindering, delaying, or
5 defrauding creditors when she took money realized from her former
6 residence in order to buy a new residence. If she had converted
7 the money into, say, an exempt musical instrument that she did
8 not know how to play, the conclusion might be different.

9 The trustee has not proven any act by the debtor evidencing
10 an intent to hinder, delay, or defraud. The mere conversion of
11 non-exempt to exempt property for purposes of bankruptcy estate
12 planning is not sufficient to establish such an intent. The
13 court notes that the lack of extrinsic evidence of intent here is
14 distinguishable from In re Maronde, where evidence of such intent
15 existed. See In re Maronde, 332 B.R. 593, 596-97, 600-01 (Bankr.
16 D. Minn. 2005). Before converting the non-exempt to exempt
17 assets at issue, the debtor there had already made an attempt to
18 defraud his creditors by withdrawing cash advances from his
19 credit cards to pay off the balance on a home equity line of
20 credit against his home. Id. The court found that the
21 conversion in question was part of a larger scheme to defraud
22 creditors. In the present case, the trustee has alleged no
23 extrinsic evidence of intent to hinder, delay, or defraud.
24 Hence, the court finds no intent to hinder, delay, or defraud.
25 See Wudrick v. Clements (In re Wudrick), 451 F.2d 988, 989-90
26 (9th Cir. 1971) (reversing on the grounds that mere conversion of
27 non-exempt to exempt property is insufficient to support a
28 finding of fraud).

1 Lastly, the court also notes that the "intent to hinder,
2 delay, or defraud" language of section 522(o) is identical to the
3 language of 11 U.S.C. § 727(a)(2), which allows a court to apply
4 the extraordinary remedy of denying a debtor's discharge. This
5 shows that Congress, in enacting section 522(o), intended to
6 reduce a debtor's exemption interest in a real property only if
7 the debtor had the same intent that warranted a denial of
8 discharge. This is a high standard that, as discussed above,
9 requires extrinsic evidence of such an intent. It requires more
10 than just the conversion of non-exempt to exempt property, the
11 existence of creditors, the receipt of collection notices, or the
12 defending of collection lawsuits. Creditors' attempts to collect
13 from debtors are incidental to most exemption planning.
14 Exemptions are made available to bankruptcy debtors and judgment
15 debtors because they are or may be pursued by creditors. It
16 would be an odd exemption that was unavailable because the debtor
17 needed it.

18 The trustee's assertion that the debtor hindered, delayed,
19 or defrauded creditors is based on nothing more than the fact
20 that the debtor, even though she owed pre-existing unsecured
21 debt, converted nonexempt cash into an exempt homestead. As
22 discussed above, this is not a sufficient basis for inferring an
23 intent to hinder, delay, or defraud creditors. The fact that the
24 debtor said she intended to file a bankruptcy petition, rather
25 than filing it without first announcing her intention, adds
26 nothing to the analysis. The trustee's objection pursuant to
27 section 522(o) will be overruled.

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1 Counsel for the debtor shall lodge a proposed order.

2 Dated: March 28, 2006

3 By the Court

4 /s/

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Michael S. McManus, Chief Judge
6 United States Bankruptcy Court

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