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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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In re:)	Case No. 08-23603-D-7
)	
GUY TYRONE LYNN and)	Docket Control No. JRR-6
JAMIE ARCHER LYNN,)	
)	Date: June 17, 2009
Debtors.)	Time: 10:00 a.m.
)	Dept: D

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On April 29, 2009, John R. Roberts, chapter 7 trustee in this case, filed a Trustee's Objection to Property Claimed as Exempt ("the Objection"). For the reasons set forth below, the court will sustain the Objection in part and overrule it in part.

I. INTRODUCTION

Debtors Guy Tyrone Lynn and Jamie Archer Lynn (the "debtors") commenced this case under chapter 13 of the United States Bankruptcy Code on March 25, 2008. The case was converted to chapter 7 by order dated January 8, 2009, on the motion of creditor Viola Archer. On April 3, 2009, the debtors filed an amended schedule of exemptions, and on April 29, 2009, the trustee filed the Objection, together with a request for judicial notice and an exhibit. On June 3, 2009, the debtors filed opposition to the Objection, together with their declaration and exhibits. The court took the matter as submitted at a hearing held June 17, 2009.

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1 II. ANALYSIS

2 This court has jurisdiction over the Objection pursuant to
3 28 U.S.C. §§ 1334 and 157(b)(1). The Objection is a core
4 proceeding under 28 U.S.C. § 157(b)(2)(B).

5 The objecting party, in this case the trustee, bears the
6 burden of proving that a claimed exemption is improper. Fed. R.
7 Bankr. P. 4003(c). Because a claimed exemption is presumptively
8 valid, the objecting party must produce evidence to rebut the
9 presumptively valid exemption, whereupon the burden of production
10 shifts to the debtor to demonstrate that the exemption is proper.
11 The burden of persuasion remains with the objecting party. In re
12 Carter, 182 F.3d. 1027, 1029-30 n.3 (9th Cir. 1999). Exemptions
13 are to be liberally construed in favor of debtors. In re Lucas,
14 77 B.R. 242, 245 (9th Cir. BAP 1987).

15 The court will take the trustee's objections in order.

16 A. Household Goods and Furnishings

17 First, the trustee objects to the debtors' claim of
18 exemption of \$9,000 in "crafts," on the ground that these items
19 do not qualify as normal household goods and personal effects.
20 The debtors respond that these items are separate and apart from
21 the assets of their business, Wild Things Beads, and are
22 ordinarily and reasonably necessary for their station in life and
23 manner of living as artists and craftsmen.

24 The statute under which the debtors claim these items as
25 exempt permits the exemption of "household furnishings,
26 appliances, provisions, wearing apparel and other personal
27 effects," to the extent they are "ordinarily and reasonably
28 necessary to, and personally used or procured for use by," the

1 debtors and their family at their principal place of residence.
2 Cal. Civ. Proc. Code § 704.020(a).¹ In assessing whether a
3 particular item meets this definition, the court is to consider
4 "(1) [t]he extent to which the particular type of item is
5 ordinarily found in a household," and "(2) [w]hether the
6 particular item has extraordinary value as compared to the value
7 of items of the same type found in other households."

8 § 704.020(b).

9 The Ninth Circuit Bankruptcy Appellate Panel in In re Lucas,
10 77 B.R. 242, 245, 246 (9th Cir. BAP 1987), held that the exercise
11 bike, camera equipment, golf clubs, and Hummel figurines at issue
12 in that case were household goods subject to exemption, relying
13 on the proposition that the court is to consider "the station in
14 life of the owner and the manner of comfortable living to which
15 he has become accustomed.'" 77 B.R. at 245, citing Independence
16 Bank v. Heller, 275 Cal. App. 2d 84, 87 (1969).

17 Viewed in this light, the court finds the craft items to be
18 household goods, despite the fact that their value appears high.²
19 The debtors have provided a detailed list of the items included
20 and have testified that these items "were maintained by [them]
21 separately from [their] business assets," and "are not and have
22 not been for sale as part of [their] business." Balancing this
23 testimony against the trustee's rather summary objection, the
24

25 1. Unless otherwise indicated, all further code and section
26 references will be to the California Code of Civil Procedure.

27 2. The value of the craft items is listed at \$9,000,
28 approximately 62% of the total value of the debtors' household
goods and furnishings. On the other hand, the inventory of the
debtors' business is listed at \$100,053.

1 account all resources likely to be available for such support
2 when the debtor retires.

3 The debtors have claimed as exempt a total of \$75,318.43 in
4 three different IRAs.⁴ The trustee objects on the grounds that
5 it is unclear whether the debtors are attempting to exempt two
6 IRAs and that subsections (a)(1) and (a)(2) do not cover IRAs.⁵
7 However, the debtors have also claimed the IRAs as exempt under
8 subsection (a)(3), which clearly covers IRAs. Further, nothing
9 in the statute limits a debtor to a single IRA or joint debtors
10 to two. These two grounds are thus without merit.

11 The trustee also objects on the ground that the debtors have
12 not provided evidence that the amount claimed will be necessary
13 for their support when they retire. In making this assessment,
14 the court is to consider

15 the debtor's present and anticipated living expenses
16 and income; the age and health of the debtor and his or
17 her dependents; the debtor's ability to work and earn a
18 living; the debtor's training, job skills and
19 education; the debtor's other assets and their
20 liquidity; the debtor's ability to save for retirement;
21 and any special needs of the debtor and his or her
22 dependents.

23 Gonzalez v. Davis (In re Davis), 323 B.R. 732, 735-36 (9th Cir.
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26 4. The debtors list the "current value" of these assets at
27 \$75,318.43, but the "value of the claimed exemption" twice, at
\$100,000 each. Since the "value of the claimed exemption,"
whether \$100,000 or \$200,000, exceeds the actual value of the
assets, any ruling on the exemption at either of those figures
would amount to a hypothetical ruling. Thus, the trustee's
objection is sustained as to any amount over \$75,318.43, without
prejudice to the debtors' right to amend their claim of
exemptions in the event the actual values of the IRAs exceed that
amount.

28 5. The trustee does not dispute that the accounts in
question are IRAs.

1 BAP 2005), quoting In re Moffat, 119 B.R. 201, 206 (9th Cir. BAP
2 1990).

3 The debtors have testified as follows:

4 These retirement accounts are necessary for our
5 retirement, especially with the loss of our business in
6 this Chapter 7 case. At the present time these IRAs
7 are our only source of retirement income. We are now
8 attempting to rebuild a new business, however without
9 significant capital and the current economy, the
10 building of this business is slow and we are not
11 earning sufficient income to increase our retirement
12 accounts. We do anticipate retiring in the near
13 future, however at the present time we do not have
14 sufficient retirement savings to do so. Presently Guy
15 Lynn is 49 years old and Jamie Lynn is 52 years old.

11 Declaration of Guy Lynn and Jamie Lynn, filed June 3, 2009, DN
12 184, 4:1-10. The trustee has offered no reply to this evidence;
13 thus, the court has no reason to doubt its reliability.

14 Based on the debtors' testimony, and given their ages and
15 the fact that they are and for some years have been self-employed
16 in the business of making and selling crafts, the court concludes
17 that the \$75,318.43 will be necessary for their support when they
18 retire, whether that occurs in the near future or in another 10
19 or 15 years' time.

20 Further, the debtors' business obviously caters to persons
21 with discretionary income, and thus, is not likely to prosper in
22 the present economy. There is no evidence the debtors have any
23 other education, training, or marketable skills, or of other
24 significant exempt assets. Thus, the court concludes that the
25 IRAs will be necessary for the debtors' support upon retirement.

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1 **D. 2006 Ford Expedition**

2 The trustee objects to the debtors' exemption of \$2,550 in
3 equity in this vehicle, under § 704.010, contending the maximum
4 exemption amount is \$2,300. In accordance with § 703.150(b), the
5 amount of the allowable exemption is adjusted every three years.
6 As of April 1, 2007, the allowable amount is \$2,550;⁶ thus, this
7 objection will be overruled.

8 **E. Wells Fargo Trailer**

9 The trustee objects to the debtors' exemption of this item,
10 valued at \$800, under § 704.020, on the ground it is not a
11 household item or personal effect subject to exemption. The
12 trailer is on a list of items the debtors testify were purchased
13 for use by their family. They state that each item is an
14 ordinary item reasonably necessary for their family. While this
15 is vague, in the absence of any response by the trustee, and
16 given the liberality with which exemptions are to be construed,
17 the court will allow the exemption.

18 **F. Personal property held by Vi Fuchser Archer**

19 The trustee objects to the debtors' exemption, under
20 § 704.020, of an antique stove, aquarium, bubble-making machine,
21 and stained glass currently being held by debtor Jamie Lynn's
22 mother, Vi Fuchser Archer. The debtors value these items at a
23 total of \$21,000; the trustee objects that these items do not
24 qualify as household items or personal effects subject to
25 exemption.

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28 6. www.courtinfo.ca.gov/forms/documents/exemptions.pdf.

1 The debtors have not broken down the total value in this
2 proceeding, but a breakdown was provided in connection with an
3 earlier motion:⁷

4	Antique stove	\$ 8,000
	Old glass	\$12,000
5	Bubble machine	\$ 80
6	Aquarium & black light	\$ 120

7 Based on these values, and the debtors' testimony,⁸ the
8 court finds the bubble machine, aquarium, and black light to be
9 household goods, within the meaning of § 704.020. Given the
10 debtors' background as artists and craftsmen, and their testimony
11 that these items were purchased for personal use, not for resale,
12 the court finds the stained glass also qualifies. The court is
13 troubled by the unusual value of the antique stove, particularly
14 when compared with the remainder of the debtors' household goods,
15 valued at a total of \$14,515. However, in the absence of a
16 response by the trustee, the court will credit the debtors'
17 testimony as reliable, and will allow the exemption.

18 **G. Inventory of Wild Things Beads**

19 The trustee objects to the debtors' exemption of the
20 inventory of their business, Wild Things Beads, under § 704.060,
21 at \$6,750 for the debtor and \$6,750 for the joint debtor, on the
22 ground that the list referred to was not attached, and thus, that
23 it is unclear what assets the debtors sought to exempt. The

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25 7. Exhibit C of Exhibits B-J in Support of Debtors'
26 Response to Objections to Confirmation, filed June 4, 2008, DN
44.

27 8. In their declaration in opposition to the Objection, the
28 debtors testified to the dates they acquired these items and the
uses to which they have been put. See Declaration of Guy Lynn
and Jamie Lynn, filed June 3, 2009, DN 184, ¶ 4.

1 debtors respond that the trustee is in possession of all of the
2 inventory, that they have provided him with inventory lists, and
3 that they are not claiming any particular item as exempt, but
4 rather a total value of \$6,750 for each debtor.

5 The trustee and creditors had only 30 days from, in this
6 case, the filing date of the amended C-schedule in which to
7 object to the debtors' claim of exemptions. Fed. R. Bankr. P.
8 4003(b). Any objection after that date would be too late,
9 "whether or not [the debtors] had a colorable statutory basis for
10 claiming [the exemptions]." Taylor v. Freeland & Kronz, 503 U.S.
11 638, 643-44 (1992).

12 The rule applies, however, only where the schedule of
13 exemptions is "sufficient to notify the creditors and the trustee
14 exactly what property the debtor is claiming as exempt."
15 Preblich v. Battley, 181 F.3d 1048, 1052 (9th Cir. 1999). In
16 this case, the absence of the "attached list" apparently created
17 uncertainty for the trustee, but also for creditors.

18 In that the trustee did not reply to the debtors' contention
19 that they have provided him with the lists, and did not request
20 additional time to review those lists and to supplement his
21 objection, the court will assume he is satisfied with the record
22 as it now stands. In the absence of any further objection to the
23 claimed exemption, the objection will be overruled. The court is
24 not called upon to rule on the sufficiency of this claim of
25 exemption as regards creditors.

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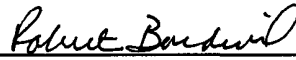
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III. Conclusion

As to the debtors' claim of exemption of their IRAs, the Objection will be sustained as to any amount over \$75,318.43. In all other respects, the Objection will be overruled. The court will issue an appropriate order.

Dated: June 24, 2009



ROBERT S. BARDWIL
United States Bankruptcy Judge

1 Certificate of Service

2 I certify that on June 24, 2009 a copy of the foregoing
3 document was mailed to the following:

4 Debtor's Attorney

5 Mark Wolff
6 8861 Williamson Dr., #30
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8 Debtor

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12 US Trustee

13 Office of the US Trustee
14 501 "I" Street, Suite 7-500
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16 Chapter 7 Trustee

17 John Roberts
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23
24
25
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27
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By: 

Andrea Lovgren