

1
2
3
4
5
6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 In re

Case No. 03-60549-A-7
DC No. DAC-2

9 CELESTINO AGUILAR

10 Debtor.
11
12 _____/

FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
FIRST AMENDED TRUSTEE'S
OBJECTION TO PROPERTY
CLAIMED EXEMPT

13 A hearing was held June 29, 2005, on the First Amended
14 Objection to Claim of Exemption (the "Amended Objection") filed
15 by James E. Salven as chapter 7 trustee (the "Trustee").
16 Following the hearing, the court took the matter under
17 submission. This memorandum contains findings of fact and
18 conclusions of law required by Federal Rule of Bankruptcy
19 Procedure 7052 and Federal Rule of Civil Procedure 52. This is a
20 core proceeding as defined in 28 U.S.C. §157(b)(2)(B).

21 The Trustee filed the Amended Objection on June 10, 2005.
22 Prior to that time, on May 31, 2005, the Trustee had filed an
23 "Objection to Property Claimed Exempt" (the "First Objection").

24 In order to understand the legal issues raised by the First
25 Objection and the Amended Objection, it is first necessary to
26 review the chronology of this bankruptcy case, along with the
27 chronology of the bankruptcy case filed by the separated spouse
28 of the Debtor here.

Celestino Aguilar filed a chapter 11 case on November 19, 2003. At that time, he claimed exemptions under California Code of Civil Procedure § 703.140(b). He claimed exempt the following property:

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
1987 SEL 560 Mercedes	C.C.P. § 703.140(b)(2) C.C.P. § 703.140(b)(5)	2,775.00 3,225.00	6,000.00
California Bank & Trust	C.C.P. § 703.140(b)(5)	504.00	504.00
Cash	C.C.P. § 703.140(b)(5)	500.00	500.00
Computers, desks, & chairs	C.C.P. § 703.140(b)(6) C.C.P. § 703.140(b)(5)	1,750.00 3,250.00	5,000.00
Debtor's clothing	C.C.P. § 703.140(b)(3)	2,000.00	2,000.00

On December 10, 2003, the Debtor filed an amendment to Schedule C. By the amendment, he claimed exempt the same property, except that he added an exemption with a value of \$0.00 for a 2003 "Hummer." Schedule C as amended December 10, 2003, reads as follows:

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
1987 SEL 560 Mercedes	C.C.P. § 703.140(b)(2) C.C.P. § 703.140(b)(5)	2,775.00 3,225.00	6,000.00
2003 Hummer	C.C.P. § 703.140(b)(5)	0.00	46,000.00

California Bank & Trust	C.C.P. § 703.140(b)(5)	504.00	504.00
Cash	C.C.P. § 703.140(b)(5)	500.00	500.00
Computers, desks, & chairs	C.C.P. § 703.140(b)(6) C.C.P. § 703.140(b)(5)	1,750.00 3,250.00	5,000.00
Debtor's clothing	C.C.P. § 703.140(b)(3)	2,000.00	2,000.00

The case was ordered converted from chapter 11 to chapter 7 on April 20, 2004. On February 4, 2005, the Debtor again amended Schedules B and C. Schedule C as amended February 4, 2005, reads as follows:

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY, WITHOUT DEDUCTING EXEMPTIONS
1993 Cadillac El Dorado. Vehicle was purchased for debtor's brother, Richard, but title has remained in debtor's name for insurance purposes	C.C.P. § 703.140(b)(2)	2,500.00	2,500.00
2003 Hummer	C.C.P. § 703.140(b)(5)	0.00	46,000.00
California Bank & Trust	C.C.P. § 703.140(b)(5)	504.00	504.00
Cash	C.C.P. § 703.140(b)(5)	500.00	500.00
Computers, desks, & chairs	C.C.P. § 703.140(b)(6) C.C.P. § 703.140(b)(5)	1,750.00 3,250.00	5,000.00
Debtor's clothing	C.C.P. § 703.140(b)(3)	2,000.00	2,000.00

Debtor's share of proceeds from sale of 6-plex (amount unknown but expected to exceed amount claimed exempt)	C.C.P. § 703.140(b)(5)	14,041.00	0.00
--	------------------------	-----------	------

In Schedule C as amended February 4, 2005, the Debtor deleted the exemption for the Mercedes and added an exemption in the amount of \$14,041 for the Debtor's share of proceeds from sale of a 6-plex, and also added an exemption of \$2,500 for a 1993 Cadillac El Dorado. The chapter 7 meeting of creditors under § 341 of the Bankruptcy Code was concluded on April 28, 2005, and the Trustee filed the First Objection on May 31, 2005.

Meanwhile, the Debtor's spouse, Vickie Aguilar, filed her chapter 7 bankruptcy case (Case No. 02-13259) on April 9, 2002. She claimed exemptions using the exemptions generally provided by California Code of Civil Procedure § 704.

On September 7, 2004, Vickie Aguilar amended her claims of exemption, now claiming exemptions under California Code of Civil Procedure § 703.140(b). The amended claims of exemption include the 6-plex for which she claims an exemption under §703.140(b)(1) of \$9,849. Otherwise, her amended claims of exemption do not appear to duplicate the Debtor's.

California Code of Civil Procedure § 703.140(a)(2) requires that if a bankruptcy petition is filed individually by someone who is married, the applicable exemptions will be the exemptions other than in § 703.140(b). However,

"[I]f both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions

1 provided by the applicable exemption provisions of this
2 chapter, other than subdivision (b), in any case commenced
3 by filing a petition for either of them under Title 11 of
4 the United States Code, then they may elect to instead
5 utilize the applicable exemptions set forth in subdivision
6 (b)."

7 Vickie Aguilar's case has been pending from April 9, 2002,
8 to date. Thus, it has been pending during the entire time that
9 Celestino Aguilar's time has been pending. No one has objected
10 to the amended claims of exemption filed by Vickie Aguilar on
11 September 7, 2004, and the period to object to those amended
12 claims of exemptions has expired. No spousal waiver of right to
13 claim exemptions has been filed in either case. Thus, in theory,
14 Celestino Aguilar may only exempt whatever property is available
15 for exemption under § 703.140(b) that was not exempted by Vickie
16 Aguilar.

17 In the First Objection, the trustee asserted that because
18 Vickie Aguilar and Celestino Aguilar are only entitled to one set
19 of exemptions, and because her exemptions and case were filed
20 first, certain of the exemptions claimed by Celestino Aguilar
21 should be disallowed. Therefore, in the First Objection the
22 trustee asks the court to disallow the exemption claimed by
23 Celestino Aguilar for vehicles under California Code of Civil
24 Procedure § 703.140(b)(2) in the amount of \$2,500 and to disallow
25 the claim of exemption under California Code of Civil Procedure
26 § 701.140(b)(5) to the extent it exceeds \$7,479, because the
27 balance of that exemption had been claimed by Vickie Aguilar.

28 The Amended Objection is that Celestino Aguilar cannot
exempt property under California Code of Civil Procedure
§ 703.140 et seq. at all because Vickie Aguilar has not signed a

1 spousal waiver. Second, the trustee objects to all the
2 exemptions claimed in Schedule C as amended February 4, 2005.

3 According to the Debtor, the chapter 7 trustee cannot timely
4 object to any of the exemptions scheduled during the chapter 11
5 case. Taylor v. Freeland and Kronz, 503 U.S. 638 (1992); In re
6 Smith, 235 F.3d 472 (9th Cir. 2000). So, according to the
7 Debtor, only items first exempted during the chapter 7 case may
8 be objected to by the chapter 7 trustee.

9 Both parties agree that the First Objection was timely.
10 However, the Debtor asserts that the Amended Objection cannot
11 relate back to the First Objection. Thus, to the extent that the
12 Amended Objection includes objections that were not raised in the
13 First Objection, it is, according to the Debtor, not timely. The
14 Trustee disagrees.

15 Both the Debtor and the Trustee have argued to the court
16 their different points of view about whether the claims in the
17 Amended Objection relate back to the First Objection. However,
18 it is not necessary for the court to decide this interesting
19 procedural issue in order to rule on the Amended and First
20 Objections. There is general agreement that husband and wife can
21 only claim one set of exemptions under California Code of Civil
22 Procedure § 703.140(b). Therefore, both the Trustee and the
23 Debtor are correct that the Debtor's claim of exemption for
24 vehicles under § 703.140(b)(2) must be disallowed in its entirety
25 because that section has already been used by Vickie Aguilar.
26 Further, everyone agrees that the total allowable exemptions
27 under § 703.140(b)(1) and (5) are \$18,350. Vickie Aguilar has
28 already claimed in her amended exemptions \$10,871. Thus,

1 Celestino Aguilar is limited under those code provisions to
2 \$7,479. In the court's view, the point that Celestino Aguilar
3 and Vickie Aguilar were only entitled to one set of exemptions
4 was adequately made and raised in the First Objection.
5 Therefore, the court need not consider the relation back
6 argument.

7 Finally, the court declines to rule that because Vickie
8 Aguilar has not signed a spousal waiver, Celestino Aguilar's
9 entire claimed exemptions should be denied. While that result
10 might be technically correct, under the facts and circumstances
11 here, where Vickie Aguilar managed to get through her entire
12 chapter 7 bankruptcy case without anyone raising this point, it
13 would seem unfair and prejudicial to Mr. Aguilar to so rule.

14 For the foregoing reasons, the Trustee's First Objection and
15 Amended Objection to the claims of exemption are sustained in
16 part and overruled in part. The objections are sustained to the
17 extent that Mr. Aguilar may not claim any exemption under
18 California Code of Civil Procedure § 703.140(b)(2), and his
19 exemption under California Code of Civil Procedure § 703.140(b)
20 (1) and (5) is limited to \$7,479. Counsel for the Trustee may
21 submit an appropriate form of order.

22 DATED: July 21, 2005.

23
24 /S/
25 WHITNEY RIMEL, Judge
26 United States Bankruptcy Court
27
28