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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 00-52097
)	
SYBILLA EMMA COURAGE,)	CHAPTER 13
)	
Debtor.)	JUDGE MARILYN SHEA-STONUM
)	
)	MEMORANDUM AND ORDER
)	GRANTING DEBTOR'S MOTION
)	TO DISMISS OBJECTIONS TO
)	EXEMPTIONS

This matter came on for hearing on January 24, 2001 on the Trustee's Objection to Claim of Exemptions and Motion for Turnover of Information, filed on November 21, 2000, and the Debtor's Motion to Dismiss Objections to Exemptions and Response to Motion for Turnover of Information, filed on December 18, 2000. Appearing at the hearing were Lydia E. Spragin, trustee, Bruce Schrader, counsel for the trustee, Sybilla E. Courage, debtor, and Fred J. Deuber, counsel for the debtor. At issue, *inter alia*, was whether the trustee's indefinite continuance of a § 341(a) meeting of creditors tolled the period for filing objections to property claimed as exempt by the debtor pursuant to § 522(b), (1)(allowing the debtor to elect to take exemptions provided by state or federal law and to list same). Following the hearing the Court requested briefing on the requirements of Fed. R. Bankr. P. 2003(e) setting forth case law concerning the interpretation of the Rule. The trustee filed her "Memorandum in Support of Objection to Exemption and Response to Motion to Dismiss" ("Mem. in Support") on

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February 9, 2001. The debtor filed her "Memorandum on Interpretation of F.R.B.P. 2003(e)" on February 22, 2001.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984 and is determined to be a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B), over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334.

I. BACKGROUND

The debtor filed her chapter 13 petition on July 11, 2000. On Schedule C the debtor claimed as exempt, *inter alia*, a "Personal Injury Award - 10/99" in the amount of \$5,000 allegedly pursuant to Ohio Rev. Code § 2329.66(A)(12)(c), and a "Personal Injury Award - 5/00" in the amount of \$6,300, and a "Personal Injury - Contingency estimated" in the amount of \$11,000, both allegedly pursuant to Ohio Rev. Code § 2329.66(A)(12)(d). The debtor filed no amended schedules. Through the Notice of the meeting of creditors, dated July 12, 2000, the parties were notified that the § 341 meeting of creditors was scheduled for August 28, 2000, and the deadline to object to exemptions was "[t]hirty (30) days after the conclusion of the meeting of creditors." The minutes of the § 341 meeting, signed by the trustee and filed on September 21, 2000, reported the meeting as "Held, Continued", but no date or time for the continued meeting was listed. No further meeting was held, and on October 31, 2000, Fred J. Deuber, counsel for the debtor, wrote to the Trustee stating, in pertinent part:

This refers to our conferences regarding exemptions claimed by the above Debtor. The Notice to Debtor dated July 12, 2000 indicates the deadline to object to exemptions is thirty days after conclusion of the Meeting of the Creditors.

Federal Rules of Bankruptcy Procedure - Rule 2003
(e) ADJOURNMENT states:

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The Meeting of Creditors may be adjourned from time to time by announcement at the meeting of the adjournment date and time without further written notice.

The record does not reflect a date and time of adjournment. Therefore it is our position the Meeting of Creditors is concluded and objection to the exemptions claim is moot.

On November 21, 2000 the trustee filed her Objection to Claim of Exemptions and Motion for Turnover of Information, stating that she needed more information regarding the claimed exemptions. Objection to Claim of Exemptions at 2, 1st numbered paragraph 4. On December 18, 2000, the Debtor filed her Motion to Dismiss Objections to Exemptions and Response to Motion for Turnover Information. A hearing was held, as stated *supra*, on January 24, 2001, following which briefs were filed in which each party set forth her interpretation of Fed. R. Bankr. P. 2003(e).

The trustee argued that the continuance of the § 341 meeting of creditors tolled the period for filing objections to property claimed as exempt. The debtor's position was that the Rule sets forth the manner by which a meeting can be adjourned and that is "by announcement at the meeting of the adjournment date and time without further written notice."

II. LAW AND ANALYSIS

B. § 522 and Fed. R. Bankr. P. 4003

When an individual debtor files a petition for bankruptcy she is entitled to claim certain property as exempt from the estate and file a list of such property pursuant to § 522(b), (l). Any party in interest may file an objection to the debtor's list of exemptions pursuant to Fed. R. Bankr. P. 4003(b). Rule 4003(b) defines the time period within which parties may object to exemptions claimed by the debtor. It states, in pertinent part:

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A party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341 is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.¹

If no timely objections are made then "the property claimed as exempt . . . is exempt" pursuant to § 522(l).

C. Fed. R. Bankr. P. 2003

Rule 2003 states, in pertinent part:

(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

Rule 2003 provides for "when and where the meeting of creditors should be held, conduct of and voting at the meeting, recording of the meeting and subsequent reporting to the court, adjournments to date certain, and the calling of special and final meetings." *In re Gregorio*, 187 B.R. 273, 274 (Bankr. N.D. Ill 1995). The only reference to adjourned or continued meetings is found in Rule 2003(e), which provides "[t]he meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice." Fed. R. Bankr. P. 2003(e). However, the Rule does not define conclusion of the creditor's meeting. In *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992),² the Supreme Court held that untimely objections to exemptions are deemed waived, making the determination of commencement of the limitation period for filing objections critical.

¹ As noted, the debtor filed no amended schedules.

² It should be noted that neither party cited this on point Supreme Court case to this Court.

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D. Discussion

The debtor argues that the August 28, 2000 meeting of creditors was not adjourned but was concluded because the trustee failed to announce a new meeting date and time and therefore the Trustee's objection, filed three months later, was untimely. In her Objection the Trustee stated that she had "insufficient information to support the Debtor's present position on Schedule C", Objection to Claim of Exemptions at 2, and in her Memorandum in Support she alleges that the debtor's argument that the trustee was required under Rule 2003 to announce an adjourned date and time for the meeting "is contrary to the prevailing law." Mem. in Support at 2. At issue is the interpretation of Rule 2003, and the consequences of such interpretation.

"Rule 2003(e) permits adjournment 'from time to time' . . . and requires the trustee to announce 'the adjourned date and time' if he chooses to exercise that option." *Smith v. Kennedy (In re Smith)*, 235 F.3d 472, 476 (9th Cir. 2000). The *Smith* court continued:

The plain language of the statute requires that for a Rule 2003(e) adjournment to be effective, it must be accompanied by an announcement of "the adjourned date and time." *See In re Hurdle*, 240 B.R. 617, 621-22 (Bankr. C.D. Cal. 1999); *In re Levitt*, 137 B.R. 881, 883 (Bankr. D. Mass. 1992). No other procedure for adjournment is provided by rule or statute, and no other method of adjournment is permitted under Rule 2003(e).

Id. There is no question that the trustee has the power to adjourn creditors' meetings -- she has that power by statute. However, the question is whether for purposes of Rule 2003(e), adjournment must be accompanied by announcement of the adjourned date and time. A plain reading of the Rule indicates that it must. *Id.*

In addition, in *Gregorio*, 187 B.R. at 276, the court stated:
There is no authority in either the Code or Rules for the

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[Trustee] to adjourn § 341 meetings generally. One need only look to the provisions of Rule 2003 itself. While 2003(e) provides for adjournments to future dates certain, conspicuously absent is any provision authorizing the Trustee to adjourn the meetings generally. Consequently, we believe the practice to be unauthorized and inappropriate.

This court agrees with the holding of the *Gregorio* and *Smith* courts: the procedure for adjourning a creditor's meeting is by announcement of the adjourned date and time.

The adjourned date and time need not be announced at the meeting, however, "[a]n announcement made after a meeting adjourns may be sufficient, if it is made within a reasonable time." *Smith* at 476. *See also In re Bernard*, 40 F.3d 1028, 1031 n. 4 (9th Cir. 1994)("The objection period . . . remains open until 30 days after one of the following events: (a) the trustee concludes a 341(a) meeting without expressly continuing it to a later date . . .; (b) the trustee sends written notification to all those on the service list that the 341(a) examination period is closed; or (c) the bankruptcy court orders the examination period closed."). In *Levitt*, 137 B.R. at 883, the court held:

Rule 2003(e), by providing for adjournment to a specific time, exhibits a concern to keep the process moving. A trustee who continues a meeting generally and does not within a reasonable time announce the adjourned date and time and reconvene the meeting thereby defeats the policy implicit in these rules.

In this case, no adjourned date and time was ever announced, and the creditors' meeting was never resumed.

In her Memorandum in Support of Objection to Exemptions, the trustee further argues that because the debtor "has the greatest interest in concluding the meeting" so as to trigger the 30 day objection period, the burden should be on the debtor to move

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the court for an order to conclude the meeting. Mem. in Support at 3, *quoting Gregorio* at 276. Particularly in light of the Supreme Court's decision in *Taylor*, 503 U. S. 638 (1992), the discussion in *Gregorio* of this issue is distinguishable in significant ways that make it inapplicable to the facts now before the Court. *Gregorio* involved a chapter 11 proceeding and it and several other courts have analyzed the propriety of the U.S. Trustee (the "UST") adjourning § 341 meetings generally. *Gregorio* at 276. *See also In re Havanec*, 175 B.R. 920 (Bankr. N.D. Ohio 1994); *In re Vance*, 120 B.R. 181 (Bankr. N.D. Okla. 1990)(generally discussing the UST's discretion in adjourning § 341 meetings in chapter 11 cases). These courts did not agree with the UST's view that the UST had the authority to adjourn meetings generally, but recognized that such general adjournments do, in fact, occur. Courts have stated that in such a case it may be proper to entertain a debtor's motion for a court order concluding the meeting. *Gregorio* at 267; *Vance* at 197-98. This is due in part to the fact that the pace of a chapter 11 proceeding is not the same as that of a chapter 7 proceeding, and in chapter 11 proceedings courts may consider whether the debtor objected to the UST's general continuance. *Havanec*, 175 B.R. at 923, *see also Vance*, 120 B.R. 181-98. This court also notes that the debtor did make her opinion known concerning the conclusion of the meeting through a letter to the trustee from her counsel dated October 31, 2000, three weeks before the Trustee filed her Objection.

Moreover, putting such a burden on a debtor in a chapter 7 case ignores the holding of *Levitt*. The *Levitt* court held that the chapter 7 trustee's purpose simply to postpone concluding the meeting until he had an opportunity to investigate matters further, as was the trustee's intent in this case, was insufficient to overcome the 30 day rule in a case in which the trustee had not announced an adjourned date for the meeting.

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Levitt, 137 B.R.at 883. In *Levitt* the court interpreted Rules 4003(b) and 2003(e) to require prompt conclusion of the chapter 7 creditors' meeting so that "debtors [can] get on with their lives" and trustees "[can] know which assets are theirs to administer." *Id.* at n.1.

In addition, the trustee's interpretation of the Rules pays insufficient heed to the Supreme Court's holding in *Taylor*, 503 U.S. 638 (1992). In *Taylor* the trustee made the decision not to object to the debtors' claimed exemption of the entire proceeds from a potential lawsuit, determining that it might be a "nullity." *Id.* at 641. The trustee "proved mistaken" and the debtors were paid \$110,000. *Id.* The trustee demanded the proceeds of the case as property of the estate and the debtors argued that they could keep the money because they had claimed it as exempt. The Court held that:

Rule 4003(b) gives the trustee and creditors 30 days from the initial creditors' meeting to object. By negative implication, the Rule indicates that creditors may not object after 30 days "unless, within such period, further time is granted by the court." The Bankruptcy Court did not extend the 30-day period. Section 522(l) therefore has made the property exempt.

Id. at 643. In *Taylor* the Supreme Court also observed that "[d]eadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." *Id.* "To authorize trustees to adjourn meetings indefinitely, even when it is unlikely that any subsequent meeting will in fact be called, would nullify the thirty-day requirement of Rule 4003(b) rendering the holding of *Taylor* hollow, and undermining the concerns of the Supreme Court about promptness and finality." *Smith*, 235 F.3d at 476.

The majority of courts follow *Taylor* closely. "*Taylor* has quickly come to stand for the proposition that in bankruptcy, adherence to statutory deadlines is fundamental." *In re Maylin*, 155 B.R. 605, 611-12 (Bankr. D. Me. 1993). *Taylor* fixes a

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"point at which the question of what property remains within the estate, and what property will be excluded by exemption, is to be determined." *Id.* at 612. *See also Morgan v. FDIC (In re Morgan)*, 149 B.R. 147, 152 (9th Cir. BAP 1993)("Section 522(l) . . . allows the trustee to promptly determine what assets of the debtor are available for distribution.").

III. CONCLUSION

For the foregoing reasons, the Court GRANTS the debtor's Motion to Dismiss Objections and the trustee's objections shall be deemed waived as untimely filed, pursuant to Fed. R. Bankr. P 2003(e), 4003(b) and relevant case law.

IT IS SO ORDERED.

MARILYN SHEA-STONUM
United States Bankruptcy Judge

DATED: 4/5/01