

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

)	CHAPTER 7
)	
)	
)	CASE NO. 05-66163
IN RE:)	
)	JUDGE RUSS KENDIG
AARON SEESE,)	
CAROL SEESE,)	
)	
)	
Debtors.)	MEMORANDUM OPINION

This matter comes before the court upon the Chapter 7 Trustee's (hereinafter "Trustee") motion for turnover filed February 16, 2006 and objection to exemption filed on March 20, 2006. Aaron and Carol Seese (hereinafter "Debtors") filed a response to the motion for turnover on March 2, 2006. A hearing was held on this matter on March 20, 2006. At this hearing, the court gave Debtors twenty-one (21) days in which to file additional briefing on both the motion for turnover and objection to exemption. Debtors' filed a brief on April 4, 2006. Trustee filed a reply on May 25, 2006.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334, 157, and the general order of reference entered in this district on July 16, 1984. This is a core proceeding over which the court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2). Venue in this district and division is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTS AND PARTIES' ARGUMENTS

Debtors filed their Chapter 7 petition on September 26, 2005. On Schedule A of their petition, Debtors listed a rental property at 400 Schwalm Ave. NW at \$55,000. Schedule D notes that Countrywide Home Loans holds a mortgage in the amount of \$34,000 on this property.¹ Debtors claimed an exemption in this property of \$800, pursuant to O.R.C. § 2329.66(A)(18).

After the Debtors' 341 meeting of creditors, the Trustee moved to compel turnover of income tax refunds. The Trustee stated that, after allowance of exemptions under O.R.C. §

¹ The Trustee contends that this amount is actually \$41,000, as shown by the Motion for Relief from Stay by creditor on this property.

2329.66(A)(4) and (A)(18), Debtors owed the estate \$3,386.² After this motion for turnover was filed, Debtors amended their schedules, listing their previously unlisted tax refund, eliminating the exemption on the rental property, and now claiming an \$800 exemption pursuant to O.R.C. § 2329.66(A)(18) in their 2005 income tax refund. The Trustee then filed an objection to this exemption, stating that she relied on the exemption in the rental property when she abandoned the rental property.

Debtors argue that they may amend their exemptions at any time before the close of the bankruptcy case and that a court can refuse an amended exemption only if the debtor acted in bad faith. The Trustee cites In re Clark, 274 B.R. 127 (Bankr. W.D. Pa. 2002), for the proposition that Debtors may not amend their schedules as a matter of course when the amendments are either proposed in bad faith, or prejudice third parties. She further claims that allowing Debtors to amend their exemptions would prejudice her, as a third party, because she decided to abandon the rental real estate after completing an appraisal and analyzing the capital gains tax that would be owed if the property were to be sold.

DISCUSSION

Rule 1009 gives broad latitude to a debtor to amend his or her schedules throughout the bankruptcy process, stating that “a schedule or statement may be amended by the debtor as a matter of course at any time before the case is closed.” Fed. R. Bankr. P. 1009 (2005). But, this rule is not without limitations. A bankruptcy court may disallow an exemption if it is proposed in bad faith or if it prejudices any third party. Clark v. Clark (In re Clark), 274 B.R. 127 (Bankr. W.D. Pa. 2002); In re Daniels, 270 B.R. 417 (Bankr. E.D. Mich 2001). While delay in filing an amendment cannot serve as the basis for prejudice, prejudice can be established by “showing harm to the litigating posture of parties in interest.” Daniels, 270 B.R. at 426 (quoting In re Talmo, 185 B.R. 637 (Bankr. S.D. Fla. 1995)). “If the parties would have taken different actions or asserted different positions had the exemption been claimed earlier, and the interests of those parties are detrimentally affected by the timing of the amendment, then the prejudice is sufficient to deny amendment.” Id. In addition, the impairment of the ability of a trustee to administer an estate can serve as the basis for prejudice. Id.

As Debtors correctly assert, there has been no allegation that they acted in bad faith or concealed an asset of the estate in this case. However, that does not end the inquiry. The court must determine whether the amendment prejudices a third party or impairs the ability of the trustee to administer the estate. In this case, the existence of the asset and the claim of exemptions were amended only after the Trustee filed a motion for turnover of Debtors’ income tax refund. Though Debtors state that the equity in the property is “significant with or without the \$800 exemption,” the Trustee stated, at the hearing, that the decision to abandon was based upon an assessment of the property and capital gains tax considerations, in which \$800 could have altered the abandonment decision. The Trustee states that she

² Apparently the exemption allowable under O.R.C. § 2329.66(A)(18) is zero.

would have taken a different action had the exemption been taken in the income tax refund rather than the rental property, and the court finds this rationale logical. Without applying the exemption to the rental property, the Trustee may have determined that there was sufficient equity to administer instead of abandoning the property.

The Trustee detrimentally relied on Debtors' initial assertion claiming the Ohio wild-card exemption³ in their rental property by soliciting an assessment of the property by a professional and figuring in capital gain tax calculations to determine what amount of commission would likely result from the sale of such property. In addition, permitting Debtors to amend their wild-card exemption from the rental property to their income tax refund would impair the Trustee's ability to administer the estate, as the Trustee's abandonment determination was based upon Debtors' rental property exemption claim. The Trustee has acted in reliance upon Debtors' initial schedules and took a certain action (i.e. abandonment of the real estate) based upon those schedules, therefore establishing the requisite prejudice to justify disallowance of the amendment.

Accordingly, the Trustee's motion for turnover is **GRANTED** and the Trustee's objection to exemption is **SUSTAINED**.

A separate order is issued herewith.

JUN - 8 2006

/s/ Russ Kendig

**Judge Russ Kendig
U.S. Bankruptcy Judge**

³ O.R.C. § 2329.66(A)(18).

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