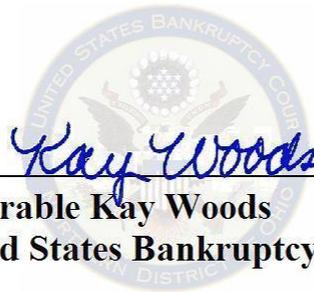


IT IS SO ORDERED.



**Dated: March 13, 2007
02:08:43 PM**

**Honorable Kay Woods
United States Bankruptcy Judge**

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

IN RE:	*	
	*	CASE NUMBER 04-41352
RANDALL JOSEPH HAKE and	*	
MARY ANN HAKE,	*	CHAPTER 7
	*	
Debtors.	*	HONORABLE KAY WOODS
	*	

M E M O R A N D U M O P I N I O N
NOT INTENDED FOR NATIONAL PUBLICATION

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This cause is before the Court on Objections to Debtors' Exemptions and Request for Evidentiary Hearing ("Objection")(Doc. # 562) filed by Buckeye Retirement Co., L.L.C., Ltd. ("Buckeye") on

October 11, 2006. This Court denied Buckeye's request for an evidentiary hearing pursuant to Order Denying Request for Evidentiary Hearing dated November 6, 2007. (Doc. # 581.) Debtors Randall J. Hake and Mary Ann Hake (collectively "Debtors") filed Debtor's (sic) Opposition to Objection to Exemptions by Buckeye Retirement Co., and Request for Preliminary Hearing ("Response"). The Court held a hearing on the Objection on November 28, 2006, at the conclusion of which the Court took the matter under advisement. This Memorandum Opinion constitutes the Court's findings of fact and Conclusions of Law pursuant to Fed. R. Bankr. P. 7052. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTS

On March 25, 2004, Debtors filed a voluntary petition pursuant to chapter 11 of title 11 of the United States Code. This case was converted to a chapter 7 case on April 26, 2006. Mark M. Gleason is the duly appointed chapter 7 trustee ("Trustee"). Buckeye is a creditor and party in interest.

On the petition date, Debtors filed their original schedules and statement of financial affairs. Debtors filed amended summary of schedules, amended schedules B, C, and F, and amended declaration concerning debtor(s) schedules on February 15, 2005. (Doc. # 142.) On that same date, Debtors filed amended statement of financial affairs. (Doc. # 143.) Debtors also filed amended declaration concerning debtors' amended schedules on February 15, 2005. (Doc. # 147.)

On May 24, 2006, Debtors filed second amended summary of schedules, second amended schedules B, C, F, I, J, and amended declaration concerning debtors' schedules. (Doc. # 467.)

The first meeting of creditors, pursuant to § 341 of the Bankruptcy Code, was held and concluded on September 13, 2006. Buckeye filed the Objection on October 11, 2006. Buckeye objects to certain exemptions claimed by Debtors on the grounds of "vagueness." Buckeye asserts that (i) four categories of Debtors' property are "undervalued" and (ii) a fifth item has no statutory basis for the exemption. Debtors oppose the Objection on the basis that the values they used were good faith estimates and/or were updated to adopt the valuation in Ronald Roman's appraisal.

STANDARD OF REVIEW

Upon filing a bankruptcy petition, an estate is created pursuant to 11 U.S.C. § 541. "The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held[.]" 11 U.S.C. § 541(a) (West 2004). Section 522 of the Bankruptcy Code permits Debtors to exempt certain property that would otherwise come within the purview of the bankruptcy estate for the benefit of creditors.

Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title . . . debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to

exempt property listed in paragraph (2) of this subsection.

11 U.S.C. § 522(b) (West 2004).

A trustee or other party in interest may object to a debtor's claimed exemptions, but the objection must be made within specified time limits.

A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

FED. R. BANKR. P. 4003(b). If an objection to exemption is not timely made, the exemption cannot be later challenged. *Taylor v. Freeland and Kronz*, 503 U.S. 638 (1992) (Trustee's failure to object to debtor's claimed exemption within the 30-day time period prevented trustee from later challenging the validity of the exemption.)

Ohio has opted out of the federal exemptions; as a consequence, exemptions in O.R.C. § 2329.66 (Property that person domiciled in this state may hold exempt) controls with respect to the amounts of debtor's exemptions and the kind of property that is exempt.

ANALYSIS

Buckeye contends that Debtors filed schedule C and amendments five times, as follows: Doc. # 1, filed March 25, 2004; Doc. # 200, filed October 3, 2005; Doc. # 285, filed December 30, 2005; Doc. # 343, filed February 22, 2006; and Doc. # 467, filed May 24, 2006. (Objection, ¶ 7.) In reality, Debtors filed original schedules on

the Petition Date and twice amended schedule C - once prior to conversion of the case, on February 15, 2005 (Doc. # 142) (not noted by Buckeye in its Objection), and the second time subsequent to conversion of the case, on May 24, 2006 (Doc. # 467). Doc. ## 200, 285 and 343 are all Disclosure Statements or Amended Disclosure Statements to which schedule C (as amended on February 15, 2005) was attached. Buckeye acknowledges that the listings in Doc. ## 200, 285 and 343 are identical. (Objection, ¶ 8.)

A. Beneficial Interest of Mary Ann Hake in The Hake Family Irrevocable Trust

Buckeye objects to Debtors' claimed exemption to the beneficial interest of Mary Ann Hake in The Hake Family Irrevocable Trust on the basis that Debtors have failed to state a statutory basis for such claimed exemption. Debtors assert that this "interest is not property of the estate pursuant to 11 U.S.C. §541(c)(2) (sic) as it is an interest under a valid spendthrift trust under Ohio law." (Response at 2-3.) Debtors further represent that they included the beneficial interest on the amended schedules in the interest of full disclosure, and "inadvertently reference[ed] the same in Schedule C without any statutory exemption claimed, and do not make a claim of an exemption for this interest." (*Id.* at 3.) As a consequence, it appears that Debtors have withdrawn their claimed exemption to the beneficial interest of Mary Ann Hake in The Hake Family Irrevocable Trust. To the extent such exemption is not deemed to be withdrawn, this Court grants Buckeye's Objection with respect to this claimed exemption.

B. Objection Based on Items Being Undervalued and Not Disclosed

Buckeye objects to the remaining four categories of exemptions on the basis that these items are not fully disclosed and are undervalued. (Objection, ¶¶ 10, 12, 20-21.) Buckeye argues that these items have not been fully disclosed because they are undervalued on Debtors' schedule B. Buckeye does not argue that Debtors have failed to list the items, but only that the values assigned to such items are insufficient. These items were necessarily listed by Debtors on schedule B in order to be claimed as exempt on schedule C.

Buckeye does not contend that Debtors did not cite a proper statutory basis for the exemptions they have claimed for (i) household good and appliances, (ii) wearing apparel, (iii) engineer's license, and (iv) tools of the trade. Indeed, the Ohio Revised Code provides for a debtor to claim exemptions in each of these categories of property. (See O.R.C. §2329.66(A)(3)(wearing apparel and certain household items); § 2329.66(A)(4)(b) (household furnishings and appliances); § 2329(A)(5) (tools of profession, trade or business)).

Buckeye's Objection on the basis of undervaluation misses the mark and fails. In *In re McVay*, 345 B.R. 846 (Bankr. N.D. Ohio 2006), the bankruptcy court dealt with the question of whether an exemption can be disallowed simply because the asset was not originally disclosed. In *McVay*, the debtor husband had been seriously injured during the course of his pre-petition employment, which gave rise to a workers' compensation claim. The debtors filed for bankruptcy relief when they were aware that Mr. McVay was about to receive a substantial workers' compensation settlement,

but they failed to disclose the claim as either an asset or exempt property. Schedule I, however, revealed that Mr. McVay received a monthly income from workers' compensation. One month after filing the bankruptcy petition, Mr. McVay received the settlement. Thereafter, debtors amended their schedules to reflect the net settlement as exempt property, but at that time the majority of the funds had already been dissipated.

The McVay chapter 7 trustee argued that, because they failed to disclose the workers' compensation claim, debtors should be denied the right to claim an exemption in the settlement proceeds. Citing FED. R. BANKR. P. 1009(a), the bankruptcy court noted that a debtor may amend a petition, list, schedule or statement as a matter of course at any time before the case is closed. *Id.* at 849. The Court held:

[I]t cannot be overlooked that there exists no statutory authority for the disallowance of an exemption based solely upon the asset's nondisclosure, even if the omission of the asset was for reasons other than inadvertence. Instead, for debtors who are less than honest with respect to their bankruptcy petition, the Bankruptcy Code contemplates an alternative sanction: the denial/revocation of discharge. 11 U.S.C. § 727(a); *In re McKain*, 325 B.R. 842, 848 (Bankr. D. Neb. 2005). In light of their different policy considerations, this distinction, - whereby a debtor's discharge, but not their right to exemption, is expressly conditioned upon a full and honest disclosure - is not without reason.

Id. at 851.

This holding is equally applicable here. There is no statutory or other basis to sustain Buckeye's Objection to the claimed exemptions on the grounds that the assets were undervalued on the schedules or not fully disclosed.

Buckeye's remedy is, as set forth in *McVay*, to seek denial of Debtors' discharge, which Buckeye has done in filing Adversary Proceeding No. 06-4153 ("Adversary Proceeding"). In the Adversary Proceeding, Buckeye complains that Debtors should be denied a discharge on the grounds that they committed fraudulent acts and concealed property by failing to disclose or accurately describe assets on schedule B, as originally filed and as amended. (Adversary Proceeding Complaint, ¶¶ 15, 16 and 17.) Buckeye's Adversary Proceeding covers Debtors' disclosure of household goods and furnishings, wearing apparel and tools of trade, but does not address the engineer's license.

Accordingly, this Court finds that Buckeye's objection to Debtors' claimed exemptions in (i) household goods and appliances, (ii) wearing apparel, (iii) the engineer's license, and (iv) tools of trade has no recognized basis and is not well taken. Accordingly, this Court overrules the Objection on this ground.

C. Objection Based on Vagueness

It is not clear whether Buckeye's objection to the claimed exemptions on the "grounds of vagueness" is in addition to its objection for failure to disclose, or only a different way of stating the same objection. The Court will deal with this ground as if it is separate and apart from the grounds of undervaluation and failure to disclose even though there is, at minimum, substantial overlap between these two arguments.

Buckeye states that "in undervaluing their wearing apparel and household goods and appliances, Debtors were overly general, as they failed to account for the value of individual items, and thus did not provide notice of the value per item." (Objection, ¶ 22.)

Buckeye continues by contending that by not stating the amount of their life insurance, but only the "entire interest," Debtors were impermissibly vague and did not provide notice of the asset being claimed as exempt. (*Id.*) On this basis, Buckeye objects to "the interest of Debtor Mary Ann Hake in the life insurance policies" and the "beneficiary interest of Debtor Mary Ann Hake in The Hake Family Irrevocable Trust."

The Court will deal with each of these items individually. First, Buckeye's objection to Debtors' claimed exemptions in wearing apparel and household goods and appliances is merely a reiteration that Debtors have "undervalued" such assets. The Court has already disposed of that part of the Objection by overruling it, above. Also as set forth above, Buckeye's objection to Mary Ann Hake's interest in The Hake Family Irrevocable Trust is sustained, to the extent that Debtors may be deemed not to have withdrawn that claimed exemption.

Buckeye's objection to the claimed exemption in Mary Ann Hake's life insurance policy is a new objection. Buckeye argues that this exemption must be denied because Debtors have been impermissibly vague. Buckeye relies on the following two cases in support of this argument: *In re Zimmer*, 154 B.R. 705 (Bankr. S.D. Ohio 1993) and *In re Andermahr*, 30 B.R. 532 (9th Cir. BAP 1985). These two cases, however, are distinguishable and do not support Buckeye's position.

In *Zimmer*, the bankruptcy court considered a motion for turnover brought by the chapter 7 trustee to require the debtor-wife to turn over a portion of a tax refund that she had claimed as exempt. The trustee argued that the non-working wife did not have

an interest in the tax refund and, thus, she could not claim any portion of it as exempt. The trustee further argued that debtor-wife had claimed exemptions in the tax refund under two provisions of the Ohio Revised Code - one dealing with tax refunds in § 2329.66(A)(4)(a) and the other dealing with "other property" in § 2329.66(a)(17). The *Zimmer* court considered the debtor's claimed exemption under the "catch-all" provision of O.R.C. § 2329.66(a)(17) and held:

The trustee and creditors are entitled to fair and complete disclosure of exemption claims; *they are not required to guess as to what property is to be exempted.* Doubts about the amount or items covered by an exemption claim must be clarified by the debtor, on the theory that the debtor is in the best position to know the assets of the estate. . . . [D]ebtors must specify what property is being exempted under the "catch-all" provision of § 2329.66(A)(17) and not merely refer to it by the generic term "other property." . . .

Id. at 709 (emphasis in original).

The *Andermahr* case is similar to *Zimmer* in that the Ninth Circuit BAP dealt with the bankruptcy court's rejection of a "non-specific claim of exemption." 30 B.R. at 533. The BAP held that a "non-specific claim of exemption gives the debtor no rights, legally or practically. It is mandatory under the language of the statute that the debtor file a list of the property he claims exempt." *Id.*

In contrast, in this case Debtors have claimed the entire interest in two insurance policies identified as "Two Westcoast Life Term Policies," which Debtors value at zero. Buckeye may believe that Debtors' valuation of the two policies is not accurate or correct (and in that case would be limited to seeking a denial

of discharge, as set forth above), but neither Trustee, Buckeye or any other creditor is left to "guess" at what property Debtors have claimed as exempt or the basis for the exemption, which is cited as O.R.C. § 2329.66(A)(10).

Accordingly, this Court finds that the grounds of "vagueness" is not well taken and overrules Buckeye's Objection on that basis.

III. CONCLUSION

For the reasons set forth above, the Objection is sustained with respect to the claimed exemption relating to the beneficial interest of Debtor Mary Ann Hake in The Hake Family Trust and is overruled in all other respects.

An appropriate order will follow.

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IT IS SO ORDERED.



**Dated: March 13, 2007
02:08:44 PM**

**Honorable Kay Woods
United States Bankruptcy Judge**

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

IN RE:

**RANDALL JOSEPH HAKE and
MARY ANN HAKE,**

Debtors.

*
* **CASE NUMBER 04-41352**
*
* **CHAPTER 7**
*
* **HONORABLE KAY WOODS**
*

O R D E R

For the reasons set forth in this Court's Memorandum Opinion entered on this date, Objections to Debtors' Exemptions and Request for Evidentiary Hearing (Doc. # 562) filed by Buckeye Retirement Co., L.L.C., Ltd. on October 11, 2006 is sustained with respect to the claimed exemption relating to the beneficial interest of Debtor Mary Ann Hake in The Hake Family Trust and is overruled in all other respects.

IT IS SO ORDERED.

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