

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 7
)
DAVID A. LASICA, SR.,) No. BK 88-30465
)
Debtor(s).)

MEMORANDUM AND ORDER

This matter is before the Court on an Objection to Debtor's Claim of Exempt Property filed by the Bank of O'Fallon ("Bank"). The Bank objects to debtor's claim of exemption on \$1,325.00 worth of office equipment because it is property used for a business purpose.

Debtor's claim of exemption is made under Illinois law rather than under the Bankruptcy Code because the Illinois legislature chose to "opt out" of the federal exemption scheme pursuant to 11 U.S.C. §522(b)(1). See, Ill.Rev.Stat., ch. 110, ¶12-1201; Matter of Barker, 768 F.2d 191, 194 n.4 (7th Cir. 1985); In re Cullen, 21 B.R. 118, 119 (Bankr. S.D. Ill. 1982). Debtor has claimed the office equipment as exempt property under two of the exemptions listed in the Illinois exemption statute, the "wild card" exemption (Ill.Rev.Stat., ch. 110, ¶12-1001(b)) and the "tools of the trade" exemption (Ill.Rev.Stat., ch. 110, ¶12-1001(d)).

The Illinois exemption statute provides that all of the exemptions listed therein, including the exemptions claimed by debtor, apply only to property which is used for personal rather than for business purposes. The Bank argues that, at the 11 U.S.C. §341(a) meeting of creditors, debtor testified that his office

equipment was used in his place of business and that under Illinois law his claim of exemption must be denied.

At the hearing on the objection debtor did not contest the Bank's claim concerning his use of the office equipment in his business. However, he claimed that he could still claim the office equipment as exempt property by using the tools of the trade exemption.

In Matter of Barker, supra, the Seventh Circuit stated that personal property statutes should be liberally construed in order to carry out the legislature's purpose in enacting them - to protect debtors." Id. at 196. The Court held that where an exemption statute might be interpreted either favorably or unfavorably vis-a-vis a debtor, it should be interpreted in a manner that favors the debtor. The Court used this rationale to allow a debtor to stack his exemptions, i.e., claim property exempt under both the wild card exemption and another exemption. Id.

In a case substantially on point with the present case, In re Allman, 58 B.R. 790 (Bankr. C.D. Ill. 1986), a debtor moved to exempt certain property under both the tools of the trade and wild card exemptions because the value of the property he wanted to exempt exceeded the \$750.00 statutory exemption limit for tools of the trade. The Allman court, citing Barker, held that since the stacking of exemptions is allowed, it is therefore permissible to use the wild card exemption for tools of the trade whose value exceed the \$750.00 tools of the trade exemption. Id. at 793.

The more difficult issue faced both in Allman and in the present case is how to reconcile the seemingly inconsistent provisions of

Ill.Rev.Stat., ch. 110, ¶12-1001 which, on the one hand, allow an exemption for tools of the trade but, on the other hand, only permit exemptions of property used for personal rather than for business purposes. The Allman court examined the legislative history of the statute and found that there was no evidence that the Illinois legislature had intended to repeal the tools of the trade exemption by limiting it only to property used for personal purposes. Noting the Seventh Circuit's decision in Barker that ambiguous exemptions should be interpreted in favor of debtors, the Allman court held that tools of the trade can be exempted under Ill.Rev.Stat., ch. 110, ¶12-1001(d) even if they are used for business purposes. Id.

In the present case, it is undisputed that the office equipment in question was used for business purposes in debtor's magazine subscription business. Nor does the bank dispute debtor's characterization of the equipment as a tool of the trade. This Court, following the Seventh Circuit in Barker and the Bankruptcy Court in Allman, finds that debtor is entitled to an exemption for the entire \$1,325.00 amount of his office equipment under the Illinois tools of the trade exemption and the wild card exemption, Ill.Rev.Stat., ch. 110, ¶¶12-1001 (b) & (d).

IT IS THEREFORE ORDERED that the Objection to Debtor's Claim of Exempt Property filed by the Bank of O'Fallon is DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: November 9, 1988