

retirement." On June 24, 1991, at the first meeting of creditors held pursuant to 11 U.S.C. § 341,³ the Chapter 7 trustee (Trustee) directed the Debtor to provide a copy of the retirement plan, the name and address of the plan administrator, and the latest statement of the plan "not later than June [sic] 9, 1991."⁴ The time afforded the Trustee to object to the Debtor's claimed exemptions expired July 24, 1991. Fed. R. Bankr. P. 4003(b) (1991). The Trustee received the name and the address of the plan administrator and a "Summary of an Annual Report for Reams Food Stores Profit Sharing Plan" on July 2, 1991.⁵ The Trustee received a copy of the actual plan and other pertinent information after July of 1991. The Trustee requested no extension of time; nor did the Trustee move the Court to order the Debtor to clarify or complete her claimed exemptions.

From the information received, the Trustee determined that the Debtor's "retirement plan" was not exempt because it was, in fact, a defined contribution plan, accessible by the Debtor upon termination of her employment with Reams Food Stores. The Debtor ceased her employment with Reams Food Stores more than four months prior to filing bankruptcy. The Trustee requested the "retirement plan" proceeds, and the Debtor surrendered \$5,348.71 to the Trustee. The Debtor never amended her schedules, but filed a proof of claim on February 10, 1992, in the amount of \$5,395.79 for retiree benefits as defined in § 1114(a).

More than three and one-half years later, on September 15, 1995, the Trustee filed an Objection to Proof of Claim, Motion to Determine Entitlement to Exemption and Property and

³ Future references are to Title 11 of the United States Code unless otherwise noted.

⁴ Objection at p.2.

⁵ *Id.*

Notice of Hearing (Objection) which came on for hearing October 19, 1995. The Trustee did not allege fraud or wrongful intent on the part of the Debtor. No responsive pleading was filed. The Court disallowed the Debtor's proof of claim, but took the issue of the Debtor's entitlement to exemption of her "retirement plan" proceeds under advisement and allowed the Trustee an opportunity to further brief the issue in the light of the Supreme Court's ruling in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). The Trustee filed a Memorandum Regarding Entitlement to Exemption in Contribution Plan (Memorandum) on November 20, 1995.

DISCUSSION AND ANALYSIS

The issue before this Court is whether the thirty-day objection period provided in Fed. R. Bankr. P. 4003(b) applies to bar a chapter 7 trustee from objecting to a claimed exemption, where the property claimed is identified, but inaccurately described, and the debtor is not entitled to claim the property as exempt. The Trustee's Objection presents a core issue and the Court has jurisdiction pursuant to 28 U.S.C. §§ 157(a) and (b), and 1334 (1995).

In *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), the Supreme Court ruled on the issue of whether a chapter 7 trustee may contest the validity of an exemption after the thirty-day period allowed for objecting to an exemption has run, even if the debtor has no colorable basis for claiming the exemption. In *Taylor*, the debtor scheduled as exempt, property that she described as "Proceeds from lawsuit --[Davis] v. TWS' and 'Claim for lost wages,'" listing the value as unknown. *Id.* at 640. The trustee questioned the debtor regarding the lawsuit at the first meeting of creditors and learned that the suit was a discrimination suit that the debtor believed may settle for \$110,000.00. *Id.* The trustee doubted that the lawsuit had any value and elected not to object to the debtor's

exemption. Almost two years later, when the debtor received \$110,000.00 in settlement of her discrimination claims, the trustee objected to the exemption of the proceeds under § 522(l). The Supreme Court denied the trustee's objection, strictly applying the time limits articulated in Fed. R. Bankr. P. 4003, and refusing to require debtors to file exemptions in good faith. *Id.* at 643. In doing so, the Supreme Court rejected the trustee's arguments that such an application would "lead debtors to claim property exempt on the chance that the trustee and creditors, for whatever reason, will fail to object to the claimed exemption on time," reasoning that "[d]eadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." *Id.* The Supreme Court stated that if the trustee "did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, see Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, see Rule 4003(b)." *Id.* The Supreme Court ultimately concluded that because the trustee had done neither, he could not now seek to deprive the debtor of her exemption. *Id.*

The Trustee asks this Court to circumvent *Taylor's* rationale and apparently harsh result by requiring the Debtor to amend her statements and schedules to accurately reflect the precise nature of the \$5,348.71 claimed as exempt. This would renew the thirty-day period within which the Trustee could object to her claimed objection. The Court declines to do so for the following reasons:

1. **DUTIES OF THE PARTIES.**

As required by § 522(l), debtors must "file a list of property that the debtor claims as exempt." *See also* Fed. R. Bankr. P. 4002(a) (1991).⁶ A debtor signs under penalty of perjury that the information contained on the schedules, including claimed exemptions, is true and correct to the best of the debtor's knowledge and belief. Fed. R. Bankr. P. 9009; Official Bankruptcy Form 6 (1991).

A trustee is obligated pursuant to § 704(1), (2) and (4) to collect and reduce to money property of the estate, to be accountable for all property received, and to investigate the financial affairs of the debtor. As the estate's representative established by § 323, the trustee is a party in interest authorized to investigate exemptions claimed by the debtor.

Since the Debtor has complied with her obligation to file a list of exempt property, and since there is no allegation that the Debtor's duty to list property under penalty of perjury has been violated,⁷ the issue as framed by the Trustee is whether the Debtor has violated an additional duty to accurately list or properly characterize property claimed as exempt. Implicit in the issue as so framed is the assertion that without a debtor's accurate listing or proper characterization of exempt property, a trustee cannot perform his or her statutory duties. Without properly listing or characterizing exempt property, a trustee would not be placed on sufficient notice that the claimed

⁶ Every debtor has a duty to "file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs." 11 U.S.C. § 521(1) (1991). *See also* Fed. R. Bankr. P. 1007, 4002 (1991).

⁷ The Trustee has not alleged that Debtor defrauded the Court or that Debtors' "mischaracterization, description or omission" of the "retirement plan" was committed with wrongful intent. Memorandum at p.4. In fact, when the Trustee informed Debtor's counsel that he considered the "retirement plan" proceeds to be property of the estate, the Trustee received \$5,348.71. Were the Trustee making an allegation of fraud, this Court's analysis and conclusion would be substantially affected.

exemption could be successfully challenged. Therefore, in this case the Debtor should be required to amend her claimed exemptions thus restarting the thirty-day objection period.

2. **DETAIL AND CHARACTERIZATION SUFFICIENT TO PLACE PARTIES ON NOTICE.**

For a debtor to validly claim an exemption, a "debtor must furnish enough information to put the trustee on notice of the wisdom of further inquiry." *Payne v. Wood*, 775 F.2d 202, 206 (7th Cir. 1985), *cert. denied*, 475 U.S. 1085 (1986). *Accord In re Wiford*, 105 B.R. 992, 999 (Bankr. N.D. Okla. 1989) (claim of exemption should have enough detail to permit interested parties to decide which claims to challenge); *In re Wenande*, 107 B.R. 770, 771 (Bankr. D. Wyo. 1989) (claim of exemption should be listed with sufficient detail to put trustee on notice of questionable assertions). Although these cases analyze a debtor's duty to list exemptions in the context of itemizing possessions, their logic is equally applicable here. The point is, a debtor must sufficiently identify exempt property so that a trustee can determine whether further inquiry and/or an objection is appropriate and necessary.

In this case, the Debtor fulfilled her duty to identify the funds she claimed as exempt with sufficient clarity to put the Trustee on notice of her intention and to trigger the running of the thirty-day time limitations of Fed. R. Bankr. P. 4003(b). Although the Debtor may have misunderstood the nature of her interest in the "retirement plan," she scheduled its approximate value and the facts indicate she identified it sufficiently so that the Trustee could and did investigate the nature of her interest further. The Trustee questioned the Debtor at the first meeting of creditors and requested a copy of the retirement plan, the name and address of the plan administrator, and the latest statement of the plan. The Debtor responded to the Trustee's requests, and although the Debtor did

not provide all of the requested information timely, the Trustee did not move the Court for additional time to object, nor did the Trustee ask the Debtor to clarify or to complete her scheduled exemptions prior to the running of the thirty-day period.

Although not directly on point, the Court finds instructive the case of *Rimmel v. Ramirez (In re Ramirez)*, 139 B.R. 220 (Bankr. E.D.Mo. 1992). In *Ramirez*, the debtor claimed an Employee Stock Ownership Plan (ESOP) and a 401(k) plan as exempt property, described on the schedules only as: "Pension M.C.I. Tele. Corp. No present use." *Id.* at 221. The debtor listed the value of the property as unknown and cited the statute creating a homestead exemption as grounds for his claim. *Id.* Seven months after the conclusion of the debtor's first meeting of creditors, the trustee filed a complaint under § 541 for turnover of the debtor's interest in the pension plan. *Id.* at 222. The Trustee argued that the thirty-day deadline to object to exemption claims did not apply *inter alia* because the reference in the schedules to "Pension, M.C.I. Tele. Corp." did not identify both the ESOP and the 401(k) plan. *Id.* The court found the trustee's argument without merit, concluding that the trustee "either knew or had clear notice of the exemption intended to be claimed in the pension plan." *Id.* at 223. The court observed that the exemption of pension plans in bankruptcy had been the subject of much litigation nationwide for several years and a frequent topic at bankruptcy seminars. *Id.* at 223 n.1. This Court shares Judge See's observation in *Ramirez*, equally applicable during the time frame of this case. *See, e.g., In re Fullmer*, 115 B.R. 311 (Bankr. D. Utah 1990), *aff'd*, 127 B.R. 55 (D. Utah 1991), *rev'd*, 977 F.2d 595 (10th Cir. 1992).⁸

⁸ The bankruptcy court and the district court *Fullmer* decisions that would have been applicable during the running of the thirty-day time limit in this case found that ERISA preempted Utah Code Ann. § 78-23-5(a)(j). Thus, the fund was property of the estate and the debtor in *Fullmer* did not have a valid exemption. Assuming the Trustee relied
(continued...)

3. POST-TAYLOR CASE LAW.

The case of *In re Mohring*, 142 B.R. 389 (Bankr. E.D.Ca. 1992), *aff'd*, 153 B.R. 601 (9th Cir. BAP 1993), *aff'd* 24 F.3d 247 (9th Cir. 1994), cited in the Trustee's Memorandum, emphasizes that schedules must be complete and states that in the Ninth Circuit, "ambiguities in schedules are construed against the debtor." *Id.* at 394 and n.14. However, this is not a case where the Debtor's claimed exemption was so ambiguous that interested parties could not have known what the Debtor was claiming. Moreover, other jurisdictions have held that if "any interested party believe[s] [a] claim to be too vague, a timely objection on the ground of vagueness [is] appropriate." *In re Smith*, 179 B.R. 437, 444 (Bankr. E.D. Penn. 1995).

The Trustee also relies on *In re de Kleinman*, 172 B.R. 764 (Bankr. S.D.N.Y. 1994), to support his assertion that the Court should order the Debtor to amend her statements and schedules. The Court finds *In re de Kleinman* unpersuasive. In *de Kleinman*, the court "concluded that the [t]rustee filed timely objections," and after reviewing the merits of the trustee's objection to the debtor's exemption claim determined that not only had the debtor failed to provide sufficient information, but that the debtor "refused to provide information that would amplify it." *Id.* at 770, 777. The *de Kleinman* court resolved the situation by allowing the debtor thirty days to submit information that would support her claim with the warning that if she failed to do so, the court would strike her exemption on three days notice. *Id.* at 777.

⁸(...continued)

upon those cases, he may have had grounds for an objection to Debtor's claimed exemption in the "retirement plan." A different circumstance may have existed, however, if the facts of this case had occurred after the Supreme Court's ruling in *Patterson v. Shumate*, 504 U.S. 753 (1992), in which funds held in ERISA qualified plans were held not to be property of the estate.

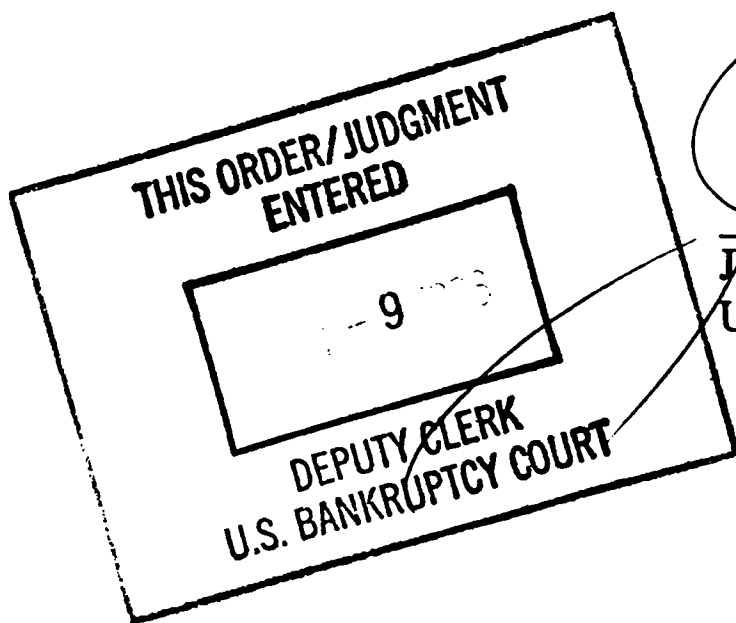
CONCLUSION


The Court concludes that the Trustee had sufficient notice that the Debtor claimed the funds as exempt property to prompt further inquiry, and to trigger the thirty-day period for filing objections under Fed. R. Bankr. P. 4003(b). Since the Debtor has fulfilled her obligation to list her property claimed as exempt with sufficient detail to place the Trustee on notice that further investigation may be required, and since an objection to the claimed objection was not timely filed, it is hereby

ORDERED, that the Debtor is entitled to exempt the \$5,328.71, and it is further

ORDERED, that the Trustee's Motion to Determine Entitlement to Exemption and Property seeking an order requiring the Debtor to amend her list of property claimed as exempt, is denied.

DATED this 9 day of January, 1996.




JUDITH A. BOULDEN
United States Bankruptcy Judge