

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Southern Division

In re:)	Bankr. No. 95-40220
)	
PAUL J. DOLD)	Chapter 7
Soc. Sec. No. 504-56-2892)	
)	
Debtor.)	
)	
PAUL JOHN DOLD)	Adv. No. 96-4002
)	
Plaintiff,)	
)	
-vs-)	MEMORANDUM OF DECISION RE:
)	DEBTOR'S COMPLAINT FOR A
)	PERMANENT INJUNCTION
CAROLYN CHRISTIE, Administratrix)	
with Will Annexed of the Estate)	
of Judson S. Berry, Deceased,)	
and)	
TIMOTHY REISCH, Miner County)	
Sheriff)	
)	
Defendants.)	

The matter before the Court is Debtor's complaint for a permanent injunction against Defendant Carolyn Christie, Administratrix with Will Annexed of the Estate of Judson S. Berry, Deceased, to prevent her from enforcing a judgment lien on certain personal property. This is a core proceeding under 28 U.S.C. § 157(a)(2). The Court's oral findings and conclusions entered on the record and those here written shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As directed at the trial and in this Memorandum, Plaintiff-Debtor's request for a permanent injunction shall be denied.

I.
FINDINGS

On May 14, 1993, Paul J. Dold was convicted in Miner County Circuit Court, State of South Dakota, for embezzling probate estate

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funds from Carolyn A Christie, administratrix for the probate estate of Judson S. Berry, deceased (hereafter "Christie"). Christie also obtained a civil judgment against Dold for \$331,886.35 on June 8, 1993.

On June 24, 1993, Miner County Sheriff Timothy A. Reisch levied on Dold's personal property at Dold's residence. Dold was incarcerated at the time. Sheriff Reisch did not take physical custody of the property.

On July 6, 1993, Dold filed a claim of exemptions in the civil state court proceedings. On August 4, 1993, the state court¹ limited Dold's exemptions to the "absolute" exemptions provided by S.D.C.L. §§ 43-45-2 and 43-45-3 because Dold had engaged in fraudulent and deceitful actions. By order entered August 31, 1993, the state court concluded that all the personalty identified in Dold's July 6, 1993 claim of exemptions and all personalty in his Miner County home were subject to levy and a sheriff's sale. Neither order was altered nor amended upon reconsideration or appeal.

Dold filed a Chapter 13 petition, case number 93-40740, on December 17, 1993 before a sheriff's sale could be conducted. This Chapter 13 case was dismissed on February 13, 1995.

Christie renewed her efforts at levy and execution on Dold's personalty in Miner County. In response, Dold filed a Chapter 7 petition on April 25, 1995. Again, a sheriff's sale was waylaid.

¹The Hon. Tim D. Tucker presiding.

Dold filed his schedule of exempt property on May 24, 1995. He stated in his schedules that some property in his possession belonged to others. The bankruptcy exemptions Dold claimed included property which the state court earlier had ordered that Dold could not claim exempt against Christie's judgment. No objections to this claim of exemptions were filed.

Dold's scheduling of the Christie claim was unusual. He listed the Judson S. Berry Trust on his schedule of unsecured, non priority claims (schedule F). He stated this claimant held a "judgment and 1994 restitution[.]" In the value portion for this claim, Dold stated "included in Schedule D[.]" Four other claims were scheduled similarly. However, Dold's Schedule D, the schedule of creditors holding secured claims, did not include the Judson Berry estate claim or any of the four other judgment and restitution claims. Further, while Dold's statement of financial affairs [see questions 4] acknowledged Christie's judgment, Dold did not disclose the August 1993 state court orders in either of his bankruptcy case schedules or statement of financial affairs, perhaps because the orders were entered more than one year before his Chapter 7 petition.

In his prior Chapter 13 case, number 93-40740, Dold had listed some restitution claim holders, including Christie and the Judson Berry estate, on his schedule of secured claims but not on his schedule of unsecured claims. This may have contributed to the confusing nature of entries on his schedules for his Chapter 7 case. As in his Chapter 7 statement of financial affairs, Dold

acknowledged in his Chapter 13 case the judgment held by the Judson Berry estate but he did not disclose or acknowledge the state court's August 1993 orders limiting his exemptions. As to the Chapter 13 case, these orders were within the one-year provision of question four. Dold's answer to question four in his Chapter 7 statement of financial affairs was a mere repetition of his incomplete answer on his Chapter 13 statement.

A § 341 meeting of creditors was held May 26, 1995. Christie was represented by counsel at the meeting. The topics of the August 1993 state court orders or the sheriff's levy on Dold's personal property were not raised by Debtor or counsel for Christie.

The Chapter 7 trustee filed a report on June 2, 1995 in which he stated he had not recovered any assets to distribute to creditors.

Christie commenced an adversary proceeding against Dold on July 20, 1995 asking that her judgment against Dold be declared non dischargeable. Pursuant to an agreement by the parties, a judgment of non dischargeability for \$192,014.98 was entered October 30, 1995. The Stipulation stated that the parties agreed

that the state court action in Circuit Court, Miner County, South Dakota, between the parties, Civ. 92-36, resulting in a judgment dated June 8, 1993, shall remain a judgment lien in full force and effect in the principal amount of One Hundred Ninety-Two Thousand Fourteen and 98/100 Dollars (\$192,014.98) as of September 19, 1995.

The stipulated judgment stated *inter alia* that Christie should retain her judgment lien "in full force and effect . . . as of

September 19, 1995."

Dold's Chapter 7 case was closed on December 21, 1995 and Christie proceeded to execute on Dold's personalty.

Dold commenced this adversary proceeding against Christie and Sheriff Reisch on February 23, 1996. He sought a preliminary and permanent injunction preventing Christie and Sheriff Reisch from levying on and selling any personal property he had declared exempt in his bankruptcy case. Christie answered on February 29, 1996. She denied Dold's allegations and affirmatively pleaded estoppel, waiver, laches, and res judicata. Christie argued that the stipulated non dischargeability judgment in bankruptcy reinstated the original judgment in state court and incorporated the state court's collateral decisions that limited Dold to only his absolute exemptions. Christie also argued the Bankruptcy Court was bound by the state court's determination of exemptions.

The parties reached an agreement on a preliminary injunction. A trial on the permanent injunction was held May 21, 1996. Testimony was received from Chapter 7 Trustee Rick A. Yarnall, Sheriff Reisch, and Dold. Material facts were not in dispute.

At the close of trial, counsel for Dold argued that the exemptions Dold claimed in his bankruptcy case must stand since no objection to them was timely filed. Counsel also argued that Christie had an ineffective levy and lien on Dold's personalty because the sheriff had not taken possession of it as required by S.D.C.L. §§ 15-18-20 and 15-18-30. In the alternative, counsel for Dold argued that any property that Dold had not properly claimed

exempt was estate property that should go to the Trustee for the benefit of all creditors.

Counsel for Christie emphasized this Court's equitable role and the importance of upholding the state court's orders limiting Dold to only his absolute exemptions. Counsel for Christie also argued that the effectiveness of the state court levy and other related issues should be addressed in state court.

After the hearing, both parties filed proposed findings of fact and conclusions of law.

II.
CONCLUSIONS ON JURISDICTION

Applicable Law. Sections 524(a) and 524(b)², on which Dold rely, do not apply in this adversary proceeding because the debt Dold owes Christie has not been discharged. Christie has urged the Court to balance the equities in this matter under the provisions of 11 U.S.C. § 105(a). That section provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

² When a discharge is entered, a permanent injunction is put in effect to protect the debtor against further collection of certain debts or judgments. Section 524(a)(1) of the Bankruptcy Code states that a judgment is void to the extent that it is a determination of the personal liability of a debt that is discharged. Section 524(a)(2) states that a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor[.]"

In this Circuit, § 105(a) is recognized as giving bankruptcy courts broad general powers as are necessary to effectuate the provisions of the Bankruptcy Code. *Miller v. Farmers Home Administration (In re Miller)*, 16 F.3d 240, 244 (8th Cir. 1995) (citing *Otoe National Bank v. Easton (In re Easton)*, 882 F.2d 312, 315 (8th Cir.1989)). These broad powers, however, have limitations because they must be exercised consistent with the provisions of the Bankruptcy Code. *Easton*, 882 F.2d at 315; *Johnson v. First National Bank of Montevideo*, 719 F.2d 270, 273 (8th Cir. 1983) (cited in *Mixon v. Anderson Cajun's Wharf (In re Ozark Restaurant Equip. Co.)*, 816 F.2d 1222, 1230 (8th Cir. 1987)).

Discussion. Dold has asked this Court to permanently enjoin Christie from collecting her debt from the property he claimed exempt in the bankruptcy case. Such a matter is a core proceeding over which this Court has jurisdiction. 28 U.S.C. § 157(b)(2)(B). Christie, however, urges the Court to consider the broader picture of the impact of the state court's orders limiting Dold's exemptions, Dold's actions in his bankruptcy cases, and the parties' stipulation that Christie's debt is non dischargeable. Those matters, individually or collectively, also are grounded in core matters and are appropriately considered here. See 28 U.S.C. §§ 157(b)(2)(I) and (O). Further, while a state court could exercise concurrent jurisdiction over some matters raised, this Court, with its closer ties to the goals of bankruptcy, the duties of a bankruptcy debtor, and the determination of the dischargeability of certain debts, is in a better position to

consider whether Dold's bankruptcy exemptions remain limited by the pre-petition state court orders. Section 105(a), with its directive that a court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" is fittingly applied here, where a seemingly simple exemption issue is complicated by several attendant circumstances.

III.

CONCLUSIONS ON THE STATUS OF DEBTOR'S CLAIMED EXEMPTIONS

Applicable Law. Under 11 U.S.C. § 522(b)(1), a bankruptcy debtor in the District of South Dakota may declare exempt from the bankruptcy process those assets exempt under applicable South Dakota law. A party in interest has thirty days after the conclusion of the § 341 meeting or thirty days after the filing of an amended schedule of exempt property to object to the debtor's claimed exemptions. F.R.Bankr.P. 4003(b). If no objection is filed timely, the exempt property is removed from the bankruptcy estate. 11 U.S.C. § 522(b) and *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992).

Under South Dakota law, a debtor receives a homestead and certain personalty as absolute exemptions. S.D.C.L. §§ 43-45-2 and 43-45-3. A debtor who is a single person and not the head of a household also may declare exempt another \$2,000.00 in personal property under § 43-45-4. However, a debtor may be limited to only his absolute exemptions if the debt for which an execution or other process is issued was obtained under false pretenses. S.D.C.L. § 43-45-9.

In a bankruptcy case, a debtor's entitlement to an exemption generally is determined on the day he files his bankruptcy petition. See *Armstrong v. Peterson (In re Armstrong)*, 897 F.2d 935 (8th Cir. 1990) (debtor's post-petition death did not result in reversion of exempt property to estate); *Armstrong v. Harris (In re Harris)*, 886 F.2d 1011 (8th Cir. 1989) (cites therein). The debtor has the responsibility to put creditors and the trustee on notice of what is being claimed exempt. *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1319 (9th Cir. 1992). Any ambiguities in the schedule of exempt property are construed against the debtor since the debtor prepared the schedule. *Addison v. Reavis*, 158 B.R. 53, 59 (E.D. Va. 1993), *aff'd*, *Ainslie v. Grablowsky (In re Grablowsky)*, 32 F.3d 562 (4th Cir. 1994); *In re Mohring*, 142 B.R. 389, 394 n.14 (Bankr. E.D. Cal. 1992) (citing *Hyman*, 967 F.2d at 1319-20 (9th Cir. 1992)), *aff'd*, *Mohring v. Avco Financial Services (In re Mohring)*, 24 F.3d 247 (9th Cir. 1994).

Most exempt property is not liable during or after the case for any debt that arose before the commencement of the case. 11 U.S.C. § 522(c). Exceptions include non dischargeable debts under §§ 523(a)(1) [certain taxes] or 523(a)(5) [family support debts]. Exempt property may be used to satisfy those types of debts.

Discussion. Were the issue presented here merely whether Christie had objected to Dold's objections timely, the *Taylor* case would easily provide a negative answer. However, the issue is more complex. Christie's reliance on state law and the state court's orders in August 1993 and also Christie's reliance on three actions

by Debtor inevitably lead the Court to conclude that an objection by Christie to Dold's exemptions were not necessary to preserve the effect of the state court's August 1993 orders.

The state court orders were clear on their face. While the court did not cite S.D.C.L. § 43-45-9, that statute clearly gives the state court the power to limit exemptions when certain judgments are executed. Moreover, neither the statute nor the state court orders put a time limit on the effectiveness of the exemption-limitation imposed.

Second, but just as important, certain actions by Debtor reasonably could have lead Christie to believe that the August 1993 orders were not displaced by Debtor's bankruptcy filings. Foremost, Dold consented to the non dischargeability of the Christie claim. The Stipulation provided that the "state court action," not just the resulting judgment, shall remain as "a judgment lien in full force and effect[.]" That language reasonably is interpreted to mean that the collateral August 1993 orders limiting Dold's exemptions as to Christie's judgment also were kept in place under the Stipulation for non dischargeability. Any argument by Dold that his exemptions claimed in bankruptcy "overrode" the state court's August 1993 orders limiting his exemptions should have been made when the non dischargeability stipulation was made. Based on the language of the Stipulation, the Court can only assume that Dold has waived that argument. While the *Taylor* decision would prevent Christie from now objecting to Dold's bankruptcy objections, *Taylor* does not prevent Dold from

making an agreement with Christie that recognized the August 1993 state court orders limiting his exemptions.

Dold's other action that could have lead Christie to believe that the August 1993 state court orders remained in effect was his filing of confusing schedules. His Chapter 13 schedules treated the Christie claim as secured. His Chapter 7 schedules intimated the same because his schedule of unsecured claim holders refers to the schedule of secured claims when it states the value of Christie's claim. The schedule of secured claims in the Chapter 7 case, unlike the Chapter 13 schedules, however, do not include the Christie claim.

The Court notes that the Trustee is no longer the holder of any scheduled, non exempt property. Under 11 U.S.C. § 554(d), all scheduled property that has not been administered by a trustee is deemed abandoned to the debtor when the case is closed. This case was closed on December 21, 1995. At that time, Trustee Yarnall abandoned any claims or recovery actions he may have had regarding scheduled property. Accordingly, Debtor's argument that Christie does not have an interest in any non exempt property that is superior to the Trustee's or other unsecured creditors is moot as to scheduled property.

Finally, the Court notes that S.D.C.L. § 43-45-9, which allows a court to limit a debtor to his absolute exemptions when the judgment to be executed arises from fraud, is directed at a single judgment. The statute does not limit a debtor to his absolute exemptions against all pending judgments. Instead, the state

court, in applying § 43-45-9, may limit a debtor to his absolute exemptions only as against the particular debt that was incurred under false pretenses. Therefore, the state court, in applying § 43-45-9, gave Christie protections that other judgment creditors did not enjoy by limiting the property Dold could declare exempt from the Christie debt. There is no reason to believe that Dold and Christie were not cognizant of § 43-45-9 when they reached their Stipulation. The overriding principle of equity in bankruptcy must prevail and the state court's decision limiting Dold's objections must be honored. *Bird v. Crown Convenience (In re NWFEX, Inc.)*, 864 F.2d 588, 590 (8th Cir. 1988). To not recognize the state court's August 1993 orders would clearly allow Dold to abuse the bankruptcy process, especially where he did not acknowledge the state court's August 1993 orders in his schedules and where he has consented to the non dischargeability of Christie's debt.³ In balancing the equities, the Court concludes that the harm that Dold may suffer in losing some personalty to execution is outweighed by the harm Christie will suffer if the

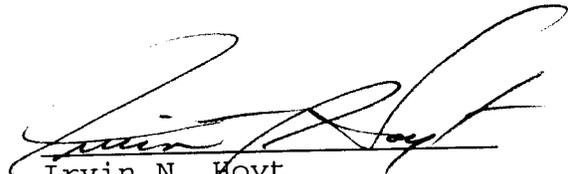
³ The Court does not hold that res judicata or collateral estoppel bar Dold's claim in this adversary proceeding. See 28 U.S.C. § 1738. When the elements of either are considered under South Dakota law, *SDDS, Inc. v. State of South Dakota*, 994 F.2d 486, 491 (8th Cir. 1993) (cites therein) (a federal court must give a state court decision the same preclusive effect as would another court of that state), one element is missing. The matters decided by the state court in 1993 included whether Dold should be limited to his absolute exemptions against Christie's judgment. The issue here is whether that limitation of exemptions survives Dold's Chapter 7 bankruptcy case. Since the two legal questions are not the same, res judicata and collateral estoppel do not apply. *Id.*; *Bank of Hoven v. Rausch*, 449 N.W.2d 263, 265-66 (S.D. 1989).

state court's August 1993 orders are disregarded in the bankruptcy process. *Hale v. Carlson (In re Hale)*, 980 F.2d 1176, 1178 (8th Cir. 1992); *Easton*, 882 F.2d at 315.

An order and judgment will be entered denying Dold's request for a permanent injunction. The parties may raise any issues regarding the validity and extent of Christie's lien and the Sheriff's levy on Dold's personalty with the state court.

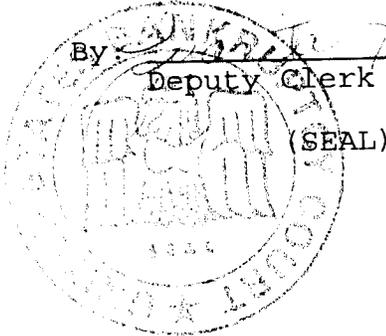
Dated this 21st day of June, 1996.

BY THE COURT:


Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: 
Deputy Clerk



NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUN 21 1996

Clerk

CERTIFICATE OF SERVICE
I hereby certify that a copy of this U.S. Bankruptcy Court, District of S.D. document was mailed, hand delivered, or faxed this date to those creditors and other parties in interest identified on the attached service list.
U.S. Bankruptcy Clerk
District of South Dakota

By: _____
Date: 6/21/96

Case: 96-04002 Form id: 122 Ntc Date: 06/21/96 Off: 4 Page : 1

Total notices mailed: 5

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