

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

IN RE:

ANN M. LAFERRIERE
and ARTHUR P. LAFERRIERE,

Chapter 7 Case
01-10643

Appearances: *Douglas J. Wolinsky, Esq.*
 Eggleston & Cramer, Ltd.
 Burlington, VT
 Ch. 7 Trustee

Glenn Arthur Robinson, Esq.
Diamond & Robinson, P.C.
Newport, VT
Counsel for debtors

MEMORANDUM OF DECISION
OVERRULING TRUSTEE'S OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS

The matter before the Court is the Chapter 7 Trustee's Objection to Debtors' Claims of Exemptions [Dkt. #18-1] filed October 17, 2001. On November 13, 2001, the debtors, Ann and Arthur Laferriere, through their counsel, filed their Response to Trustee's Objection to Debtor's [sic] Claim of Exemptions [Dkt. #21-1] and Objection to Trustee's Proposed Order Granting Trustee's Objection to Debtors' Claim of Exemptions [Dkt. # 22-1]. A hearing was held on November 13, 2001 and the Court reserved decision. This Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334. For the reasons set forth below, the trustee's objections to debtors' exemptions are overruled on the merits and the debtors' objection to the proposed Order is denied as moot.

FACTS

The debtors filed for relief pursuant to chapter 7 of title 11 U.S.C. ("the Bankruptcy Code") on April 30, 2001. On Schedule A, the debtors listed a gift shop with a value of \$53,400. On their original Schedule

C, debtors sought to exempt the gift shop under 12 V.S.A. § 2794. Upon inquiry by the chapter 7 trustee, the debtors filed an Amended Schedule C on June 15, 2001, deleting the gift shop exemption. Thereafter, the trustee listed the gift shop for sale. On October 16, 2001, the debtors filed a second amended Schedule C this time reasserting an exemption claim in the gift shop, although this time claiming an exemption of \$10,300 under 12 V.S.A. §2740(7), the so-called "wild card" exemption.

In response, the trustee objected to the debtors' second amended exemption as "belated" and prejudicial to the debtors' estate and the creditors. The trustee asserts that the exemption should be disallowed since debtors fail to explain why this exemption is either necessary or proper. At the hearing, the trustee also explained that his argument of prejudice to the estate was based upon the fact that he had incurred the expense of a title search, as well as fees for the time he spent preparing for the sale of the gift shop, between the date when the debtors withdrew their exemption claim and the date when the debtors filed an amended Schedule C re-claiming a gift shop exemption. In response, the debtors maintain their right to amend their schedules at any time before the case is closed pursuant to Bankruptcy Rule 1009, absent a showing of bad faith; point out that their case is not closed; and assert that they have not acted in bad faith or improperly under the circumstances.

The Wild Card Exemption

The trustee does not dispute that the debtors are eligible to claim an exemption in the sale proceeds of the gift shop pursuant to the "wild card" exemption, 12 V.S.A. §2740(7), even though the gift shop is not subject to exemption under subsections (1) through (6) of that statute. Indeed, the Vermont Supreme Court has recognized, and this Court has agreed, that the phrase "any property" as used in the Vermont "wild card" exemption authorizes a debtor who has not used up his or her exemptions for various types of personal property to claim an exemption in "any property" of his or her choice, and is broad enough to include both

personal and real property. See Licursi v. Sweeney, 157 Vt. 599, 603 A.2d 342 (1991); accord In re Christie, 139 B.R. 612 (Bankr. D. Vt. 1992) see also In re Parrotte, 22 F.3d 472 (2nd Cir. 1994)(Vermont exemption statutes are remedial in nature and should receive liberal construction in favor of debtors). Therefore, this Court finds that, absent a finding of bad faith, the debtors may exempt the proceeds of the gift shop real property, up to the limit set forth in the statute, under the wild card exemption.

Successive Amendments

The gravamen of the trustee's grievance is the debtors' successive amendments of their exemption schedule and the costs incurred by the trustee as a consequence of these changes. While such repeated changes are potentially frustrating to a case trustee, the debtors are correct in emphasizing that a debtor typically has a broad right to amend their schedules as a matter of course at any time before the case is closed, absent a showing of bad faith. See In re Sheridan, 38 B.R. 52 (Bankr. D. Vt. 1983); see also In re Hoffpauir, 258 B.R. 447 (Bankr. D. Idaho 2001); In re Simpson, 238 B.R. 776 (Bankr. S.D. Ill. 1999); In re Brown, 234 B.R. 907 (Bankr. W.D. Mo. 1999). The question is thus whether the trustee has shown that the debtors herein acted in bad faith.

In this instance, while the actions of these debtors appear somewhat erratic, this Court finds that the limited time frame involved and the circumstances of these debtors as evidenced at the hearing do not demonstrate the requisite bad faith sufficient to preclude the subject exemption claim. Moreover, the trustee has not established the requisite level of prejudice to third parties that may support an objection to the exemption. See In re Arnold, 252 B.R. 778 (BAP 9th Cir. 2000). Because the debtors do not appear to seek an order barring the sale of the subject gift shop, it is unclear how the trustee has incurred additional unnecessary costs related to the proposed sale. Assuming *arguendo* that some additional trustee time has been spent and closing related costs have been incurred, the trustee is entitled to compensation for his time and

services, and reimbursement for his costs, at the conclusion of this case, in an amount the Court finds to be reasonable under the circumstances. The trustee has not demonstrated any basis for a determination that the estate or the trustee will be financially harmed as a result of the conduct of these debtors.

Based upon the foregoing, the trustee's objection to the debtors' claims of exemption is overruled and the debtors' objection to the terms of the trustee's proposed Order is denied as moot.

February 5, 2002
Rutland, VT

Colleen A. Brown
U.S. Bankruptcy Judge