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UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

Leonard L. Riendeau,
Debtor.

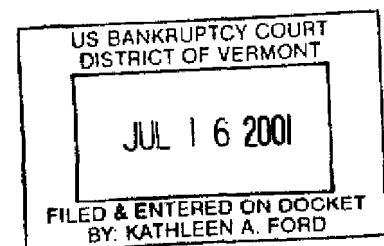
Chapter 7
Case # 00-11440 cab

#63-1

Appearances of Counsel: *John R. Canney, III, Esq.* *Kathleen Walls, Esq.*
 Rutland, VT *Middlebury, VT*
 Attorney for Trustee *Attorney for Debtor*

ORDER SUSTAINING
TRUSTEE'S OBJECTION TO EXEMPTION

This matter came on for hearing on June 19, 2001 pursuant to the Objection to Claim of Exemption filed by the chapter 7 trustee on April 20, 20001. The debtor filed his Response to Trustee's Objection to Exemption on May 2, 2001; the parties filed a Stipulation As To Facts on May 21, 2001; the trustee filed a Memorandum of Law on May 23, 2001; and debtor filed his Supplemental Response to Trustee's Objection to Exemption on May 31, 2001. The debtor essentially contends that 12 V.S.A. §3170(b) is a state exemption statute applicable to bankruptcy proceeding, whereby the debtor may exempt certain earnings from the reach of the Chapter 7 trustee. The gravamen of the Chapter 7 trustee's objection is that the subject state statute is applicable only to the issuance of trustee process involving a judgment debtor and is not a bankruptcy exemption statute. This Court has considered the foregoing and has adopted the parties' Stipulation As To Facts. Based upon the matters filed of record and the arguments of counsel, the trustee's Objection to Exemption is sustained for the reasons set forth below.



Findings of Fact and Conclusions of Law

The debtor filed for chapter 7 relief under title 11 U.S.C. (“the Bankruptcy Code”) on December 19, 2001. He has previously engaged in the business of farming but had sold his cattle on January 16, 2001. This dispute arises from debtor’s Amended Schedule C submitted on or about March 1, 2001 pertaining to a claimed exemption pursuant to 12 V.S.A. §3170(b) concerning certain income from the production of milk. The debtor received post-petition checks in the amount of \$11,210.03 and \$11,490.00 in January, 2001 related to pre-petition dairy farm earnings. The payments were for milk shipped in December, 2000 and government surplus for milk produced in 2000, respectively. The debtor has not amended his Schedule C further to claim an exemption regarding these funds under any other purported exemption statute, including 15 U.S.C. §1673. As to these funds, the parties have stipulated that the exemption is based on 12 V.S.A. § 3170(b)¹, a provision of Vermont law exempting certain earnings of a judgment debtor from trustee process. There was no question that the chapter 7 trustee is not seeking to collect funds of the debtor pursuant to a judgment.

In pertinent part, 12 V.S.A. § 3170 provides:

(a) No order approving the issuance of trustee process against earnings shall be entered against a judgment debtor who was, within the two month period preceding the hearing provided in section 3169 of this title, a recipient of assistance from the Vermont department of prevention, assistance, transition, and health access. The judgment debtor

¹ While debtor asserts for the first time in his Supplemental Response to Trustee’s Objection to Exemption [Dkt. # 53-1] that he is entitled to an automatic, self-executing federal wage exemption in bankruptcy under a federal garnishment limitation provision of the Consumer Credit Protection Act, 15 U.S.C. §1601 *et seq.*, the stipulation and Amended Schedule C base the exemption claim upon Vermont state law under 12 V.S.A. §3170. The federal garnishment limitation is inapposite and otherwise inapplicable. *Cf. Kokoszka v. Belford*, 94 S.Ct. 2431, 417 U.S. 642 (1974)(enactment of federal garnishment limitation statute intended to assist persons in efforts to avoid a bankruptcy and not to drastically alter delicate balance of a debtor’s protections and obligations during a bankruptcy proceeding).

must establish this exemption at the time of hearing.

(b) The earnings of a judgment debtor shall exempt as follows:

(1) seventy-five percent of the debtor's weekly disposable earnings, or 30 times the federal minimum hourly wage, whichever is greater.

Although not dispositive of the issue, the debtor concedes that the statute restricts the use of trustee process to cases where a final judgment has been obtained. [See Debtor's Supplemental Response to Trustee's Objection to Exemption dated May 31, 2001, at p. 2].


This Court acknowledges the well-settled principle in Vermont law that applicable exemption statutes should be given a liberal construction in favor of the debtor. See In re Christie, 139 B.R. 612, 613 (Bankr. D.Vt. 1992). However, this Court is equally aware that "Vermont broadly construes its exemption statutes within the parameters of a plain meaning interpretation." Id. Lastly, this Court recognizes that while the lionshare of exemptions applicable to bankruptcy cases in Vermont are located at 12 V.S.A. § 2740, this statute is certainly not the sole repository of potential state exemptions available to a debtor. See, e.g., 27 V.S.A. §101 (exempting a debtor's homestead from attachment and execution). Nonetheless, in reviewing 12 V.S.A. §3170 in light of its plain language and the overall legislative scheme in Vermont, this Court finds that this statute provides for exemption from trustee process specifically and is not a bankruptcy exemption. It relates to circumstances in which a debtor seeks to isolate a portion of earnings from the reach of a creditor acting pursuant to a judgment entered against a debtor; there is no reference to the debtor being in bankruptcy. By its terms, the statute is limited to judgment debtors "within the parameters of a plain meaning interpretation," and is not an exemption statute for non-judgment debtors or for other unarticulated purposes.

The attempt by a debtor to seek refuge in trustee process statutes in the context of a pending bankruptcy case has been examined by other jurisdictions and rejected as an improper attempt to expand applicable state exemptions. See In re Damast, 136 B.R. 11 (Bankr. D.N.H. 1991)(rejecting a debtor's attempt to claim an exemption under New Hampshire trustee process statute in bankruptcy proceeding); In re Kingsbury, 124 B.R. 146 (Bankr. D.Me. 1991)(Maine trustee process exemption not applicable to bankruptcy debtor)(overruled on other unrelated grounds by Taylor v. Freeland & Kronz et al., 503 U.S. 638, 112 S.Ct. 1644 (1992)). With limited case law in Vermont construing 12 V.S.A. §3170, it nevertheless appears that this statute is likewise directed at circumstances involving the legal process by which a judgment debtor's earnings are sought to be garnished by a judgment creditor. See Olson v. Townsend, 148 Vt. 135, 530 A.2d 566 (1987). A finding that Vermont's exemption statute applicable to pre-petition trustee process is not effective in post-petition bankruptcy proceedings is also consistent with the existing protections afforded to a debtor upon filing for bankruptcy protection. See In re Emery, 13 B.R. 689 (Bankr. D.Vt. 1981) (12 V.S.A. § 3170 not applicable after bankruptcy filing); cf. Kokoszka v. Belford, 417 U.S. 642, 94 S.Ct. 2431 (1974) (comparable federal garnishment limitation statute not applicable to debtor in bankruptcy proceedings where debtor's protection and remedy remained under bankruptcy law). Thus, this Court concludes that upon filing for bankruptcy protection a debtor's rights and remedies are controlled by the Bankruptcy Code and applicable state and federal property exemption statutes, and not governed by restrictions on garnishment set forth in a state law applicable to judgment debtors and the issuance of trustee process.

Based upon the foregoing, the trustee's Objection to Exemption is sustained.

SO ORDERED.

July 16, 2001
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

NOTE:

Although the movant may have designated additional parties to receive this document, the court has served copies of this document only on the parties named below. If a designated party is not listed, they are not in the court's database as a party to this case.

Notice sent to:

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John R. Canney III
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CERTIFICATE OF SERVICE

District/off: 0210-1
Case: 00-11440

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Page 1 of 1
Total Served: 3

Date Rcvd: Jul 16, 2001

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aty-db	+Fax: 802-388-0633	Jul 16 2001 21:05:31	Kathleen Walls,	PO Box 88,	Middlebury, VT 05753-0088
					TOTAL: 2

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NONE.

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I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Date: Jul 18, 2001

Signature:

