

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

**Floyd R. Earle and
Donna D. Earle
Debtors.**

Chapter 7 case
01-10982

<i>Appearances of Counsel:</i>	<i>Oliver L. Twombly, Esq. Barre, Vermont Attorney for the Debtors</i>	<i>Michael Marks, Esq. Montpelier, Vermont Attorney for Creditor/Movant</i>
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**MEMORANDUM OF DECISION
OVERRULING CREDITOR'S OBJECTION TO EXEMPTIONS**

On September 13, 2001, creditor Ainsworth Realty and Appraisals, Inc. (hereafter "Ainsworth") filed a document captioned as "Objection to Claimed Exemptions" challenging the debtors' valuation of many of the items of real and personal property listed on the debtors' chapter 7 schedules. The debtors responded with an Objection to Objection to Claimed Exemptions asserting that the debtors had accurately valued all of the property brought into question, set forth the basis for the debtors' valuation of that property and provided documentary support for those values. Ainsworth did not find any of that documentation to satisfy its concerns. Therefore, a hearing was held on October 26, 2001. Although not specifically plead, Ainsworth argued at the hearing that it believes the debtors should be prohibited from claiming an exemption in any property that they did not value accurately. The parties were given an opportunity to file post-hearing memoranda of law but Ainsworth did not do so.

The Court is aware of no authority requiring the debtor to value property with exactitude in order to obtain an exemption of that property. See In re R&H Investment Co., Inc., 46 B.R. 114, 116 (Bankr. D. Conn. 1985). Clearly the debtor may be deprived of a discharge if fraudulent schedules are filed. See 11 U.S.C. section 727; see also In re Shebel, 54 B.R. 196 (Bankr. D. Vt. 1985). Moreover, the chapter 7 trustee or any creditor may object to a claimed exemption *inter alia* on the ground that the property specified is not sufficiently identified. See Rule 4003(b), Fed. R. Bankr. P;

Local Rule 1007-1(a)(1), Vt. LBR; *see also* Payne v. Wood, 775 F.2d 202, 206 (7th Cir. 1985); In re Doyle, 209 B.R. 897, 901-02 (Bankr. N.D. Ill. 1997). In this matter however, the gravamen of the objection is that the debtors failed to exercise due diligence in preparing their schedules or otherwise accurately value certain property.

The first issue which is raised is the proper method for valuing property in bankruptcy schedules. The Bankruptcy Code and official bankruptcy forms answer this unambiguously. Both the official bankruptcy forms for chapter 7 schedules [Official Form No. B-6, *et seq.*] and 11 U.S.C. §522(a)(2), addressing exemptions, state that the value to be set forth in the schedules is the market value: the official form for schedules A and B specifies that the value listed should be “the current market value” and §522(a)(2) defines value as the “fair market value as of the date of the filing of the petition.”

Mrs. Earle testified on behalf of the debtors and addressed both the effort she had made in determining what value to set forth on the schedules and the accuracy of the listed values. It is this Court’s position that, absent extraordinary circumstances, if the values are found by the Court to be accurate then the nature and extent of the process used to reach those values is irrelevant. *See In re Watkins*, 240 B.R. 735, 740 (Bankr. C.D. Ill. 1999).

Ainsworth raises an objection to six categories of property. First, Ainsworth alleges that the \$58,000 figure listed in Schedule A for the homestead property in Berlin, Vermont represents an undervaluation of that asset. The debtors respond that they purchased the one acre parcel with mobile home in 1999 for \$60,000 and that it is their best estimate that its current fair market value is approximately \$58,000. Since the debtors are permitted to exempt up to \$75,000 and the debtors’ explanation of the valuation of this asset is reasonable, the objection to exemption with respect to the homestead is **overruled**.

Secondly, Ainsworth objects to the \$72,000 valuation of the Fisher Road real estate, again, as inaccurately lower than its full value. The debtors presented proof that they had a purchase

contract for this property at the time of the bankruptcy filing in the amount of \$76,600 but that this contract required the debtor to put \$4,400 of the purchase price into repairs on the property; hence, reaching a net sale price of \$72,200. Moreover, the debtors have an appraisal of the property which was prepared in November , 1998 which concludes that the property's fair market value as of that date was \$72,000. In light of the appraised value and current purchase contract, the Court finds that the value of the property could be reasonably set forth as \$72,000. Accordingly, the objection to exemption with respect to the Fisher Road property is **overruled**.

Ainsworth's third category of objection is with respect to the debtors' valuation of personal property such as household goods, furnishings and wearing apparel. The market for such property is indeed limited and the debtors' objection response indicates that they relied upon flea market pricing for their valuation. The objecting creditor bears the burden of proving the basis for its objection, *see* Bankruptcy Rule 4003(c); In re Matta, 1995 WL 664765 (Bankr. D. Vt. 1995), and Ainsworth has provided no basis for contesting the debtors' valuation of this personal property. Accordingly, the objection to exemption with respect to this personal property is **overruled**.

Next, Ainsworth challenges the debtors' valuation of the debtors' motor vehicles and motorcycles. Although the debtor was a bit confused as to the definition of retail value in NADA book valuing automobiles and motorcycles, it was clear that as an employee of the Department of Motor Vehicles and as a longtime owner of Harley Davidson motorcycles, the debtor is indeed in a position to reliably estimate the value of vehicles and motorcycles that she owns. *See Kestenbaum v. Falstaff Brewing Corp.*, 514 F.2d 690, 698-99 (5th Cir. 1975); In re Stratton, 248 B.R. 177, 182 (Bankr. D. Mon. 2000). Ainsworth did not provide sufficient proof to contradict the debtors' values or to prove that they were intentionally misstated. Accordingly, the objection to exemption with respect to the automobiles and motorcycles is **overruled**.

The fifth category of objections raised by Ainsworth focuses on the 2001 boat and trailer, listed by the debtors to have a value of \$12,500 [see Schedule B, # 23]. The debtors provided proof that they purchased the boat shortly before the filing for \$12,673. Ainsworth presented no proof as

to why such a recent purchase would not be acceptable proof of fair market value or why a diminution of \$173 for use and removal from the showroom is unreasonable. Since the burden of proof is clearly upon Ainsworth in this regard, *see* Bankruptcy Rule 4003(c); *In re Matta, supra*, and Ainsworth has failed to meet this burden, the objection to exemption with respect to the boat and trailer is **overruled**.

The final category of objection Ainsworth raises relates to the debtors' interest in a timeshare unit in Orlando, Florida, which the debtors value at \$11,400. The debtor testified that she did not do independent research or obtain an appraisal of this property pre-petition, but rather relied upon the fact that she knew that other units in this location were selling for approximately \$11,500. *See U.S. v. 18.46 Acres of Land*, 312 F.2d 287, 288 (2nd Cir. 1963)(property value may be determined by recent sale of comparable properties in area); *In re Leonard*, 151 B.R. 639, 644 (Bankr. N.D.N.Y. 1992)(recognizing importance of utilizing recent comparable sales data in determining market value of property). The debtors' objection response indicates that subsequent to receiving the objection to exemptions from Ainsworth, the debtor telephoned the management of the timeshare development and learned that the value they had listed indeed corresponds to the price other units are selling for presently. Since there was no proof submitted by Ainsworth as to why this was not a sound basis for the valuation or an accurate figure, the Court finds the debtors' valuation to be acceptable. Accordingly, the objection to exemption with respect to the timeshare unit is **overruled**.

The Court notes that it believes that it is extremely important for schedules to be complete and accurate. *See* Local Rule 1007-1, Vt. LBR (recently enacted to require complete and accurate schedules). However, since the burden of proof to sustain an objection to exemptions is borne by the movant and in this case the movant presented no evidence to support the allegations of false valuation or undervaluation of property, the Court must overrule the objection *in toto*.

February 8, 2002
Rutland, Vermont

/s/ Colleen A. Brown
Colleen A. Brown
United States Bankruptcy Judge