

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**In Re: Kelly Owen Alford and
Kimberly Robin Alford, Debtors**

**No. 5:08-bk-75308
Ch. 7**

ORDER

The debtors filed their joint, chapter 7 bankruptcy petition and schedules on December 29, 2008. The debtors listed their residence [the Property] on Schedule A, valued the Property at \$362,600.00, and stated it was subject to a secured claim in the amount of \$358,004.00. On Schedule C, the debtors again valued the Property at \$362,600.00 and claimed an exemption in the Property under 11 U.S.C. § 522(d)(1) in the amount of \$4596.00. The chapter 7 trustee did not object to the debtors' claimed exemptions. On April 3, 2009, the debtors filed a Motion to Determine Value, requesting that this Court (1) "acknowledge the unassailability of the listed exemptions and direct the Trustee to desist in any attempts to list [the Property] for sale" or (2) determine the value of the Property. On April 6, 2009, the chapter 7 trustee filed his Response to the Motion to Determine Value, stating that the trustee values the Property at \$398,000.00, and that he has the right to sell the Property, pay the debtors only the exact amount exempted, and retain any remaining proceeds as non-exempt equity. The Court held a hearing on the motion and response on June 16, 2009. At the conclusion of the hearing, the Court took the matter under advisement. For the reasons stated below, the Court denies the debtors' motion.

Jurisdiction

This Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157. The following order constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

Findings of Fact and Conclusions of Law

The debtors' and trustee's arguments at the hearing are based on the United States Supreme Court's opinion in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), and the progeny of cases following and distinguishing *Taylor*. See *In re Reilly*, 534 F.3d 173, 178 (3d Cir. 2008)(citing cases and describing a split of authority). The debtors' position is that the Property is fully exempt because the trustee did not object to their exemptions. They argue that by exempting the full amount of equity in the Property, based on the amount of the lien and value of the Property in their schedules, the Property is entirely exempt even if the Property was undervalued in the debtors' schedules. The trustee countered that the Property is worth more than the value stated in the schedules; that he has the right to sell the Property; and that any proceeds remaining--after paying the secured creditor and the debtors precise amount exempted--is non-exempt equity that is property of the debtors' estate. Based on these positions, the debtors requested that the Court make four findings: first, that their exemptions are unassailable because the trustee did not object to them within 30 days as provided by Federal Rule of Bankruptcy Procedure 4003; second, that the trustee cannot sell the Property because it has passed from the debtors' estate; third, that the trustee desist in any attempts to sell the Property; and fourth, that this Court determine the value of the Property. The Court will address each request in turn.

First, the debtors' request that this Court determine that their exemptions are unassailable is not ripe for determination. It is true that the trustee did not object to the debtors' exemptions within the time limits prescribed by Rule 4003; but, the trustee is not attempting to object to the debtors' exemptions now. While the parties ascribe different meanings to the debtors' exemption, there is no pending objection to exemptions or contest over the allotment of proceeds from any sale.

The debtors' second request can be addressed similarly. The trustee has not yet filed a motion to sell the Property.¹ Although the parties disagree as to whether the trustee *can* sell the Property, he has not filed a motion to sell the Property. Also, the debtors have not filed a motion to compel the trustee to abandon the Property under 11 U.S.C. § 554, and the Court will not consider treating the present motion as a request to so compel because it was only noticed to the U.S. Attorney and the chapter 7 trustee. In the absence of a motion to sell the Property or a properly noticed motion to compel the trustee to abandon the Property, the Court declines to order preemptively that the trustee cannot contemplate selling the Property.

Third, the debtors ask this Court to determine the value of the Property. The debtors did not proceed under a specific statute or rule in their request. Motions to determine value are typically brought under 11 U.S.C. § 506, which concerns the valuation and treatment of secured claims, or Federal Rule of Bankruptcy Procedure 3012, which allows the Court to determine the value of a claim secured by a lien on property. However, here neither party is requesting that this Court determine the value or treatment of the secured creditor's claim. Based on their arguments, both the debtors and the trustee believe that the secured creditor is oversecured. Further, in any proceeding to determine the value of the Property, the secured creditor is an important party-in-interest entitled to notice of the proceeding; only the U.S. Attorney and the trustee were noticed. Therefore, the Court declines to determine the value of the Property.

To the extent the above three requests are seeking declaratory relief of the kind specified in Federal Rule of Bankruptcy Procedure Rule 7001(9), the debtors are required to file an adversary proceeding, which the debtors have not done. Likewise, the debtors' remaining request to enjoin the trustee from selling the Property must also be brought in

¹ The Court entered an Order on January 21, 2009, approving the trustee's motion to employ a realtor in this case. Neither the order or the motion address the Property, specifically.

the context of adversary proceeding. Rule 7001(7) requires a party seeking an injunction to commence an adversary proceeding, with exceptions not relevant here. Some courts in certain instances will reach the merits of an issue improperly brought by motion. *See In re Morysville Body Works, Inc.*, 89 B.R. 440, 442 (Bankr. E.D. Pa. 1988). However, the circumstances of this case do not warrant obviating the procedural requirements of Rule 7001. There is no pending sale or motion to sell the Property before the Court, and, pursuant to Federal Rules of Bankruptcy Procedure 6004 and 2002, the debtors would be entitled to notice of and could object to any subsequently filed motion to sell.

It is apparent from the hearing that the trustee believes that the Property was worth more than the secured creditor's claim plus the debtors' specific exemption amount at the time of filing, and he presented evidence for this position at hearing. The trustee is certainly poised to act on his position and his theory that he is legally entitled to sell the Property; however, he has yet to do so formally. Conceivably, the trustee might not be able to find a buyer to purchase the Property for more than \$362,600.00 that would net the estate any funds after realtor fees and closing costs. It is also possible that the debtors might file amended exemptions to which the trustee does not object. At most, on the motion before the Court as noticed, the Court can find that there is a good faith dispute between the parties as to whether the trustee has an interest in the Property. The issues involved in this case are legally significant, and both parties have good faith legal arguments on which to stand. Accordingly, it is important that the issues involved are presented to the Court when ripe for determination, on good notice, and in the correct procedural posture; until then, the Court will refrain from judgment and the debtors' motion is denied without prejudice.

IT IS SO ORDERED.

June 25, 2009

DATE



BEN T. BARRY
UNITED STATES BANKRUPTCY JUDGE

cc: Forrest L. Stolzer, attorney for the debtors
William M. Clark, Jr., chapter 13 trustee
All creditors and interested parties