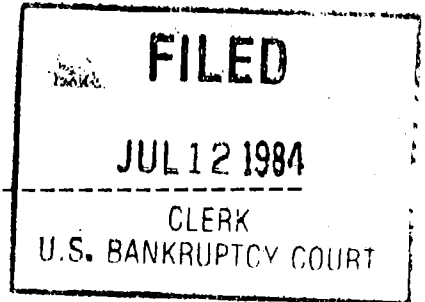


UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN



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In re:

Case Number:

WAYNE PORTER JOHNSON, SR.  
BETTY LORRAINE JOHNSON

EF7-82-00865

Debtors.

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FINDINGS OF FACT, CONCLUSION OF LAW  
AND  
ORDERS (1) FOR PAYMENT TO TRUSTEE  
((2) GRANTING MOTION TO AMEND EXEMPTION SCHEDULE

Debtors Wayne Porter Johnson, Sr., and Betty Lorraine Johnson, by Attorney Robert F. Wall of Richards, Wall & Harris, having filed a Motion for Leave to File Amended Schedule B-4 (property claimed as exempt); and Trustee Peter F. Herrell having filed an Objection to said Motion; and the matter being submitted on affidavits and briefs; the Court having considered the complete record and file herein, and being fully advised in the premises, FINDS THAT:

1. The Debtors filed for relief under Chapter 7 of the Bankruptcy Code on May 19, 1982. Mr. Johnson has recently suffered a severe heart attack and has been advised by his doctors to retire. Mrs. Johnson is confined to a county health center due to mental incompetence.

2. The Debtors' original schedules listed homestead real property with a market value of \$43,000 and a lien of \$28,980.

The equity of \$14,000 was claimed as exempt under 11 U.S.C. sec. 522(d)(1).

3. The homestead was valued at \$43,000 because it "had been assessed at that value by the local tax assessor and had been evaluated for insurance purposes as having that worth." Affidavit of Wayne Porter Johnson (filed June 20, 1984).

4. On September 27, 1983, the Trustee began two adversary proceedings to recover on certain notes due to the Debtors: Herrell v. Johnson, Adv. 83-237 (the defendant, Barry B. Johnson, is the Debtors' son), and Herrell v. Ideal Marketing, Adv. 83-238.

5. Between September, 1983, and February, 1984, the Trustee proceeded with the prosecution of said adversary proceedings in reliance upon the Debtors' original exemption schedule.

6. On February 10, 1984, the Debtors filed an amended exemption schedule. The homestead exemption claim was reduced to \$2,900 and the Debtors made new exemption claims to the Barry B. Johnson note, see Paragraph 4, supra, and to a remainder interest in certain real property.

7. The homestead exemption claim was reduced because when "Mr. Johnson attempted to sell his home. . . he discovered it not to be worth anywhere near \$43,000." Brief in Support of Debtor's Motion to Amend (filed June 20, 1984). The Debtors have not informed this Court of the date when said discovery was made.

8. The Trustee submitted a schedule of attorneys fees and costs that totalled \$566.80.

9. Allowing the Amendment would deny the Trustee reimbursement of said expenses. In addition, the Trustee would be denied commissions totalling approximately \$280.

Discussion

10. Fed.R.Bankr.P. 1009 provides that a "schedule. . . may be amended by the debtor as a matter of course at any time before the case is closed." Nevertheless, when a trustee would be prejudiced by an amendment of a debtor's schedule of exemptions, the Court may properly deny a motion to amend. In re Drake, 39 B.R. 75 (Bankr.E.D.N.Y. 1984). See In re Hurles, 31 B.R. 179, 182 (Bankr. S.D.Ohio 1983) (under Former Fed.R.Bankr.P. 110).

11. This Court considers four factors to determine the propriety of amendments to exemption schedules:

- (a) Whether an adverse party's rights will be prejudiced if an amendment is allowed.
- (b) Whether not allowing the amendment will cause undue hardship to the debtor.
- (c) Whether there is a reasonable excuse for not claiming the exemption on the original schedule.
- (d) Whether there is a reasonable excuse for any delay in seeking the amendment.

See In re Kochell, 23 B.R. 191, 192 (Bankr.W.D.Wis. 1982) (cases collected).

12. The Court is convinced that the Trustee would be prejudiced if the amendment is allowed and that not allowing the amendment would cause undue hardship to the Debtors. While there

is a reasonable excuse for not claiming the exemptions on the original schedule, the Court does not know whether the amendment was made in a timely fashion.

13. The equities appear to be balanced and equitable relief must be fashioned. See 27 Am.Jur.2d Equity sec. 107 (1966).

CONCLUSION OF LAW

The Debtors should be allowed to amend their exemption schedules upon payment of compensation to the Trustee for lost commissions, attorney's fees and costs.

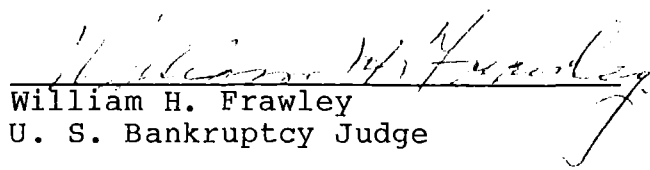
ORDER

IT IS ORDERED THAT Debtors Wayne Porter Johnson, Sr., and Betty Lorraine Johnson pay Trustee Peter F. Herrell the sum of \$846.80.

IT IS FURTHER ORDERED THAT the Debtors' Motion for Leave to File Amended Schedule B-4 be, and the same hereby is, GRANTED, without costs, subject to payment of the sum provided for in the first paragraph of this Order.

Dated: July 12, 1984.

BY THE COURT:

  
William H. Frawley  
U. S. Bankruptcy Judge