

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

In the Matter of:

**James E. Wheeler,**

**Case No. 18-01009-als7**

Debtor(s)

**Peoples Bank,**

**Adv. Pro. 18-30031-als**

Plaintiff(s)

v.

**James E. Wheeler**

Defendant(s).

**MEMORANDUM OF DECISION  
(date entered on docket: November 30, 2018)**

Before the Court is the Plaintiff's pending Motion for Summary Judgment on Counterclaims and the Defendant's resistance. Jurisdiction of this matter is conferred under 11 U.S.C. §§157 and 1334. For the reasons stated the Motion is denied.

**LEGAL STANDARD**

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. Pro. 56(a). "A principal purpose of the summary-judgment procedure 'is to isolate and dispose of factually unsupported claims or defenses,' with due regard being given to the rights of those opposing a claim or defense to demonstrate in the manner provided by Rule 56, prior to trial, that a claim or defense has no factual basis." *Bedford v. Doe*, 880 F.3d 993, 996 (8th Cir. 2018); quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24, 327, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). "Summary judgment is appropriate if, viewing the evidence in the light most favorable to the nonmoving party, there is no material factual dispute." *Bremer Bank v. John Hancock Life Ins. Co.*, 601 F.3d 824, 829 (8th Cir. 2010). The party opposing the motion must do more than raise doubts or bare assertions to meet its burden to establish a

disputed fact. *Bedford*, 880 F.3d at 997. In addition to the parties' submissions a court "may consider other materials in the record." Fed. R. Civ. Pro. 56(c)(3).

### **UNDISPUTED FACTS**

1. Wheeler operated a business called Rain Pro, Inc.
2. Prior to Wheeler filing bankruptcy the Bank sued Rain Pro and Wheeler in state court related to its secured loans, the collateral and Wheeler's unsecured guaranties.
3. In that litigation Wheeler raised counterclaims against the Bank related to its conduct under theories of breach of fiduciary, negligent misrepresentation and fraud.
4. Wheeler confessed judgment in favor of the Bank and an order entering judgments for money and foreclosure were entered.
5. The state court pleading reveal that the parties agree that the loan involving the 2010 Mustang was a consumer credit transaction, was not subject to cross-collateralization of the business loan and that this note was paid in full in May 2017.
6. On May 1, 2018 Wheeler filed a voluntary chapter 7 petition.
7. Schedule A/B of Wheeler's filing identified a 2010 Ford Mustang valued at \$7000 which was claimed as exempt in that value on Schedule C. No objection was filed to Wheeler's exemption in this vehicle.
8. Schedule A/B of Wheeler's filing did not identify the counterclaims he raised against the Bank in the state court filing.
9. On behalf of the estate the chapter 7 trustee filed a Notice of Intent to Sell two vehicles and the state court counterclaims to the Bank for \$10,000. Wheeler objected to this sale.
10. By its order entered on August 28, 2018 the Court established a base value for the vehicles and counterclaims and directed the trustee to conduct an auction of these items.
11. In his answer to this adversary proceeding, Wheeler raised counterclaims involving the Bank's actions related to the 2010 Ford Mustang.

### **DISCUSSION**

Peoples Bank (Bank) alleges that Wheeler's debt is not subject to discharge pursuant to 11 U.S.C. § 523(a)(6) for willful and malicious injury. In his answer, Wheeler raised counterclaims related to his exempt property. The crux of the pending motion for partial summary judgment is less about disputed facts and more about Wheeler's legal standing to raise these claims.

The Bank argues that Wheeler has no standing and cites to cases that hold that a chapter 7 debtor is not an aggrieved party within any pecuniary interest in assets administered by the trustee. This is true as to any interest held by Wheeler the counterclaims he raised in state court prior to his bankruptcy filing. These claims became property of the bankruptcy estate subject to the trustee's administration. 11 U.S.C. §541. In fact, the counterclaims have been administered in Wheeler's bankruptcy case.<sup>1</sup> While this legal principle is correct it is not applicable in this case.

The counterclaims raised by Wheeler in this adversary proceeding relate solely to his interest in the 2010 Mustang which he claimed as exempt. No objections were filed related to this claimed interest. "Failure to object to an exemption will preclude a creditor from raising ownership issues as to the exempt property . . . ." *In re Indvik*, 118 B.R. 993, 1004 (Bankr. N.D. Iowa, 1990); *In re Towns*, 74 B.R. 563, 567 (Bankr. S.D. Iowa 1987). "Once the exemptions are allowed the properties are no longer part of the Debtor's estate, and the Debtor does not retain property on account of such interest because he retains it as a matter of right by virtue of recognition of his right to exemptions." *In re Henderson*, 321 B.R. 550, 559 (Bankr. M.D. Fla. 2005). Because the 2010 Mustang is no longer an asset of the estate, the Trustee has no standing to administer this exempt asset and is not entitled to any proceeds stemming from it for the benefit of creditors of the estate. *Benn v. Cole (In re Benn)*, 491 F.3d 811, 813 (8th Cir. 2007) ("Exempt property is excluded from property of the estate available to satisfy debts"). Wheeler, however, does have the right to assert claims regarding property that is rightfully his. Wheeler has a pecuniary interest in obtaining the title to this vehicle unfettered by the conditions or admissions the Bank had attempted to obtain in the state court action.<sup>2</sup>

The Bank also suggests that the 2010 Mustang, or the counterclaims, must be abandoned by the trustee. This position is not supported by the prevailing law. The vehicle was deemed to be exempt prior to the filing of this adversary proceeding and the estate retains no interest in the exempt property. *In re Lassiter*, 104 B.R. 119, 123 (Bankr. S.D. Iowa 1989); *In re Doty*, 104 B.R. 133, 136 (Bankr. S.D. Iowa 1989). Further, Wheeler's claim to the exemption occurred post-petition. To the extent the conduct of the Bank continued after his bankruptcy filing he has a current right to pursue those claims. While other avenues may be available to Wheeler to enforce his exemption rights the Court is unaware of any rule or precedent that would prevent him from raising these issue in the context of this adversary proceeding.

---

<sup>1</sup> Chapter 7 Trustee's Final Report, Case No. 18-01009 docket number 43 reflects that the Bank purchased the rights to the state court counterclaims.

<sup>2</sup> The Bank states in its pleadings that it is holding the title to the vehicle because Wheeler did not sign a prepetition affidavit attesting to his sources of funding and compensation. This affidavit was not submitted in support of its Motion for Summary Judgment.

For the reasons stated the Bank's motion for summary judgment on Wheeler's counterclaims is denied.

/s/ Anita L. Shodeen  
Anita L. Shodeen  
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:  
Electronic Filers in this Adversary Proceeding