UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In re:	**:**	**Case No. 02-03910-rjh**
RAYMOND JOHN WASTENEY and	**:**	
NADINE R. TIERNEY-WASTENEY,	**:**	
	:	**Chapter 7**
Debtors.	**:**	

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ORDER—OBJECTION TO EXEMPTIONS AND RESISTANCE THERETO

The objection to exemption filed by Security State Bank of Stuart came on for hearing on August 12, 2003. Jeffrey D. Goetz represented Creditor Security State Bank of Stuart, Iowa. Jerrold Wanek represented Debtors Raymond John Wasteney and Nadine R. Tierney-Wasteney. At the conclusion of the hearing, the court took the matters under advisement on a briefing schedule. Post-hearing briefs have been received, and the court considers the matters fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S.C. §§ 157(b)(1) & 1334 and order of the United States District Court for the Southern District of Iowa pursuant to 28 U.S.C. § 157(a). These are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(B). Upon review of the pleadings, evidence, memorandums, and arguments of counsel, the court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 & 7052.

FACTS

1. On July 19, 2002, Raymond John Wasteney and Nadine R. Tierney-Wasteney (hereinafter collectively Debtors) filed a petition for relief under chapter 7 of title 11, the Bankruptcy Code. Along with their petition, Debtors filed their schedules and statements.

2. On Schedule A – Real Property, Debtors scheduled a "160 acre farm (two separate 80 acre farms)" located in Union County, Iowa, valued at $96,160.00 with a secured claim of $96,160.00; an 85 acre farm located in Union County, Iowa, valued at $43,750.00 with a secured claim of $46,528.81; a time share in Kissimee, Florida, valued at $7,000.00 with a secured claim of $6,606.24; and their residence located in Panora, Iowa, valued at $325,000.00 with a secured claim of $155,621.87.

3. On Schedule B – Personal Property, Debtors scheduled household goods and furnishings valued at $3,955.00; books and wall hangings valued at $400.00; costume jewelry valued at $250.00; computer and office equipment valued at $1,000.00; wearing apparel valued at $1,000.00; four Individual Retirement Accounts (hereinafter IRAs) and an IPERS account valued collectively at $52,288.28; 200 shares of Ray-Dee Car Wash, Inc. stock valued at $0.00; two vehicles valued at $17,500.00 and $24,000.00; a 21' boat valued at $7,500.00; Breadaux Pizza equipment valued at $10,000.00; Chicken Broaster equipment valued at $8,047.00; ice cream equipment valued at $7,500.00; 62 head of cattle valued at $30,500.00; a shotgun valued at $100.00; and, four accounts at the Iowa Postal Credit Union and cash on hand amounting to $150.00. Debtors did not schedule any interest in Stuart Car Wash, Inc. Debtors valued all of their personal property at $164,190.28.

4. On Schedule C – Property Claimed as Exempt, Debtors claimed as exempt $3,955.00 of household goods and furnishings pursuant to Iowa Code § 627.6(5); $5,000.00 in each of the two vehicles pursuant to Iowa Code § 627.6(9); $10,000.00 for the Breadaux Pizza equipment; $8,047.00 for the Chicken Broaster equipment; $1,000.00 for the computer and office equipment pursuant to Iowa Code § 627.6(10);

$150.00 for the credit union accounts and cash, pursuant to Iowa Code § 627.6(13); $250.00 for the costume jewelry, and $1,000.00 for wearing apparel, pursuant to Iowa Code § 627.6(1); $100.00 for the shotgun, pursuant to Iowa Code § 627.6(2); $400.00 for books and wall hangings, pursuant to Iowa Code § 627.6(3); and, $52,288.28, the full value, for the retirement accounts pursuant to Iowa Code §§ 627.8 & .9.

5. On Schedule F – Creditors Holding Unsecured Nonpriority Claims, Debtors scheduled five creditors holding claims of $350,760.77. Debtors identified Security State Bank (hereinafter Security Bank) as holding by far the largest claim, amounting to $286,012.28, based on Debtors' guaranty of a loan to Stuart Car Wash, Inc. Debtors identify Stuart Car Wash, Inc., as a codebtor on Schedule H.

6. On June 9, 2003, Debtors amended Schedule C to claim their retirement accounts exempt pursuant to Iowa Code § 627.6(8).

7. On May 5, 1993, Debtors executed a "Guaranty" to induce Security Bank to extend loans from time to time to Stuart Car Wash, Inc. Under its terms, Debtors guaranteed the payment of each and every debt, liability, and obligation of every type that Stuart Car Wash, Inc. had with Security Bank at the time the Guaranty was executed and any future obligation that it might incur to the bank. On February 12, 1997, Raymond Wasteney executed a "Continuing Guaranty" whereby he guaranteed the payment of Stuart Car Wash, Inc.'s present and future indebtedness to Security Bank. This document identifies the borrower as Raymond J. Wasteney D/B/A Stuart Car Wash, Inc. Nadine Wasteney did not sign this Continuing Guaranty. Both Debtors signed a Continuing Guaranty, dated February 23, 1998, whereby they guaranteed the payment of Stuart Car Wash, Inc.'s indebtedness to Security Bank.

8. In 1989, Debtors built a house located on Panora Drive in Panora, Iowa. They financed the house with a loan provided by Guthrie County State Bank. Debtors owned and occupied the house as their homestead. Sometime in 1992, Debtors sold the home on Panora Drive. They built a new house on Panora Point and financed it with a loan from Guthrie County State Bank. Debtors owned and occupied the house on Panora Point as their homestead. In 1996, Debtors sold their home and purchased a condominium located on Lynn Drive in Panora. They financed the purchase of the condominium with a loan held ultimately by Peoples Trust and Savings Bank (hereinafter Peoples Bank). They owned and occupied the condominium as their homestead.

9. In April 1999, Debtors entered into a contract to sell their condominium for $200,000.00.

10. Also in April 1999, Debtors purchased a house located at 7021 Andrews Terrace in Panora for $200,000.00. They initially paid $1,000.00 in earnest money using two $500.00 checks, dated February 19, 1999, and drawn on their personal accounts. After receiving credits for various items, Debtors were left with a balance of $198,007.44 due upon closing. Debtors obtained a loan for this amount from Peoples Trust and Savings Bank of Guthrie Center, Iowa, (hereinafter Peoples Bank) and paid the amount due by cashier's check dated April 16, 1999. The new house was in need of some repair, and Debtors repaired and remodeled the house.

11. The sale on the condominium closed on June 1, 1999, and after charges, an $187,464.99 payoff was remitted to Peoples Bank. Peoples Bank applied $93,799.47 of the sale proceeds to pay off the remaining balance of the loan used to purchase the

condominium. It applied the remaining $93,665.52 to the loan that Debtors obtained to purchase the Andrews Terrace house.

12. On June 22, 1999, Debtors refinanced their loans with Peoples Bank. They consolidated a $38,133.02 construction loan used to remodel and repair their house with the $106,515.98 remaining on the purchase money loan. Debtors also borrowed an additional $17,351.00 to be used for additional remodeling expenses. Peoples Bank wrote a new loan in the amount of $162,000.00 secured by the real property on Andrews Terrace.

13. Debtors scheduled Panora State Bank (hereinafter Panora Bank) as a creditor holding both secured and unsecured claims incurred in connection with their business enterprises. Over the course of their relationship, Debtors provided Panora Bank with financial statements. The latest of these statements dated January 19, 2001 (Exh. L), shows total assets valued at $1,571,300.00, total liabilities of $873,080.00, and net worth of $698,220.00. On the statement, Debtors claimed ownership of furniture and fixtures valued at $37,500.00.

14. On April 28, 2003, Mike J. Green (hereinafter Green), at the behest of Security Bank and with authorization of the court, entered Debtors' real estate to view, inspect, and appraise their tangible personal property. Green was to specifically inspect personal household goods and furnishings; books and wall hangings; wearing apparel; jewelry; computer equipment; Breadeaux pizza equipment; and Chicken Broaster equipment. Green photographed numerous items and provided an itemized appraisal of all the property that he viewed. Green set the value of Debtors' personal property,

excluding the Breadeaux and Chicken Broaster equipment, at $19,185.00. Green did not place a value on Debtors' wearing apparel or jewelry.

15. Green's appraisal identified numerous items that Debtors' did not include in their itemization of personal property. Debtors acknowledge that they did not include these items because they felt that they were of minimal or no value; belonged to other parties; were fixed to the real property and therefore included in its value; or were purchased after the filing of the their bankruptcy petition.

DISCUSSION

Security Bank, an unsecured creditor, filed an objection to exemptions on January 23, 2003. In its objection, Security Bank took issue with a number of Debtors' claimed exemptions. Over the course of the case and through other contested matters concerning property claimed as exempt, certain portions of the objection have been resolved or rendered moot. Remaining before the court for resolution at this time are Security Bank's objections to Debtors' claims of exemption in the homestead, individual retirement accounts, household goods and furnishings, miscellaneous wearing apparel and jewelry, and a general objection stylized as "Objection to Potential Claims of Exemption on Disclosed and Non-Disclosed Asset." The court will address the homestead, the individual retirement accounts, and the general objection to potential claims separately. It will deal with the objections to the various household and personal items collectively.

At the outset, the court notes that the filing of a bankruptcy petition creates an estate comprised of all "legal and equitable interests of the debtor in property…." 11 U.S.C. § 541(a)(1). From this estate, a debtor may exempt certain property. 11 U.S.C.

§ 522(b). Section 522(b)(1) permits the states to "opt out" of the federal exemption scheme and requires the debtor to use the exemptions provided by state law. Once a state opts out, "its debtors are limited to the exemptions provided by state law." Owen v. Owen, 500 U.S. 305, 308 (1991). Iowa has chosen to opt out of the federal exemptions. Iowa Code § 627.10. Therefore, Iowa law determines the scope of the exemptions.

A party in interest may object to a debtor's claim of exemption. Fed. R. Bankr. P. 4003(b). The objecting party must demonstrate by a preponderance of the evidence that the exemption is not properly claimed. In re Ehnle, 124 B.R. 361, 363 (Bankr. M.D. Fla. 1991). Accordingly, it is up to Security Bank to show that Debtors are not entitled to claim each of the exemption to which it has objected.

Objections to Exemptions for Household Goods, Furnishings, Wearing Apparel, and Jewelry

On their schedules, Debtors provided an itemized list of their household goods and furnishings valuing the same at $3,955.00. They scheduled books and wall hangings, wearing apparel, costume jewelry, and computer, peripherals, and office furnishings. They valued these items at $400.00, $1,000.00, $250.00, and $1,000.00 respectively. Debtors claimed these items fully exempt to their scheduled values pursuant to Iowa Code §§ 627.6(1), (3), (5), & (10).

Iowa Code § 627 contains the provisions for holding certain property exempt from execution and thereby, the general exemptions available to debtors in bankruptcy. Section § 627.6 provides in part relevant to this matter:

> A debtor who is a resident of this state may hold exempt from execution the following property:
>
> 1. All wearing apparel of the debtor and the debtor's dependents kept for actual use and the trunks or other receptacles necessary for the wearing apparel, not to exceed

> in value one thousand dollars in the aggregate. In addition, the debtor's interest in any wedding or engagement ring owned and received by the debtor or the debtor's dependents on or before the date of marriage.
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> * * *
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> 3. Private libraries, family bibles, portraits, pictures and paintings not to exceed in value one thousand dollars in the aggregate.
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> * * *
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> 5. The debtor's interest in household furnishings, household goods, and appliances held primarily for the personal, family, or household use of the debtor or a dependent of the debtor, not to exceed in value two thousand dollars in the aggregate.
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> * * *
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> 10. If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

Iowa Code § 627.6(1), (3), (5), & (10).

In this case, Security Bank does not challenge the propriety of the property claimed exempt or the amount set forth. Rather, it alleges that Debtors failed to schedule all of their property and undervalued the property that they did schedule. In support of this contention, Security Bank offered financial statements that Debtors provided to Panora Bank and an appraisal of their property performed by Green. Security Bank argues that Debtors' exemptions should be limited to the amount claimed in their Schedule C with the excess being subject to turnover to the chapter 7 trustee in the case. The court agrees.

After notice and a telephonic hearing, on April 7, 2003, the court entered an order authorizing an independent appraiser paid by Security Bank to enter onto Debtors' property to appraise their personal property and photograph the same. The court directed Debtors to cooperate with the appraiser in carrying out this task. On April 28, 2003, Green made such

an inventory and subsequently testified at the hearing on the objection to exemptions.

The court has had the opportunity to review Green's credentials and finds him to be qualified to provide testimony concerning the value of the property that he viewed. The court has heard his testimony and viewed his demeanor in court and finds him to be a credible witness. Contrary to Debtors' assertions, the court finds his appraisal of their property to be accurate and unbiased. Accordingly, the court finds the value of Debtors personal property as identified in the appraisal to be $19,185.00.

The court further finds that Debtors have claimed $6,605.00 ($3,955.00 pursuant to Iowa Code § 627.6(5); $1,000.00 pursuant to Iowa Code § 627.6(10); $250.00 and $1,000.00 pursuant to Iowa Code § 627.6(1); $400.00 pursuant to Iowa Code § 627.6(3)), of the appraised property at issue as exempt. Therefore, property valued at $12,580.00 ($19,185.00 - $6,605.00 = $12,580.00) remains property of their bankruptcy estate and is subject to turnover to the trustee.

Debtors dispute Green's appraisal and question his impartiality. They offer their own valuations of their property, which are significantly lower than Green's valuations. They also state that a number of items are valueless and give that as their reason for not scheduling the assets. Further, they claim that certain items are fixtures that are not severable from their real estate and were included in its value. Finally, they identify certain items that are owned by others or that were purchased after they filed for bankruptcy protection.

As to the first argument, the court has found Green to be qualified, credible, and impartial. It accepts his appraisal of the property as its true and fair value. Accordingly, the court discounts Debtors' valuation as self-serving.

Likewise, the court finds self-serving and lacking credibility Debtors assertion that certain appraised items belong to other parties or were purchased after filing for bankruptcy protection. Debtors statement of financial affairs do not identify any property held for others, and neither Debtors nor any third parties provided any documentary or other evidence regarding the ownership of these items. Accordingly, the court finds that the utility trailer, snowplow, pickup toolbox, and "shop vac" were properly included in the appraisal as Debtors' property.

Further, the court agrees with Green's appraisal that the hot tub, boat lift, VW dock, metal shelves, and portable tool shed constitute personal property and are not permanently fixed to the real estate. Therefore, these items were properly included in the appraisal.

Finally, the court rejects Debtors' argument that they need not include property in their schedules if they determine that it is of little or no value. While it is true that they need not count and report every spoon or fork, they must identify property in meaningful terms. "The Code requires nothing less than a full disclosure…" Fokkena v. Tripp (In re Tripp), 224 B.R. 95, 98 (Bankr. N.D. Iowa 1998). The fact that an asset might be exempt does not excuse its omission. Johnson v. Baldridge (In re Baldridge), 256 B.R. 284, 289 (Bankr. E.D. Ark. 2000). It is not up to the debtor to determine which assets are of value to the estate and which are negligible. In re Tripp, 224 B.R. at 95. The debtor's "petition, including schedules and statements, must be accurate and reliable, without the necessity of digging out and conducting independent examinations to get the facts." Korte v. United States of America Internal Revenue Service (In re Korte), 262 B.R. 464,

474 (B.A.P. 8th Cir. 2001) quoting In re Sears, 246 B.R. at 347 citing Mertz v. Rott, 955 F.2d 596, 598 (8th Cir. 1992).

Security Bank has uncovered numerous items that Debtors failed to schedule, and Green included many of these items in his appraisal. Security Bank also uncovered certain items of jewelry including a 14K gold man's ring with one diamond, ladies' bridal set, and a 14K gold diamond cut open link necklace. These items were valued for insurance at $8,164.00.

On their schedules, Debtors only disclosed "costume jewelry" valued at $250.00, and claimed the same as exempt. The court notes that costume jewelry by definition is made of "relatively inexpensive materials or set with imitation gems." Webster's New Twentieth Century Dictionary Unabridged, 413 (2d ed. 1979). As the necklace and rings contain precious metal and gems, the court concludes that Debtors did not include these items in the category of costume jewelry and did not disclose their ownership of these items.

As of this writing, Debtors have not amended their schedules to include the rings and necklace. They have not amended their schedules to claim these items as exempt. Further, there is nothing in the record demonstrating that the diamond rings were wedding or engagement rings owned and received by the debtors on or before the date of their marriage. Consequently, the court finds that these items are property of the bankruptcy estate and subject to turnover to the trustee.

Debtors have argued that they did not claim the full amount available to them under the state exemption scheme, and therefore, the court should credit the maximum amount of exemption available against any additional finding of value. The court

disagrees. Debtors claimed specific amounts of their property as exempt under various sections of the Iowa Code. The property to those specific amounts is no longer property of the estate. To the extent that their property exceeds the exempted amount, it remains available for administration by the trustee for the benefit of their creditors. Soost v. NAH, Inc. (In re Soost), 262 B.R. 68, 72 (B.A.P. 8th Cir. 2001).

For all the foregoing reasons, the court will sustain this objection to exemption. The trustee will determine how she wishes to proceed with the assets.

Objection to Exemption for IRAs

On the schedules filed with their petition on July 19, 2002, Debtors claimed their interests in four IRAs exempt pursuant to Iowa Code §§ 627.8 & .9. After receiving an extension of time to do so, Security Bank filed its objection to the exemption on January 23, 2003. In its objection, Security Bank noted that debtors had not claimed the IRAs as exempt under Iowa Code § 627.6(8), and requested that Debtors be foreclosed from amending their schedules to make the claim under that section and paragraph. It then argued that state exemption laws are preempted by the Employee Retirement Income Security Act of 1974 (hereinafter ERISA) 29 U.S.C. §§ 1001 - 1461.

On June 9, 2003, Debtors amended Schedule C to claim their retirement accounts exempt pursuant to Iowa Code § 627.6(8). The provision provides in relevant part an exemption for:

> 8. The debtor's rights in:
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> * * *
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> f. Contributions and assets, including the accumulated earnings and market increases in value, in any of the plans or contracts as follows:

(1) All transfers, in any amount, from a trust forming part of a stock, bonus, pension, or profit-sharing plan of an employer defined in section 401(a) of the Internal Revenue Code and of which the trust assets are exempt from taxation under section 501(a) of the Internal Revenue Code and covered by the Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. 1001 et seq., to either of the following:

* * *

(b) An individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, from which the total value, including accumulated earnings and market increases in value, may be contributed to a succeeding trust authorized under federal law on or after April 25, 2001. For purposes of this subparagraph, transfers, in any amount, from an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code to an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, or an individual retirement account established under section 408(a) of the Internal Revenue Code, or an individual retirement annuity established under section 408(b) of the Internal Revenue Code, or a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code are exempt.

* * *

(4) For simplified employee pension plans, self-employed pension plans (also known as Keogh plans or H.R. 10 plans), individual retirement accounts established under section 408(a) of the Internal Revenue Code, individual retirement annuities established under section 408(b) of the Internal Revenue Code, savings incentive matched plans for employees, salary reduction simplified employee pension plans (also known as SARSEPs), and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution deducted on the debtor's tax return or the maximum amount which could be contributed to an individual retirement account established under section 408(a) of the Internal Revenue Code and deducted in the tax year of the contribution, whichever is less. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as

> determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

Iowa Code § 627.6(8).

Security Bank did not file an objection to the amended exemption. Debtors argue that Security Bank's failure to object to the amended exemption results in the valid exemption of the IRAs from the bankruptcy estate. The court agrees.

Fed. R. Bankr. P. 1009(a) provides that a debtor may amend a schedule as a matter of course at any time prior to the closing of the bankruptcy case. A party in interest may file an objection to exemption within thirty days following the conclusion of the § 341 meeting of creditors or within thirty days following an amendment to the debtor's schedules. Fed. R. Bankr. P. 4003(b). Should the party in interest fail to object within the specified time period (including court granted extensions), the property is exempt. 11 U.S.C. § 522(l); see also Taylor v. Freeland & Kronz, 503 U.S. 638, 633-34 (1992) (holding that a trustee could not contest the validity of an exemption after the time for objections had past).

The § 341 meeting of creditors was held and concluded on August 27, 2002. The last day to object to exemptions was September 26, 2002. Security Bank timely filed a motion to extend the time for filing objections, and the court granted up to and including January 23, 2003, to file objections to the exemptions that Debtors included on their initial filing of schedules. Security Bank timely filed its objections to those exemptions on January 23, 2003. After Debtors filed their amendment to exemptions on June 9, 2003, parties in interest were granted an additional thirty days to file objections to the amended exemptions. Security Bank did not file such an objection. Accordingly, the

court finds that no party in interest has objected to the amended exemption for the IRAs. Therefore, pursuant to 11 U.S.C. § 522(l), the IRAs are exempt.

The court acknowledges that a plausible argument may be made by Security Bank that its original objection to exemption was such that all parties were put on notice that it contested any attempt on Debtors' part to exempt the IRAs, regardless of the Iowa Code section cited, based on its preemption argument. However, even if the court would reach the merits of the issue, it would not sustain the objection because it is not persuaded that ERISA preempts state exemptions, particularly in the bankruptcy context.

Security Bank primarily based its argument on an unpublished opinion by the Sixth Circuit Court of Appeals, Lampkins v. Golden, No. 00-1443 2002 WL 74449, 28 Fed. Appx. 409 (6th Cir. January 17, 2002). In that case, a legal secretary at Michigan law firm sued her employer, a lawyer, alleging violations of ERISA and breach of his fiduciary responsibilities. She stated a claim for accrued benefits for her profit sharing and pension plans and was granted summary judgment by the district court. The defendant refused to pay the judgments claiming that he had no assets or income even though he continued to practice law. The plaintiff subsequently discovered that the defendant had placed assets in an individual retirement account designated as a simplified employee pension account or SEP, a type of individual retirement account established under 26 U.S.C § 408(k). She then attempted to garnish the account to satisfy her judgments and sought summary judgment from the district court. Id. at 410-11. The district court granted summary judgment against the garnishee on the writs of garnishment, and the defendant appealed to the 6th Circuit. Id. at 412-13.

On appeal the defendant argued that SEP was exempt from execution under state

and federal law. Id. at 413. In affirming the lower court, the Sixth Circuit held that the SEP was not shielded by ERISA's anti-alienation provision, because IRAs, including SEPs, are not covered by that provision. Id. citing 29 U.S.C. § 1056(d)(1). The Sixth Circuit further held that the Michigan statute which provided for the exemption of all § 408 individual retirement plans was preempted by ERISA's preemption clause which provides that its provisions will supercede any and all state laws related to any employee benefit plan described in 29 U.S.C. § 1003(a). Id. As a result, the plaintiff was able to garnish the SEP account.

The court does not find Lampkins to be persuasive in this matter. The Eighth Circuit has held in a published opinion that ERISA did not preempt a Missouri exemption statute that permits debtors to exempt reasonably necessary pension benefits. Checkett v. Vickers (In re Vickers), 954 F.2d 1426, 1429 (8th Cir. 1992) cert. dismissed 505 U.S. 1235 (1992). The Circuit Court based its decision in part on the ERISA savings clause which provides that "[n]othing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supercede any law of the United States…" 29 U.S.C. § 1144(d). The Eighth Circuit reasoned that the Bankruptcy Code specifically provides for exemptions pursuant to 11 U.S.C. § 522 and allows states to opt out and use their own exemptions pursuant to 11 U.S.C. § 522(b)(A), and therefore the state law providing for the exemption of pension plan benefits was enacted pursuant to the authority given by the Bankruptcy Code. Consequently, ERISA would not preempt the state exemption statute. In re Vickers, 954 F.2d at 1429.

In Schlein v. Mills (In re Schlein), 8 F.3d 745 (11th Cir. 1993), the Eleventh Circuit further expounded this rationale. That court opined that Congress enacted the

Bankruptcy Code as

> a comprehensive scheme to regulate debtor/creditor relationships after the filing of a bankruptcy petition. As part of this scheme, responsibility for defining what property debtors will take out of bankruptcy is shared with the states. ERISA, on the other hand, is a comprehensive regulatory program that governs employer-employee relations in the area of private employee benefit plans. Congress made clear that it did not want the states to interfere in this area. But as the Supreme Court has taught us, this does not mean that Congress intended ERISA preemption to ride roughshod over other areas of federal legislation, whether it be Title VII, the Bankruptcy Code, or other comprehensive federal schemes.

Id. at 753. The Eleventh Circuit ultimately held that preemption of state exemption laws by ERISA would have the effect of alter, amending, or modifying the Bankruptcy Code's provision allowing states to use their own exemptions and the "deliberate policy choices of Congress that underlie that provision." Id. at 753-54. Consequently, ERISA did not preempt the exemption statute in question.

The Fifth Circuit likewise has held that ERISA does not preempt state exemption laws. See Heitkamp v. Dyke (In re Dyke), 943 F.2d 1435 (5th Cir. 1991).[1] It analogized Title VII to the Bankruptcy Code finding that both relied on state law to assist in implementing and enforcing its goals. Id. at 1449. Primary to the Bankruptcy Code was that debtors emerge from bankruptcy with enough possessions to make a fresh start. Id. Congress acknowledged that circumstances varied in each state, therefore, permitted the states to utilize their own set of exemptions. If ERISA were interpreted to preempt the state exemptions then "the enforcement scheme contemplated in the Bankruptcy Code would be modified and impaired." Id.

This court finds the analysis of Fifth, Eighth, and Eleventh Circuits to be

[1] To the extent that it held that ERISA-qualified plans were property of the bankruptcy estate and were not excluded by 11 U.S.C. § 541(c)(2), the Fifth Circuit decision was abrogated by Patterson v. Shumate, 504 U.S.C. § 753 (1992).

persuasive.[2] Further, although a Missouri statute was at issue in In re Vickers, the court anticipates that the Eighth Circuit would come to the same conclusion concerning ERISA preemption should it consider the question in connection with Iowa Code § 627.6(8). Accordingly, the court adopts the analysis of the Fifth, Eighth, and Eleventh Circuits, and holds that the savings clause, 29 U.S.C. § 1144(d), precludes a finding that ERISA preempts Iowa Code § 627.6(8).

For all the foregoing reasons, Security Bank's objection to exemption of Debtor's IRAs will be overruled.

Objection to Homestead Exemption, Pre-acquisition Debt Exception

Debtors claim their residence located in Panora as an exempt homestead pursuant to Iowa Code §§ 499A.18,[3] 561.16, 561.19[4] & 561.20. They value the property at $325,000.00 and show it encumbered by a $155,521.87 mortgage held by Peoples Bank. Debtors place the value of their homestead exemption at $84,378.13.

Security Bank objects to the homestead exemption. Security Bank argues that it holds a claim against Debtors contracted with them prior to their acquisition of their

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[2] The Ninth Circuit, over a strong dissent, held that ERISA did indeed preempt state exemption statutes in bankruptcy. Pitrat v. Garlikov, 947 F.2d 419 (9th Cir. (1991), withdrawn, 992 F.2 224 (9th Cir. 1993). After the initial decision was entered, The U.S. Supreme Court decided by Patterson v. Shumate. The Ninth Circuit subsequently withdrew its panel opinion in Pitrat and reversed the bankruptcy court's grant of summary judgment against the debtor. 981 F.2d 1021. The withdrawal order was withdrawn upon rehearing. In May 1993, the Ninth Circuit reaffirmed its reversal of the grant of summary judgment based on Patterson v. Shumate. Because the Circuit Court decided that the debtors' interest in the pension funds were not property of the estate pursuant to 11 U.S.C. § 541(c)(2), it did not reach the preemption issue. See Schlein v. Mills (In re Schlein), 8 F.3d at 751 n. 5 (outlining the procedural history of Pitrat). Although the original Pitrat holding is contrary to the analysis of the Fifth, Eighth, and Eleventh Circuits, it is not controlling precedent even in the Ninth Circuit. Id.

[3] Iowa Code § 499A.18 provides: "Each individual apartment constitutes a homestead and is exempt from execution, provided the member otherwise qualifies within the laws of the state of Iowa for such exemption."

[4] Iowa Code § 561.19 provides: Where the homestead descends to the issue of either spouse the homestead shall be held exempt from any antecedent debts of the issue's parents or antecedent debts of the issue, except those of the owner of the homestead contracted prior to acquisition of the homestead or those created under section 249A.5 relating to the recovery of medical assistance payments. As this case does not address homestead that descended from Debtors' parents, this provision is not applicable to their case.

homestead and consequently, the homestead may not be held exempt from its claim.

Iowa's homestead provisions are found in section 561 of the Iowa Code. Relevant to this matter are the following provisions:

> The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

Iowa Code § 561.1:

> The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary. Persons who reside together as a single household unit are entitled to claim in the aggregate only one homestead to be exempt from judicial sale. A single person may claim only one homestead to be exempt from judicial sale. For the purposes of this section, *"household unit"* means all persons of whatever ages, whether or not related, who habitually reside together in the same household as a group.

Iowa Code § 561.16

> Where there has been a change in the limits of the homestead, or a new homestead has been acquired with the proceeds of the old, the new homestead, to the extent in value of the old, is exempt from execution in all cases where the old or former one would have been.

Iowa Code § 561.20

> The homestead may be sold to satisfy debts of each of the following classes:
> 1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution….

Iowa Code § 561.21:

The purpose of the homestead exemption is "to provide a margin of safety to the family, not alone for the benefit of the family, but for the public welfare and social benefit which accrues to the state by having families secure in their homes." In re

Mclain's Estate, 262 N.W. 666, 669 (Iowa 1935). Accordingly, Iowa courts "generally hold that to secure the benevolent purposes of the homestead laws they should be broadly and liberally construed in favor of the beneficiaries of the legislation," Millsap v. Faulkes, 20 N.W.2d 40, 42 (Iowa 1945). "Regard should be had to the spirit of the law rather than its strict letter." Id. The courts recognize that the state receives social benefits and public welfare "by having families secure in their homes." In the Matter of Property Seized from Bly, 456 N.W. 2d 195, 199 (Iowa 1990). Iowa's policy is to "jealously safeguard" the homestead. Id. "Loss of homestead exemption is not favored." Schaffer v. Campbell, 199 N.W. 334, 338 (Iowa 1924). Homestead laws should and do receive a liberal interpretation. Dalton v. Webb, 50 N.W. 58, 59 (Iowa 1905). They should not be "pared away by construction so as to defeat its beneficent sociological, and economic purpose." American Sav. Bank of Marengo v. Willenbrock, 228 N.W. 295, 297 (Iowa 1927). However, such interpretation must be "fair and rational and not arbitrary," Smith v. Andrew, Superintendent of Banking, 227 N.W. 587, 589 (Iowa 1929), and the liberality of construction should not result in granting rights that exceed the spirit and purpose of the statute. Willenbrock, 228 N.W. at 299.

A homestead is "acquired" when the homestead right attaches by actual use and occupation of the property as a homestead. In re Streeper, 158 B.R. 783, 788 (Bankr. N.D. Iowa 1993); Elston & Green v. Robinson, 23 Iowa 208 (1867); See also Harris v. Carlson, 205 N.W. 202, (Iowa 1925) ("Actual occupation of premises as home, except in cases of temporary absence, is required to support claim of "homestead," and mere use or cultivation is insufficient . . . ."). Once the homestead is acquired, it is presumed to continue until its use is terminated. In re McLain's Estate, 262 N.W. at 669-70.

Section 561.20 gives the homestead owner the right to change homesteads and use the proceeds from the old homestead to invest in the new. There is no prescribed method for how this is to be done. Elliott v. Till, 259 N.W. 460, 463 (Iowa 1935) quoting State v. Geddis, 44 Iowa 537 (1876) (further stating "[t]he statute does not provide that the sale must be for money in hand, which must be immediately invested in the new homestead; that is, that the selling of the old and purchasing the new must be simultaneous acts."). When a new homestead is acquired with proceeds from an old homestead, the new is exempt to the value and to the extent that the old homestead was exempt from sale. Iowa Code § 561.20.

The homestead's value under this section is "the value of the physical property, not the value of the owner's estate in it or the amount that the owner will enjoy from its sale." Willenbrock, 228 N.W. at 300. An actual sale price is the best evidence of value. Id. "Proceeds" as the term is used in the section means "net proceeds." Millsap, 20 N.W.2d at 42.

A homestead is not entirely exempt from judicial sale. Pertinent to this matter is the exception to exemption provided in § 561.21(1), which provides that the homestead may be sold for debts "contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution." The date of entry of judgment is not pertinent to the exception; it is the date of contracting of the debt that controls. Bills v. Mason, 42 Iowa 329, 332 (Iowa 1876); Hale v. Heaslip, 16 Iowa 451, 452-53 (Iowa 1864).

In this case, the evidence shows that Debtors have owned homes in or around Panora, Iowa, as early as 1989, when they built a house on Panora Drive. The court finds

that beginning in 1989, Debtors have owned and occupied each residence, be it single-family home or condominium, as their homestead and have acquired such right in each.

The evidence also shows that Debtors entered into an agreement with Security Bank on May 5, 1993, whereby they guaranteed payment of each and every debt, liability, and obligation of Stuart Car Wash, Inc. to the bank. Such guaranty constitutes a debt for purposed of § 561.21. See Merchant's Nat. Bank of Clinton v. Eyre, 77 N.W. 498, 499 (Iowa 1898) (surety is deemed a debtor under the section); Kamerick v. Marion County State Bank, No. 03-0469, 2003 WL 23006949 at * 2 (Iowa Ct. App. Dec. 24, 2003) (distinction between surety and guarantor does not make a difference in determination of pre-acquisition debt). Debtors individually and jointly signed additional or continuing guaranties in 1997 and 1998. Security Bank obtained a judgment on the guaranties on December 13, 2001.

Security Bank contends that its claim on the 1993 Guaranty predates Debtors acquisition of their current homestead that they purchased in April 1999. In essence, it argues that in order for Debtors to utilize the provisions of § 561.20, Debtors must first sell their existing homestead and then purchase a new homestead using the proceeds from the sale of the old. Because Debtors closed on the purchase of their new homestead before closing on the sale of their condominium, Security Bank asserts that Debtors did not acquire their new homestead with the proceeds of their former homestead and consequently, their homestead right in their current residence dates from when they moved into the residence in June 1999. According to Security State Bank, under these circumstances Debtors effectively abandoned their former homestead and commenced

anew. Therefore, the homestead is subject to Security Bank's claim based on the pre-acquisition debt exception to the homestead exemption.

In view of the purpose of Iowa's homestead statutes and mindful of the liberal construction afforded it by the Iowa courts, this court is not persuaded that Security Bank is correct.

As stated above, there is no prescribed manner in which a change of homesteads is to be effected, and there is no requirement that the identical funds be used or the sale of the old and the purchase of the new be simultaneous. The determinative requirement is that exempt proceeds from the old be reinvested in the new homestead.

It is undisputed by the parties that Debtors had a continuing homestead right in the condominium located on Lynn Drive, and Security Bank could not attach it to satisfy its claim on the guaranties. The best indicium of the value of their homestead right is the sale price of the property, $200,000.00 when sale closed in June of 1999. [5]

Debtors did indeed reinvest these exempt funds into their new homestead. Debtors had entered into a purchase agreement for the property located on 7021 Andrews Terrace and initially paid $1,000.00 (two $500.00 checks written on their personal accounts) in earnest money. After various credits were included, Debtors owed $198,007.44 at closing on this property (Exh. 3). They financed this amount with a loan from Peoples Bank, with which they had financed the purchase of the condominium and held a mortgage on the same. After closing the sale of the condominium, the purchase price was turned over to Peoples Bank. It applied $93,799.47 to pay off the existing

[5] Security Bank has based its argument on the Debtors' change of homestead from the condominium to the house on Lynn Drive. The record is devoid of any valuation of the homestead on Panora Point where Debtors lived when the debt was contracted and prior to moving to the condominium. Therefore, the value of the exemption will be established on the evidence in the record concerning the condominium.

mortgage on the condominium, and applied $93,665.52 to the new loan on the 7021 Andrews Terrace property.

Accordingly, the court finds that Debtors reinvested the proceeds from the sale of their existing homestead into a new homestead thereby acquiring a new homestead with the proceeds of the old. The new homestead located at 7021 Andrews Terrace is exempt to the same extent as the old, in this case $200,000.00.

Security Bank cites a number of cases that state that actual occupancy of the premises is necessary to establish a homestead right. See e.g. Streeper, 158 B.R. at 788. While this is the well-settled rule for establishing the original acquisition of a homestead, it is not applicable to the case where a new homestead is acquired with the proceeds of the old. In the latter case, the homestead is preserved as a continuing right. Blue v. Heilprin, 78 N.W. 642, 644 (Iowa 1898).

Security Bank likewise relies heavily on Chariton Feed and Grain, Inc. v. Kinser, 794 F.2d 1329 (8th Cir. 1986) for the proposition that Debtors cannot change their homestead to another property and protect the new from a pre-acquisition debt. However, the significant difference in that matter from the one at hand is that the creditor had reduced its claim to judgment and therefore, its judgment lien had attached to the property prior to the change of the homestead. The Eighth Circuit placed its ruling on "the sole ground that the lien of the judgment and the right of the creditor to subject the property to the payment of his debt, could not be displaced by the subsequent change of homestead, and the occupancy of the property thus incumbered." Id. at 1332. In so holding the circuit court relied on Elston & Green v. Robinson, where the Iowa Supreme Court found the defect in the debtor's position to be that judgment was entered against

him prior to his occupancy and use of the second property as his homestead. Id. The Iowa Supreme Court stated, "In other words, it was a lien upon this land, and the debtor could not divest this lien by subsequently using and occupying it for this purpose." Id. quoting Elston & Green v. Robinson, 23 Iowa at 534.

In the matter before this court, the record is clear that Debtors occupied the residence at 7021 Andrews Terrace prior to Security Bank obtaining its judgment. Therefore, the bank did not have a judgment lien against the property prior to Debtors establishing their homestead in the property, and Debtors' acquisition of the new homestead did not divest Security Bank of an interest in the property or prejudice it in any way.

For all the foregoing reasons, the court will overrule Security Bank's objection to the extent that Debtors may claim an exemption in their homestead in the amount of $200,000.00.

Further Objections to Exemptions

Security Bank asks the court to deny Debtors the opportunity to further amend their schedules of exemptions because they failed to disclose certain assets and undervalued others. Alternatively, they ask for an additional sixty days to object to any amendments.

Based on the record before it, the court will deny the objection as premature. As stated above, the Bankruptcy Rules provide Debtors with the opportunity to amend their schedules of exemptions. Fed. R. Bankr. P. 1009(a). They further provide a party in interest with the opportunity to file an objection to the amended exemption within thirty days following the amendment. Fed. R. Bankr. P. 4003(b). Accordingly, Security Bank

may raise an objection to any amended exemption as the Rules provide, and may present their argument against allowing the exemption at that time.

ORDER

IT IS ACCORDINGLY ORDERED AS FOLLOWS:

1. Security State Bank's objection to Raymond John Wasteny and Nadine R. Tierney-Wasteny's claim of exemption in household goods, furnishings, wearing apparel, and jewelry is SUSTAINED to the extent set forth in the body of the decision.

2. Security State Bank's objection to the claim of exemption in the Individual Retirement Accounts is OVERRULED.

3. Security State Bank's objection to the claim of exemption in the homestead is OVERRULED to the extent that Raymond John Wasteny and Nadine R. Tierney-Wasteny may claim an exemption in the amount of $200,000.00 in their homestead located at 7021 Andrews Terrace in Panora, Iowa.

Dated:

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RUSSELL J. HILL, JUDGE
U.S. BANKRUPTCY COURT