

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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In re: Case No. 12-30081-EPK
Chapter 7
CLSF III IV, INC., et al., (Substantively Consolidated)
Debtors.

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In re: Case No.: 14-14507-EPK
DEBORAH CATHERINE PECK, Chapter 7
Debtor.

_____ /

**TRUSTEE'S OBJECTIONS TO EXEMPTIONS
CLAIMED BY DEBTOR, DEBORAH CATHERINE PECK**

Deborah C. Menotte, the duly appointed and acting Chapter 7 Trustee (the "Trustee") for the estate of Deborah Catherine Peck (the "Debtor"), by and through undersigned counsel, hereby files this objection (the "Objection"), pursuant to 11 U.S.C. § 522 and Federal Rule of Bankruptcy Procedure 4003, to the exemptions claimed by the Debtor. In support of this Objection, the Trustee states:

Background

1. On August 22, 2012, an involuntary petition for relief was filed against CLSF III IV, Inc. in this Court under Chapter 7 of the Bankruptcy Code.

2. Thereafter, thirty-two affiliates (the "Affiliates") of CLSF III IV, Inc. filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code between October 24, 2012 and November 7, 2012.

3. On October 2, 2013, the Court entered an *Order Granting Trustee's Second Amended Motion for Substantive Consolidation of the Jointly Administered Bankruptcy Estates*

[ECF No. 561] (the “SubCon Order”). As set forth in the SubCon Order, the Court granted the substantive consolidation of the bankruptcy estate CLSF III IV, Inc., with that of the Affiliates, and certain non-debtor entities (the “Non-Debtor Entities”).

4. On February 26, 2014, the Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code. The Internal Revenue Service is a creditor of the Debtor by virtue of a Proof of Claim filed in the Debtor’s case on May 29, 2014, in the amount of \$1,262,431.13. (Claim No. 17-2).

5. On August 6, 2014, the Court entered an *Order Granting Trustee’s Amended Motion for Substantive Consolidation of the Bankruptcy Estate of Deborah Catherine Peck, Debtor, [Case No. 14-14507-BKC-EPK], and Non-Debtor Deborah C. Peck, Esq., P.A. With the Substantively Consolidated Debtors and Memorandum of Law in Support* [ECF No. 857], (the “Peck SubCon Order”) thereby substantively consolidating the estates of CLSF III IV, Inc., the Affiliates, and the Non-Debtor Entities with the Chapter 7 estate of the Debtor and non-debtor, Deborah C. Peck, Esq., P.A.

6. As set forth in the Peck SubCon Order, the Trustee was appointed as successor trustee of the Debtor’s chapter 7 case.

7. On April 2, 2014, the Debtor’s spouse, Joe Kelly Bloomer, filed a Chapter 7 bankruptcy proceeding in this Court, under Case No. 14-17616-EPK (the “Bloomer Chapter 7 Case”). The Internal Revenue Service is also a creditor of Bloomer by virtue of a Proof of Claim filed in Bloomer’s case on January 28, 2015 in the amount of \$989,910.92 (Claim No. 10-1 in Bloomer Chapter 7 Case).

8. The Internal Revenue Services’ claims against both Bloomer and Peck arise out of the joint tax return they filed in 2011, and an unpaid assessment of \$722,283.00 that has been levied against them jointly. In fact, the IRS’s claim in the Debtor’s Bankruptcy case references

Bloomer.

9. Pursuant to the Court's *Agreed Ex Parte Order Granting Sixth Agreed Ex Parte Motion to Extend Time for Interested Party, Deborah C. Menotte, Chapter 7 Trustee of the Estates of CLSF III IV, Inc., et al. to File Objections to the Debtor's Claimed Exemptions and a Complaint Objecting to Debtor's Discharge* [ECF No. 1070] dated May 22, 2015, the deadline for the Trustee to object to the Debtor's claimed exemptions is July 1, 2015. Accordingly, this Objection is timely filed.

Relief Requested

10. On March 24, 2014, the Debtor filed her schedules of assets and liabilities, and on July 30, 2014, filed her amended schedules of assets and liabilities, including Amended Schedule C [ECF No. 112].

11. As set forth on the Debtor's Amended Schedule C, the Debtor claims that the value of her household goods and furnishings total \$1,350.00; that the value of books, pictures and other art objects total \$550.00; and that the value of firearms and sports equipment totals \$650.00. Each of these personal property items is claimed as exempt on the Debtor's Amended Schedule C pursuant to 11 U.S.C. § 522(b)(3)(B).

12. Pursuant to Florida law, entireties property is not exempt from process to satisfy joint debts of both spouses. *Stanley v. Powers*, 123 Fla. 359, 166 So. 843, 946 (1936); *In re Monzon*, 214 B.R. 38 (Bankr. S.D. Fla. 1997), and 11 U.S.C. § 522(b)(3)(B). Thus, where a Debtor files bankruptcy, property which was held by a debtor and a debtor's spouse as tenancy by the entirety becomes property of the Debtor's bankruptcy estate to the extent there is equity in the property which can be used to satisfy debts held by creditors of both spouses. *See In re Helm*, 2012 WL 1616791, at *2 (Bankr. S.D. Fla. May 9, 2012) (citing *In re Monzon*, 214 B.R. 38, 46 (Bankr. S.D. Fla. 1997)).

13. As set forth above, the Internal Revenue Service is a creditor of both the Debtor and her husband, Bloomer. The property which is claimed as exempt because it is held as tenancy by the entirety is therefore property of the Debtor's estate to the extent that it can be used to satisfy the Internal Revenue Service's joint claims. *Id.* Accordingly, the Court should disallow the Debtor's claim of exemption based on her contention that certain property is held as tenancy by the entirety.

14. The Debtor further listed as exempt on Amended Schedule C, her interests in real properties owned by "CJ VJ Realty" (which the Trustee presumes to mean CJ-VJ Realty Associates, LLC) and CJ VJ Management LLC, entities in which the Debtor holds an ownership interest. The Debtor claims these properties as exempt pursuant to Article X, section 4(a)(2) of the Florida Constitution. The Debtor further lists as exempt her stock and ownership interest in Assisted Living of Wall Township, LLC. The Debtor's Amended Schedule C lists values in excess of the maximum allowed value for this exemption. To the extent the Debtor has claimed property as exempt under this category in excess of \$1,000.00, that claim of exemption should be disallowed.¹

WHEREFORE, for the foregoing reasons, the Trustee's Objection should be sustained, and the Debtor's claim of exemption in the property indicated above should be disallowed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic transmission through the Court's CM/ECF system upon all parties on the attached CM/ECF Service List, and via first class, U.S. Mail upon all parties listed below on this 1st day

¹ The Trustee reserves the right to investigate the value of any personal property claimed as exempt and object to such claims of exemption to the extent that the actual value of Debtor's personal property exceeds \$1,000.

of July, 2015.

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