

FSM SUPREME COURT TRIAL DIVISION

In re ANTHONY JAMES MIX,	)	BANKRUPTCY CASE NO. PB 001-2012
	)	
Debtor.	)	
_____	)	

ORDER DETERMINING NON-EXEMPT STATUS AND VOIDING PREFERENTIAL TRANSFERS

Dennis K. Yamase  
Associate Justice

Decided: June 5, 2013

APPEARANCE:

For the Creditor:	Michael J. Sipos, Esq.
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HEADNOTES

Bankruptcy

A party's failure to oppose a motion constitutes that party's consent to the granting of the motion, but even if there is no opposition, the court still needs good grounds before it can grant the motion. In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

Bankruptcy – Debtor's Estate

Bankruptcy Code Section 209(2)(b), which exempts from the debtor's receivership estate all tools, implements, utensils, two work animals and equipment necessary to enable the debtor to carry on his usual occupation, does not apply to individual filings where the debt is primarily of a business nature. A debtor cannot exempt such business tools from his receivership estate, especially when he is no longer in business. In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

Bankruptcy – Debtor's Estate

Fishing coolers, fishing gear, lures, rod and reel, fishing lines, fishing net spear gun, .410 shotgun, TV-flat screen, laptop, PC, 23 ft boat, trailer, 75hp motor, life jackets for the boat and boating accessories are not items that qualify as exempt personal and household goods under 31 F.S.M.C. 209(2)(a). In re Mix, 19 FSM R. 63, 64 (Pon. 2013).

Bankruptcy – Debtor's Estate

A boat and its motor are exempt to the combined value not in excess of \$2,500 and a motor vehicle is exempt not to exceed \$1,500 in value, and if the vehicle exceeds the \$1,500 exempt valuation and the boat and motor exceed their \$2,500 exempt valuation, then they can be sold with the excess going to the creditors and the debtor keeping the exempt value. In re Mix, 19 FSM R. 63, 64-65 (Pon. 2013).

Bankruptcy – Debtor's Estate

Since a son falls within the definition of an insider, a debtor's transfers of property to his son

at any time after one year before the debtor's bankruptcy filing are voidable as preferences or as fraudulent transfers. The Receiver shall recover these items or their cash value from the son if they are in his possession. In re Mix, 19 FSM R. 63, 65 (Pon. 2013).

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#### COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

This comes before the court on the Motion to Determine Non-Exempt Status of Business Assets and to Void Preferential Insider Transfers filed on April 16, 2013, by creditor FSM Social Security Administration. Neither the debtor nor any interested party has filed a response or an opposition to Social Security's motion. A party's failure to oppose a motion constitutes that party's "consent to the granting of the motion." FSM Bankr. R. 9013(c). Even if there is no opposition, the court still needs good grounds before it can grant the motion. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 442 (App. 1994). The motion is granted because there are such grounds. The court's reasons follow.

#### I.

The debtor was conducting a "security business" that failed and that failure was the cause of this bankruptcy filing. The debtor claims in his Schedule C, as exempt necessities for trade or occupation: "pepper spray, handcuffs, batons, two-way radios and radio accessories, uniforms, boots(uniform), metal detectors, training equipment for security services, 1 Suzuki flatbed, bullet proof class [sic] for training, 2 motorcycles – for patrol purposes, 1 van to pick up employees for work, two wall lockers, 2 filing cabinets, I.D. card machine, [and] 2 office desk."

Section 209(2)(b) of the Bankruptcy Code exempts from the debtor's receivership estate "[a]ll tools, implements, utensils, two work animals and equipment necessary to enable the debtor to carry on his usual occupation." However, that same section qualifies that exemption by providing that "[t]his section does not apply to . . . individual filings where the debt is primarily of a business nature." 31 F.S.M.C. 209(2)(b). This case is an individual filing where the debts are primarily of a business nature – e.g., unpaid tax withholdings from the security business's employees. The debtor therefore cannot exempt these business tools from his receivership estate. This is especially true since he is no longer in business. They must be included and the Receiver shall eventually reduce these estate assets to cash for the benefit of the debtor's creditors.

The debtor's Schedule C also lists as exempt personal and household goods: "Cookware, Kitchenware, Refrigerator, 1 chest freezer, 5 fishing coolers, fishing gear (lures, rod and reel, fishing lines, fishing net spear gun), .410 shotgun, TV-flat screen sony, laptop, pc, 23 ft boat, trailer, 75hp, life jackets for the boat and boating accessories, 4 folding tables, [and] furniture for the house." Section 209(2)(a) exempts from the debtor's receivership estate "[a]ll necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding and provisions for household use sufficient for six months." The "5 fishing coolers, fishing gear (lures, rod and reel, fishing lines, fishing net spear gun), .410 shotgun, TV-flat screen sony, laptop, pc, 23 ft boat, trailer, 75hp, life jackets for the boat and boating accessories" are not items that qualify as exempt under 31 F.S.M.C. 209(2)(a). Their exemption as necessary household goods is disallowed. They are part of the receivership estate and should be included in the plan to reduce the state's assets to cash for the creditors' benefit.

The 23-foot boat and its 75hp motor are, however, exempt to the "combined value not in excess

of \$2,500." 31 F.S.M.C. 209(2)(e). And the "1 nissan van" also listed as exempt in Schedule C is an exempt motor vehicle "not to exceed \$1,500 in value." 31 F.S.M.C. 209(2)(d). If the van exceeds the \$1,500 exempt valuation and the boat and motor exceed their \$2,500 exempt valuation, then they can be sold with the excess going to the creditors and the debtor keeping the exempt value.

Schedule C (although not properly filled out because the parts asking for the law providing for the exemption, value of exemption, and current value of property were left blank) is part of the original verified bankruptcy application to which the court must give credence over the unverified February 14, 2013 filing that lists some of the same properties as the property of the debtor's son, Dorian Mix. Those items, if transferred to Dorian Mix at any time since June 8, 2011 (one year before the debtor's June 8, 2012 bankruptcy filing since Dorian Mix falls within the 31 F.S.M.C. 102(7)(a)(i) definition of an insider) are voidable as preferences, 31 F.S.M.C. 205(1)(d), or as fraudulent transfers, 31 F.S.M.C. 206. The Receiver shall recover these items or their cash value from Dorian Mix if they are in his possession. 31 F.S.M.C. 207.

Accordingly, the items listed on Schedule C as pepper spray, handcuffs, batons, two-way radios and radio accessories, uniforms, boots(uniform), metal detectors, training equipment for security services, 1 Suzuki flatbed, bullet proof glass for training, 2 motorcycles for patrol purposes, 1 van to pick up employees for work, two wall lockers, 2 filing cabinets, I.D. card machine, 2 office desk, 5 fishing coolers, fishing gear (lures, rod and reel, fishing lines, fishing net spear gun), .410 shotgun, TV-flat screen sony, laptop, pc, 23 ft boat, trailer, 75hp, life jackets for the boat and boating accessories are part of the debtor's estate and are not exempt properties. 31 F.S.M.C. 209(2). The 23-foot boat and motor are exempt only to "a combined value not in excess of \$2,500," 31 F.S.M.C. 209(2)(e), and the "1 nissan van" is exempt only to "\$1,500 in value," 31 F.S.M.C. 209(2)(e).

## II.

NOW THEREFORE IT IS HEREBY ORDERED that the Receiver shall, no later than June 24, 2013, conclude his inventory of the estate's assets and assist in marshaling the assets to prevent a dissipation of those assets and that the Receiver shall also prepare and submit by June 24, 2013, a plan for the sale of the estate's non-exempt assets. IT IS FURTHER ORDERED that if Dorian Mix feels he has a claim to any of the items listed above as not exempt property, he must file a notice with the court and serve it on the creditors no later than June 17, 2013. AND IT IS FURTHER ORDERED that a copy of this order shall be served on Dorian Mix, the Receiver, the debtor, and the creditors who have appeared.

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