

In the United States Bankruptcy Court

for the Northern District of Iowa

RICHARD KEITH TURPEN and
MARCIA ANN TURPEN

Bankruptcy No. 97-02407M

Debtor(s).

Chapter 13

ORDER RE: CREDITORS' OBJECTIONS TO CLAIMS OF EXEMPTION

The matters before the court are objections to certain of debtors' claims of exemption. Objections were filed by Comprehensive Systems, Inc. (docket no. 54) and by the United States of America (docket no. 36). Hearing was held December 16, 1997 in Mason City. Gerald Wanek and David A. Morse appeared for debtors. Donna K. Webb appeared for the United States. James F. Kalkhoff appeared for Comprehensive. This is a core proceeding. 28 U.S.C. § 157(b)(2)(B).

Richard and Marcia Turpen filed their joint chapter 13 petition on August 8, 1997. Among other things, they claimed as exempt the following: three life insurance policies; household goods, furnishings and appliances having a value of \$30,000; miscellaneous wearing apparel having a value of \$2,000; zero value in a 1995 Mercedes Benz automobile having a value of \$40,000; a 1991 Ford Mustang to the extent of \$5,000, its asserted value.

Comprehensive objected to the exemption of all these items and also objected to any claim of exemption in an unscheduled pension plan. The United States objected to the claims in household goods, the automobiles and life insurance. During the hearing, the creditors withdrew their objections to the claim of exemption in the life insurance policies.

Household Goods

Debtors may each claim exempt household goods having an aggregate value of \$2,000. Iowa Code § 627.6(5). Debtors have claimed far more than \$4,000 in household goods as exempt. The creditors' objections will be sustained. If debtors amend their claims, they must itemize the articles claimed exempt and their values.

Wearing Apparel

Each debtor may claim exempt as much as \$1,000 worth of wearing apparel. Iowa Code § 627.6(1). Each has made an unitemized \$1,000 claim. Comprehensive objects to the claims to the extent the property claimed includes fur coats or items of jewelry.

The schedules reveal that the debtors are claiming exempt \$2,000 worth of wearing apparel, not including furs and jewelry. Therefore, the objection to the claims will be overruled.

Pension Plan

Debtors have not scheduled, nor claimed exempt, an interest in a pension plan. Until one does, an objection is premature. The pending objection will be overruled without prejudice to its reassertion if and when a pension plan is claimed exempt.

1991 Ford Mustang

According to the schedules, the 1991 Ford Mustang is owned by Richard Turpen. He claims in the schedules that it is worth \$5,000, and he reasserts that opinion in his testimony in this proceeding. The two-door vehicle has a V-8 engine, air conditioning, automatic transmission and a convertible top. It was purchased used. It is an LX model. Turpen says it is in fair condition. He claims it is exempt to the extent of \$5,000, its asserted value.

Comprehensive and the United States object to the claim contending that the Mustang is worth more than \$5,000. Comprehensive offered exhibit B, a page from the October 1997 edition of the NADA Blue Book. Debtor objected to the offer for the reason that the exhibit is not relevant. Debtor says the appropriate and, therefore, relevant date of valuation is August 8, 1997 when the case was filed. At the time of trial, I reserved ruling on the objection so that I could evaluate the offer in light of In re Roberts, No. 97-00855C, slip op. (Bankr. N.D. Iowa, June 18, 1997). In that proceeding, Judge Kilburg ruled that the NADA Blue Book is admissible as substantive evidence under Fed.R.Evid. 803 (17) without further foundation. Id. at 7. I find exhibit B relevant despite the fact that it provides valuation information as of October 1997. The objection is overruled. Exhibit B is admitted.

Because the debtor proposes to retain the auto in this chapter 13 case, I value the Mustang at its retail value. Considering debtor's description of the vehicle and exhibit B, I find the value of the Mustang was \$8,425 at the time of filing. Debtor Richard Turpen is entitled to claim as exempt up to \$5,000 in equity in the vehicle. Iowa Code § 627.6(9)(b); In re Smith, No. L88-01716W, slip op. at 7 (Bankr. N.D. Iowa, June 8, 1989). Turpen's claim of exemption has not exceeded the statutory allowance. The objection to the claim of exemption will, therefore, be overruled.

Mercedes Benz

Debtors have scheduled as an asset their joint interest in a 1995 Mercedes Benz automobile. It is valued by debtors at \$40,000. It and a parcel of land valued in the schedules at \$35,000 are security for a debt to First Citizens National Bank. Richard Turpen testified that he did not know the amount owed to the bank.

The Mercedes is an S class 320. It is a four-door sedan with leather interior, traction control, compact disc player, and an anti-theft system. Turpen purchased it new for \$60,000. It is in fair to good condition. For the reasons stated with regard to the Mustang, I overrule debtor's objection to the admission of the NADA Blue Book page on the Mercedes. Exhibit A is admitted. Considering Turpen's description of the vehicle and exhibit A, I find the Mercedes has a retail value of \$48,350.

Because the Mustang was owned solely by Richard, it was his interest that was claimed exempt. The Mercedes was scheduled as jointly owned. Only Marcia Turpen may claim her interest as exempt. She may claim her equity interest exempt to the extent of \$5,000. Iowa Code § 627.6(9)(b). I cannot determine from the evidence how much equity she has in the vehicle. She has claimed zero value as exempt. Whether the consequence of claiming an item exempt to the extent of zero value is the same as claiming no exemption in the item, I need not decide. The claim has not exceeded the limitation of the statute. The objection to the exemption will be overruled.

IT IS ORDERED that the objections of Comprehensive Systems, Inc. and the United State in household goods is sustained. Comprehensive's objection to the claims of exemption in wearing apparel is overruled. The objections to the claims of exemption in the 1991 Ford Mustang and the 1995 Mercedes Benz automobile are overruled. Comprehensive's objection to exemption of a pension plan is overruled without prejudice.

SO ORDERED THIS 21st DAY OF JANUARY, 1998.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U.S. mail to David Morse, U.S. Attorney, James Kalkhoff, Carol Dunbar, William Frye, Habbo Fokkena, and U.S. Trustee.