

United States Bankruptcy Court
District of Delaware

824 N. Market Street
Wilmington, DE 19801



JUDGE BRENDAN LINEHAN SHANNON

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WILMINGTON, DE 19801
(302) 252-2915

December 10, 2012

Erin K. Brignola
Cooper Levenson
Fox Run Shopping Center
30 Fox Hunt Drive
Bear, DE 19701

George L. Miller
1628 John F. Kennedy Blvd.
Suite 950
Philadelphia, PA 19103-2110

Re: Re: Daniel R. Serviss and Theresa A. Serviss
Case No. 12-11515 (BLS)

Dear Ms. Brignola & Mr. Miller:

This letter follows upon our hearing on September 27, 2012 and the letter memoranda subsequently filed by the parties in the above matter. The Joint Debtors filed this Chapter 7 case on May 11, 2012 and a section 341 meeting of creditors occurred on June 21, 2012. Thereafter, the Trustee filed an Objection to the exemption of certain property and seeking related relief on July 23, 2012, to which the Debtors responded on August 20, 2012. On August 21, the Court entered an Order discharging the Debtors. *See* Dkt. No. 14.

The Objection seeks relief in the form of an order disallowing the exemption of the Debtors' bank account and inheritance assets, and requiring the turnover of such assets to the Trustee. The Trustee also asks that the Court limit the exemption of Debtor Theresa Serviss's sole proprietorship to an allowed amount of \$0.00. Such relief is warranted, the Trustee argues, because the Debtors failed to timely provide valuations and documentation relating to these assets. In response, the Debtors filed an Amended Schedule C reflecting the distribution of inheritance property to the Debtors' disclosed bank accounts. The Debtors argue that the bank account assets are now properly documented and exempted under 10 Del. C. Section 4914(b), and that the sole proprietorship is properly valued and exempted.

At the hearing on September 27, 2012, the Trustee suggested that the assets discussed above constitute concealed assets. Following my partial ruling on the Trustee's objection allowing the Trustee to go forward with a 2004 exam without the need for a formal court order, counsel for the parties filed supplemental letter memoranda on October 4, 5, and 19.

In sum, the main issues presently before the Court are (i) the exemption of the Debtors' bank accounts which have increased in value following the distribution of funds pursuant to Debtor Theresa Serviss's inheritance, and (ii) the valuation and exemption of the same Debtor's sole proprietorship and related property. I discuss each in turn below.

First, the parties are in agreement as to the exemption of the Debtor's inheritance property under 10 Del. C. Section 4914(b). The plain language of that statute provides each debtor in a joint case with certain personal exemptions not to exceed \$25,000 for a total of \$50,000. In other words, the \$25,000 exemption applies separately to each spouse.

Counsel for the parties urge consideration of this Court's ruling concerning the exemption of inheritance property in *Pedicone*, Case No. 11-10485. By Order dated May 11, 2012, Judge Sontchi ruled that an inheritance received by one of the joint debtors in that case was property of the estate and available to the Chapter 7 trustee to administer, provided that the debtor could retain up to \$25,000 under the section 4914(b) exemption. *See* Dkt. No. 46. The Court finds that analysis applicable here. Accordingly, the inheritance property in this case must be turned over to the Trustee only to the extent that the inheritance exceeds the \$25,000 exemption available to Ms. Serviss for personal property under section 4914(b).

The parties dispute whether the Debtors' joint property must be allocated one-half to each spouse for purposes of claimed exemptions under section 4914(b). It appears to the Court that the genesis of this dispute is the Debtors' intent to allocate certain joint assets entirely to Mr. Serviss, thus using less of the section 4914(b) exemption available to Ms. Serviss and maximizing the amount of her inheritance assets that may exempted thereunder. Section 4914(b) is silent on the appropriate allocation of joint property, but the Third Circuit addresses this question in *In re Brannon*, 476 F.3d 170, 176–77 (3d Cir. 2007).¹ Applying the lesson of that case, the Court finds support for the same result here under Delaware law. *See Steigler v. Ins. Co. of N. Am.*, 384 A.2d 398, 400 (Del. Sup. Ct. 1978) (“The nature of such an estate is settled law in Delaware: thus, husband and wife are seized, not merely of equal interests, but of the whole estate during their lives,” and may act on behalf of both so long as the other spouse consents.). Moreover, the Court finds nothing in section 4914(b) or any authority cited by the Trustee suggesting that the Debtors must allocate one-half to each spouse. Accordingly, the Court will not require the Debtors to do so here.

The Trustee objects to the Debtors' submission of amended schedules reflecting the deposit of inheritance property into the Debtors' bank accounts and changes to the allocation of joint property. However, under the Bankruptcy Rules, a debtor may amend an exemption schedule at any time prior to the closing of the case without court permission. *See In re Akulova*, 407 B.R. 602, 605 (Bankr. D. Del. 2009). The general rule allows for liberal amendment of exemptions, including amendments to add property exempted from distribution. *Id.* The Trustee also requests that the Court disallow the Debtors' proposed exemption. The Court finds that the Trustee has not carried his burden with respect to the relief requested. There is clearly a tortured history to this case, but the Court has reviewed the submissions of the parties and is not satisfied that the extraordinary remedy of disallowance of exemptions is warranted here.²

Second, the record reflects that the parties are prepared to move forward with an examination of the sole proprietorship listed by Ms. Serviss in order to determine an appropriate

¹ The Third Circuit reversed a pair of Pennsylvania bankruptcy court decisions holding that property owned by the entireties could not be allocated for exemptions at a ratio other than one-half to each spouse. *See In re Brannon*, 476 F.3d 170, 176–77 (3d Cir. 2007). This result turned on the language of the exemption statute relied upon by the joint debtors and applicable state law on tenancies by the entirety. *See id.* The court cited the ability of each spouse in a tenancy by the entirety under Pennsylvania law to “act on behalf of both spouses with respect to the whole of the entireties property, so long as the other spouse does not object.” *Id.*

² The record currently developed before the Court is insufficient to support a finding, sought by the Trustee, that the Debtors have willfully concealed assets. Further, the Trustee's letter submissions also indicate the prospect of a non-dischargeability complaint filed on account of alleged concealment of inheritance or bank account assets. The Court today makes no comment with respect to such prospective proceedings.

valuation, without the need for a formal court order pursuant to Rule 2004. The Court herein authorizes and directs the parties to (i) conduct the examination, (ii) discuss the appropriate valuation, and, if necessary, (iii) arrange for filing amended schedules. The Court will hold in abeyance consideration of the parties' arguments concerning the allowance and exemption of any sole proprietorship assets and any related business assets pending the conclusion of that exercise.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brendan Linehan Shannon", written over a horizontal line.

Brendan Linehan Shannon
United States Bankruptcy Judge

BLS/jmw