



United States Bankruptcy Court
District of Delaware
824 N. Market Street
Wilmington, DE 19801

Chambers of Christopher S. Sontchi
(302) 252-2888

December 19, 2012

George L. Miller
8 Penn Center, Suite 950
1628 John F. Kennedy Blvd.
Philadelphia, P 19103

Gerry Gray
P.O. Box 549
Georgetown, DE 19947-0549

Mark Kenney
Office of the United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19899

RE: **Mark E. Swarbrick**
Case No.: 12-12338

Dear Counsel:

Before the Court is the Chapter 7 trustee's objection to Debtor's asserted exemption of an automobile. Debtor's Schedule B-25 lists five motor vehicles, including a "1957 Chevy 210 200k miles" with a current value of \$16,900. Concomitantly, under section 522(b)(3) of the Bankruptcy Code, Schedule C lists the Chevy 210 as exempt under 10 Del.C. §§ 4914(b) and (c)(2) in the amount of \$15,000.

The trustee objects to the exemption of the Chevy 210 on two grounds. First, the trustee objects to Debtor's use of 10 Del.C. § 4914(c)(2) as the basis for exempting the Chevy 210. Section 4914(c)(2) provides:

In any federal bankruptcy or state insolvency proceeding, an individual debtor ... shall be authorized to exempt from the bankruptcy or insolvency estate, in addition to the exemptions made in subsection (b) hereof and in § 4915 of this title, the following:

- (2) A vehicle and/or tools of the trade necessary for purposes of employment in an amount not to exceed \$15,000 each.

The trustee argues that for a vehicle to be eligible for exemption under subsection (c)(2) the vehicle must be “necessary for purposes of employment.” As Debtor has four other motor vehicles that he could use to commute the trustee argues that Debtor has not shown the Chevy 210 is necessary for his employment and, thus, the exemption is simply inapplicable.

Debtor responds that the Chevy 210 is, in fact, necessary for his employment as the four other vehicles are not suitable for Debtor’s commute to work: one is in the possession of his ex-wife, one has over 200,000 miles and is used by his daughter and the other two (a motorcycle and a scooter) are simply impractical. Debtor lives in lower Delaware and there is no public transportation available. Thus, the possession of a vehicle is necessary for his commute and, thus, his work. But whether the Chevy 210 is his only option is not clear on the record.

But, the factual question of whether the Chevy 210 is necessary for employment is a red herring. The trustee argues that under the statute *both* the vehicle and the tools of the trade must be necessary for employment for the exemption to be available. That is a misreading of the statute. “Necessary for purposes of employment” does not modify “vehicle” under the statute. Rather it is limited to “tools of the trade.” This reading is consistent with the general use of the term. Indeed, section 522(d)(2) and (6) of the Bankruptcy Code separately itemize “vehicles” and “tools of the trade.” Thus, Debtor may exempt one vehicle regardless of its use under section 4914(c)(2).¹ This leads to the second question, is the vehicle worth more than the claimed exemption?

The trustee’s second argument is that the Chevy 210 is a “collectible automobile” and, by implication, is almost certainly worth materially more than its stated value of \$16,900. Under Bankruptcy Rule 4003(c), the trustee “has the burden of proving that the [exemption is] not properly claimed.” While it is possible the car is indeed a classic there is an insufficient record before the Court for it to determine the fair market value of the Chevy 210. Thus, the Court will conduct an evidentiary hearing as to the vehicle’s value. That said, under Debtor’s own schedules, \$1,900 of value in excess of the exemption is available for payment to the creditors. As such, the trustee has made a *prima facie* case that the vehicle’s fair market

¹ Although Debtor lists five vehicles on his schedules he has only sought to exempt the Chevy 210 under section 4914(c)(2).

December 19, 2012

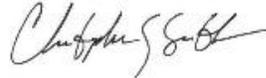
Page Three

value is in excess of the exemption and the Debtor will have the burden of proof at the hearing as to the value of the Chevy 210.

The Court will overrule the trustee's objection under section 4914(c)(2) and hold in abeyance its decision regarding the fair market value of the vehicle pending an evidentiary hearing. The trustee may very well not wish to proceed with an evidentiary hearing. The Court leaves that to the trustee's discretion. If the trustee decides to go forward the Court will schedule a hearing. If not, the objection will be overruled. The Court will provide the trustee 14 days after issuance of this letter to decide whether to proceed.

The trustee is directed to submit an order under certification of counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Christopher S. Sontchi".

Christopher S. Sontchi
United States Bankruptcy Judge