

WAGNER CHOI & VERBRUGGE

Chuck C. Choi
Allison A. Ito
745 Fort Street, Suite 1900
Honolulu, HI 96813
Telephone: (808) 533-1877
Facsimile: (808) 566-6900
cchoi@hibklaw.com

Attorneys for Richard A. Yanagi, Chapter 7 Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

WITT K. AKANA and
PAULETTE K. AKANA

Debtors.

Case No. 11-02765
(Chapter 7)

**TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION
UNDER 11 U.S.C. §§ 522(D)(1) and (5)**

Richard Yanagi, the duly appointed and acting trustee (the "Trustee") for the bankruptcy estate of Witt K. and Paulette K. Akana (collectively, the "Debtors"), by and through his undersigned attorneys, hereby objects to the Debtors' claim of exemption under 11 U.S.C. § 522(d)(1) in the amount of "100% of FMV" and 11 U.S.C. § 522(d)(5) in the amount of \$20,984.08 as indicated in Debtors' Amended Schedule C filed April 11, 2013.

I. LIMITED PROCEDURAL BACKGROUND

The Debtors filed a petition for chapter 13 relief, schedules and statement of financial affairs on October 19, 2011. *See* Docket # 1.

On November 27, 2012, the case was converted from a chapter 13 case to a chapter 7 case. *See* Docket #21.

On April 11, 2013, the Debtors filed amended Schedules B and C. *See* Docket #40.

II. OBJECTION TO EXEMPTION UNDER 11 U.S.C. § 522(d)(1)

The Trustee objects to Debtors' claim of real property exemption under 11 U.S.C. § 522(d)(1) for the following reasons:

1. Section 522(d)(1) permits a debtor to exempt up to \$21,625 in value in real property or personal property that the debtor uses as a residence. *See* 11 U.S.C. § 522(d)(1).

2. In their Amended Schedule C, the Debtors have collectively claimed an exemption under 11 U.S.C. § 522(d)(1) in the amount of "100% of [fair market value]" for their house (16-2114 Kuleana Drive, Paho, Hawaii), which the Debtors allege is valued at \$133,877.00. *See* Docket #40.

3. The most that the Debtors could exempt under 11 U.S.C. § 522(d)(1) is \$43,250.

4. The Trustee objects to the claimed exemption because it fails to set forth a specific dollar amount of the claimed exemption.

5. Further, the Trustee objects to the valuation of the residence listed in the Debtors' Amended Schedule C.

6. The Trustee's realtor has opined that the property could be sold for approximately \$189,000.

7. 11 U.S.C. § 348(f)(1)(B) clearly states that "valuations of property . . . in a chapter 13 case" shall not apply "in a case converted to a case under chapter 7."

8. The Trustee believes that the appropriate value of the house is \$189,000 and not \$133,877.

III. OBJECTION TO EXEMPTION UNDER 11 U.S.C. § 522(d)(5)

To the extent that the Court determines that the Debtors have used the entire amount permitted to be exempted under 11 U.S.C. § 522(d)(1), Trustee objects to Debtors' claims of "wildcard" exemptions for the following reasons:

9. Under Section 522(d)(5) of the Bankruptcy Code, a debtor may exempt the debtor's aggregate interest in any property, not to exceed in value \$1,150 plus up to \$10,825 of any unused amount of the exemption provided under 11 U.S.C. § 522(d)(1). *See* 11 U.S.C. § 522(d)(5).

10. Section 522(d)(1) permits a debtor to exempt up to \$21,625 in value in real property or personal property that the debtor uses as a residence. *See* 11 U.S.C. § 522(d)(1).

11. In their Schedule C, the Debtors have collectively claimed an exemption in the amount of up to the “fair market value” of their house under 11 U.S.C. § 522(d)(1). *See* Docket #8.

12. Accordingly, to the extent that the Court determines that the Debtors have used the entire amount permitted to be exempted under 11 U.S.C. § 522(d)(1), there is no unused amount of the exemption under 11 U.S.C. § 522(d)(1) that can be carried over and used towards the wildcard exemption under 11 U.S.C. § 522(d)(5).

13. Thus, the most that the Debtors could collectively exempt under 11 U.S.C. § 522(d)(1) is \$2,300.

14. In Schedule C, the Debtors have exempted \$20,984.08 under 11 U.S.C. §522(d)(5) summarized as follows:

Description of Property	Value of Claimed Exemption Under 11 U.S.C. § 522(d)(5)	Current Value of Property Without Deducting Exemption
Unimproved Land – located at 15-2713 Lalakea Street	\$ 10,270.00	\$ 10,270.00
First Hawaiian Bank – Checking Account (ending in 6524) – jointly	\$ 2,364.14	\$ 2,364.14

held with Debtors' daughter		
First Hawaiian Bank Checking Account (ending in 9028)	\$ 3,449.94	\$ 3,449.94
Loan to Joint Debtor's sister	\$ 1,400.00	\$ 1,400.00
2011 State and Federal Tax Refund	\$ 2,000.00	\$ 2,000.00
2003 Dodge Dakota	\$ 1,500.00	\$ 4,950.00
1991 Jeep Cherokee Laredo	\$ 1,775.00	\$ 1,775.00
Total	\$ 20,984.08	\$ 24,434.08

See Docket #40.

15. This amount clearly exceeds the amount permitted to be exempted under 11 U.S.C. § 522(d)(5).

16. Accordingly, the Debtors should only be able to exempt the Dodge Dakota and the Jeep Cherokee pursuant to 11 U.S.C. § 522(d)(5).

17. The Trustee respectfully requests that the claims of exemption pursuant to 11 U.S.C. § 522(d)(5) (excluding the \$1,500.00 claim for the Dodge Dakota and the \$1,775.00 claim for the Jeep Cherokee) be found to be invalid.

Dated: Honolulu, Hawaii, May 10, 2013.

/s/ Chuck C. Choi

Chuck C. Choi
Allison A. Ito

Attorneys for Richard A. Yanagi, Chapter 7 Trustee