

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE:)	
)	
LISA RASNAKE)	CASE NO. 12-71221
)	
ERNEST COBURN, JR.,)	CASE NO. 12-71189
)	
Debtors)	CHAPTER 7

JOINT MEMORANDUM DECISION

In both of these cases the Chapter 7 Debtors claimed IRA exemptions on Schedule C pursuant to 11 U.S.C. §522(b)(3)(C). Lisa Rasnake filed for Chapter 7 on June 29, 2012. On Schedule C she claimed an exemption in an IRA worth \$34,277.49 and designated 11 U.S.C. §522(b)(3)(C) where asked to “Specify Law Providing Each Exemption.” The meeting of creditors required by 11 U.S.C. §341 was held and concluded in her case on July 26, 2012. Ernest Coburn filed for Chapter 7 on June 22, 2012. On Schedule C he set forth an exemption in an IRA worth \$159,348.19 and designated 11 U.S.C. §522(b)(3)(C) as the statutory basis for such claim. In his case the meeting of creditors required by 11 U.S.C. §341 was held and concluded on July 26, 2012.

The Trustee has filed Objections to these claimed IRA exemptions. The Trustee has objected on the basis that, since Virginia has “opted out” of the federal exemption scheme through Va. Code §34-3.1, debtors can only claim the Virginia exemption for a retirement account provided in Va. Code §34-34. Debtors must claim this exemption within the time limits prescribed in Va. Code §34-17. Va. Code §34-17(A) requires debtors to claim exemptions “on or before the fifth day after the date of the meeting held pursuant to 11 U.S.C. §341, but not thereafter.” Ms. Rasnake filed an Answer to the Objection requesting that the objection of the

Trustee be overruled. Ms. Rasnake asserts that while the Code of Virginia prescribes a time limit, it does not require that reference be made to a particular Code section in order to be valid; the citation of a statutory reference on Schedule C is mere surplusage and not required by the Code of Virginia. Mr. Coburn did not file an Answer.

Both objections were set for hearing on September 19, 2012. Counsel appeared and after hearing the arguments of counsel the Court took the matters under advisement.

CONCLUSIONS OF LAW

This Court has jurisdiction of this matter by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. Determination of the validity of a Debtor's claim of exemption of property from the bankruptcy estate when challenged, as is the case here, by a duly and timely filed objection is defined as a "core" bankruptcy proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). The Court further concludes that it has constitutional authority to enter a final order upon such an objection because the determination of the extent of the bankruptcy estate and any exemptions from it is essential to the administration of the bankruptcy estate.

The Eastern District of Virginia has previously dealt with the issue presented here in the 2010 case of *In re Diaz*, 2010 Bankr. LEXIS 1944 (Bankr. E.D.Va. June 10, 2010) (Mitchell, J). That decision holds that, due to the 2005 BAPCPA amendments to the Bankruptcy Code, a debtor who is required to take state law exemptions can nevertheless elect to claim the

retirement account exemption provided by 11 U.S.C. §522(b)(3)(C).¹ The Virginia statute §34-34 and the time limitations of §34-17 are not relevant when the debtor has claimed the exemption under §522(b)(3)(C). *In re Diaz* is consonant with the House Report on the BAPCPA amendments stating, “In addition, this provision ensures that the specified retirement funds are exempt under state as well as Federal law.” H.R. Rep. No. 109-31 at 64 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 133. From the text of the House Report, it is clear that Congress intended for the federal exemption of retirement funds to apply to all states.

Collier on Bankruptcy provides that §522(b)(2) allows states to prohibit use of federal exemptions in §522(d), however the exemption of retirement funds in §522(b)(3)(C) applies even if the debtor’s state has opted out of the federal exemption scheme, as Virginia has done.² 4 *Collier on Bankruptcy* ¶ 522.02[1], at p. 522-16 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2012). Further Norton’s treatise confirms that, “The 2005 Amendments have significantly simplified the exemption of retirement funds by the addition of two new sections making such funds exempt whether the debtor chooses state or federal exemptions.” 3 *Norton Bankruptcy Law & Practice 3d* § 56:23 (2012).

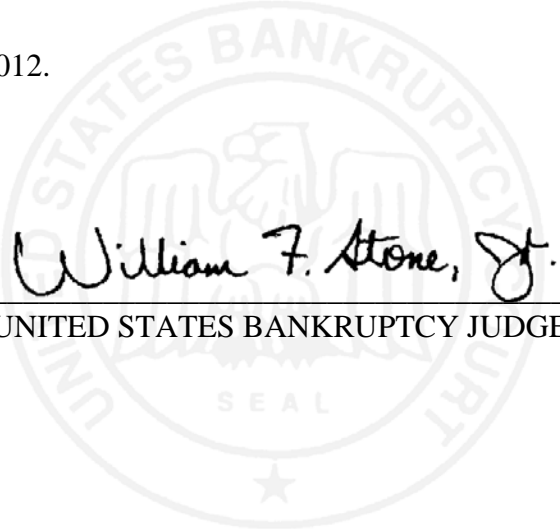
For these reasons the Court will follow and adopt the entirely persuasive analysis of Judge Mitchell’s decision in *Diaz* and overrule the Trustee’s objections to the IRA accounts

¹“Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in . . . paragraph (3) of this subsection. . . . Property listed in this paragraph is – retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.” §522(b)(3)(C).

²Va. Code Ann. §34-3.1.

exemption claims in both cases. An order to such effect will be entered contemporaneously herewith.

This 24th day of September, 2012.



William F. Stone, Jr.

UNITED STATES BANKRUPTCY JUDGE