



In addition, Michael Cone had received a written offer from the corporation to purchase his shares for \$2,500.00. That offer was made on September 15, 1999, and never withdrawn.

At the first meeting of creditors, counsel for MMG informed the Trustee that the corporation would purchase the shares for \$3,000.00. Therefore, the Trustee filed a notice of intent to sell the shares for \$3,000.00 and the debtors objected. In addition to objecting to the sale for \$3,000.00, as being an insufficient amount, the debtors amended their exemption claim to \$4,475.00, apparently on the theory that, as married debtors, they each could claim an exemption in the value of the stock.

At the hearing, the Trustee suggested that to allow the debtors to amend the claim of exemptions under the circumstances of this case would not be appropriate. It is the position of the debtors that they can amend their claim of exemptions at any time and if their property turns out to be worth more than they estimated on the petition date, they get the benefit of the alleged increase in value.

#### Issues

1. Is \$3,000.00 a fair price for the shares?
2. May the debtors increase their claim of exemptions to cover the full value obtained by the Trustee?
3. May married debtors each claim an exemption in the value of property owned by only one of the debtors?

#### Law and Discussion

According to Bankruptcy Rule of Procedure 1009 and case law, a debtor may amend his/her list of exempted property as a matter of course at any time before the close of the bankruptcy case. Fed. R. Bankr. P. 1009,; Lucius v. McLemore, 741 F.2d 125, 126 (6th Cir. 1984); Shirkey v. Leake, 715 F.2d 859, 863 (4th Cir. 1983); Doan v. Huddings, (In re Doan), 672 F.2d 831, 833 (11th Cir. 1982); In re Gershenbaum, 598 F.2d 779 (3d. Cir. 1979); Andermahr v. Barrus, (In re Andermahr), 30 B.R. 532 (9th Cir. BAP 1983). However, there is an exception to the general rule allowing amendments in a case in which the debtor has acted in bad faith or property has been

concealed. See In re Doan, 672 F.2d at 833. This position is taken in In re Hardy, 234 B.R. 94 (Bankr. W.D. Mo. 1999).

In Hardy, the debtor claimed certain exemptions under Missouri law for non-residential property in the amount of \$1,710.00. In re Hardy, 234 B.R. at 95. It was later discovered, at a Section 341 meeting, that the debtor was entitled to a tax refund and she subsequently amended her schedules to provide that the exemptions taken on the real property would instead be taken on the tax refund in the amount of \$2,536.11. Id. The Trustee objected to the debtor's action because the debtor would receive approximately \$800.00 more than the amount originally claimed as exempt. Id. The court held that: (1) absent a showing of bad faith or prejudice to the creditors, a debtor may amend a list of property claimed as exempt, as a matter of course, at any time before the case is closed, and (2) "bad faith", of a kind which may preclude a debtor from amending the list of property claimed as exempt, is generally determined from the totality of circumstances. The court reasoned that, although the Trustee's objection was timely, there was no showing of bad faith or prejudice sufficient to support a denial of the debtor's amended exemption. Id. at 96. The possibility that the amended exemption will diminish the estate or make it more difficult for the Trustee to liquidate nonexempt assets was not a convincing argument because obviously all exemptions authorized by statute would do so. As a result, the court overruled the Trustee's objection and allowed the debtor's amended exemption.

The Hardy case is distinguishable from the matter at hand. In Hardy, the debtor amended her exemptions to switch from one item (real estate) to another (tax refund). The debtor in the present case changed the value of the same item. (emphasis added) Although in Hardy the tax refund exemption claim provided the debtor more money, there was no evidence or indication that the debtor knew, when filing her schedules, the amount of her tax refund or that it would be more than the exemption in the real estate. On the other hand, Michael Cone, the owner of the stock, knew, at the time he signed his schedules, that his stock was worth more than \$500.00 and that it wasn't "worthless" as claimed. The evidence shows: (1) MMG offered to buy the stock for \$2,500.00 before the debtor's filing, (2) the debtor offered to sell the stock for amounts ranging from \$24,000.00 to \$45,000.00 before the debtor's filing, and (3) no evidence was introduced that the offer by

MMG was rescinded, void or had expired at the time he completed his schedules.

Even if the offer had been withdrawn, the debtor had a duty to inform the Trustee, and the court, either through information on the schedules, or otherwise, that within a very short period of time before the filing of the bankruptcy petition, he had information that the shares were worth more than the value he claimed on his original schedules.

A case specifically dealing with the valuation of stock by a debtor on his schedules is In re Ligon, 55 B.R. 250 (Bankr. M.D. Tenn. 1985). Although the case concerns the issue of discharge and not a claim of exemptions, the court does discuss "bad faith" and concealment of value. The debtor listed on his schedules that the valuation of his stock was unknown and that he was unable to estimate the market value of his home. The debtor also failed to reveal his remainder interest in a house. In re Ligon, 55 B.R. at 251-52. The court found that the debtor had a "reckless and cavalier disregard for the truth," and denied discharge. Id. at 253. Concerning the valuation of the stock, it was apparent from the evidence that the debtor, in years prior to the bankruptcy, listed increasing value of the stock up to \$165,000.00. Id. at 251. Additionally, the debtor had detailed information about the corporation in which the stock was held and its property value. Id. at 253. The court stated that valuing the stock as "unknown" was a "poorly conceived effort" to disguise and conceal a large asset. Id. at 253. Ultimately, the court held this behavior to be in "bad faith". See also In re Buck, 166 B.R. 106 (Bkrtcy. M.D. Tenn. 1993) for a similar discussion of erroneous valuation of assets.

Portions of the lessons from the Ligon case seem applicable to this matter. Similar to the findings in Ligon, on which a denial of discharge was based, in this case the MMG stock was marketable at a reasonably determinable value and Michael Cone knew it but, nonetheless, scheduled the stock at a low value and stated on the schedule that the stock might be "worthless". Such conduct indicates concealment on the part of the debtor and disregard for the truth. Such lack of openness and honesty about the status of the shares is bad faith.

#### Decision

Bankruptcy court judges are not required to permit debtors to increase their claimed exemption after a Trustee finds value in assets of the estate, particularly when the debtor had actual knowledge of such value, and for his own reasons, failed to bring that value to the attention of the court or the Trustee. Therefore, the debtors' objection to the sale for the amount of \$3,000.00, and the debtors' attempt to increase the claimed exemption are both denied. The value obtained by the Trustee is fair to the estate.

Even if the change in the exemption were to be allowed, the most that the debtors could claim would be \$2,500.00, the maximum allowed by Neb. Rev. Stat. § 25-1552. There is no statutory or case law authority for property that is owned by one debtor to be claimed as exempt by another. The stock in this corporation is not jointly held by the debtors. It is owned solely by Mr. Cone. His personal property exemptions are limited by the statutory language.

In conclusion, the Trustee is permitted to sell the shares of stock for \$3,000.00 to the corporation. The Trustee shall recognize the \$500.00 claimed exemption and distribute such amount to Mr. Cone at the appropriate time.

Separate journal entry to be filed.

DATED: April 12, 2000

BY THE COURT:

/s/Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

BLACKWELL, BERT	82
MYERS, RICHARD	09
SCHNEIDER, DONALD	402-727-5182

Copies mailed by the Court to:

United States Trustee

Movant (\*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: )  
)  
MICHAEL DUANE & )  
KRISTI KAY CONE, ) CASE NO. BK00-80018  
)  
\_\_\_\_\_  
DEBTOR(S) )  
) CH. 7  
) Filing No. 8, 10  
Plaintiff(s) )  
vs. ) JOURNAL ENTRY  
)  
)  
)  
\_\_\_\_\_  
Defendant(s) ) DATE: April 12, 2000  
HEARING DATE: March 28, 2000

Before a United States Bankruptcy Judge for the District of Nebraska regarding Trustee's Notice of Intent to Sell Free and Clear of Liens by Private Sale and Objection by the Debtors.

APPEARANCES

Bert Blackwell, Attorney for debtors  
Richard Myers, Trustee  
Don Schneider, Attorney for Midwest Marketing Group

IT IS ORDERED:

The Trustee is permitted to sell the shares of stock for \$3,000.00 to the corporation. The Trustee shall recognize the \$500.00 claimed exemption and distribute such amount to Mr. Cone at the appropriate time. See Memorandum entered this date.

BY THE COURT:

/s/Timothy J. Mahoney  
Timothy J. Mahoney  
Chief Judge

Copies faxed by the Court to:

BLACKWELL, BERT 82  
MYERS, RICHARD 09  
SCHNEIDER, DONALD 402-727-5182

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