FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:	)	Case No. 09-22066 (ASD)
	)	
TARA Y. LEWIS,	)	CHAPTER 7
	)	
Debtor	)	RE: Doc. I.D. No. 28

APPEARANCES:

Henry J. Kroeger, III, Esq.
50 Founders Plaza
Suite 108
East Hartford, CT 06108

Attorney for Plaintiff

Bonnie C. Mangan, Esq.
The Law Office of Bonnie C. Mangan, P.C.
Westview Office Park
1050 Sullivan Avenue, Suite A3
South Windsor, Connecticut 06074

Chapter 7 Trustee

BRIEF MEMORANDUM OF DECISION AND ORDER ON TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION

ALBERT S. DABROWSKI, Chief United States Bankruptcy Judge

I. INTRODUCTION

The instant contested matter presents a question of the applicability of the exemption for "an award under a crime victim's reparations law" provided by Section 522(d)(11)(A) of the Bankruptcy Code. The specific issue raised by the parties is whether a restitutionary payment received from the Connecticut Home Improvement Guaranty Fund

constitutes such an award. For the reasons which follow, this Court determines that the Act which created the Connecticut Home Improvement Guaranty Fund is not a "crime victim's reparations law" within the meaning of 11 U.S.C. § 522(d)(11)(A), and that any payment received from this fund is not exempt from the bankruptcy estate of the Debtor under Section 522(d)(11)(A).

II. JURISDICTION

The United States District Court for the District of Connecticut has jurisdiction over the instant proceeding by virtue of 28 U.S.C. § 1334(b); and this Court derives its authority to hear and determine this matter on reference from the District Court pursuant to 28 U.S.C. §§ 157(a), (b)(1). This is a "core proceeding" pursuant to 28 U.S.C. §§ 157(b)(2)(B).

III. PROCEDURAL AND FACTUAL BACKGROUND

The following facts are derived from the Court's judicial notice of the files and records of this bankruptcy case and/or are undisputed.

On April 8, 2008, the Debtor obtained a judgment against Steve Santilli in Hartford Superior Court for *inter alia*, conversion, in a case entitled Strobe-General Building Supply Inc. v. Steve Santilli and Tara Lewis (CV-07-5009169-S). The Debtor applied to and was awarded payment from the Connecticut Home Improvement Guaranty Fund. The Debtor received this award pursuant to Connecticut General Statutes Section 20-432(d)[1], which

[1]Connecticut General Statutes § 20-432(d) states as follows: Whenever an owner obtains a court judgment against any contractor holding a certificate or who has held a certificate under this chapter within the past two years of the effective date of entering into the contract with the owner, for loss or damages sustained by reason of performance of or offering to perform a home improvement within this state by a contractor holding a certificate under this chapter, such owner may, upon the final determination of, or expiration of time for, appeal in connection with any such judgment, apply to the

provides for awards as compensation for unpaid judgment amounts against home improvement contractors.

The Debtor commenced this bankruptcy case by filing a voluntary petition under Chapter 7 of the Bankruptcy Code on July 23, 2009. Bonnie C. Mangan (hereafter, the "Trustee") was appointed trustee of the resulting bankruptcy estate, and a meeting of creditors was held on August 26, 2009 (hereafter, the "Section 341 Meeting"). In Schedule B (Personal Property) accompanying her Petition, the Debtor disclosed a property interest in a joint savings account at New Alliance Bank with a balance of $14,000.00 (the "Account"). On Schedule C (Property Claimed as Exempt) the Debtor claimed an exemption of the entire $14,000 balance in the Account pursuant to 11 U.S.C. § 522(d)(11)(A). At the Section 341 Meeting she testified that the funds in the Account represented a restitutionary award she received from the State of Connecticut Home Improvement Guaranty Fund. The Debtor further testified that she received the award after obtaining a judgment against a home improvement contractor for conversion. A fter an

---

commissioner for an order directing payment out of said guaranty fund of the amount unpaid upon the judgment for actual damages and costs taxed by the court against the contractor, exclusive of punitive damages. The application shall be made on forms provided by the commissioner and shall be accompanied by a certified copy of the court judgment obtained against the contractor together with a notarized affidavit, signed and sworn to by the owner, affirming that: (1) He has complied with all the requirements of this subsection; (2) he has obtained a judgment stating the amount thereof and the amount owing thereon at the date of application; and (3) he has caused to be issued a writ of execution upon said judgment, and the officer executing the same has made a return showing that no bank accounts or real property of the contractor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of them or of such of them as were found, under the execution, was insufficient to satisfy the actual damage portion of the judgment or stating the amount realized and the balance remaining due on the judgment after application thereon of the amount realized, except that the requirements of this subdivision shall not apply to a judgment obtained by the owner in small claims court. A true and attested copy of said executing officer's return, when required, shall be attached to such application and affidavit. No application for an order directing payment out of the guaranty fund shall be made later than two years from the final determination of, or expiration time for, appeal of said court judgment.

initial objection by the Trustee, the Debtor amended her claim of exemption in the Account to $3,850.00. Now before the Court is the Trustee's Second Objection to the Debtor's Claim of Exemption, Doc. I.D. No. 28, objecting to the Debtor's claim of exemption on the basis that the funds in the Account do not constitute "property that is traceable to an award under a crime victim's reparation act". Section 522(d)(11)(A). A hearing on the matter was held and concluded on October22, 2009.

IV. DISCUSSION

The Debtor seeks to exempt this award under Section 522(d)(11)(A) of the Bankruptcy Code. Section 522 provides, in pertinent part,

> (b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection.
>
> (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.
>
> * * * *
>
> (d) The following property may be exempted under subsection (b)(2) of this section:
>
> * * * *
>
> (11) The debtor's right to receive, or *property that is traceable to–*
>
> (A) *an award under a crime victim's reparation law*;

11 U.S.C. § 522 (emphasis added).

Connecticut General Statutes Section 20-432, under which the Debtor received the relevant payment, was enacted as part of the Home Improvement Act (C.G.S. §§ 20-418 through 20-432) (hereafter, the "Act") . See Habetz v. Condon, 224 Conn. 231, 618 A.2d 501 (1992). A principal purpose of the Act was to create the Connecticut Home Improvement Guaranty Fund to provide payment to homeowners who are "financially

injured by registered home improvement contractors" under a home improvement contract. Hearing on H.B. 5317 Before the House Comm. on General Law, p. 38 (Conn. 1988) (statement of Comm. Mary Heslin).

> The [Act] is a remedial statute that was enacted for the purpose of providing the public with a form of consumer protection against unscrupulous home improvement contractors.... The aim of the statute is to promote understanding on the part of consumers with respect to the terms of home improvement contracts and their right to cancel such contracts so as to allow them to make informed decisions when purchasing home improvement services.

M.M. Landscaping, Inc. v. Lorant, 268 Conn. 429, 435, 845 A.2d 382 (2004) (*citing* Wright Bros. Builders, Inc. v. Doling, 247 Conn. 218, 231, 720 A.2d 235 (1998)).

The Act was not intended to compensate individuals who are victims of a crime but rather to make homeowners whole when they suffer a loss from non-performance, under-performance or shoddy construction work by a licensed home improvement contractor. In light of the purpose of the Act as reflected by its public hearing history, and its language, the Court determines that the Act (C.G.S. §§ 20-418 through 20-432), is not a "crime victim's reparations law" within the meaning of 11 U.S.C. Section 522(d)(11)(A)[2]. Consequently, the Debtor is not entitled to an exemption of the payment received from the Connecticut Home Improvement Guaranty Fund represented by funds in the Account.

V. CONCLUSION AND ORDER

In accordance with the Court having determined that the Debtor does not qualify for an exemption, pursuant to 11 U.S.C. § 522(d)(11)(A), of $3,850.00 received from the

---

[2]For a statute which appears to compensate crime victims, see generally, Connecticut General Statutes § 54-201 *et seq.* entitled "Victim Services."

Connecticut Home Improvement Guaranty Fund,

IT IS HEREBY ORDERED that the Trustee's Second Objection to the Debtor's Claim of Exemption (Doc. I.D. No. 28) is **SUSTAINED** – the Debtor's amended claim of an exemption, pursuant to Section 522(d)(11)(A), of funds in the Account in the amount of $3,850.00 is **DENIED**.

Dated: October 27, 2009

BY THE COURT

Albert S. Dabrowski
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re: Joseph Sparticus Rich **Case No.** 09-22711 asd

Debtor Joseph Sparticus Rich

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD
2009 OCT 27 AM 8:44
FILED

MOTION FOR EXEMPTION FROM ELECTRONIC FILING

I, Edward W. Gasser CT 03648 (name & bar no.) hereby apply for exemption from this court's requirement that all documents to be filed in any case or adversary proceeding on or after August 1, 2005, be submitted for filing in electronic form. I have read the instructions issued by this court for completion of this motion, and request exemption on the following ground(s):

( ) Not-Yet-Trained (in house). I have not yet received Electronic Court Filing (ECF) training. I am scheduled to attend ECF training on _____. I agree to appear on the designated date, to complete my ECF "required assignment," and to file all documents electronically no later than 15 days after the training date.

( ) Not-Yet-Trained (on-line). I have not yet received Electronic Court Filing (ECF) training. I will complete the ECF on-line training and submit my registration by _____ (date must not be more than 14 days from the filing of this motion). I agree to file all documents electronically no later than 15 days after I complete the on-line training and submit my registration.

(✓) Other. (Provide a detailed explanation of your reasons for requesting an exemption in the space below. Any additional information may be attached, but must be signed, under penalty of perjury).

Firm does not usually handle bankruptcy cases. We are just appearing in this one case.

I declare under penalty of perjury that the statements in this motion are true. I understand that if I do not complete ECF training as scheduled, or otherwise file documents in paper form without further exemption, any documents I have filed or will file in paper format may be stricken or dismissed, and I may be subject to referral by the court for disciplinary action.

Date: 10/27/09 Signature:

Print name and Bar Number: Edward W. Gasser CT 03648 Phone Number: (860) 674-8342

Address: 20 East Main St.
Avon CT 06001

Form omexecf

UNITED STATES BANKRUPTCY COURT
District of Connecticut

In Re: Joseph Sparticus Rich
Debtor

Case No.: 09–22711

ORDER ON MOTION FOR EXEMPTION FROM ELECTRONIC FILING

The foregoing Motion for Exemption is granted and the Movant is allowed to file documents in conventional format in the above named case for a period of no later than 15 days from the scheduled training date which is N/A or, if completing the on–line training, for a period of not more than 15 days from the entry date of this order.

Dated:

Albert S. Dabrowski
United States Bankruptcy Judge