

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:

TIMOTHY JOSEPH GOUMAS,

Chapter 7

Debtor

Case No. 05-21469

APPEARANCES:

John E. Hudson, Esq.
P.O. Box 2026, Torrington, CT 06790
Counsel for Debtor

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Counsel for Creditor, Robert H. Fritzinger

RULING ON CREDITOR'S OBJECTION TO
DEBTOR'S CLAIM OF EXEMPTION

KRECHEVSKY, U.S.B.J.

I.

Robert H. Fritzinger ("Fritzinger"), a creditor in the Chapter 7 bankruptcy case of Timothy Joseph Goumas ("the debtor"), on September 26, 2005, filed an objection ("the objection") to the debtor's amended claim of exemption. At the noticed hearing held on November 3, 2005, the parties agreed to file by December 1, 2005 a stipulation of facts ("the stipulation"), and memoranda of law in support of their respective positions. The following background has been culled from the timely-filed stipulation.

II.**BACKGROUND**

Fritzinger, on November 1, 2003, obtained a default judgment in the District Court of the Western District of New York against the debtor in the amount of \$311,182.16. On or about April 1, 2004, the debtor and his wife, Holly Goumas (“Holly”), sold their jointly-owned real property in New Hampshire (“the New Hampshire property”). The debtor transferred his share of the proceeds to Holly who, on April 12, 2004, purchased a residence in Avon, Connecticut (“the Avon property”) in her name only. The debtor, in November, 2004, filed in the Connecticut Superior Court a complaint for dissolution of marriage, seeking, as a property settlement, one-half of the equity in the Avon property.

Fritzinger, on April 15, 2005, filed a Connecticut state-court complaint against the debtor and Holly seeking to recover, as a fraudulent transfer, the debtor’s one-half share of the New Hampshire proceeds. On April 18, 2005, Fritzinger filed, in the Avon land records, a judgment lien and a notice of lis pendens on the Avon property, which was, at that time, under a contract of sale. To facilitate the pending sale, Fritzinger released the judgment lien and lis pendens in exchange for Holly’s agreement to pay into an escrow account, pending resolution of his fraudulent transfer suit, one-half of the net proceeds from the sale of the Avon property. Pursuant to an order of the family court in the marriage dissolution action, the Avon property was sold on April 29, 2005, and \$25,000 was paid into an escrow account, held by Fritzinger’s attorney, pending resolution of the debtor’s and Fritzinger’s claims thereto.

The debtor, on May 4, 2005, commenced a Chapter 13 bankruptcy case, which he converted, on July 21, 2005, to one under Chapter 7. John J. O'Neil, Jr., Esq. ("the trustee") became trustee of the debtor's estate. The debtor's Amended Schedule B (Personal Property), filed on September 22, 2005, listed his claim for \$25,000 in proceeds from the sale of the former marital house. In his Amended Schedule C (Exemptions), the debtor asserted an exemption in such proceeds of \$7,400, pursuant to § 522(d)(5).¹

III.

DISCUSSION

The gist of Fritzingler's objection is that the transfer of the debtor's funds to Holly to purchase the Avon property "was made fraudulently and without consideration with the intent of avoiding claims of creditors." (Objection ¶ 7), "and, therefore, [the debtor has] no possible exemption." (Id. ¶ 12).

The trustee has yet to commence an adversary proceeding, either under Bankruptcy Code § 544 or §548 to avoid and recover the alleged fraudulent transfer. The objection is not an appropriate vehicle for determining a fraudulent transfer. See Fed. R. Bankr. P. 7001 ("An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings: (1) a proceeding to recover money or property") and R. 7003 ("A civil action is commenced by filing a complaint with the

¹ 11 U.S.C. § 522 (d)(5), sometimes referred to as the wildcard exemption, permits the debtor to exempt: "The debtor's aggregate interest in any property, not to exceed in value \$975 plus up to \$9,250 of any unused amount of the [homestead] exemption provided under paragraph (1) of this subsection."

court.”). Accordingly, a ruling on the objection is deferred until an adversary proceeding to resolve the allegation of fraudulent transfer is brought.² It is

SO ORDERED.

Dated at Hartford, Connecticut, this 13th day of December, 2005.



ROBERT L. KRECHEVSKY
UNITED STATES BANKRUPTCY JUDGE

² The Trustee has also filed an objection to the debtor’s exemption claim.