

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE: § CASE NO. 06-31917-H4-7  
JIMMY SISSOM § CHAPTER 7  
DEBTOR(S) §

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SUSAN SISSOM'S RESPONSE TO TRUSTEE'S AMENDED  
OBJECTION TO EXEMPTIONS

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, Susan P. Sissom, a Defendant in Adversary Proceeding No. 06-03565 and respectfully responds in opposition to the relief requested in the "Trustee's Amended Objection to Homestead and Personal Property Exemptions under 11 U.S.C. § 522(o) and the Texas Property Code."

1. Disallowing Jimmy Sissom's exemption under 11 U.S.C. § 522(o) of the Bastrop home and the home furnishings therein does not and cannot affect Susan Sissom's homestead interest under Texas Property Code Section 41.002. Even if the Trustee's allegations were correct, Susan Sissom's homestead exemption under Texas State Law could not be affected because Texas Prop. Code § 42.004 applies to personal property.

2. The Trustee's objection is procedurally deficient. The Trustee's motion under Section 522(o) requests that Mrs. Sissom "turn over to the Trustee the Non-Exempt Homestead Interest and the Consumer Goods." The relief requested can only be granted through an adversary proceeding. Fed. R. Bankr. P. 7001(1). Therefore, the objection to exemption election should be denied, without prejudice to the Trustee filing an amended complaint in Adversary Proceeding No. 06-03565. The facts alleged in the objection to exemption election include the same operative nucleus of facts



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alleged in the adversary proceeding. Filing an amended complaint in the adversary proceeding will cause the Trustee to settle upon one alleged disposition of the Crown Financial proceeds, whereas the current alleged disposition of funds in the objection to exemption election seem to conflict with some of the alleged disposition of funds in the adversary complaint.

3. The Chapter 7 Trustee has the burden of proof by a preponderance of the evidence that exemptions are not properly claimed. *Pequeno v. Schmidt (In re Schmidt)*, Unpubl. Op. 2005 U.S. App. Lexis 3721, paragraph 15 (5th Cir. 2005); *In re Park*, 246 B.R. 837, 840 (Bankr. E.D. Tex. 2000). But, the Trustee does not present any evidence tracing the source of the funds used by Susan Sissom to purchase her Bastrop homestead, rather relies on assumptions and inferences. Mrs. Sissom purchased her Bastrop homestead with:

A \$3,500 check for earnest money;

A \$50,000 bank check dated April 18, 2006;

A \$11,540.99 bank check dated April 19, 2006; and

A promissory note for \$241,792 executed by Susan Sissom solely.

The Trustee never alleges the source of the \$3,500 earnest money contract funds, never alleges the source of the \$11,540.99 bank check and ignores the fact that the balance in the Chase account was insufficient to cover the total amount of the April 18 and April 19 checks.

4. Mrs. Sissom's testimony that she purchased the two bank checks from Chase Bank with a credit against an incoming wire transfer in the amount of \$75,426.78 is consistent with the closing documents on her Missouri City home, the closing documents on her Bastrop home, and the April 6 through May 3, 2006 Chase Bank accounts statement. Mrs. Sissom's testimony at her deposition regarding her deposits of her own separate money into her bank account, use of own cash, and her

procuring the two cashier's checks is the truth, which the Trustee does not want to accept. Regarding the Trustee's burden of proof, Mrs. Sissom's deposition testimony is at least equally credible, as the Trustee's assumptions and inferences.

5. The Trustee is ignoring the fact that the Mr. and Mrs. Sissom sold one homestead and Mrs. Sissom purchased one homestead.

6. Under the Texas Family Code, the Trustee is not entitled to a sale or possession of Mrs. Sissom's homestead, even accepting all of the Trustee's allegations of fact.

7. The Trustee's allegations regarding the source of the objected to personal property are not more likely than Mr. Sissom's and Mrs. Sissom's deposition testimony.

**WHEREFORE PREMISES CONSIDERED** Susan Sissom respectfully prays that this Court deny the relief requested in the Chapter 7 Trustee's objection to exemption election, and grant Susan Sissom such other relief as she may show herself justly entitled in equity or at law.

Respectfully submitted,

By: /s/ H. Gray Burks IV  
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#### CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2006, this Answer was served by email on Jennifer L. Huluptzok, attorney for the Chapter 7 Trustee, and by email on Craig Cowgill and Holley Hubenack attorneys for Debtor, Jimmy Sissom.

/s/ H. Gray Burks IV  
H. GRAY BURKS IV

