

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA**

In Re
THOMAS CLAUDE ADAMS,
Debtor.

Case No. 00-11591

ORDER ON OBJECTION TO CLAIM OF EXEMPTION

Greg McAtee, attorney for Albert C. Adams
Robert McDonald, attorney for Thomas C. Adams and
Granny's Old Fashioned Lemonade, Inc.
Tristan Armer, attorney for Alice Prater
Charles Baer, attorney for Internal Revenue Service
Joe Verneuille, Trustee

This matter came on for hearing on the objection to debtor's claim of exemptions. The Court has jurisdiction to hear this matter pursuant to 23 U.S.C. §157 and § 1314 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

Thomas Claude Adams, debtor in this case, filed a petition under Chapter 7 on April 20, 2000. During the course of the Chapter 7 proceeding, a creditor, Albert C. Adams, filed an adversary proceeding against the debtor, the debtor's wife, Alice Prater (who is not a debtor), and Granny's Old Fashioned Lemonade, Inc. The adversary proceeding sought to deny discharge under Section 727 and to set aside a conveyance of real property where the debtor and his wife resided. This Court entered an order on the adversary complaint on February 22, 2002. The Court takes judicial notice of its own order for purposes of the instant objection to claim of exemption. The order dated February 22, 2002 denied the debtor a discharge under 11 U.S.C. §727(a)(2)(A)(3). The Court further ordered that the April 3, 1997 transfer of the debtor's interest in the Burnham Road property, which was the home place of the debtor and his wife,

would be set aside as a fraudulent conveyance pursuant to *Alabama Code* §8-9A-4(a) and that the debtor's interest in the property would be considered property of the estate.

Subsequent to the Court having entered an order setting aside the transfer of real property, the debtor amended his bankruptcy schedules so as to amend Schedule C - Property Claimed as Exempt. The amendment sought to claim the homestead located at 14301 Burnham Road, Grand Bay, Alabama, as exempt with a stated exempt value of \$5,000 and listed the current market value of the property as \$5,000. Objections to the amended claim of exemptions were filed by the trustee, the creditor, Albert C. Adams, and the United States of America, Internal Revenue Service. The objections were set for a hearing and the parties presented oral argument before the Court.

The issue is whether the debtor can claim a homestead exemption in real property that has been set aside by the Court as a fraudulent conveyance. Under 11 U.S.C. §522(b), a debtor may exempt from his bankruptcy estate property specified in 11 U.S.C. §522(d), unless barred by state law, or any other property exempt under federal, state or local law. In its previous order, the Court found that the debtor fraudulently conveyed title to the real property to his wife, Ms. Prater, and further found that such conveyance had been concealed from the time of the conveyance through January 2000. (See page 12 of Court order in Adversary Proceeding No. 00-1162). The Court further found that any interest that the debtor has in the property would be considered property of the estate. 11 U.S.C. § 541, § 550.

11 U.S.C. §522(g) states that

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the debtor recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if -

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and (B) the debtor did not conceal such property; . . .

The facts in this case clearly indicate that the debtor does not fall within the requirements of 11 U.S.C. § 522(g). The transfer that was proven to be a fraudulent conveyance was a voluntary transfer and the Court found that the debtor concealed the transfer. See *In re Beshears*, 182 B.R. 235 (Bkrctcy. E.D. Ark. 1995); *In re Arzt*, 252 B.R. 138 (8th Cir. BAP 2000); *In re Trujillo*, 215 B.R. 200 (9th Cir. BAP 1997), unpublished disposition, 166 F.3d 1218, 1998 WL 894574 (9th Cir.). Therefore, the Court concludes that the objections to the debtor's claim of homestead exemptions are due to be SUSTAINED and the claim of homestead exemption is hereby DISALLOWED.

Dated: November 7, 2002
/s/ William S. Shulman
WILLIAM S. SHULMAN
BANKRUPTCY JUDGE