

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
CORINE GILDERSLEEVE,) Case No. 15-2946
)
Debtor.)

ORDER OVERRULING OBJECTION TO CLAIM (DOC. 181)

The chapter 7 trustee objected to the secured portion of claim no. 7 filed by creditor First Heritage Credit because the claim is “for indebtedness and other household goods which are not property of the estate.” For the reasons discussed below, the court overrules the objection without prejudice.

“The filing of a bankruptcy petition under Chapter 7 creates a bankruptcy ‘estate’ generally comprising all of the debtor’s property.” *Law v. Siegel*, 571 U.S. 415, 417 (2014) (citing Bankruptcy Code § 541(a)(1)). “The estate is placed under the control of a trustee, who is responsible for managing liquidation of the estate’s assets and distribution of the proceeds.” *Id.* The Bankruptcy “Code authorizes the debtor to ‘exempt,’ however, certain kinds of property from the estate, enabling him to retain those assets post-bankruptcy.” *Id.* “Except in particular situations specified in the Code, exempt property is not liable for the payment of any prepetition debt” *See id.* at 417-18 (quotation marks and brackets omitted).

Property of the estate remains in the estate during the pendency of the chapter 7 case unless it is disclosed and either exempted by the debtor, administered by the trustee, or abandoned by the trustee. *See* 11 U.S.C. § 554; *In re Owen*, 519 B.R. 869, 877-79 (Bankr. N.D. Ala. 2014). “The fact that property is fully encumbered, or even over-encumbered, does not exclude the property from the definition of property of the estate; inclusion of fully encumbered property within the definition of property of the estate is contemplated by the Bankruptcy Code .

...” *In re Equator Corp.*, No. 06-30414, 2007 WL 3119679, at *2 (Bankr. S.D. Tex. Oct. 22, 2007); *see also, e.g., In re Bridgeview Aerosol, LLC*, 538 B.R. 477, 506 (Bankr. N.D. Ill. 2015) (“But under the Bankruptcy Code, ‘property of the estate’ includes property that is fully encumbered by a lien.”); *In re Feinstein Family P’ship*, 247 B.R. 502, 507 (Bankr. M.D. Fla. 2000) (“It is also true that fully encumbered property is still property of the estate . . .”).

“In contrast to an abandonment of property, or an exemption of the entirety of a property, an exemption of only a fixed dollar amount of the value of a property is not an exemption of the asset itself and leaves title to the asset in the estate.” *In re Yelverton*, No. 09-00414, 2015 WL 3637440, at *13 (Bankr. D.D.C. June 10, 2015). This result is made clear by the Supreme Court’s decision in *Schwab v. Reilly*, 560 U.S. 770 (2010), in which the Court held that when a debtor claims a dollar amount of an asset exempt, and the exemption is allowed (i.e. there has been no timely objection), “title to the asset will remain with the estate pursuant to § 541, and the debtor will be guaranteed a payment in the dollar amount of the exemption.” *See id.* at 792. Here, the debtor listed a value of \$1,150.00, but only exempted the property for \$1.00 on her Schedule C. Title to the property thus remains in the estate at this juncture – regardless of whether it is encumbered by a lien of First Heritage – and the court overrules the objection insofar as the trustee argues that the property is no longer property of the estate.

However, the court’s analysis does not end here. Bankruptcy Code § 726(a) does not provide for payments of secured claims by a chapter 7 trustee; therefore, some courts hold that there is no need for a chapter 7 trustee to object to a secured claim at all. *See, e.g., In re Appling*, No. 09-62040, 2010 WL 2036793 (Bankr. N.D. Ga. Mar. 8, 2010). The general practice in this court when a chapter 7 trustee objects to a secured claim secured by property that the debtor has fully exempted or that the trustee has abandoned is to disallow the claim but give the creditor a

certain period of time (usually 30 or 60 days) to file an unsecured deficiency claim. In this particular case, then, if the trustee chooses to abandon the property, she may refile an objection requesting that the claim be disallowed with leave to file an unsecured deficiency claim. But for the time being, the court overrules the trustee's objection (doc. 181) to claim no. 7 without prejudice.

Dated: February 10, 2020


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE