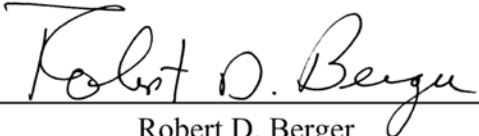


The relief described hereinbelow is **SO ORDERED**.

SIGNED this 19th day of March, 2024.




Robert D. Berger
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

JULIE ANN TERRY,

Case No. 17-21615
Chapter 7

Debtor.

**ORDER FINDING SOUTHAMPTON'S OBJECTION TO
EXEMPTION TIMELY**

This matter comes before the Court on creditor Southampton Ltd.'s objection to exemption,¹ debtor Julie Ann Terry's response,² and

¹ ECF 32. Southampton is represented by attorneys Stephen J. Torline, Peyton Healey, and Kevin G. Corcoran. This matter is a core proceeding under 28 U.S.C. § 157(b), and venue is appropriate under 28 U.S.C. § 1409(a).

² ECF 35. Terry is represented by Jonathan Becker.

Southampton's sur-reply in support of its objection.³ In its objection, Southampton argues that Terry cannot exempt the property, located at 5545 W. 203rd Terrace, Stilwell, Kansas 66085 (the "Property"), because it was purchased using fraudulently transferred funds, which belong to Southampton and other creditors.⁴ Terry points out, in her response, that Southampton's objection was untimely under Fed. R. Bankr. P. 4003(b), as it was filed one day after the 30-day deadline expired, and, therefore, Southampton cannot challenge her homestead exemption.⁵ Southampton concedes that its formal objection was untimely but claims that three previous filings: a motion to transfer venue (to Oklahoma),⁶ motion for relief from stay (to pursue Oklahoma state court litigation against Terry for fraud),⁷ and an adversary complaint (to determine dischargeability under 11 U.S.C. §§ 523(a)(4) and 727(a)(4)),⁸ timely challenged Terry's homestead exemption, and therefore preserved its ability to contest the exemption, because they were filed within the 30-day deadline under Rule 4003(b) and

³ ECF 37.

⁴ ECF 32.

⁵ ECF 35.

⁶ ECF 19.

⁷ ECF 25.

⁸ ECF 20.

“clearly put [Terry] and her counsel on notice that [it] intended to challenge Debtor’s claimed homestead exemption.”⁹

Under Rule 4003(b), to object to a debtor’s claimed exemptions under 11 U.S.C. § 522(l),¹⁰ a party in interest must file an objection within 30 days after the § 341(a) meeting concludes or the debtor amends their schedules. Fed. R. Bankr. P. 4003(b)(1). The 30-day deadline is strictly enforced, and—if a party fails to timely object—the property is exempt regardless of whether the debtor had “colorable statutory basis for claiming [the exemption].” *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643-44 (1992); *see generally Brayshaw v. Clark (In re Brayshaw)*, 110 B.R. 935, 937 (D. Colo. 1990), *aff’d*, 912 F.2d 1255 (10th Cir. 1990) (“Courts strictly enforce the 30-day time limit for filing objections”).

Although Rule 4003(b) dictates the timing of the objection, it neither requires nor discusses a particular form for such objections. *See Lee v. Field*

⁹ ECF 37 at 4. The only issue before the Court is whether Southampton’s other filings constitute objections to exemptions and thus, preserved its ability to contest Terry’s homestead exemption; it will not delve into the merits of Southampton’s objection. Additionally, if the prior pleadings are not considered objections to exemptions, Southampton asserts that, because Terry does not have legal or equitable title, she cannot claim that fraudulently transferred property is exempt. ECF 37 at 1. However, because the Court finds in favor of Southampton as to timeliness of the objection, it will not address the merits of this argument.

¹⁰ Section 522(l) provides: “The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed as exempt on such list is exempt.” 11 U.S.C. § 522(l).

(*In re Lee*), 889 F.3d 639, 642 (9th Cir. 2018) (citing *Spencer v. Siegel* (*In re Spencer*), 212 B.R. 625, 629 (9th Cir. B.A.P. 1997)). Because of this, courts will allow other filings to constitute an objection to exemption so long as the filing is timely under Rule 4003(b) and puts the debtor on notice of the objection by clearly questioning the validity of the debtor's claimed exemption.¹¹ Following this approach, courts have found adequate objections to exemptions in, for example, motions for relief from stay, lien avoidance actions, and adversary complaints.¹²

¹¹ *In re Cannon*, 568 B.R. 859, 865 (Bankr. M.D. Fla. 2016) (citing 9 COLLIER ON BANKRUPTCY ¶ 4003.03[2], 4003-12 (Alan N. Resnick & Henry J. Sommer eds. 16th ed. 2011)); *In re Betz*, 273 B.R. 313, 320 (Bankr. D. Mass. 2002) (citing cases); *In re Tatum-Charlemagne*, 368 B.R. 654, 659 (Bankr. N.D. Ohio 2006); *In re Gee*, No. 13-61483, 2014 WL 172334, at *4 (Bankr. N.D. Ohio Jan. 14, 2014); Kenneth DeCourcy Ferguson, *Repose or Not? Informal Objections to Claims of Exemptions After Taylor v. Freeland*, 50 OKLA. L. REV. 45, 54 (1997).

¹² See *Via Christi Reg'l Med. Ctr. Inc. v. Brown* (*In re Brown*), No. 06-10005, Adv. No. 06-5182, 2007 WL 2029498, at *1 n.4 (Bankr. D. Kan. July 10, 2007) (motion for stay relief that challenged debtors' title to vehicles was a sufficient objection to exemption, because the allegation that the debtors' lacked title was inconsistent with the debtors' claim of exemptions); *In re Stanley*, 143 B.R. 900, 904-05 (Bankr. W.D. Mo. 1992) (motion for stay relief that questioned whether debtor held equity in the exempt property qualified as an objection); *In re Starns*, 52 B.R. 405, 410-11 (S.D. Tex. 1985) (motion for relief from stay); *In re Betz*, 273 B.R. at 320 (creditor's objection to debtor's lien avoidance action was sufficient); *In re Lee*, 889 F.3d at 644-45 (adversary complaint that attacked the basis of the debtor's exemptions constituted an objection to exemption); *Liberty State Bank & Trust v. Grosslight* (*Matter of Grosslight*), 757 F.2d 773, 777 (6th Cir. 1985) (adversary complaint); *Feldman v. Buffenmeyer* (*In re Buffenmeyer*), 624 B.R. 766, 772 (Bankr. E.D. Pa. 2020) (adversary complaint); *c.f. In re Snyder*, 215 B.R. 477, 478 (Bankr. W.D. Okla. 1997) (objection to lien avoidance action was not sufficient because it did not question the debtor's basis for exempting property).

Under this approach, Southampton claims that its three prior filings satisfy the stated requirements and should be considered objections to exemption, enabling it to contest Terry’s homestead exemption. Indeed, all three were filed either before the § 341 meeting concluded or shortly after.¹³ However, although the other two filings, the motion to transfer and motion for relief, contain *some* allegations that *could* provide notice, the adversary complaint contains *clear* allegations that *directly* challenge Terry’s ability, or lack thereof, to exempt the Property, which is sufficient to put her on notice of the objection. Such allegations include: Terry “knowingly and fraudulently misrepresented on her Schedules that the [Property] is her own property subject to a homestead exemption when the [Property] is actually fraudulently transferred property. . . .”¹⁴ that belongs to Southampton; and the funds used to purchase the Property are “traceable to funds fraudulently transferred that belong to Southampton. . . .”¹⁵ Therefore, the complaint will

¹³ Early filings, such as filings made prior to the conclusion of the § 341 meeting, are still considered timely as they are “not contrary to the purpose of Rule 4003, which aims to encourage early determination of exemption issues.” *In re Starns*, 52 B.R. at 410 (citing *In re Earnest*, 42 B.R. 395, 401 (Bankr. D. Ore. 1984)). Thus, both the motion for transfer, filed on November 17, 2017, and the adversary complaint, filed on November 27, 2017, were timely even though they were filed before Terry’s § 341 meeting concluded on December 11, 2017. *See* ECF 19, ECF 20. The motion for relief from stay was filed on December 22, 2017, well within the 30-day deadline of Rule 4003(b). *See* ECF 25.

¹⁴ ECF 20 ¶ 30.

¹⁵ *Id.* ¶ 24.

be considered a timely objection to exemption that preserved Southampton's ability to contest Terry's homestead exemption.

For these reasons, the Court finds that Southampton's objection to exemption, through its adversary complaint, was timely. Because Terry's earlier response dealt with the timeliness issue, the Court will give Terry 30 days from the date of this order to file a substantive response to Southampton's objection to exemption.

IT IS SO ORDERED.

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