

Blaine F. Bates
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE FIDEL NARCISCO MAESTAS
and JUDY NAOMI ESPINOZA,

Debtors.

BAP No. CO-12-100

FIDEL NARCISCO MAESTAS and
JUDY NAOMI ESPINOZA,

Appellants,

Bankr. No. 12-20125
Chapter 7

v.

OLD WORLD CONSTRUCTION,
INC.,

Appellee.

OPINION*

Appeal from the United States Bankruptcy Court
for the District of Colorado

Before MICHAEL, JACOBVITZ, and MARKER¹, Bankruptcy Judges.

MARKER, Bankruptcy Judge.

Chapter 7 debtors Fidel Narcisco Maestas and Judy Naomi Espinoza claimed an exemption in an office building and storage warehouse under a Colorado statute providing protection for the “stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of

* This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

¹ Honorable Joel T. Marker, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Utah, sitting by designation.

any debtor used and kept for the purpose of carrying on any gainful occupation.”² The bankruptcy court sustained an objection to the exemption, concluding that the statute’s reach is limited to personal property. We affirm.³

I. Factual Background

Maestas and Espinoza jointly filed a Chapter 7 petition on May 16, 2012. They claimed a \$30,000 exemption in an office building and storage warehouse located in Pueblo County, Colorado (the “Property”) pursuant to § 13-54-102(1)(i).⁴ Appellee, Old World Construction, Inc. (“Old World”), objected to the claimed exemption, arguing that the statute does not apply to real property – and even if it did, the exemption is limited to \$20,000.⁵ On November 16, 2012, the bankruptcy court denied Maestas and Espinoza’s exemption claim under § 13-5-102(1)(i) “on the grounds that such exemption is limited to certain personal property used in a trade or business.”⁶ Maestas and Espinoza appeal the Order Denying Exemption.

² Colo. Rev. Stat. § 13-54-102(1)(i). All future references to “Section” and “§” are to the Colorado Revised Statutes, unless otherwise specified.

³ We heard oral argument in this case in Denver, Colorado on June 26, 2013. Tara E. Gaschler of The Gaschler Law Firm, LLC argued for appellants Fidel Narcisco Maestas and Judy Naomi Espinoza; and Karl A. Berg, Jr. of Mulliken Weiner Berg & Jolivet P.C. argued for appellee Old World Construction, Inc.

⁴ See Schedule C, *in* Appendix to Principal Brief of Appellants (“App.”) at 86. Maestas and Espinoza claimed a \$30,000 exemption presumably because they had approximately that much equity in the Property. They listed the Property’s value at \$95,042 on Schedule A, with a mortgage of \$65,433, leaving equity of \$29,609. Schedule A, *in* App. at 81.

⁵ Old World obtained a state court judgment against Maestas and Espinoza in the principal amount of \$28,030 on August 9, 2011, and recorded the judgment at the Pueblo County Clerk’s office on August 19, 2011. See Old World’s Motion for Relief from Automatic Stay at 2, *in* App. at 33. As of the petition date, accrued interest and attorney’s fees and costs brings the total balance owed to Old World to \$40,771.98.

⁶ Order Re: Objection of Creditor Old World Construction, Inc. to Property Claimed As Exempt Pursuant to C.R.S. § 13-54-102(1)(i) (“Order Denying Exemption”), *in* App. at 31.

On December 31, 2012, Old World filed a motion to require the Trustee to abandon the Property. Maestas and Espinoza did not object to the motion to abandon. On January 24, 2013, the court granted the motion for abandonment. On January 25, 2013, the Trustee filed a notice of his intent to abandon the property.

II. Appellate Jurisdiction and Standard of Review

Old World suggests that this appeal is moot because the bankruptcy court no longer has jurisdiction over the Property since it has been abandoned by the Trustee and therefore is no longer part of the bankruptcy estate.⁷ An appeal is moot if an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party.⁸ Generally, a bankruptcy court loses subject matter jurisdiction over property on its abandonment. Abandonment, however, does not divest a bankruptcy court of jurisdiction to enforce the rights of a debtor to claim an exemption under § 522 of the Bankruptcy Code.⁹ A bankruptcy court still has jurisdiction to determine core matters affecting property of the debtor abandoned from the estate, such as enforcing the automatic stay, avoiding liens, or allowing claims of exemptions under provisions of the Bankruptcy Code. Because the foreclosure process remains incomplete and effective relief may be granted by reversing the bankruptcy court and allowing the claimed exemption, the Trustee's

⁷ Appellee's Br. at 3-4. The cases cited by Old World in support of its position that this Court is without jurisdiction are distinguishable because they did not concern disputed exemption claims and the properties had been sold to third-parties.

⁸ *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (citing cases).

⁹ See *Bennett v. Commercial Credit Plan (In re Bennett)*, 13 B.R. 643 (Bankr. W.D. Mich. 1981); *In re Lafoon*, 278 B.R. 767 (Bankr. E.D. Tenn. 2002); 5 *Collier on Bankruptcy* ¶ 554.02[3], at 554-6 (Alan N. Resnick & Henry J. Sommer eds.-in-chief, 16th ed. 2011).

abandonment of the Property has not rendered this appeal moot.

We have jurisdiction to hear timely filed appeals from final orders, final collateral orders, and, with leave of court, interlocutory orders of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.¹⁰ Under this standard, we have jurisdiction over this appeal. The parties have consented to this Court’s jurisdiction by not opting to have the appeal heard by the United States District Court for the District of Colorado, and the Order Denying Exemption is a final order.¹¹

We review the bankruptcy court’s decision *de novo* as it involves the interpretation of a state statute.¹²

III. Discussion

The primary issue on appeal is whether the bankruptcy court correctly held that § 13-54-102(1)(i) is limited to personal property. Colorado has specifically opted out of the federal exemption scheme, *see* § 13-54-107. Thus, resolution of this appeal requires an analysis of Colorado law relating to exempt property.

Section 13-54-102(1)(i), Colorado’s tools-of-the-trade exemption statute, states the following property is exempt:

The stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, and business materials of any debtor used and kept for the purpose of carrying on any gainful occupation in the aggregate value of twenty thousand dollars. . . .

When interpreting a statute, the language of the statute is examined with the

¹⁰ 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-3.

¹¹ *In re Duncan*, 294 B.R. 339, 341-42 (10th Cir. BAP 2003) (citing *In re Zibman*, 268 F.3d 298, 301 (5th Cir. 2001) (“An order that grants or denies an exemption is deemed a final order for purpose of [appeal].”)).

¹² *Salve Regina Coll. v. Russell*, 499 U.S. 225, 231 (1991).

objective of giving effect to the intent of the legislature.¹³ Language is given its commonly accepted and understood meaning if the unambiguous statutory language is not defined and the result is not absurd or contrary to the legislative purpose.¹⁴ If the statute is unambiguous, we do not resort to further rules of statutory construction to determine the statute’s meaning.¹⁵ “If the language is ambiguous, however, we look to ‘legislative history, prior law, the consequences of a given construction, and the goal of the statutory scheme to ascertain the correct meaning of a statute.’”¹⁶

Maestas and Espinoza argue that the statute is ambiguous because it contains a short list of items to be protected, yet Colorado courts have expanded the statute to include more than the enumerated list of items.¹⁷ They point out that liquor, motor vehicles, and farming and ranching equipment have been exempted under this statute despite not being enumerated, citing *Weil v. Nevitt*,¹⁸ *In re Van Winkle*,¹⁹ and *In re Larson*.²⁰ They also argue that under the facts of this case, the Property constitutes “business material” used and kept by them for the specific purpose of carrying on their rental management business. They contend that the pertinent language of § 13-54-102(1)(i) speaks as to whether the

¹³ *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Bd. of Cnty. Comm’rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188, 1193 (Colo. 2004) (quoting *People v. Luther*, 58 P.3d 1013, 1015 (Colo. 2002)).

¹⁷ Appellants’ Br. at 5.

¹⁸ 31 P. 487 (Colo. 1892) (protecting liquor held by a saloon keeper).

¹⁹ 265 B.R. 247 (Bankr. D. Colo. 2001) (allowing a debtor to protect a motor vehicle).

²⁰ 260 B.R. 174 (Bankr. D. Colo. 2001) (exempting farming and ranching equipment).

property is “used and kept for the purpose of carrying on [the debtor’s] gainful occupation” and not as to the nature of the property itself. We disagree.

We find Section 13-54-102(1)(i)’s language unambiguous. The statute has two parts: (1) a list of exemptible items and (2) the requirement that the property be “used and kept for the purpose of carrying on any gainful occupation.” Thus, it requires that the property claimed exempt fall within the definition of an enumerated item, as well as that it is “used and kept for the purpose of carrying on any gainful occupation.” Maestas and Espinoza’s reliance upon *Weil*, *Van Winkle*, and *Larson* is misplaced. In each of those cases, the property at issue fell within the definition of an enumerated item: liquor held by a saloon keeper was “stock in trade”; and a motor vehicle was “equipment,” as was farming and ranching equipment.

The commonly accepted and understood meaning of each enumerated item in § 13-54-102(1)(i) includes the criterion that it be personal in nature. Black’s Law Dictionary defines “personal property” as “[a]ny movable or intangible thing that is subject to ownership and not classified as real property.”²¹ Thus, it is axiomatic that real property may not be claimed as a tool-of-the-trade. Because we conclude that § 13-54-102(1)(i) is limited to personal property, we need not address Maestas and Espinoza’s “use” argument.

IV. Conclusion

We conclude that the bankruptcy court correctly construed § 13-54-102(1)(i) as limited to personal property. Because the bankruptcy court properly disallowed Maestas and Espinoza’s claimed exemption in the Property, we need not determine whether the exemption is limited to \$20,000. For the foregoing reasons, we AFFIRM the Order Denying Exemption.

²¹ Black’s Law Dictionary 1223 (7th ed. 1999).