

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

IN RE:)	
)	
RICHARD J. LeJUERRNE,)	Case No. 02-14863
)	Chapter 7
)	
Debtor.)	
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MEMORANDUM OPINION

This case presents the interpretation and application of Kansas’ so-called “household goods” exemption law, KAN. STAT. ANN. § 60-2304(a) (1994).¹

Debtor Richard J. LeJuerrne seeks to exempt certain “old-time” automotive collectibles, memorabilia and antiques as household goods and furnishings.² Security State Bank (“Bank”) has timely objected to this exemption.³ The parties filed cross-motions for summary judgment on the Bank’s exemption objection, but the Court denied these motions because the record was incomplete with respect to debtor’s standard of living.⁴ Thereafter, the Bank and the debtor each presented evidence in support of their respective positions at an evidentiary hearing conducted on May 18, 2004. The Court has carefully considered the evidence presented that day, consisting of oral testimony and color photographs of the exempted articles, along with the affidavits of the debtor and the Bank. Pursuant to Fed. R. Civ. P. 52 and Fed. R. Bankr. P. 7052, the Court makes the following findings of

¹ Although commonly referred to as the household goods exemption, the language of the exemption statute itself makes no reference to “household goods.”

² See Dkt. 1, Schedule C.

³ Dkt. 17.

⁴ Dkt. 60 (letter ruling).

fact and conclusions of law.

Findings of Fact

Debtor resides with his wife (not a debtor here) in Wellington, Sumner County, Kansas. On summary judgment, the Court found that the debtor “owns a homestead,” but, on further review of the schedules and statement of affairs, this is apparently not the case. In his bankruptcy schedules, debtor listed no ownership of the property in question. Further, debtor lists a number of secured debts which appear to be secured by items of personal property belonging to the “Richard J. LeJUERRNE Revocable Trust,” an entity on which this Court has no evidence whatsoever. Debtor’s Schedule J reflects a rent or house payment of some \$3,385 monthly. Corner Bank, NA, has filed a motion for stay relief in the case seeking, inter alia, to foreclose a mortgage on property in Sumner County in the amount of \$400,000. The Court assumes, without deciding, that the debtor leases his homestead from the trust or some other entity and, although no mention is made on Schedule C of any homestead exemption, that he would claim whatever occupancy interest he has in the property as exempt under KAN. STAT. ANN. § 60-2301 (1994).

The debtor is 53 years old and owns a number of businesses, two of which have petitioned for relief in this Court in the past few years. Debtor worked for his father until he was about 35 years old, and then took over management of the family business interests. In 1998, he left that employment to acquire and manage Halibrand Engineering, Inc., a maker of after-market car wheels. Debtor has long been in businesses related in some manner to automobiles, motor sports components, or aircraft and has been a car enthusiast all his life. In addition to his work, debtor considers cars his hobby; he is frequently involved in rebuilding or restoring vehicles for himself or other people. The collection of items in controversy here is, in the debtor’s words, “part of what I am, what I represent . . . this is me.”

Debtor acquired the land on which the dwelling sits in 1986. When he bought the land, there was a 75-year old barn on the tract. The barn is 50 feet by 100 feet and is in good structural condition. Debtor refurbished the north end of the barn and converted a portion to living quarters, including two bedrooms, a kitchen, a bath, and other amenities. Debtor briefly occupied the barn with his family while his home was being built in 1987. The home itself covers some 4,500 square feet. Debtor lived in this home at the time of filing the bankruptcy petition.⁵ It is undisputed that the barn and house are not attached or connected in any fashion, but are separated by a 25-30 foot drive.

The southern portion of the barn, which has not been converted to living quarters, is devoted to a custombuilt and decorated setting for automotive memorabilia and collectibles that debtor claims exempt as household goods or furnishings. Debtor describes it as a “Hollywood stage setting,” which contains life sized dioramas of an old Sinclair gas station, a highway café, and a Ford garage.⁶ From the Court’s review of the photographs, these settings are enhanced by the presence of signage (some neon) advertising various automotive services, parts, gas, and the like. The Sinclair gas station portion of the barn contains a gas pump island with antique gas pumps, an air pump/hose, tires, and other objects. Also depicted in the exhibits are the café with neon signage, various car parts or automotive-related items displayed or stored, and many pictures and signs hung on the walls.

According to debtor, this is his “social and storage” area. He has used this area to host social events, including wedding receptions for his children, parties for Americruise tour participants, and general socializing with family, friends and business contacts. He says he also uses the area as a way of connecting with others in the automotive-related businesses but denies that it is used to transact

⁵ Debtor filed his chapter 7 case on September 26, 2002.

⁶ The Bank describes this portion of the barn as debtor’s private museum of automotive memorabilia.

business with his customers or his contacts in the automotive field. He conceded on examination by the Court that the items in the barn were not “necessary” per se, but are a part of “who he is.” Debtor testified that he is in the barn for some purpose almost daily, if for no other reason than to smoke.

Debtor collected the items in the barn over a period of years. The Bank has not suggested that the items were accumulated in anticipation of bankruptcy or that debtor intended to defraud his creditors by obtaining or retaining them.

In support of its summary judgment motion, the Bank presented color prints taken from a videotape made in the course of discovery. These prints were admitted into evidence at trial with the understanding that some of the pictured items are not actually property of the debtor and therefore not subject to exemption. As noted above, the exempted decorative items include a number of neon signs. Debtor asserts that these neon signs provide the light for this area of the barn and are activated by one or two light switches. Also depicted are gas pumps with globes, traffic signals and posts, non-neon advertising signs, framed pictures, road signs, and cabinets, boxes or shelves filled with automotive parts said to have been severed from some of the displayed items. While the neon signs provide the lighting for this area, the gas pumps, air hose, traffic lights or posts, and other items are inoperable. Also shown in the pictures are a Harley Davidson motorcycle that is not claimed as exempt and apparently subject to another creditor’s lien, and the body of a 1930’s vintage Ford Coupe, said to be the property of Robert Tucker.

At the time of the last financial statement provided by debtor to the Bank on July 12, 2001, debtor valued these automotive items at \$96,000.⁷ In his summary judgment papers, debtor states that

⁷ On the financial statement debtor separately classified these automotive items, described as “Other Assets (Shop Equip. & Antiques)” from his “Home Furnishings” which he valued at \$54,000 and “Home Antiques” which he valued at \$47,200.

some of these items were sold for approximately \$10,000 prior to his bankruptcy.⁸ In Schedules B and C of his bankruptcy case, debtor values the exempted items at \$32,000. These appear to be the only household furnishings debtor seeks to exempt.

Debtor has scheduled some \$7.124 million in unsecured debt along with priority tax and wage debt exceeding \$468,000. Some of these debts may have been incurred by debtor's two bankrupt businesses, AvCentral, Inc.⁹ and Halibrand Engineering Corporation,¹⁰ or may constitute claims against solvent businesses.

Applicable Law and Burden of Proof

A Kansas debtor is limited to those exemptions provided under state law; the federal exemptions found in 11 U.S.C. § 522(d) are not available.¹¹ This Court must determine whether the personal property in question is exempt under prevailing state law.¹² The Kansas courts have stated often that the exemption laws are to be liberally construed to effectuate the purpose of the exemption.¹³ However, liberal construction does not give the Court a license to enlarge the exemption or read into the exemption law provisions which are not found there.¹⁴ As the party challenging the debtor's claim

⁸ See Dkt. 56, Debtor's Affidavit dated October 20, 2003 attached in support of his opposition to the Bank's summary judgment motion.

⁹ Case No. 02-11525, chapter 7. Richard LeJuerrne was the president of AvCentral.

¹⁰ Case No. 03-16062, chapter 7 and Case No. 01-14684, chapter 11. Halibrand's chapter 11 case was dismissed on January 8, 2003. Richard LeJuerrne was listed as the president and 78% owner of Halibrand.

¹¹ See KAN. STAT. ANN. § 60-2312(a); 11 U.S.C. § 522(b).

¹² See *In re Busch*, 294 B.R. 137, 142 (10th Cir. BAP 2003), citing *Butner v. United States*, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979).

¹³ *Nohinek v. Logsdon*, 6 Kan. App.2d 342, 344, 628 P.2d 257 (1981).

¹⁴ *Id.* at 345.

of exemption, the Bank has the burden of proving that the exemption was not properly claimed.¹⁵

Analysis and Conclusions of Law

KAN. STAT. ANN. § 60-2304(a) (1994) permits a debtor to exempt the “furnishings, equipment and supplies . . . for the person . . . reasonably necessary at the principal residence” Debtor has exempted the contents of the barn under this so-called “household goods” exemption. KAN. STAT. ANN. § 60-2304(a) provides:

Every person residing in this state shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state, the following articles of personal property:

(a) *The furnishings, equipment and supplies, including food, fuel and clothing, for the person which is in the person's present possession and is reasonably necessary at the principal residence of the person for a period of one year. (Emphasis added.)*

The language of the statute makes clear that the Court must determine whether the personal property sought to be exempted are (1) furnishings in the person’s present possession; and (2) whether they are reasonably necessary at the principal residence. There is no dispute that these items are in the hands of the debtor. The Kansas legislature has removed any dollar value limitation on the exemption.¹⁶ Likewise, the Kansas legislature has not provided a laundry list of personal property that it deems as qualifying “furnishings.” The Bank does not question whether the items here are “furnishings” or “household goods.”¹⁷

¹⁵ Fed. R. Bankr. P. 4003(c); *In re Bechtoldt*, 210 B.R. 599, 601 (10th Cir. BAP 1997).

¹⁶ A dollar limit of \$500 was removed from the exemption by the Kansas Legislature in 1965. *See* 1965 KAN. SESS. LAWS ch. 357, § 1.

¹⁷ *See Seel v. Wittman*, 173 B.R. 734 (D. Kan. 1994) (Although lawn mower is generally considered to be a household good, under circumstances where lawn mower was used in a commercial lawn mowing business and depreciated as income-producing property, lawn mower was not exempt as a household good, even though debtors used the lawn mower to mow the grass at their personal residence.).

The crux of this case is whether the items are “reasonably necessary at the principal residence.” Kansas law instructs in *Nohinek v. Logsdon*,¹⁸ that “reasonably necessary” does not require the personal property to be indispensable; rather, it means that the items must be reasonably necessary to the debtor’s customary standard of living. This Court denied summary judgment because there was an inadequate factual record concerning the extent and nature of debtor’s standard of living. With the evidence presented at trial, and as found above, the debtor’s standard of living may be said to reasonably embrace the ownership and retention of artifacts related to his hobby.

Kansas state and federal district courts facing these issues have been given guidance by Kansas appellate courts, some of which dates back to the nineteenth century. A careful review of this precedent is in order. As early as 1877, in *Rasure v. Hart*, the expansive nature of Kansas exemptions was made clear by the Kansas Supreme Court.¹⁹ There the judgment debtor owned a hotel. He lived in the hotel with his family. When a creditor executed on his assets, he sought to exempt not only the furnishings he and his family used, but also those items which were available for use by boarders at the hotel. The pertinent exemption statute at that time provided that every head of a family could exempt from seizure a variety of enumerated household goods as wells as “all other household furniture not herein enumerated” not exceeding \$500 in value.²⁰ Justice Valentine commented that –

The word "furniture" is a comprehensive term, embracing about everything with which a house or anything else is or can be furnished. In this connection it evidently means, everything with which the residence of the debtor is furnished.²¹

¹⁸ 6 Kan. App. 2d 342, 628 P.2d 257 (1981).

¹⁹ 18 Kan. 340, 1877 WL 1028 (1877).

²⁰ 1877 WL 1028 at *3.

²¹ *Id.*

He added that while goods “must be so connected with the residence of the debtor that they may be denominated his household goods,” it was not necessary that the goods be “in actual and personal use all the time by members of the debtor’s family, or that they be actually necessary for such use.”

Perhaps most relevant to the case at bar are the following statements:

[The items] may be pictures hung upon the walls, or other furniture, or mere ornaments, or bedroom furniture for visitors only, or bedroom furniture, table-ware, etc., for paying guests, or boarders, etc. *In this state a man must not give credit to another on account of any supposed security furnished by his debtor's household goods, unless these household goods should be immensely valuable, or unless the creditor takes some specific lien thereon, such as a mortgage, pledge, etc.*²²

In other words, as far back as 1877, virtually anything reasonably definable as household furnishings and connected with the residence, fell within the exemption’s grasp, so long as it did not exceed \$500 in value.

The same version of the exemption statute was addressed nearly forty years later in *Harrison v. Foster*,²³ another case where the debtors operated, and the family resided, in a hotel. The interesting twist in the case was that the household goods were owned by the wife, not the head of the family. The Kansas Supreme Court again recognized the connection between the household goods and the residence, going so far as to characterize the household goods exemption as a supplement to the homestead exemption.

The most casual consideration of the statute discloses that it was intended first of all to supplement the homestead exemption. *A home which creditors could strip of the things essential to home maintenance would be a poor privilege, and consequently a minimum amount of property essential to family existence was exempted from seizure and sale for the payment of debts. . . .* If family property not belonging to the person occupying the position of head of the family could be seized and sold the means of keeping the family intact would be destroyed and the purpose

²² *Id.* (Emphasis added).

²³ 94 Kan. 284, 146 Pac. 355 (1915).

of the legislature in creating the exemption would be defeated.²⁴

The leading Kansas case on the modern day version of the household goods exemption is *Nohinek v. Logsdon*,²⁵ a decision where the Kansas Court of Appeals considered again whether Kansas exemptions should be narrowly or liberally interpreted. The court cited *Rasure* for the proposition that the goods need not be “necessary” in order to be covered by the exemption, at least as it was defined in 1877. The determination of “necessity” only entered the analysis when the modern version of the exemption statute was first enacted in 1965 and then amended in 1980.²⁶ The court reviewed authorities from other states in deciding whether to adopt a narrow or liberal construction of “necessity” and opted to follow those jurisdictions where the liberal philosophy has prevailed.²⁷ “Owing to the fact that the exemption statute is remedial and enacted for the public good, we adopt the liberal rule as the more appropriate holding.”²⁸ Trial courts were thus instructed to “make a factual determination that the exempt property is reasonable and necessary to the debtor’s customary standard of living.”²⁹

In making this holding, the court followed the reasoning of the California Court of Appeals in

²⁴ 94 Kan. at 286 (Emphasis added).

²⁵ 6 Kan. App. 2d 342, 628 P.2d 257 (1981).

²⁶ The enumeration of specific household goods and the \$500 limit was eliminated in 1965. The statute provided an exemption for “furnishings, equipment and supplies, including food, fuel and clothing, for the family for a period of one year on hand and reasonably necessary at the principal residence of the family.” *See* 1965 KAN. SESS. LAWS ch. 357, § 1. In 1980, the possession requirement that is present today was added and the reference to head of family was deleted. *See* KAN. SESS. LAWS ch. 176, § 4. The substance of the household goods exemption statute has remained unchanged in its current form since 1980.

²⁷ The narrow construction deemed household goods that were luxuries were not necessary and not exempt. The liberal construction determined the necessity of household goods based on the debtor’s customary standard of living. No showing that the goods were indispensable was required. 6 Kan. App. 2d at 344.

²⁸ 6 Kan. App. 2d at 344-45.

²⁹ *Id.* at 345.

Independence Bank v. Heller,³⁰ where the debtor, an interior decorator, had furnished his apartment with very high quality furnishings and housewares.³¹ That court stated, *inter alia* –

The word 'necessary' as used in the statute should not be given the meaning of indispensable. By its terms [the California statute] forbids the interpretation that the exemption is limited to the things the owner cannot do without. Hanging pictures, drawings, paintings, a piano, a radio, a television receiver, a shotgun and a rifle are not exempted in addition to household furniture; *they are included as household furniture, not because they are suitable for physical use but because they contribute to the pleasure and comfort of the owner and perhaps to his pride of ownership.* In the eyes of the law they are no less necessary than a chair or a rug.³²

This Court concludes that a trial court sitting in Kansas, following *Nohinek*, is constrained to consider not simply what is a bare necessity to the maintenance of a homestead, but what is consistent with the standard of living to which the debtor has become accustomed.³³

The Court does not doubt that such an interpretation runs counter to many creditors' views that debtors should be left with only that which is indispensable to their survival in the home. And, in applying this rule, courts find themselves faced with the dilemma of "how much is too much." As Bank's counsel stated at oral argument, there must certainly be a limit on that which a debtor may

³⁰ 275 Cal. App. 2d 84, 79 Cal. Rptr. 868 (1969).

³¹ 79 Cal. Rptr. at 871. (Emphasis added).

³² This Court's independent research revealed that California is the closest jurisdiction to Kansas in terms of its household goods exemption statute (Cal. Civ. Proc. Code § 704.020) and determining whether household goods are reasonably necessary. The California courts refer to a debtor's "station in life" and "manner of comfortable living to which [the debtor] has become accustomed." See *Thornton v. ITT Financial Corp. (In re Thornton)*, 91 B.R. 913, 916 (Bankr. C.D. Cal. 1988), quoting *In re Lucas*, 77 B.R. 242, 245 (9th Cir. BAP 1987).

³³ The California legislature adopted its current exemption statute, § 704.020, in 1982, to replace its former exemption statute. As the legislative committee comment to § 704.020 indicates, it continued the "reasonably necessary" standard for household goods but gave further discrete guidance for determining whether an item is reasonably necessary. Pursuant to § 704.020(b), the courts are to consider two factors: "The extent to which the particular type of item is ordinarily found in a household." and "Whether the particular item has extraordinary value as compared to the value of items of the same type found in other households." Unlike California, the Kansas legislature has not enumerated factors or given any more specific guidance for determining whether an item is "reasonably necessary." Thus, Kansas courts are left with the *Nohinek* decision and its pronouncement that whether an item of property is reasonably necessary depends on the debtor's customary standard of living.

exempt as part of his furnishings. Delineating that limit in the context of determining what is reasonably necessary to a debtor's standard of living leaves the Court with what is, to some extent, a value judgment rather than a legal determination. Yet, this Court's sense of the "limit" is that where a debtor has enjoyed a certain standard of living prior to his financial ruin, he may retain those items at his principal residence which comport with that lifestyle to the extent they are "furnishings." Under the *Rasure* definition, this embraces most personal property commonly used at the debtor's homestead. *Rasure*, *Nohinek*, and other Kansas cases make clear that the Kansas exemptions are to be construed in a humane, non-punitive manner and that almost 140 years of Kansas legislators have intended that debtors be permitted to exempt more furnishings than mere subsistence would require.

This Court declines the Bank's invitation to formulate a "use-based" rule of interpretation because such a rule is simply not indicated in any of the Kansas jurisprudence. For the same reason, the Court is reluctant to construct a mechanical "factors" test as the Bank suggests. Adoption of such tests or rules for interpreting the "reasonably necessary" standard remains the province of the legislature, not this Court. Certainly this Court can practice principled liberal construction, as required by *Nohinek*, without resort to a test with more factors than those specified in either the statute or the prevailing case law.

Here, the Bank had the burden to prove by a preponderance of the evidence that all of the items to which it objects were not necessary to maintenance of debtor's lifestyle. As to a number of these items, it succeeded. Yet, however tempting it might be for a court to strip the debtor of the remaining decorative items, which the debtor admittedly could live without, doing so would amount to judicial legislation. Instead, the Court follows *Nohinek's* lead in determining that some of the articles in debtor's barn are in fact exempt furnishings which are reasonably necessary at the debtor's principal residence.

In reaching this decision, the Court has considered not only the *Nohinek* dictates concerning the liberal construction of the exemption statute, but also the relative value of these items compared to the apparent value of the homestead. The items are worth either \$32,000 or \$96,000 according to the evidence at hand, while the home is subject to a \$450,000 mortgage, indicating its likely substantial value. There is no evidence as to the authenticity or genuineness of any of the items and even if they are worth \$96,000, this amount would only pay 20% of the *priority* claims, leaving nothing for the unsecured creditors. Moreover, the items situated in the barn located on the homestead tract only a few paces from the dwelling house, are “used” in the sense that they are viewed and enjoyed by the debtor and his guests and business associates frequently.³⁴ Both his vocations and his avocations center around collecting automotive memorabilia and restoring vehicles. Like the interior decorator in *Heller*, he entertains his business associates in this area and wishes to impress upon them his passion for things automotive. Finally, there is no suggestion that these items were obtained to shelter other assets from the reach of debtor’s creditors. Rather, they are the fruits of many years of collecting.

Kansas creditors should not develop an expectation of recovering their debts from household goods and furnishings so long as the current version of KAN. STAT. ANN. § 60-2304(a) and its judicial interpretation by the Kansas courts remain in force. Justice Valentine’s admonition that “a man must not give credit to another on account of any supposed security furnished by his debtor's household goods, unless these household goods should be immensely valuable, or unless the creditor takes some specific lien thereon . . .” remains sage advice 127 years later.

³⁴ The Court notes with some interest the legislature’s choice of words in § 60-2304(a), “at the principal residence” instead of “within the dwelling” or the like, indicating that exempt furnishings may be maintained outside the close of the debtor’s house. Presumably, such language is used to exempt personal property that is kept around the house and used to maintain it, but is not typically found inside the house, such as ladders, mowers, and lawn and gardening equipment or tools.

At the same time, Kansas debtors should not consider KAN. STAT. ANN. §60-2304(a) or today's opinion to be a *carte blanche* which entitles them to shield limitless value from their creditors' grasp. Until Kansas law evolves a different standard, this Court will continue to weigh what debtors attempt to exempt as household goods against their value and utility and the debtors' station in life.

The Bank's objection to exemption is SUSTAINED as to the following items of personal property (items as referenced in Bank's Motion for Summary Judgment, paragraph 3, Dkt. 51):

Item l, car body;

Item v, leather bags and contents;

Item w, gray Ford grill;

Item y, boxes and contents; and

Items "au" through "be," boxed items and miscellaneous vehicle parts, except the white appliance (which is a space heater).

These items are mostly automotive parts and accessories and not furnishings or household goods. They may have substantial value as parts, but they appear to add little to the furnishings or maintenance of the home. Further, it appears that some of these items are not debtor's property or that some dispute as to that conclusion remains. Finally, the boxes of items are not displayed or used in any fashion but are merely stored in the barn and therefore not exempt.³⁵

The Court finds that the balance of the decorative items listed in the Bank's Motion, to the extent they were the prepetition property of the debtor, constitute furnishings which are of a nature and value consistent with the debtor's standard of living. As to these, the Bank's objection to their

³⁵ See *Walnut Valley State Bank v. Coots*, 60 B.R. 834 (D. Kan. 1986) (Boxed items of personal property merely stored in the debtors' attic and basement are not household goods and not reasonably necessary to maintain debtors' customary standard of living.).

exemption is OVERRULED.

This shall serve as the Court's order in this case.

Dated this 9th day of July, 2004

ROBERT E. NUGENT
CHIEF BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the **Memorandum Opinion** was deposited in the United States mail, postage prepaid on this 9th day of July, 2004, to the following:

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