

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE**

In re:

Bk. No. 99-13801-JMD
Chapter 7Douglas William MacLean,
Debtor*Michael S. Askenaizer, Esq.
Chapter 7 Trustee**Grenville Clark, III, Esq.
GRAY, WENDELL & CLARK, P.C.
Attorney for Debtor*

MEMORANDUM OPINION

I. BACKGROUND

Before the Court is an objection to exemptions filed by Michael S. Askenaizer, the Chapter 7 trustee in the above-captioned bankruptcy case (the "Trustee"). The material facts relating to this proceeding are straightforward and not in dispute. Douglas William MacLean (the "Debtor") filed for bankruptcy under Chapter 7 on December 8, 1999. On his Schedule B, the Debtor listed two financial assets that form the basis of the instant dispute: a Fidelity IRA account in the amount of \$9,651.07 and an Amex Financial Advisors IRA account in the amount of \$14,170.10. On his Schedule C, the Debtor claimed the two IRAs as exempt pursuant to RSA 511:2(XIX), a newly enacted New Hampshire exemption provision which provides that certain financial assets, including IRAs, are exempt from attachment and execution without limitation. However, RSA 511:2(XIX) explicitly provides that it does not apply to debts arising on or before January 1, 1999. It is undisputed that the vast majority of the Debtor's debts arose before January 1, 1999. Accordingly, the Trustee argues that RSA 511:2(XIX), as incorporated by 11 U.S.C. § 522(b)(2) in bankruptcy,¹ does not allow the Debtor to exempt his two IRAs.

¹ Unless otherwise noted, all section references hereinafter are to Title 11 of the United States Code.

The Debtor, on the other hand, argues that pursuant to In re Weinstein, 164 F.3d 677 (1st Cir. 1999), cert. denied, 119 S.Ct. 2394 (1999), the pre-January 1, 1999 carve-out found in RSA 511:2(XIX) is preempted by § 522(c) so that he may exempt his two IRAs in full.

A hearing was held regarding the Trustee's objection on February 23, 2000. The Court took the matter under advisement pending resolution of a separate proceeding dealing with the identical RSA 511:2(XIX) issue heard earlier before Chief Judge Vaughn of this district. An opinion resolving that proceeding was subsequently issued by Judge Vaughn.

The Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

II. DISCUSSION

On February 29, 2000, Judge Vaughn issued In re Stewart, an opinion that analyzes the question of whether § 522(c), as interpreted by the Court of Appeals for the First Circuit in In re Weinstein, preempts the pre-January 1, 1999 carve-out found in RSA 511:2(XIX). See In re Stewart, Bk. No. 99-10237-MWV (Bankr. D.N.H. Feb. 29, 2000). Judge Vaughn answered the question in the affirmative by reasoning that RSA 511:2(XIX)'s pre-January 1, 1999 carve-out is analogous to the prior contracted debt exception found in the Massachusetts homestead statute that the Weinstein Court held was preempted by § 522(c). See id. At the hearing, the Trustee conceded that the material factual issues raised by the instant matter are identical to the material factual issues decided in In re Stewart.

The Court finds In re Stewart's reasoning compelling and therefore sees no reason to diverge from its holding and result. Moreover, the Court desires to promote uniformity within this district when possible. For those reasons, this Court expressly adopts In re Stewart's conclusion that § 522(c) preempts RSA 511:2(XIX)'s pre-January 1, 1999 carve-out, with the result that assets falling under the umbrella of RSA 511:2(XIX) may be exempted in full in bankruptcy without regard to whether a debtor's debts arose before

or after January 1, 1999. Accordingly, the Debtor may exempt his two IRAs in full notwithstanding the fact that most of his debts arose before January 1, 1999.

III. CONCLUSION

For the reasons stated above, the Court denies the Trustee's objection to exemptions. This opinion constitutes the Court's findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. A separate order in accordance with this opinion shall be entered.

DONE and ORDERED this 1st day of March, 2000, at Manchester, New Hampshire.

J. Michael Deasy
Bankruptcy Judge