

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

JOHN ALEXANDER COCHRANE,

Debtor.

ORDER SUSTAINING OBJECTIONS
TO DEBTOR'S CLAIM OF
EXEMPTIONS

BKY 3-93-2056

At St. Paul, Minnesota, this ____ day of January, 1994.

This Chapter 11 case came on before the Court on November 18, 1993, for a hearing on the objections of various creditors to the Debtor's claim of exemptions in certain assets. The Debtor appeared personally and by his attorney, Michael J. Iannacone. Appearances were made on behalf of the objectors as follows: S.B. McLaughlin & Company, Ltd. and Tudor Oaks Condominium Project, by William J. Fisher; Liberty State Bank, by Richard A. Glassman; Midway National Bank, by John E. Brandt; and Vaquero Investments, Inc. (joining in the other claimants' timely-filed objections), by Christopher A. Elliott. Sheridan J. Buckley appeared on behalf of Carolyn Cochrane.

Counsel made various remarks going to the Debtor's claim of exemption in various forms of personal property under color of Fla. Const. Art. X, Section 4, and in certain assets claimed by him to be held in an Individual Retirement Account, under color of authority that the Debtor identified in his Schedule C as "Florida Statute 222." The Debtor's counsel acknowledged the constitutional provision limited his client's exemption in personalty to a value of \$1,000.00. He also conceded that the Debtor's interest as payee under a promissory note in the principal balance of \$380,000.00 was not qualified for inclusion in an Individual Retirement Account under the provisions of Internal Revenue Code.

On the basis of counsel's remarks, the Court directed the Debtor and his counsel to submit a summary of the assets that he intended to subject to claims of exemption, with itemizations of various information going to the extent of the exemptions he could claim. The Debtor's counsel timely submitted this summary. Review of it reveals that the Debtor apparently wishes to change the legal basis for his claim of exemption as to certain items of personal property, from the constitutional provision to the "immunity" accorded under Florida law to an individual debtor's interest in property held in a tenancy by the entireties. By a separate order entered today, the Court has determined that the Debtor's original Schedule C did not include a claim of exclusion or exemption on the latter theory, and has ordered the Debtor to file an amended Schedule C to explicitly claim that theory of exclusion or exemption. It is clear that at least one of the Debtor's creditors

will object to any such claim and will put the Debtor to his burden of proof under Florida state law.

From the summary, it also appears that the Debtor is willing to abandon previously-asserted claims of exemption to various other assets. To evidence the Debtor's final intention as to all of his assets, he should be required to file an amended Schedule C. The Debtor, however, should not be allowed to play an extended game of "hide the ball"--that is, his broad right of amendment under Fed. R. Bankr. P. 1009(a) should be restricted so as to prevent him from re-claiming particular personalty or realty as exempt if he is unable to establish that he is entitled to a tenancy-by-the-entireties immunity for such assets.

IT IS THEREFORE ORDERED:

1. That the objection of S.B. McLaughlin & Company, Ltd. and Tudor Oaks Condominium Project to the Debtor's claim of exemption in his rights as payee under a promissory note under color of "Florida Statute 222" is sustained; that asset not being legally qualified for inclusion in an Individual Retirement Account, it shall remain property of the bankruptcy estate.

2. That the pending objections to the Debtor's general claim of exemption in all of his personal property under color of Fla. Const. Art. X, Section 4, are sustained, for the Debtor's failure to specify items of an aggregate value of \$1,000.00 or less that would be subject to that claim of exemption.

3. That, no later than February 18, 1994, the Debtor shall file an amended Schedule C, setting forth his final election as to his claims of exclusion or exemption in all of his assets. For the remaining pendency of this bankruptcy case, the Debtor shall have no right to file a further amended Schedule C.

BY THE COURT:

GREGORY F. KISHEL
U.S. BANKRUPTCY JUDGE