



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: April 10, 2015**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**DANIEL JAMES HUSSER, SR. AND
NIKI PALERMO HUSSER,**

CASE NO. 14-02084-NPO

DEBTORS.

CHAPTER 7

**ORDER SUSTAINING TRUSTEE'S
OBJECTION TO DEBTORS' AMENDED EXEMPTIONS**

This matter came before the Court for hearing on March 9, 2015 (the "Hearing") on the Trustee's Objection to Debtors' Amended Exemptions (the "Objection") (Bankr. Dkt. 59)¹ filed by Eileen N. Shaffer, the standing chapter 7 trustee (the "Trustee"), and the Response to Trustee's Objection to Debtor's [*sic*] Amended Exemptions (the "Response") (Bankr. Dkt. 62) filed by Daniel James Husser, Sr. and Niki Palermo Husser (collectively, the "Debtors") in the Bankruptcy Case. At the Hearing, the Trustee represented herself, and Robert M. Peebles, III appeared on behalf of the Debtors. The Court, being fully advised in the premises, finds as follows:

¹ Citations to the record are as follows: (1) citations to docket entries in the above-styled bankruptcy case (the "Bankruptcy Case") are cited as "(Bankr. Dkt. ___)" and (2) citations to docket entries in Adversary Proceeding No. 14-00078-NPO (the "Adversary") are cited as "(Adv. Dkt. ___)".

1. On June 30, 2014, the Debtors filed a voluntary petition for relief (the “Petition”) (Bankr. Dkt. 1) pursuant to chapter 7 of the United States Bankruptcy Code.

2. On July 14, 2014, the Debtors filed their statements and schedules regarding their income, expenses, and creditors (the “Statements and Schedules”) (Bankr. Dkt. 9). On Schedule A – Real Property (“Schedule A”) (Bankr. Dkt. 9 at 3), the Debtors did not list any property. On Schedule C – Property Claimed as Exempt (“Schedule C”) (Bankr. Dkt. 9 at 8), the Debtors likewise did not list any real property. On the Statement of Financial Affairs (“SOFA”) (Bankr. Dkt. 9 at 21-28), the Debtors listed a transfer of property described as “The West Half of the Southwest Quarter of the Northeast Quarter, and all that part of the Southeast Quarter of the Northwest Quarter lying East of the county road, containing 60 acres, more or less, in Section 25, Township 4 North, Range 5 East, Amite County, Mississippi” (the “Amite County Property”) to Husser Family, LP. The Debtors did not refer to Husser Family, LP or Husser Asset Management, LLC in any other portion of the Statements and Schedules.

3. On October 16, 2014, the Trustee initiated the Adversary by filing the Complaint to Set Aside a Fraudulent Conveyance (the “Fraudulent Conveyance Complaint”) (Adv. Dkt. 1) requesting the Court to set aside a transfer of the Amite County Property pursuant to 11 U.S.C. § 548.² In the Fraudulent Conveyance Complaint, the Trustee alleged that before the Petition was filed, the Debtors fraudulently transferred the Amite County Property to Husser Family, LP, a limited partnership in which Husser Asset Management, LLC is the general partner. (Adv. Dkt. 1, Ex. B). The Trustee further alleged that Husser Asset Management, LLC, in turn, is a limited liability company in which Daniel James Husser, Sr. is the manager/member. (Adv. Dkt. 1, Ex. A).

² Hereinafter, all code sections refer to the United States Bankruptcy Code (the “Code”) found at title 11 of the United States Code unless otherwise noted.

4. On December 31, 2014, the Court entered the Agreed Order (the “Agreed Order”) (Adv. Dkt. 12) between the Trustee and the Debtors in the Adversary. The Agreed Order provided that the Fraudulent Conveyance Complaint was granted and that the Debtors would transfer the Amite County Property to the Trustee to be liquidated and then distributed to the Debtors’ creditors in the Bankruptcy Case.

5. On January 27, 2015, the Debtors filed amended versions of Schedule A and Schedule C in the Bankruptcy Case to include property described as “Home and 60 acres located at 5964 Burris Road, Smithdale, MS 39964.”³ (Bankr. Dkt. 54). On Schedule C - Property Claimed as Exempt – Amended (Bankr. Dkt. 54 at 4), the Debtors claim a homestead exemption of \$75,000.00 on the Amite County Property pursuant to MISS. CODE ANN. § 85-3-21.

6. On February 3, 2015, the Trustee filed the Objection in the Bankruptcy Case requesting the Court to deny the Debtors’ exemption of the Amite County Property.

7. On February 24, 2015, the Debtors filed the Response arguing that the Objection should be overruled.

8. In the Objection and at the Hearing, the Trustee argued that the Amite County Property does not constitute exempt property under MISS. CODE ANN. § 85-3-21 because the Debtors did not own the Amite County Property on the day they filed the Petition. The Debtors contrarily argued in the Response and at the Hearing that the Debtors maintained enough of an ownership interest in the Amite County Property to satisfy MISS. CODE ANN. § 85-3-21 because (1) the Agreed Order that granted the Fraudulent Conveyance Complaint retroactively reverted

³ Although this description does not mirror the description of the Amite County Property provided in the SOFA or the exhibits attached to the Agreed Order, both the Trustee and the Debtors assert that this property description added to the amended versions of Schedule A and Schedule C is the Amite County Property that was the subject of the Adversary. Therefore, the Court will refer to the property the Debtors added to the amended versions of Schedule A and Schedule C as the “Amite County Property.”

ownership of the Amite County Property to the Debtors as of the date the Debtors transferred the property and (2) the Debtors have always maintained an assignable interest in the Amite County Property through their exclusive control of Husser Asset Management, LLC and Husser Family, LP.

9. Up to this point, the Trustee and the Debtors have focused their arguments on whether the Debtors are entitled to exempt the Amite County Property under MISS. CODE ANN. § 85-3-21. Neither the Trustee nor the Debtors, however, has cited the controlling authority of § 522(g), the section of the Code that governs a debtor's ability to claim an exemption of property that has been recovered by a trustee's avoiding powers. Section 522(g) provides in relevant part:

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1) (A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property

11 U.S.C. § 522(g)(1). “The purpose of section 522(g) is to prevent a debtor from claiming an exemption in recovered property which was transferred in a manner giving rise to the trustee's avoiding powers, where the transfer was voluntary or where the transfer or property interest was concealed.” *Russell v. Kuhnel (In re Kuhnel)*, 495 F.3d 1177, 1180 (10th Cir. 2007) (quoting another source); *see also Glass v. Hitt (In re Glass)*, 60 F.3d 565, 568-69 (9th Cir. 1995); *In re Bub*, No. 11-78278-reg, 2015 WL 1541310, at *3-5 (Bankr. E.D.N.Y. Apr. 1, 2015); 4 COLLIER ON BANKRUPTCY ¶ 522.08[3] (16th ed. 2015) (“When the trustee recovers property fraudulently conveyed or concealed, the debtor may not claim an exemption in the recovered property.

Indeed, the transfer need not be fraudulent to defeat the debtor's right to claim an exemption in such property. Section 522(g) provides that the transfer need only be voluntary.”).

Here, § 522(g) applies because the Trustee recovered the Amite County Property through the Adversary under § 550, which provides that a trustee may recover, for the benefit of the estate, property included in a fraudulent transfer that is avoided under § 548. 11 U.S.C. § 550; *see In re Glass*, 60 F.3d at 568 n.3; 3 NORTON BANKR. L. & PRAC. 3d § 56:30 (explaining that the inclusion of § 550 in § 522(g) “incorporate[s] the trustee’s traditional avoiding powers into subsection (g)”). Thus, the Debtors may claim an exemption of the Amite County Property only if the transfer of the property was involuntary and the Debtors did not conceal the property. 11 U.S.C. § 522(g); *In re Carroll*, No. 08-10756, 2015 WL 1519272, at *4 (Bankr. M.D. La. Mar. 30, 2015).

The Code does not explain what makes a transfer “voluntary” or “involuntary.” Bankruptcy courts, however, have generally held that a transfer is involuntary for the purpose of § 522(g), “if it occurred (1) by operation of law without consent; or, (2) if the debtor consented, but the consent was the product of fraud, material misrepresentation, coercion, duress or similar circumstances.” *In re Diamantis*, No. 13-11201, 2014 WL 1203182, at *4-6 (Bankr. N.D. Ohio Mar. 24, 2014) (collecting and examining cases). Here, the Court finds that the Debtors’ transfer of the Amite County Property was not involuntary for purposes of § 522(g) under either one of these definitions. The Debtors transferred the Amite County Property to Husser Family, LP via a warranty deed. (Bankr. Dkt. 62, Ex. B). Thus, the transfer of the property did not occur by “operation of law without consent,” such as “an execution of judgment, repossession, or garnishment.” *See Dickson v. Countrywide Home Loans (In re Dickson)*, 655 F.3d 585, 593 (6th Cir. 2011) (quoting another source). Further, Daniel James Husser, Sr. is the manager/member of

Husser Asset Management, LLC, which is the general partner of Husser Family, LP. (Adv. Dkt. 1, Exs. A & B). The Debtors' consent to the transfer, therefore, was not the product of "fraud, material misrepresentation, coercion, duress or similar circumstances." Daniel James Husser, Sr. was heavily involved on both sides of the transfer, and the Debtors stated in the Response that the transfer of the Amite County Property was "initiated and effectuated as a means of estate planning." (Bankr. Dkt. 62 at ¶ 5). For these reasons, the Court finds that the transfer of the Amite County Property was not "involuntary" for the purpose of § 522(g). Accordingly, pursuant to § 522(g), the Debtors may not claim the Amite County Property as exempt. It is unnecessary for the Court to determine whether the Debtors' interest in the Amite County Property satisfies MISS. CODE ANN. § 85-3-21. *See* 4 COLLIER ON BANKRUPTCY ¶ 522.08[1] (16th ed. 2015) ("[I]n situations in which there has been avoidance or recovery under the Code of property previously transferred or concealed by the debtor, state law, if applicable, is superseded by the Code. For example, if an exemption is claimed as to recovered property, section 522(g) prevails even if the debtor has opted for the state exemptions."). The Court finds that the Objection should be sustained.

IT IS, THEREFORE, ORDERED that the Objection hereby is sustained.

##END OF ORDER##