

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

CASE NO. 02-14039-BKC-AJC

In re:

MICHAEL J. GOLDSMITH and
DIANA G. GOLDSMITH

Debtors.

ORDER OVERRULING TRUSTEE'S OBJECTION TO EXEMPTIONS

THIS CAUSE came before the Court on August 22, 2002 upon the Trustee's *Objection to Exemptions*. The Debtors reside in Miami-Dade County Florida subject to a non-immigrant visa issued to them as religious workers. They are citizens of South Africa. The Trustee objected to the Debtors' claim of federal exemptions on the basis that the Debtors are not United States citizens and therefore are not entitled to the exemptions. The Trustee further objects to their claim of exemption because the Debtors are residents of the State of Florida, albeit not permanent residents, and Florida's Opt-Out statute prohibits residents from claiming the federal exemptions.

At the hearing, the Court took the matter under advisement and requested further submissions from the parties on their respective positions. However, on November 12, 2002, subsequent to the submission of further memoranda and proposed orders, and prior to the entry of an order on the Trustee's objection, this case was dismissed. Thus, no opinion on the exemption issue was forthcoming.

Thereafter, on December 19, 2002, the Court entered an order granting Debtors' motion to set aside and vacate the prior dismissal order and reinstated the case. Upon reinstatement, the Trustee's objection to exemptions was revived. Shortly after the case was reinstated, Chief United

States Bankruptcy Judge Robert A. Mark issued an opinion on the identical issue in the case In re Arispe, Case no. 01-42962-BKC-RAM. Following the well-reasoned opinion of Chief Judge Mark, the Court overrules the Trustee's objection.

As in Arispe, the parties do not dispute that the Debtors are eligible to be debtors in bankruptcy even though they are not United States citizens and even though they do not have their domicile in the United States or the State of Florida. The only issue before the Court is whether these Debtors, non-immigrant aliens, are entitled to the federal exemptions even though they are not domiciled in any state. The Court answers that question in the affirmative.

Because the parties stipulated that the Debtors are Florida residents, the Trustee argues that the Florida Opt-Out Statute applies and precludes the Debtors from utilizing the federal exemptions. The Debtors argue the Florida Opt-Out Statute does not apply, citing 11 U.S. C. §522(b)(1) which allows debtors to claim the federal exemptions if applicable state law does not so prohibit. As Judge Mark points out, the Florida's Opt-Out statute is inapplicable if the Debtors are not domiciled in Florida and they are therefore not prevented by state law from claiming the federal exemptions.

It is of no consequence that the Florida Opt-Out Statute uses the term "resident," because this Court does not look to Florida law under §522(b) if the Debtor is not domiciled in Florida. Furthermore, although this decision is based on statutory interpretation, not policy considerations, it is certainly worth mentioning that adopting the Trustee's view would deny this Debtor the right to any exemptions. This is not the result intended by Congress in allowing the state to opt out of the federal exemption statutes. Just because a non-immigrant alien is not domiciled in any state, he should not be treated as a "naked debtor" without the right to even exempt the clothes on his back. Congress provided an opportunity for these foreign citizens to seek relief in our bankruptcy courts. Surely Congress did not intend to deprive them of the right to exempt a portion of their assets.

Consistent with the holding in Arispe, Florida Statute §222.20 does not apply to non-

immigrant alien debtors residing, but not domiciled, in Florida. Accordingly, the Opt-Out Statute does not prevent them from utilizing the federal exemptions under 11 U.S.C. §522(b). Therefore, it is

ORDERED that the Trustee's objection to the Debtors' claimed exemptions is **OVERRULED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 23rd day of January, 2003.

A. JAY CRISTOL, JUDGE
UNITED STATES BANKRUPTCY COURT