

SIGNED.



Dated: November 14, 2005

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)	Chapter 7
)	
DAWN M. DOCKERY,)	CASE NO. 2:05-10938-RJH
)	
Debtors.)	MEMORANDUM DECISION
)	SUSTAINING DEBTOR'S CLAIMED
)	EXEMPTION FOR PROCEEDS OF
)	DAMAGES TO HOMESTEAD

Debtor has claimed an exemption for \$1,500 received from an insurance policy due to damages to the roof of Debtor's homestead.

A.R.S. § 33-1126(A)(5) provides an exemption for:

All money arising from any claim for the destruction of, or damage to, exempt property and all proceeds or benefits of any kind arising from fire or other insurance upon any property exempt under this article.

The Trustee's objection relies on the analysis of *In re Plant*, 300 B.R. 22 (D. Ariz. 2003), which held that A.R.S. § 33-1126(A)(5) applies only to proceeds arising from the destruction of, damages to or insurance upon *personal property* that is exempt pursuant to A.R.S. Title 33, Chapter 8, Article 2 "Personal Property Exemption." *Plant* concluded that that exemption did not apply to proceeds from damages to a homestead because it was limited to "any property exempt under this article." 300 B.R. at 24. It further concluded that "this article" must refer to Article 2 of Chapter 8, Title 33, "which only pertains to personal property exemptions." *Id.*

While the *Plant* opinion may be correct that "property exempt under this article" refers only to personal property exempt under Article 2, that phrase does not modify the entirety of § 1126(A)(5). Rather, it modifies only the second clause, "all proceeds or benefits of any kind

1 arising from fire or other insurance.” The first clause exempts “all money arising from any claim
2 for the destruction of, or damage to, exempt property” and is grammatically not so limited by the
3 qualification “under this article” that appears in the second clause. The first clause therefore
4 applies to all exempt property, not merely property that is exempt under Article 2. That first
5 clause therefore provides an exemption for any money arising from any claim for the destruction
6 of, or damage to, a real property homestead that is exempt under Article 1.

7 Because the proceeds at issue arose from the Debtor’s claim for damages to the
8 roof of her homestead, the proceeds are exempt pursuant to A.R.S. § 33-1126(A)(5). The
9 Trustee’s objection to that claimed exemption is therefore denied, and the Debtor’s claim of
10 exemption is sustained.

11 DATED AND SIGNED ABOVE

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13 Copy of the foregoing faxed this
14 14th day of November, 2005, to:

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