

SIGNED.

Dated: January 14, 2014



Randolph J. Haines

Randolph J. Haines, Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)	Chapter 13
)	
JOSEPH OTTO LETIZIA and)	CASE NO. 3:13-bk-09233-RJH
ZHANHONG CHEN,)	
)	ORDER SUSTAINING OBJECTION
Debtors.)	TO CLAIMED EXEMPTIONS
)	

The issue presented is whether the Debtors may exempt two vehicles, concededly utilized primarily for business purposes in a sole proprietorship, using Arizona’s personal item exemptions provided in A.R.S. § 33-1125(8). As this specific question has not been addressed in Arizona case law, the Court took this matter under advisement. The Court holds that debtors in Arizona, doing business as sole proprietors, may not exempt vehicles used primarily for business using Arizona personal item exemptions, and instead must use Arizona’s tools of the trade exemptions.

Background Facts

The Debtors are sole proprietors of a mail delivery business. They filed for Chapter 13 relief on May 30, 2013. In their petition they claimed personal exemptions for two vehicles pursuant to A.R.S. § 33-1125(8) and A.R.S. § 33-1121.01 allowing for joint debtors to each claim a vehicle exemption. The Debtors stipulate that these vehicles are trucks used exclusively in their business.

Creditor Ricky Lundy filed an objection to the Debtors’ use of Arizona’s personal vehicle exemption for vehicles they utilized exclusively for business purposes. Lundy claims the exemptions should be denied because the trucks are used in a business for profit, and A.R.S. § 33-1125 specifies that personal property claimed as exempt must be used “primarily for

1 personal, family, or household purposes.” The Debtors reply that, as the business is a sole
2 proprietorship run for the exclusive benefit of the household, they meet the requirement of the
3 language of the statute, and should be allowed to claim the vehicles as personal property
4 exemptions. The issue then is whether § 33-1125 allows for the exemption of vehicles used
5 exclusively in a sole proprietorship.

6 **Analysis**

7 Arizona’s personal property exemption statute allows for the exemption of the “equity in
8 one motor vehicle not in excess of six thousand dollars.”¹ A.R.S. § 33-1125(8). However, the
9 opening language of § 33-1125 states that the exemption applies only to property “used
10 primarily for personal, family, or household purposes.” This phrase was added to § 33-1125 in
11 a 1983 amendment. Arizona does not have case law specifically interpreting this phrase, and
12 there is no legislative history directly addressing its meaning. However the examination of the
13 amended language of § 33-1125 along with a contemporaneous amendment to Arizona’s tools
14 of the trade exemption statute, § 33-1130, helps explain the legislature’s intent behind the
15 specific phrase.

16 Prior to its 1983 amendments, § 33-1125, titled “Personal items,” began: “The following
17 property of a debtor shall be exempt from process.” The statute did not include a motor vehicle
18 exemption. Section 33-1130, titled “Tools and equipment used in a commercial activity, trade,
19 business, or profession,” stated that the “tools of a mechanic or artisan necessary to carry on his
20 or her trade” were exempt, as well as the “instruments, books and office furniture of any . . .
21 professional, tradesman or artisan.” The statute did allow for the exemption of one motor
22 vehicle.

23 In 1983, the opening language of § 33-1125 was amended to read: “The following
24 property of a debtor *used primarily for personal, family, or household purposes* shall be exempt
25

26 ¹ The six thousand dollar amount here is taken from the language of the statute following its 2013
27 amendment. The Debtors filed their case prior to the amendment, when the statute allowed for a
28 five thousand dollar vehicle exemption. However, the amount of the allowed exemption is not at
issue in this case.

1 from process.” (Emphasis added to new language). The legislature also added a vehicle
2 exemption to the list of such exempt personal items.

3 Section 33-1130 was amended in 1983 to include as exempt tools and equipment of a
4 debtor “primarily used in, and necessary to carry on, the commercial activity, trade, business or
5 profession of the debtor or the debtor’s spouse.” More significantly, the legislature added
6 language specifying that “tools” for the purposes of § 33-1130, “do not include a motor vehicle
7 primarily used by a debtor for personal, family or household purposes such as transportation to
8 and from the debtor’s place of employment,” and removed the separate motor vehicle
9 exemption from the statute.

10 In interpreting the present forms of both § 33-1125 and § 33-1130, and how they affect
11 the Debtors’ claimed personal vehicle exemptions, it is necessary to look to the Arizona
12 Legislature’s intent behind the 1983 amendments. It is necessary to consider intent because the
13 “personal” purposes limitation in § 33-1125 does not expressly preclude use in a debtor’s
14 personal dba (while the “personal” use exclusion in § 33-1130 does preclude a tool of the trade
15 from also being exempt as a “personal” item). “The primary principle of statutory interpretation
16 is to determine and give effect to legislative intent.” *Wyatt v. Wehmuller*, 167 Ariz 281, 284,
17 806 P.2d 870 (1991). To determine the legislature’s intent, in addition to the language of the
18 statute itself, factors for consideration include the context of the statute, the subject matter, its
19 historical background, and its spirit and purpose. *Id.*

20 When the language of § 33-1125 is examined in conjunction with § 33-1130, it is clear
21 what the Arizona Legislature intended by amending them in 1983. The intent was to allow a
22 motor vehicle to be exempt as a personal item under § 1125 only if it is used for personal or
23 household purposes, as distinct from trade or business purposes. And if a motor vehicle is
24 primarily used for business purposes, then it may only be claimed as exempt under § 1130,
25 regardless of how the business is owned.

26 IT IS THEREFORE ORDERED sustaining the objection to the claimed exemption of the
27 trucks under § 1125.

28 DATED AND SIGNED ABOVE