

SO ORDERED.

SIGNED this 26th day of January, 2015.



Benjamin A. Kahn

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)	
)	
Randy Floyd Nevils,)	Case No. 12-81688
)	
Debtor.)	
)	
_____)	

ORDER DENYING MOTION BY TRUSTEE TO MODIFY PLAN

This case came before the Court on October 23, 2014, for hearing on the Motion by the Trustee to Modify Plan [Doc. # 32] (the “Motion to Modify Plan”). At the hearing, Benjamin Lovell appeared on behalf of the Trustee, Koury Hicks appeared as counsel for Randy Floyd Nevils (the “Debtor”), and Robert E. Price appeared on behalf of the Bankruptcy Administrator. Following the conclusion of the hearing, the Court took the matter under advisement and allowed the parties to file supplemental memorandum of law addressing the relationship between 11 U.S.C. § 522(c) and 11 U.S.C. § 1329(b). Having considered the record, including the Bankruptcy Administrator’s Joinder in the Trustee’s Motion [Doc. # 39] and all briefs/memoranda of law filed by the parties [Doc. #'s 41, 42, and 43], as well as arguments of counsel, the Court finds that the Motion should be denied for the reasons which follow.

FACTS

The Debtor filed a voluntary petition under Chapter 13 of the United States Bankruptcy Code on November 9, 2012. On February 26, 2013, the Court entered an Order Confirming Chapter 13 Plan [Doc. # 17], providing for sixty monthly payments of \$1,543 and no distribution to unsecured creditors. At the time of filing, the Debtor held a worker's compensation claim (the "Claim") under Chapter 97 of the North Carolina General Statutes, arising from a pre-petition, work-related injury. While the Debtor did not originally list the Claim in his schedules, he filed amended documents with the Court in December of 2012 to list and exempt the Claim under North Carolina General Statute § 97-21, estimating a recovery value of the Claim in the amount of \$8,360 [Doc. #'s 12 and 13].

Over seven months later, following lengthy negotiations, the Debtor finalized settlement of the Claim in the total amount of \$235,000, and the North Carolina Industrial Commission entered an Order Approving Agreement for Final Compromise Settlement and Release [Doc. # 25, Exhibit B] (the "Award"). Under the terms of the Award, the Debtor agreed to release his employer from liability for injuries relating to an occupational disease which arose in 2011 in exchange for net proceeds in the amount of approximately \$176,250¹; \$5,000 for future medical expenses and \$171,250 as an effective monthly disability benefit of \$568.56 per month for 25.1 years.² (Award p. 5). The Debtor filed the Award with the Court, along with an Amended Schedule B [Doc. # 22] and an amended claim for property exemptions [Doc. # 23], asserting an exemption in the gross \$235,000. Without ruling on the propriety of the Debtor's amended exemption, the Court entered an order approving the Award on October 3, 2014. The Trustee

¹ This net figure incorporates a deduction of \$58,750 in attorneys' fees.

² The Award established 25.1 years as the Debtor's life expectancy as measured under North Carolina General Statute § 8-46.

filed an objection [Doc. # 28] to the Debtor's amended exemption, and at a hearing on October 9, 2014, the Court overruled the Trustee's objection under the plain language of North Carolina General Statutes §§ 1C-1601 (f) and 97-21.³ This ruling was made without prejudice to the Motion to Modify Plan currently before the Court.

In the Motion to Modify Plan, the Trustee requests an increase in the Debtor's plan payments to provide a 100% dividend to unsecured creditors. The Trustee argues that even though the Award has been allowed as an exemption, the Debtor's receipt of the Award constitutes an unforeseen and significant change in financial circumstances which necessitates modification of the Debtor's plan under 11 U.S.C. § 1329. The Trustee further argues that the Award should be considered in calculating the Debtor's projected disposable income for purposes of 11 U.S.C. 1325(b), which would require an increase in the Debtor's plan payments. This increase would result in paying all claims in full. The Debtor objects to this proposed modification, arguing (1) that the plan language of 11 U.S.C. § 522(c) dictates that an exempt asset cannot be utilized to satisfy a pre-petition debt, and, (2) that even if the Debtor's exemption is considered "disposable income" under 11 U.S.C. § 1325(b), the disposable income test does not apply to modifications of plans under 11 U.S.C. § 1329. The Court concludes that it may not interpret the Code in such a way to indirectly require what the Code directly prohibits. Therefore, the Trustee's Motion to modify the Debtor's plan will be denied.

DISCUSSION

Section 522(c) provides in relevant part that "property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under

³ See *In re Hare*, 32 B.R. 16 (Bankr. E.D.N.C. 1983) (discussing propriety of retirement benefit exemption under prior version of North Carolina General Statutes § 1C-1601 (f)). An order effectuating the terms of this Court's October 9, 2014 ruling was entered on October 16, 2014 [Doc. # 37].

section 502 of this title as if such debt had arisen before the commencement of the case....” 11 U.S.C. § 522(c). The United States Bankruptcy Court for the Eastern District of North Carolina recently considered whether a debtor must include exempt personal injury proceeds in “disposable income” for purposes of 11 U.S.C. §§ 1325(b) and 1329. In re Daniels, No. 11-08830-8-RRD, 2013 WL 365107, at *3 (Bankr. E.D.N.C. Jan. 29, 2013). In Daniels, the court collected cases considering this issue and concluded that property that is exempt under § 522(c) may not be treated as “disposable income.” Id. at *3 (citing In re Graham, 258 B.R. 286, 291 (Bankr. M.D.Fla. 2001), for the proposition that “[t]he clear language of [§ 522(c)] protects exempt property, regardless of form, from prepetition debts...[t]his express limitation cannot be ignored for purposes of defining disposable income under [§ 1325(b)]”).

This Court agrees with the conclusion and rationale set forth in Daniels and the consistent cases cited therein. Although fair distinctions could be made regarding the purpose between protecting the entirety of workers compensation awards from wholesale post-judgment execution under North Carolina law on the one hand, and the exclusion from “disposable income” under § 1325 of the imputed income embodied in any such awards in the Chapter 13 context on the other hand, such distinctions and equities are for Congress and/or the North Carolina General Assembly to effectuate, and not this Court. Congress has ceded to the states the ability to opt out of the exemptions provided under the United States Bankruptcy Code, see 11 U.S.C. § 522(b)(2), and North Carolina has accepted Congress’ invitation by opting out of the federal exemption scheme. See N.C. Gen. Stat. § 1C-1601(f). As previously ruled by this Court, the entirety of the

Award constitutes exempt property. This Court cannot equitably carve exceptions to these exemptions, nor can it ignore the plain language and mandate of 11 U.S.C. § 522(c).⁴

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to Modify Plan is DENIED.

[END OF DOCUMENT]

⁴ Law v. Siegel, -- U.S. --, 134 S.Ct. 1188 (2014) supports this conclusion. In Siegel, the Court noted that although Section 105 confers the authority for the bankruptcy courts to “carry out” the provisions of the Code, courts may not do under section 105 that which other provisions of the Code do not authorize. Id. at 1194-95.