

United States Bankruptcy Court

EASTERN DISTRICT OF CALIFORNIA

United States Courthouse

501 I Street, Suite 3-200

Sacramento, California 95814

15-BK-E

CHRISTOPHER M. KLEIN
CHIEF JUDGE

916-930-4510

July 10, 2015

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

Re: Proposal to Amend Federal Rule of Bankruptcy Procedure
4003(c).

Dear Committee:

The attached decision, In re Tallerico, ___ B.R. ___, 2015 Westlaw 4077219 (Bankr. E.D. Cal. 2015), explains why Federal Rule of Bankruptcy Procedure 4003(c) ("Exemptions - Burden of Proof") contravenes the Bankruptcy Rules Enabling Act, 28 U.S.C. § 2075, with respect to claims of exemption that are made under state law that does not allocate the burden of proof to the objector. Hence, the rule needs to be either amended or abolished.

Rule 4003(c) provides that:

(c) Burden of Proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

Fed. R. Bankr. P. 4003(c).

The basic problem is that no bankruptcy rule may "abridge, enlarge, or modify any substantive right." 28 U.S.C. § 2075. The Supreme Court held in Raleigh v. Illinois Dep't of Revenue, 530 U.S. 15, 20-21 (2000), that burden of proof is substantive, not procedural. It follows that the allocation of burden of proof embodied in Rule 4003(c) is substantive.

The Tallerico decision explores the roots of Rule 4003(c) and of its antecedent, former Bankruptcy Rule 403(c), and establishes that the underlying premise at the times of their

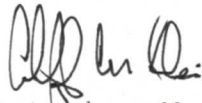
inception was that burden of proof was procedural in nature. Raleigh destroyed that premise.

While the holding of Tallerico is limited to the invalidity of Rule 4003(c) to claims of exemption made under state law, it is also doubtful that Rule 4003(c) is valid with respect to federal exemptions claimed under 11 U.S.C. § 522(d). Even though the Bankruptcy Code does not prescribe a burden of proof regarding exemptions, the fact remains that, after Raleigh, Rule 4003(c) addresses a substantive right.

While it may be beyond cavil that the exemption-by-default provision of 11 U.S.C. § 522(1), as enforced by the Supreme Court in Taylor v. Freeland & Kronz, 503 U.S. 638, 643-45 (1992), operates to create a presumption in favor of a claimed exemption, it does not follow that § 522(1) dictates a substantive burden of proof in the event of an objection to the exemption.

Two general alternatives for correction suggest themselves. First, carve out an exception to Rule 4003(c) for exemptions as to which state law provides the rule of decision. Second, abolish Rule 4003(c).

Very truly yours,



Christopher M. Klein
Chief Judge

cc: Hon. Sandra Segal Ikuta

Enclosures:

- (1) Tallerico as filed
- (2) Tallerico Westlaw version