ABI EXCLUSIVE

JUNE 12, 2023

Accumulated, Identifiable Wages Were Held Exempt, Regardless of the Total Amount

Listen to Article 0:00 / 4:29

> Colorado allows the 'stacking' of exemptions, given the mandate to interpret exemptions liberally in favor of debtors.

In an opinion allowing the stacking of exemptions, Bankruptcy Judge Cathleen D. Parker allowed the debtor to exempt almost $140,000 in wages.

In her May 23 opinion, Judge Parker explained why the outcome was not "strange" but reflected how the Colorado Supreme Court has been interpreting the state's wage exemption for 150 years.

The debtor was a physician who filed a chapter 7 petition with $11 million in debt, mostly arising from personal guarantees of his corporate medical practice. At filing, the debtor had about $28,000 a month in net income.

Before bankruptcy, judgment creditors had been garnishing his salary, taking 20% as allowed by Colorado law. On advice of counsel, the debtor opened a new bank account before filing and began depositing his net earnings into the account. From the account, he transferred whatever he needed into a preexisting bank account to pay expenses. Judge Parker said there was no evidence that the debtor concealed the existence of the new account.

how account.

At filing, the debtor had more than $170,000 in the new account. Colorado has opted out of federal exemptions. The debtor claimed that 80% of the $170,000 was exempt under the state statute.

The trustee objected to the exemption claim, contending that the debtor could only exempt 80% of wages earned one week before filing. Wyoming's bankruptcy judge, Judge Parker was sitting in Denver and overruled the objection.

The Colorado statute allows an exemption for the "maximum part of the aggregate disposable earnings of an individual for any workweek that . . . may not exceed . . . [t]wenty percent of the individual's disposable earnings for that week." The statute defines "earnings" as "[c]ompensation paid or payable to an individual employee or independent contractor for personal labor or services."

Judge Parker began with the proposition that exemptions in Colorado must be interpreted liberally in favor of debtors. In an 1885 decision, the Colorado Supreme Court held that wages are exempt if they are capable of identification. The statute at the time, like the current statute, did not specify in whose hands the wages must be held to be exempt.

Although old, Judge Parker said that the 1885 decision has not been overruled but rather has been continually cited. For example, she mentioned a Colorado district court decision holding that wages remained "earnings" even after being deposited into a bank account. Similarly, the Tenth Circuit held that accumulated pension benefits remained exempt after being deposited into a bank account.

Like the earlier statute, Judge Parker said that "the current form of the earnings exemption statute is devoid of any temporal or monetary limitations." She said that courts in some other states have held otherwise but were "driven by differences in statutory language."

Judge Parker alluded to a Nevada Supreme Court decision that did not limit the exemption to one week's wages because the statute did not say so. She similarly held that she would "not add words to the current version, which is devoid of any temporal or monetary limitations on the earnings claimed to be exempt."

Judge Parker noted that the only limitation in the Colorado statute is the 20% cap on

Judge Parker noted that the only limitation in the Colorado statute is the 20% cap on garnishments. "By its language," she said, "even the highest-income earners in Colorado could retain 80% of their disposable earnings."

Given the mandate to interpret exemptions liberally, Judge Parker said that courts in Colorado permit stacking except when expressly prohibited by statute, like for tools of the trade and automobiles. "Because the legislature has not expressly prohibited the stacking of the deposit account exemption with any other exemption, this court will not do so," she said.

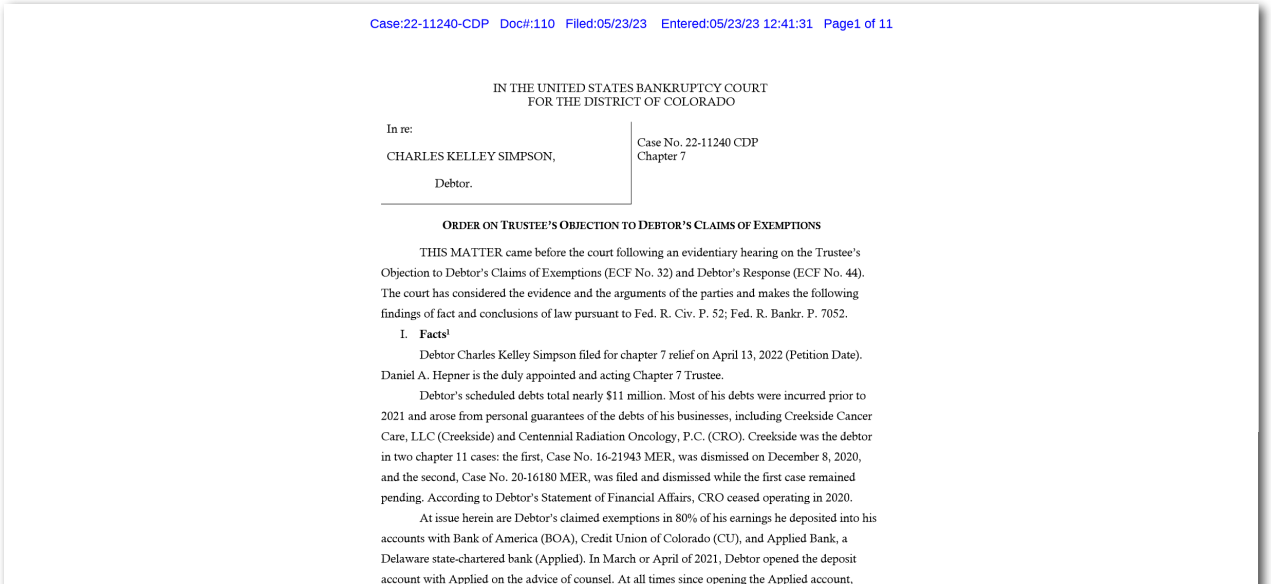
In his schedules, the debtor had claimed an exemption over 80% of the funds in the new account, but at the hearing, the debtor advanced a new theory to cover 100%. The debtor claimed that 20% had been garnished before the remainder had been deposited into the new account.

The new theory might have prevailed, but Judge Parker rejected the idea because there was "insufficient evidentiary support" to prove that 20% had in fact been garnished before deposit.

Judge Parker allowed an exemption for 80% of the funds in the account, or about $140,000.

Opinion Link

PREVIEW



Case:22-11240-CDP Doc#:110 Filed:05/23/23 Entered:05/23/23 12:41:31 Page1 of 11

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:

CHARLES KELLEY SIMPSON,

Debtor.

Case No. 22-11240 CDP
Chapter 7

ORDER ON TRUSTEE'S OBJECTION TO DEBTOR'S CLAIMS OF EXEMPTIONS

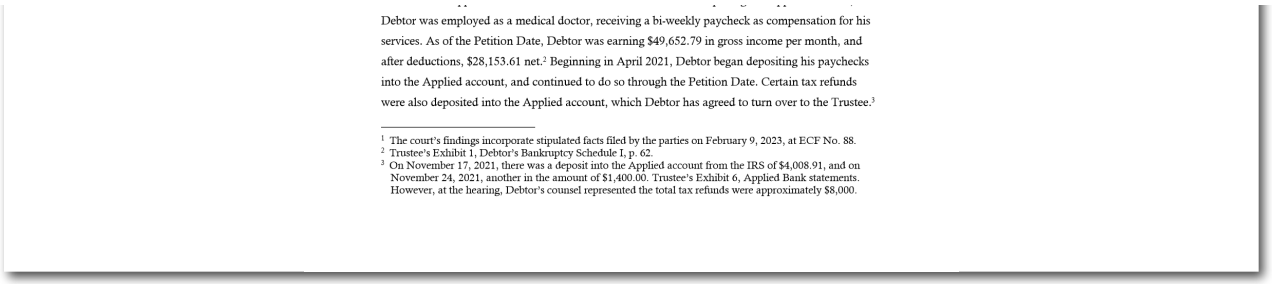
THIS MATTER came before the court following an evidentiary hearing on the Trustee's Objection to Debtor's Claims of Exemptions (ECF No. 32) and Debtor's Response (ECF No. 44). The court has considered the evidence and the arguments of the parties and makes the following findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52; Fed. R. Bankr. P. 7052.

I. **Facts**[1]

Debtor Charles Kelley Simpson filed for chapter 7 relief on April 13, 2022 (Petition Date). Daniel A. Hepner is the duly appointed and acting Chapter 7 Trustee.

Debtor's scheduled debts total nearly $11 million. Most of his debts were incurred prior to 2021 and arose from personal guarantees of the debts of his businesses, including Creekside Cancer Care, LLC (Creekside) and Centennial Radiation Oncology, P.C. (CRO). Creekside was the debtor in two chapter 11 cases: the first, Case No. 16-21943 MER, was dismissed on December 8, 2020, and the second, Case No. 20-16180 MER, was filed and dismissed while the first case remained pending. According to Debtor's Statement of Financial Affairs, CRO ceased operating in 2020.

At issue herein are Debtor's claimed exemptions in 80% of his earnings he deposited into his accounts with Bank of America (BOA), Credit Union of Colorado (CU), and Applied Bank, a Delaware state-chartered bank (Applied). In March or April of 2021, Debtor opened the deposit account with Applied on the advice of counsel. At all times since opening the Applied account,



Debtor was employed as a medical doctor, receiving a bi-weekly paycheck as compensation for his services. As of the Petition Date, Debtor was earning $49,652.79 in gross income per month, and after deductions, $28,153.61 net.[2] Beginning in April 2021, Debtor began depositing his paychecks into the Applied account, and continued to do so through the Petition Date. Certain tax refunds were also deposited into the Applied account, which Debtor has agreed to turn over to the Trustee.[3]

[1] The court's findings incorporate stipulated facts filed by the parties on February 9, 2023, at ECF No. 88.
[2] Trustee's Exhibit 1, Debtor's Bankruptcy Schedule I, p. 62.
[3] On November 17, 2021, there was a deposit into the Applied account from the IRS of $4,008.91, and on November 24, 2021, another in the amount of $1,400.00. Trustee's Exhibit 6, Applied Bank statements. However, at the hearing, Debtor's counsel represented the total tax refunds were approximately $8,000.

https://abi-opinions.s3.amazonaws.com/Simpson.pdf

Case Details

Case Citation	In re Simpson, 22-11240 (Bankr. D. Colo. May 23, 2023)
Case Name	In re Simpson
Case Type	Consumer
Court	10th Circuit Colorado
Bankruptcy Tags	Consumer Bankruptcy

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re: CHARLES KELLEY SIMPSON, Debtor.	Case No. 22-11240 CDP Chapter 7

ORDER ON TRUSTEE'S OBJECTION TO DEBTOR'S CLAIMS OF EXEMPTIONS

THIS MATTER came before the court following an evidentiary hearing on the Trustee's Objection to Debtor's Claims of Exemptions (ECF No. 32) and Debtor's Response (ECF No. 44). The court has considered the evidence and the arguments of the parties and makes the following findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52; Fed. R. Bankr. P. 7052.

I. **Facts**[1]

Debtor Charles Kelley Simpson filed for chapter 7 relief on April 13, 2022 (Petition Date). Daniel A. Hepner is the duly appointed and acting Chapter 7 Trustee.

Debtor's scheduled debts total nearly $11 million. Most of his debts were incurred prior to 2021 and arose from personal guarantees of the debts of his businesses, including Creekside Cancer Care, LLC (Creekside) and Centennial Radiation Oncology, P.C. (CRO). Creekside was the debtor in two chapter 11 cases: the first, Case No. 16-21943 MER, was dismissed on December 8, 2020, and the second, Case No. 20-16180 MER, was filed and dismissed while the first case remained pending. According to Debtor's Statement of Financial Affairs, CRO ceased operating in 2020.

At issue herein are Debtor's claimed exemptions in 80% of his earnings he deposited into his accounts with Bank of America (BOA), Credit Union of Colorado (CU), and Applied Bank, a Delaware state-chartered bank (Applied). In March or April of 2021, Debtor opened the deposit account with Applied on the advice of counsel. At all times since opening the Applied account, Debtor was employed as a medical doctor, receiving a bi-weekly paycheck as compensation for his services. As of the Petition Date, Debtor was earning $49,652.79 in gross income per month, and after deductions, $28,153.61 net.[2] Beginning in April 2021, Debtor began depositing his paychecks into the Applied account, and continued to do so through the Petition Date. Certain tax refunds were also deposited into the Applied account, which Debtor has agreed to turn over to the Trustee.[3]

---

[1] The court's findings incorporate stipulated facts filed by the parties on February 9, 2023, at ECF No. 88.
[2] Trustee's Exhibit 1, Debtor's Bankruptcy Schedule I, p. 62.
[3] On November 17, 2021, there was a deposit into the Applied account from the IRS of $4,008.91, and on November 24, 2021, another in the amount of $1,400.00. Trustee's Exhibit 6, Applied Bank statements. However, at the hearing, Debtor's counsel represented the total tax refunds were approximately $8,000.

Debtor would transfer funds from his Applied account (ranging from $1,000 per month to as much as $26,000 per month) into his BOA account or other accounts, to pay his monthly bills and ordinary expenses. The parties disagree as to why Debtor did this; it was either to avoid garnishment, as the Trustee contends – or for convenience, as Debtor contends. In any event, there was no evidence Debtor concealed the existence of any of his deposit accounts from creditors. Before Debtor opened the Applied account, there were at least two lawsuits filed against him, resulting in judgments. The judgment creditors in these actions began collection activities, including executing writs of garnishment against Debtor's wages. From September 1, 2021 through the post-petition period, BOA held and segregated $5,804.73 of funds in the BOA account in compliance with a writ of garnishment from judgment creditor Michael Farr, Key Business Strategies. Debtor continued to use the BOA account, as BOA had local branches in Colorado.

As stipulated by the parties, on the Petition Date, the balance of the Applied account was $173,054.71, and the balance of the BOA account was $5,430.86. Debtor's other accounts as of the Petition Date included a savings account with CU with a balance of $3.11, and a CMA account with Merrill Lynch with a balance of $1,015.96.

On the Petition Date, Debtor was owed pre-petition wages for the periods of March 26, 2022 to April 10, 2022, and April 11, 2022 to April 13, 2022. Debtor received payment of these wages post-petition on April 15, 2022. The net amount received for the period of March 26, 2022 to April 10, 2022 was $15,839.02. The net amount received for the period of April 11, 2022 to April 13, 2022 was $3,394.08. Debtor agrees with the Trustee that the non-exempt portion of these pre-petition wages received post-petition —$3,846.62—is property of the estate and shall be surrendered to the Trustee.

On his Amended Schedule C,[4] Debtor claimed 80% of the balances on deposit in his accounts at Applied, BOA, and CU as exempt earnings under C.R.S. § 13-54-104(2)(a). In his Response, however, Debtor claimed the entire balance of the Applied account is exempt, less the tax refund deposits he agreed to turn over, on the ground the funds in said account were already subject to garnishment by creditors pre-petition.

The Trustee timely objected to Debtor's claimed exemptions. The Trustee asserts C.R.S. § 13-54-102(1)(w) is the only applicable exemption for Debtor's deposit accounts, and such exemption is limited to $2,500 in the aggregate under that statute.

II. **Conclusions of Law**

Section 541(a)(1) of the Bankruptcy Code[5] provides a bankruptcy estate consists of "all legal

[4] Trustee's Exhibit 2; Debtor's Exhibit C.
[5] All references to the Bankruptcy Code or to Sections thereof are to 11 U.S.C. § 101 *et seq*.

or equitable interests of the debtor in property as of the commencement of the case." Accordingly, all property Debtor owned as of the Petition Date became property of the bankruptcy estate. Exempt property is initially regarded as estate property until it is claimed and distributed as exempt. "Rather than withholding property from the estate, the debtor actually seeks a return of the property from the estate by filing the claim for exemption."[6] Unless a debtor claims an exemption, the property remains estate property.[7] A debtor's claimed exemption is presumed valid; the objecting party bears the burden to prove such exemption is improper.[8]

Section 522(b)(2) of the Bankruptcy Code "grants States the authority to 'opt out' of the federal scheme of property exemptions enumerated in 11 U.S.C. § 522(d)."[9] Colorado has chosen to "opt out" of the federal scheme under C.R.S. § 13-54-107.[10] Therefore, Colorado law governs the validity of Debtor's claimed exemptions.[11]

A bankruptcy court is bound by the state's interpretations and applications of its law.[12] Above all, "the Colorado Constitution mandates the enactment of liberal exemption laws" and courts must liberally construe Colorado exemption laws in favor of debtors.[13]

The court's "starting point is always the plain language of the statute."[14] "[A] court interpreting a Colorado statute must 'ascertain and give effect to the intent of the legislature,' and that task begins with 'the language of the statute itself.' "[15] "When the statutory language is clear and unambiguous, the statute must be interpreted as written without resort to interpretive rules and statutory construction."[16]

A. **Colorado's Disposable Earnings Exemption**

Debtor's claimed exemption under Colorado law, C.R.S. § 13-54-104(2)(a), provides: "[T]he

---

[6] *Scrivner v. Mashburn (In re Scrivner)*, 535 F.3d 1258, 1267 (10th Cir. 2008) (quoting *In re Yonikus,* 974 F.2d 901, 905 (7th Cir. 1992)).

[7] *In re Scrivner*, 535 F.3d at 1266.

[8] *In re Sharp*, 490 B.R. 592, 597 (Bankr. D. Colo. 2013), *aff'd*, 508 B.R. 457 (B.A.P. 10th Cir. 2014); Fed. R. Bankr. P. 4003(c).

[9] *Lawrence v. Jahn (In re Lawrence)*, 219 B.R. 786, 790 (Bankr. E.D. Tenn. 1998) (citing cases); *see also*, *In re Withington*, 594 B.R. 696, 701 (Bankr. D. Colo. 2018).

[10] *Cohen v. Borgman (In re Borgman)*, 698 F.3d 1255, 1259 (10th Cir. 2012).

[11] *Id.*

[12] *Id.*; *In re Goldman,* 70 F.3d 1028, 1029 (9th Cir.1995); *see also*, *Glapion v. Mashburn (In re Glapion)*, No. BAP WO-19-030, 2020 WL 486865, at *3 (B.A.P. 10th Cir. Jan. 30, 2020).

[13] *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 39 F.3d 1078, 1086 (10th Cir. 1994) (citing Colo. Const. art. XVIII, § 1); *In re Larson*, 260 B.R. 174, 193 (Bankr. D. Colo. 2001) (recognizing "the long-standing tradition in the courts of Colorado to construe all exemptions laws liberally in favor of debtors"); *Sandberg v. Borstadt,* 109 P. 419, 421 (Colo. 1910) ("Primarily, the exemption laws of the state are for the benefit of residents, and they are to be liberally construed.").

[14] *In re Marriage of Zander*, 480 P.3d 676, 680 (Colo. 2021).

[15] *In re Borgman*, 698 F.3d 1255, 1260 (10th Cir. 2012) (quoting *People v. Zapotocky*, 869 P.2d 1234, 1238 (Colo. 1994)).

[16] *Id.*

maximum part of the aggregate disposable earnings of an individual for any workweek that is subjected to garnishment or levy under execution or attachment may not exceed . . . (A) Twenty percent of the individual's disposable earnings for that week."[17] Disposable earnings are "earnings" less any deductions required by law.[18] And most critical here, the statute defines "earnings" as "[c]ompensation *paid or payable* to an individual employee or independent contractor for personal labor or services."[19]

Per the Trustee, Section 13-54-104(2)(a) exempts from garnishment or levy 80% of a debtor's wages earned during the one week prior to the filing of a bankruptcy petition, arguing the law places a one-week temporal limitation on earnings a debtor may claim as exempt. However, the court does not find any such temporal limitation exists in the statute; the words "any workweek" and "for that week" connote earnings that are ongoing. "The dictionary defines 'any' as 'one, some, every, or all without specification.' "[20] Accordingly, the existence of "the modifier 'any' in this provision does not reflect an intent to restrict the scope of the exemption as suggested by the [Trustee]."[21] The exemption is not limited to earnings "earned during the seven days immediately preceding the garnishment" or "earned by the debtor during the one week next preceding the garnishment"; if it was, the Colorado legislature could have easily said so. And in fact, in a much older version of the statute, the legislature did place such a temporal limitation, as discussed below. And as the Trustee acknowledges, the application of Section 13-54-104(2)(a) in bankruptcy has not been limited to a single week when the debtor's paycheck is for periods longer than one week. In other words, the Trustee admits bankruptcy trustees in Colorado have not historically operated under the theory the exemption is limited to the wages earned one week prior to a debtor's bankruptcy filing.[22]

Section 13-54-104 is silent regarding earnings held in a deposit account. However, over 130 years ago in *Rutter v. Shumway*, the Colorado Supreme Court held earnings deposited into a judgment debtor's bank account were exempt from garnishment.[23] Since then, courts have consistently followed *Rutter* in applying Colorado's earnings exemption.[24]

---

[17] Here, the exceptions of subsection (3) are not applicable.
[18] C.R.S. § 13-54-104(1)(a).
[19] C.R.S. § 13-54-104(1)(b)(I)(A) (emphasis added).
[20] *In re Christensen*, 149 P.3d 40, 47 (Nev. 2006) (quoting *American Heritage Dictionary of the English Language* 81 (4th ed. 2000) and interpreting Nevada's earnings exemption statute on questions submitted by the Nevada Bankruptcy Court).
[21] *Id.*
[22] The court acknowledges the Trustee's argument may have been previously advanced in other cases, but often the amount at issue results in settlement rather than the parties incurring the cost of litigation.
[23] *Rutter v. Shumway*, 26 P. 321 (Colo. 1891).
[24] *See, e.g., Guidry*, 39 F.3d at 1086; *In re Hernandez*, 2011 WL 5239238, at *6 (Bankr. D. Colo. 2011); *Morrison v. Kobernusz (In re Kobernusz)*, 160 B.R. 844, 848 (Bankr. D. Colo. 1993).

The 1885 earnings exemption statute before the court in *Rutter* declared: "There shall be exempt from levy under execution or attachment or garnishment the wages and earnings of any debtor to an amount not exceeding one hundred dollars, earned during the thirty days next preceding such levy. ....."[25] In consideration of the constitutional mandate for a liberal construction of exemptions, the Colorado Supreme Court concluded "[s]o long as the wages or earnings of the debtor are capable of identification he is entitled to have them exempt, according to the terms and provisions of the statute."[26] In its endeavor to construe the 1885 earnings exemption statute liberally, the *Rutter* court opined "courts cannot justly *add words* which would tend to defeat or restrict the manifest purpose of the statute."[27] The court further explained—regardless of form—the statute exempted $100 of wages earned in the 30 days before garnishment; it did not specify in whose hands such wages must be held. For example, the statute did not "declar[e] that such wages shall not be levied upon in the hands of the employer, or that they shall not be attached or garnished *before payment*."[28]

Admittedly, *Rutter* is an old decision; however, the Colorado Supreme Court has never overruled it, and it continues to be cited as good law, even though the earnings exemption statute has evolved since 1885.[29] For example, over 100 years after *Rutter* was decided, the United States District Court for the District of Colorado in *In re Kobernusz* held a judgment debtor's wages remained "earnings" after being deposited into a bank account, citing the continuing viability of *Rutter*.[30] In *Guidry v. Sheet Metal Workers*, the Tenth Circuit Court of Appeals allowed an exemption for "accumulated" pension benefits deposited into a bank account under the Social Security Act, which prohibited the garnishment of "moneys paid or payable" to a beneficiary, noting the similarity of language employed in the earnings exemption statute.[31] The *Guidry* court found it was required to follow *Rutter* in doing so.[32] But *Guidry* also relied upon the plain statutory language. In *Guidry*, the Tenth Circuit "was construing ..... 'compensation paid or payable,' which clearly contemplates the conversion of the asset from a claim against an employer to some other asset, typically to a negotiable instrument, and ultimately to cash or a deposit of some kind. 'Paid or payable' recognizes

---

[25] *Rutter v. Shumway,* 26 P. at 322.
[26] *Id.*
[27] *Id.* at 322 (emphasis added).
[28] *Id*. (emphasis added).
[29] *Id.*; *see also In re Kobernusz*, 160 B.R. at 847-48 (finding, without analysis: "[t]hough one hundred and two years old, the decision *Rutter v. Shumway* is still applicable and controlling.").
[30] *In re Kobernusz*, 160 B.R. 844, 848 (D. Colo. 1993) ("Though one hundred and two years old, the decision *Rutter v. Shumway* is still applicable and controlling.").
[31] *Guidry*, 39 F.3d at 1087.
[32] *Id.*

by its own terms this changing nature."[33]

Almost 125 years after *Rutter*, another division of this court had to decide whether funds paid out of an exempt retirement account and deposited into the debtors' savings account "retain[ed] their character as exempt funds under Colo. Rev. Stat. § 13–54–102(1)(s), even though they [we]re no longer 'held in or payable from any pension or retirement plan or deferred compensation plan....' "[34] In that case, the court contrasted the restrictive language of the retirement exemption statute that specifies where the funds must be held from the language in the earnings exemption statute, which defines "earnings" broadly as "compensation paid or payable":

> In § 13–54–104, the Colorado legislature chose to include compensation "paid" in addition to compensation "payable." Under that language, which explicitly includes funds that have been paid into a debtor's hands, the courts have found that, when those funds have been deposited to a bank account, they do not lose their exempt character.[35]

1885 earnings exemption statute examined in *Rutter* set a monetary limitation of $100 and a temporal limitation as to when the debtor earned the wages, of 30 days "next preceding [the] levy."[36] The *Rutter* court highlighted those temporal and monetary limitations, stating "[t]he exemption is from execution, attachment, or garnishment, and that only for the wages of the preceding 30 days, and to the extent of only $100."[37] In considering the judgment creditor's argument that wages in the hands of the debtor became capital, the *Rutter* court noted "[i]t cannot be difficult to distinguish the fruits of labor from the accumulations of capital for that length of time; nor can any considerable earnings of the debtor elude the pursuit of the creditor while the $100 limit is retained."[38]

Unlike the 1885 statute, the current form of the earnings exemption statute is devoid of any temporal or monetary limitations. The Trustee is correct courts citing *Rutter* do not discuss when "fruits of labor" transform into "accumulations of capital." Additionally, these courts do not limit their holdings to only the most recent payment or one week's worth of earnings, nor do they interpret Section 13-54-104 to contain any temporal or monetary limitations.

It is true many state courts have held to the contrary when interpreting similarly-worded earnings exemption statutes.[39] Many of these cases are driven by differences in statutory language.

---

[33] *In re Fager*, 274 B.R. 537, 540 (Bankr. D. Colo. 2002).

[34] *In re Gordon*, No. 13-16089 HRT, 2013 WL 5763314, at *1 (Bankr. D. Colo. Oct. 24, 2013), *aff'd*, No. 13-CV-03196-RBJ, 2014 WL 2442519 (D. Colo. May 30, 2014), *aff'd*, 791 F.3d 1182 (10th Cir. 2015).

[35] *Id*. at *2 (citing *Rutter v. Shumway,* 26 P. 321, 322 (Colo. 1891); *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 39 F.3d 1078, 1086–87 (10th Cir. 1994) (en banc)).

[36] *Rutter v. Shumway*, 26 P. at 322.

[37] *Id.*

[38] *Id.* at 323 (emphasis added).

[39] *See In re King,* No. 206-BK-04089-JMM, 2007 WL 4097880, at *3 (Bankr. D. Ariz. Nov. 13, 2007) ("Earnings lose that status once they are transferred to the debtor's bank account" even though earnings defined as "paid or payable", because "[e]arnings become monies, as defined [by Arizona statute], upon

Notwithstanding differing interpretations by courts in other states, *Rutter* has continued to be cited as good law in Colorado. Just as the *Rutter* court did not add words to the 1885 version of the statute, this court will not add words to the current version, which is devoid of any temporal or monetary limitations on the earnings claimed to be exempt. [40]

One decision giving guidance on the issue is the Nevada Supreme Court's opinion in *In re Christensen*.[41] Debtors therein claimed Nevada's earnings exemption (75% of disposable earnings) in four deposit accounts. Debtor husband was paid bi-weekly, and the wages within the deposit accounts accumulated to a total of $1,889.72. At issue here, and answered by the Nevada Supreme Court in *Christensen*, is whether the earnings exemption statute "protected only the proceeds of the most recent deposit or does it protect any and all deposits."[42] The court held:

> If the legislature intended to exempt only one week of a debtor's earnings from execution, it would have expressly embraced such limitation. And to the extent that the statute is arguably ambiguous, we must construe it liberally . . . in favor of debtors. Consequently, we conclude that NRS 21.090(1)(g) protects the proceeds of *any deposits of earnings*.[43]

The balances within the debtor's deposit accounts in *Christensen* were vastly lower than those of this Debtor. However, *Christensen*'s statutory interpretation is consistent with Colorado law. The Colorado Constitution mandates a liberal construction of exemption statutes in favor of a debtor. More importantly, if the Colorado legislature intended to limit its earning exemption as the Trustee contends, it would have expressly done so. The only limitation contained in Section 13-54-104 is the percentage of an individual's aggregate disposable earnings subject to garnishment – 20%. By its language, even the highest-income earners in Colorado could retain 80% of their disposable earnings.

---

their disbursement by the employer to or for the account of the employee, except disbursements into a pension or retirement fund."); *In re Lawrence*, 219 B.R. 786, 799, 800 (E.D. Tenn. 1998) (holding "earnings do not retain their exempt status in the debtor's hands and bank account" even though definition of earnings references "paid or payable", finding "no precedent in the Tennessee caselaw comparable to the Colorado case of *Rutter* to guide th[e] Court in its interpretation"); *John O. Melby & Co. Bank v. Anderson*, 276 N.W.2d 274, 276 (Wis. 1979) (holding garnishment restrictions are not applicable under the Federal Consumer Credit Protection Act after wages have been deposited into a deposit account despite earnings being defined as "paid or payable").

[40] *See, e.g., Rutter v. Shumway*, 26 P. at 322; *People v. Garcia*, 2021 COA 65, ¶ 20, 493 P.3d 929, 934, *cert. granted,* No. 21SC473, 2022 WL 1087340 (Colo. Apr. 11, 2022) (citing *People v. Benavidez*, 222 P.3d 391, 393-94 (Colo. App. 2009) ("[I]n interpreting a statute, we must accept the General Assembly's choice of language and not add or imply words that simply are not there.")).

[41] *In re Christensen*, 149 P.3d 40 (Nev. 2006).

[42] *Id.* at 43.

[43] *Id.* at 48. Nev. Rev. Stat. Ann. § 21.090 ("For any workweek, 82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was $770 or less. ....").

The Trustee argues the amount Debtor has accumulated in his deposit accounts constitutes capital as opposed to earnings, as distinguished in the *Rutter* case, and to allow an exemption for such an accumulation would make a "mockery" of and run contrary to the "manifest purpose" of the exemption laws.[44] The court agrees allowing an exemption of this magnitude seems a strange result. However, any attempt by this court to draw some line between earnings and accrued capital would be arbitrary at best, and the issue is better left for the Colorado legislature. "Exempting that much money might seem inequitable—especially if the debtor times the bankruptcy filing strategically—but the Bankruptcy Code is what it is and cannot be overridden in the name of equity."[45] Congress placed limitations on exempting the full value of homes 11 U.S.C. § 522(o), (p). "State-law exemptions for wages are not subject to a similar limit, and whether one should be created is a decision for Congress to make."[46]

B. **Colorado's Deposit Account Exemption**

Prior to 2020, Colorado did not have a statutory exemption in deposit accounts. In response to the COVID pandemic, the Colorado legislature enacted Section 13-54-102(1)(w). This statute exempted "[u]p to four thousand dollars cumulative in a depository account or accounts in the name of the debtor." However, this Section included a sunset provision, expiring by its own terms on June 1, 2021. On April 7, 2022, the Colorado legislature enacted the current and permanent version of Section 13-54-102(w). The current statute is identical to the prior, with one exception—the exemption is capped at $2,500.

The Trustee claims the Colorado legislature, in enacting Section 13-54-102(1)(w), abrogated *Rutter*, such that a cumulative balance of "earnings" and other monies in a deposit account or accounts are only exempt up to $2,500 – drawing the line between earnings and accrued capital. The court cannot agree; to do so would interpret the legislature's addition of one exemption as foreclosing a debtor's ability to claim another. Due to the constitutional mandate of applying exemption laws liberally, courts permit the "stacking" of exemptions under Colorado law unless expressly prohibited by statute.[47] As noted in such decisions,[48] the Colorado legislature has expressly prohibited the stacking of exemptions in certain parts of Section 13–54–102(1), but not others. For

---

[44] *Rutter v. Shumway*, 26 P. at 323.
[45] *Matter of Burciaga*, 944 F.3d 681, 685 (7th Cir. 2019) (citing *Law v. Siegel*, 571 U.S. 415, *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004)).
[46] *Matter of Burciaga*, 944 F.3d at 685.
[47] *See, e.g., In re Larson*, 260 B.R. 174, 193 (Bankr. D. Colo. 2001) (debtor-ranchers permitted to "stack" agricultural tools of trade exemption with general tools of trade exemption); *In re Case,* 66 B.R. 44, 45 (Bankr. D. Colo. 1986) (same). The court acknowledges the overhaul of C.R.S. § 13-54-102 may have impacted these decisions as they relate to agricultural exemptions and the stacking of same by spouses.
[48] *Id.*

example, the "tools of the trade" exemption provided under Section 13-54-102(1)(i) "*may not also be claimed as exempt* pursuant to subsection (1)(j) of this section"[49] (the motor vehicle exemption for "[u]p to two motor vehicles or bicycles kept and used by any debtor"). Likewise, Section 13-54-102(1)(k) provides an exemption for:

> [t]he library of any debtor who is a professional person . . . kept and used by the debtor in carrying on his or her profession, in the value of three thousand dollars; *except that exemptions with respect to any of the property described in this paragraph (k) may not also be claimed* [as "tools of the trade"] *under paragraph (i) of this subsection (1).*[50]

Because the legislature has not expressly prohibited the stacking of the deposit account exemption with any other exemption, this court will not do so, nor will it "add words" to Section 13-54-102(w) to that effect.

In any event, while the Colorado legislature does have the authority to abrogate common law, it must do so "expressly or by clear implication."[51] In enacting the first version of Section 13-54-102(w), the Colorado legislature considered: "[e]xisting regulations may not adequately protect consumers. . . [and] it is . . . necessary to provide *additional protections* for Colorado consumers."[52] According to the emphasized language, the legislature did not intend to abrogate *Rutter* and its progeny. Rather, Section 13-54-102(w) is an "additional exemption" debtors can claim on the cumulative balance in their deposit accounts.[53]

C. **Debtor's Claim of 100% Exemption in Earnings**

Although he did not claim 100% of the Applied account as exempt on his Amended Schedule C, Debtor now argues, without support, the Applied account is fully exempt because creditors already garnished his paychecks before he deposited them into that account. "Section 522(l) [of the Bankruptcy Code] states the procedure for claiming exemptions."[54] Pursuant to Section 522(l), "[t]he debtor *shall file* a list of property that the debtor claims as exempt under subsection (b). . . ." Here, Debtor only claimed a dollar amount equal to 80% of the Applied account exempt on Amended Schedule C; he listed the value of the Applied account at $173,060.51 and claimed $138,448.41 of it exempt pursuant to C.R.S. § 13-54-104(2)(a). Debtor did not check the box he claimed "100% of fair market value, up to any applicable statutory limit" on Amended Schedule C

---

[49] C.R.S. § 13-54-102(1)(i) (emphasis added).
[50] C.R.S. § 13-54-102(i)(k) (emphasis added).
[51] *Vaughan v. McMinn*, 945 P.2d 404, 409 (Colo. 1997) (quoting *Van Waters & Rogers, Inc. v. Keelan,* 840 P.2d 1070, 1076 (Colo. 1992)); *see also*, *Yaekle v. Andrews*, 195 P.3d 1101, 1108 (Colo. 2008).
[52] 2020 Colo. Legis. Serv. Ch. 140 (S.B. 20-211) (West).
[53] *See Platte River Ins. Co. v. Jackson*, 500 P.3d 1257, 1262 (Nev. 2021) (explaining the legislature's addition of a wildcard exemption did not supplant the earnings exemption).
[54] *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642 (1992).

with respect to the Applied account. Debtor argues that was a function of counsel's bankruptcy preparation software, but he never amended his Schedule C to claim 100% of the Applied account exempt, or to claim a different amount. "[N]either the Trustee nor the bankruptcy court need struggle to divine a debtor's 'intent' underlying claimed exemptions or look beyond the face of Schedule C to figure out what the debtor 'meant' to exempt."[55] "Instead, where the amount of the exemption is discernable from the description of the property, the cited statutory basis, and amount of the claimed exemption, . . . *that* amount is what "is exempt" under § 522(*l*)."[56]

Even if Debtor followed the procedure mandated by the Bankruptcy Code for claiming his Applied account fully exempt, the Trustee has, "as of the commencement of the case", the rights and powers of a hypothetical judgment lien creditor, "whether or not such a creditor exists."[57] This power is described as "a legal fiction . . . [that] permits the trustee . . . to assume the guise of a creditor with a judgment against the debtor. Under that guise, the trustee may invoke whatever remedies provided by state law to judgment lien creditors to satisfy judgments against the debtor."[58] Vis-à-vis the debtor, "[t]he trustee, as hypothetical ideal lien creditor . . . [is] granted the rights of a lien creditor who has 'exercised these rights in their entirety.' Therefore, any act necessary to perfect the hypothetical ideal lien upon property that could be (or could have been) subject to such a lien is deemed, by the language of [Section 544(a)], to have been done."[59]

In any event, the court also finds insufficient evidentiary support for Debtor's assertion. Although the parties stipulated Debtor's judgment creditors had executed upon writs of garnishment against Debtor's wages prior to his opening the Applied account, it is unclear as to when each of the garnishments occurred or for how much, or whether the garnishments were continuing throughout the dates in question.[60] Debtor's paystubs admitted into evidence only go back to October 15, 2021, and Debtor offered equivocal testimony at best as to when the garnishments occurred. Debtor opened the Applied account in March 2021 and the first writ of continuing garnishment admitted into evidence was issued over five months later, towards the end of August 2021.[61] As of the end of

---

[55] *In re Hall*, 453 B.R. 22, 30–31 (Bankr. D. Mass. 2011) (citing *Schwab v. Reilly*, 560 U.S. 770, 788 (2010).
[56] *Id.*
[57] 11 U.S.C. § 544(a)(1).
[58] *Zilkha Energy Co. v. Leighton*, 920 F.2d 1520, 1523 (10th Cir. 1990) (citing generally 4 *Collier on Bankruptcy* ¶ 544.01 (15th ed. 1990)).
[59] *In re Guillot*, 250 B.R. 570, 593 (Bankr. M.D. La. 2000) (quoting *In re Peregrine Entertainment Ltd.,* 116 B.R. 194, 207 at n. 19 (C.D. Cal. 1990)).
[60] The parties' Stipulation of Facts (ECF No. 88) references Trustee's Exhibit 1 (Debtor's Statement of Financial Affairs, #10, pp. 11-13). As to the only pre-petition wage garnishments listed there, it is impossible to tell when such garnishments occurred or how much was garnished, after the Applied account was opened.
[61] *See* Debtor's Exhibit JJ.

August 2021, the balance in the Applied account was $130,880.36 – the equivalent of about 75% of the balance on the Petition Date.

III. **Conclusion**

This court applies the plain language of C.R.S. §§ 13-54-104 and 13-54-102(w) and will not add words to their text. Therefore, Debtor is able to exempt 80 percent of traceable disposable earnings in the BOA, CU, and Applied deposit accounts. Debtor is also able to stack his deposit account exemption of $2,500 cumulatively across these deposit accounts.

Accordingly, it is

ORDERED the Trustee's Objection to Debtor's Claims of Exemptions is OVERRULED.

BY THE COURT

Cathleen D Parker 5/23/2023

Honorable Cathleen D. Parker
United States Bankruptcy Court