UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

MICHELLE HARVEY Case No. 97-11047 K

Debtor

The Debtor wishes to claim a $3,000 diamond engagement ring, from a former marriage, as "exempt" property . The Trustee objects. Although a further dispute has arisen about whether Ms. Harvey should be able now to claim that the engagement ring became her wedding ring, we need not resolve that dispute. Because I find that even if one assumed, for the sake of argument, that a diamond engagement ring could ever be exempted as a "wedding ring" under Civil Practice Law and Rules 5205(a) (McKinney 1978), it can never be so exempted where the marriage represented by the ring ended in divorce.

In re Dillon, 113 B.R. 46 (Bankr. D. Utah 1990), cited in the Debtor's brief, is distinguishable in that it did not address an exemption for "a wedding ring;" rather it addressed a statute that permitted an item having "sentimental value" to be exempt, up to $500 actual value, and the question was whether a wedding ring and engagement ring together could be treated as one item.

The *In re Mims,* 49 B.R. 283 (Bankr. E.D.N.C. 1985), also is distinguishable. Contrary to the Debtor's brief, North Carolina law did not have a specific provision for jewelry or wedding rings. (I think that counsel unintentionally left the word "not" out of the brief.) So the question there was whether an engagement ring could be exempt as wearing apparel. Here, New York Law speaks directly to jewelry and allows only an exemption for "a wedding ring."

Finally, as *to Wilke v. Westhem (In re Westhem),* 642 F.2d 1139 (9th Cir. 1981), I find the dissent (written by a judge from the Eighth Circuit) to be far more persuasive than the Ninth Circuit's majority decision. (Naturally, the case arose in Los Angeles.) The dissent's observation that "the purpose of exemption laws is to save debtors and their families from want . . . ," *id.* at 1141, is far closer to the New York rationale than the "dignity" rationale examined in *Mims*. For example, Professor Siegel's Commentary to CPLR 5205 states that "[t] he exempted items are those deemed necessities by the Legislature. Also apparent is the list's origin in a predominantly rural American society." Practice Commentaries to CPLR 5205, C: 5205: 1, at 123 (McKinney 1978).

In an appropriate case, this writer is willing to confront the question of whether a $3,000 diamond engagement ring can be exempt as a "wedding ring."[1] I hold that that issue may not be raised after the marriage symbolized by the ring ended in divorce, for such can, in my

[1] Professor Siegel stated: "Though there appears to be little case Law on the subject, it would appear to be permissible to pierce through any apparent subterfuge whereby a judgment debtor of means is attempting to use the exemptions to frustrate the collection of a judgment. A 'wedding ring,' for example, is exempt, but if the ring is worth $100,000 it is doubtful that the Legislature intended to permit the judgment debtor to keep it at the expense of creditors. The ring may have sentimental value, but the higher the price the more suspect the sentiment." Practice Commentaries, *supra*, at 123.

view, never be viewed as a "necessity" under such circumstances.

SO ORDERED.

Dated: Buffalo, New York
July , 1997

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Michael J. Kaplan, U.S.B.J.