

CACH, LLC,
Plaintiff

vs.

JOHN T. MARTZ, SR.,
Defendant

: IN THE COURT OF COMMON PLEAS
: OF LYCOMING COUNTY,

:
: CASE NO. 09-00534

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:
:
: CIVIL ACTION – LAW
:

OPINION AND ORDER

On June 3, 2009, Plaintiff obtained a default judgment against Defendant in the amount of \$18,253.66. To satisfy this judgment, on September 23, 2011, Plaintiff filed a Praecipe for Writ of Execution against, among other items, Plaintiff's personal property. On October 24, 2011, Defendant submitted a claim for exemption requesting that his 1987 Chevrolet Embassy Van be set aside in kind as his \$300.00 statutory exemption.

A hearing was held on November 21, 2011 on Defendant's claim for exemption. Defendant testified that he is the owner of the van having purchased it approximately ten years ago for approximately \$2,100.00 to \$2,200.00. Defendant testified that the van is in very, very poor condition. Among other things, the transmission is bad, the frame is rusted out, and the van needs extensive work. While it recently passed inspection, it "won't make the next inspection." If the van is driven too far or too long, it starts smoking or dies in power. Defendant only uses it for short trips approximately two times a week.

Defendant testified that the value of the van is no more than \$300.00. He remarked that if the "company" wanted it so bad, they could take it and try to sell it but that they would never get more than \$300.00 for it. In addition to his own testimony, Defendant presented a November 21, 2011 written estimate from Norman Hicks Auto World that noted the van has severe body rust, the transmission is bad and it needs work for inspection, and indicated the actual cash value in its present condition is "Three Hundred no/100 \$350.00." Mr. Hicks

noted that he has been in the business of buying and selling these vehicles for the past thirty years.

On cross-examination, the Defendant was provided with six pages of used vehicles that were listed for sale on Autotrader.com. Defendant noted that at least 11 of the vehicles were somewhat similar to his vehicle although none were exact. He also noted that the prices that were listed for the vehicles depended upon, among other things, mileage and condition and he could not “tell” the condition of the vehicles that were listed. He insisted that the condition of his van was far worse and that his van would never sell for the prices listed or requested for the “similar” vans which ranged from a low of \$1,995.00 to a high of \$8,000.00 (with wheelchair accessibility).

Defendant’s sister Mary Paternostro also testified on Defendant’s behalf. She confirmed Defendant’s description of the vehicle and additionally noted that occasionally she needed to pick her brother up after the van broke down and he needed a ride.

Property of a judgment debtor to the value of \$300.00 is exempt from attachment or execution on the judgment. 42 Pa. C.S.A. §8123. A debtor is permitted to exempt up to \$300.00 in any type of property. In Re: Stephenson, 205 B.R. 52, 61 (E.D. Pa. 1997). The exemption statute must be applied “in the liberal and benevolent spirit in which it was enacted.” Maschke v. O’Brien, 142 Pa. Super. 559, 563, 17 A.2d 923, 924 (1941).

When a defendant claims a statutory exemption, the burden is on the plaintiff to show that the exemption ought not to be allowed, Pierce v. Boalick, 42 Pa. Super. 218, 220 (1910).

The Plaintiff has failed to meet its burden in this particular matter. The Court finds the testimony of the Defendant and his sister to be credible with respect to the value and condition of the vehicle. The Court will not consider the

estimate of Mr. Hicks in that it is not clear whether Mr. Hicks meant \$300.00 or \$350.00.

The exhibit offered by the Plaintiff is circumstantial at best and does not suffice in the Court's opinion to prove that the Defendant's claimed exemption should not be allowed. None of the vans listed were of the same make, model or condition as Defendant's van.

Accordingly, the Court will grant Defendant's exemption and enter the following Order.

ORDER

AND NOW, this ____ day of November 2011 following a hearing, the Court **GRANTS** Defendant's claim for exemption. The 1987 Chevrolet Embassy Van with PA Registration No. FZM8665 shall be exempt from levy or attachment by Plaintiff.

BY THE COURT

Marc F. Lovecchio, Judge

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