So Ordered.

Dated: September 29, 2021

G. Michael Halfenger
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Michael L Galesky,

Debtor.

Case No. 20-25509-gmh
Chapter 7

DECISION AND ORDER ON TRUSTEE'S AND WISCTEX LLC'S OBJECTIONS TO DEBTOR'S CLAIM OF EXEMPTIONS

The chapter 7 trustee and WiscTex LLC, a creditor, objected to the debtor's claim of exemptions. The court held an evidentiary hearing. This decision and order sets forth the court's findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52 and Federal Rules of Bankruptcy Procedure 7052 and 9014.

I

The underlying facts are not genuinely disputed: The debtor is 50 years old. After graduating from high school, he served in the United States Army. For his service, he received a Commendation Medal, three Good Conduct Medals, an Achievement Medal, an Overseas Service Ribbon, and Superior Unit Awards for the Army and the Air Force; Top Secret and Sensitive Compartmented Information security clearances;

and an honorable discharge due to a disability. He began receiving veterans' disability benefits in 2000 (and Social Security disability benefits in 2020).

In 2008 the debtor started working for Johnson Creek Enterprises LLC. By 2011 he was the sole member of Therrons Dad LLC, which had acquired a minority interest (about 28%) in Johnson Creek Enterprises, though it sold part of that interest in 2011 and much of the remainder in 2014.

In 2012 the debtor and Therrons Dad executed a continuing unlimited guaranty of all debts of Johnson Creek Enterprises to JPMorgan Chase Bank. See ECF No. 111-10.[1] Johnson Creek Enterprises borrowed from JPMorgan Chase several times. Those loans were memorialized in notes for about $383 thousand in May 2012, $500 thousand in November 2013, and $500 thousand in July 2014.

In May 2016 the debtor was still working for Johnson Creek Enterprises, but he planned to quit, so he rolled over about $50 thousand in a Roth 401(k) sponsored by Johnson Creek Enterprises to a new self-directed Roth individual retirement account. That September the debtor resigned his employment with Johnson Creek Enterprises and generally ceased his involvement with the company, though Therrons Dad retained an interest in the company, and the debtor remained the sole member of Therrons Dad.

In June 2016 JPMorgan Chase sold its interests under and related to the May

[1] WiscTex offered the executed guaranty as its exhibit 10. The debtor objected that the exhibit is neither an original nor a complete copy of the guaranty. The court reserved ruling on admission of the exhibit. See ECF No. 127, at 1. In his briefs after the conclusion of the evidentiary hearing, the debtor raised doubts as to the guaranty's terms and WiscTex's right to enforce it. See ECF No. 145, at 1–3. As the debtor concedes, however, a state court has already granted WiscTex judgment on its claim to enforce the guaranty against him. It appears, therefore, that the debtor is precluded from relitigating whether WiscTex can enforce the guaranty. Moreover, WiscTex filed a proof of claim in this case based on its state-court judgment, and the debtor has not objected to that claim, even though this case has been pending for more than a year and disputes between the debtor and WiscTex have been its major feature over that period, which suggests that the debtor does not seriously dispute (or intend to dispute) WiscTex's right to enforce the guaranty. For these reasons, the debtor's objection to the admission of WiscTex's exhibit 10 is overruled. The exhibit is admitted for the limited purpose of showing that the debtor signed the guaranty, for whom, and when.

2012, November 2013, and July 2014 notes to PSB Credit Services Inc. By December 2016 Johnson Creek Enterprises was in default of its payment obligations under the notes. PSB Credit Services entered into a forbearance agreement with Johnson Creek Enterprises and the guarantors, including the debtor. As a result, among other things, the balances due under the notes were consolidated with the accrued interest thereon, which was capitalized, and late charges, for a total "Restructured Balance" of about $889 thousand; PSB Credit Services agreed to forbear until December 9, 2018, subject to certain conditions precedent, including an initial payment of $105 thousand by December 16, 2016, and weekly payments commencing the following week; and the guarantors agreed that the forbearance agreement did not affect the May 2012 guaranty. ECF No. 108-2, at 35–42.

In May 2017 the debtor moved from real property he owned at 101 Mark Drive in Johnson Creek, Wisconsin, to 5868 North 35th Street in Milwaukee, Wisconsin. The debtor had purchased the 35th Street property less than a year earlier, at auction, through a single-member LLC of his called Byway Investment, planning "to fix and flip the property and sell it or rent it out", though he never did either. ECF No. 123, at 53:35–54:15 & 56:30–:50. The debtor sold the Mark Drive property that November. Johnson Creek Enterprises went out of business that year.

In November 2018 PSB Credit Services sold its interests under and related to the notes it had acquired from JPMorgan Chase and the December 2016 forbearance agreement to CL Ventures LLC, which immediately sold them to WiscTex. In January 2019, after successfully credit-bidding $100 thousand at a forced sale of collateral securing the debt, WiscTex sued the debtor and Therrons Dad in the Wisconsin Circuit Court for Milwaukee County, seeking a judgment against them for the remaining restructured balance due under the forbearance agreement, based on their May 2012 guaranty of Johnson Creek Enterprises's debts to JPMorgan Chase.

In May 2019, the debtor executed a quit-claim deed for Byway Investment,

transferring the 35th Street property to himself for a nominal payment of $1. He earlier intended to transfer the property to himself from Byway after it became his home, but around May 2019 he first learned about a real property tax credit available to disabled veterans under state law, which provided sufficient motivation to transfer title.

In August 2019 WiscTex moved for summary judgment.

In September 2019 the debtor first met with Hanson & Payne LLC, his counsel in this case, about the possibility of seeking relief under the Bankruptcy Code. (Though he had met with another bankruptcy firm, ESSERLAW LLC, in April 2018, he declined to retain their services, concluding that it was not necessary at the time.)

In December 2019 the debtor received an offer from Lakeland Property Management LLC to purchase real property located at 313 South Marshall Avenue in Jefferson, Wisconsin. The debtor bought the property as an investment in October 2013 and rented it to his sister, Belinda, who was still living there in 2019. Belinda and her husband, Bruce, who are both real estate agents, assisted the debtor with the sale of the property to Lakeland. The debtor agreed to sell the property "as is" for $135 thousand, subject to its appraising for $170 thousand or more, because, he testified, the property needed substantial and expensive repairs, including a new roof and a new heating and air conditioning system, and he avoided having to pay a broker's commission by enlisting Belinda and Bruce to act on his behalf. The sale closed in January 2020. The debtor was unable to attend the closing, so he granted Belinda a power of attorney specific to the transaction, authorizing her to sign the necessary documents on his behalf. Belinda still rents the Marshall Avenue property, and, as the debtor later learned, she secured from Lakeland an option to purchase the property.

Around that time, the debtor and the attorney representing him in state court started planning to negotiate with WiscTex about settling its lawsuit against him. The debtor began freeing up assets for that purpose and preparing a statement of his financial condition. He testified that, in doing this, he realized that he had saved less for

his retirement than he thought he would need, especially given then-recent medical issues that had caused him to consider more seriously the need to shore up his savings. When WiscTex snubbed his initial settlement offer, the debtor decided to take the funds he had gathered and buy an annuity.

In January 2020 the debtor contacted a financial advisory, George Schmidley, to discuss annuity options. When the two met in person in early February, the debtor gave Schmidley a check for $100 thousand that Schmidley used to purchase an annuity for the debtor from Nationwide. Most of the funds, about $66 thousand, were the debtor's net proceeds from the sale of the Marshall Avenue property. The remainder consisted of more than $5 thousand the debtor withdrew from a brokerage account, more than $16 thousand he transferred to himself from Byway Investment, and a portion of more than $18 thousand he had placed with a service called Lending Club.

In May 2020 the state court granted WiscTex's motion for summary judgment and entered a judgment for about $686 thousand against the debtor and Therrons Dad. In August 2020 the debtor commenced this case under chapter 7 of the Bankruptcy Code. He claimed as exempt under applicable state law, i.e., Wisconsin law, the 35th Street property, a 2014 Dodge Ram, his brokerage account, his interest in Byway Investment up to $15 thousand in value, his Roth IRA, a checking account with JPMorgan Chase, his Nationwide annuity, and other personal property. He claimed as exempt under federal nonbankruptcy law a second checking account with JPMorgan Chase purportedly containing only veterans' and Social Security disability benefits payments, some medical equipment, and his Nationwide annuity. WiscTex and the trustee timely objected to the debtor's claim of exemptions.

In May 2021 the court held an evidentiary hearing by Zoom videoconference. The objecting parties called Schmidley and the debtor to testify. The debtor also testified in his own case and presented the expert testimony of an attorney with expertise in employee benefits and requirements for IRAs under the Internal Revenue Code. The

parties then briefed the issues, and the court took the matter under advisement.

II

WiscTex and the trustee principally seek denial of some or all of the debtor's state-law exemptions under Wisconsin Statutes section 815.18(10), which provides in relevant part, "Any or all of the exemptions granted by this section may be denied if, in the discretion of the court having jurisdiction, the debtor procured, concealed or transferred assets with the intention of defrauding creditors."[2] WiscTex and the trustee primarily focus on the debtor's actions during WiscTex's state-court suit against him, arguing that he caused Byway Investment to convey the 35th Street property and liquidated assets that he would not have been able to exempt to purchase an exemptible annuity. They contend that in so doing the debtor "procured . . . or transferred assets with the intention of defrauding" WiscTex by putting assets out of its reach.[3]

---

[2] Section 815.18(10) applies to all of the debtor's state-law exemptions. Nearly all of those exemptions are "granted by" section 815.18. §815.18(10). And section 815.18(10) expressly applies to the two exemptions that the debtor claimed under other provisions of Wisconsin law, his homestead exemption under section 815.20 and his exemption of veterans' benefits under section 45.03(8)(b). §815.18(13)(d) & (k).

[3] Although Federal Rule of Bankruptcy Procedure 4003(c) imposes on a party objecting to a debtor's claim of exemptions "the burden of proving that the exemptions are not properly claimed", Wisconsin law likely governs who bears the burden of proof, and by what standard of proof, when a request is made to deny Wisconsin exemptions under section 815.18(10). See Decision & Order on Trustee's Objections to Debtors' Claims of Homestead Exemptions at 2–6, *In re Lampe*, No. 19-30044 (Bankr. E.D. Wis. Sept. 28, 2021), ECF No. 214. No Wisconsin statute or court decision clearly addresses either the burden or the standard of proof that applies under these circumstances—which is somewhat surprising given that the Wisconsin Statutes have contained what is now the operative language of section 815.18(10) for more than seven decades. See Act of Aug. 21, 1947, ch. 598, 1947 Wis. Laws 1201, 1201–02; see also Maria S. Lazar, *Exemptions*, in 2 *Wisconsin Practice Series, Methods of Practice* §74:35 (5th ed.), Westlaw WIPRAC (updated Oct. 2020) ("The procedure for claiming exemptions is nebulous. . . . Court review seems to be contemplated, but no procedure for such review is provided. No indication of the burden of either proceeding or proof is given."). The Supreme Court of Wisconsin would probably conclude that the party seeking to employ section 815.18(10) to defeat an exemption bears the burden of proof, but that court's five-part test for allocating burdens of proof makes predicting the outcome an uncertain exercise. See *Acuity Mut. Ins. Co. v. Olivas*, 726 N.W.2d 258, 267–68 (Wis. 2007) (citing *State v. McFarren*, 215 N.W.2d 459, 463–66 (Wis. 1974)) ("The court has adopted . . . a five-factor analysis to be applied in allocating the burden of proof."); *Friends of Maple Grove, Inc. v. Merrill Area Com. Pub. Sch. Dist.*, 959 N.W.2d 362, 373 (Wis. Ct. App. 2021) ("As a general rule, 'the party seeking judicial process to advance a position carries

Whether the conduct about which WiscTex and the trustee complain even implicates section 815.18(10) is unclear. Neither Wisconsin nor federal precedents afford decisive guidance on the scope of section 815.18(10)'s discretionary limitation on exemptions when the debtor "procured, concealed or transferred assets with the intention of defrauding creditors." Bankruptcy court decisions generally utilize multipart "badges of fraud" inquiries from federal precedents construing the Bankruptcy Code's similar, but textually distinct, grounds for denying a chapter 7 discharge when "the debtor, with intent to *hinder*, *delay,* or defraud a creditor . . . , has transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor . . . or . . . the estate".[4] 11 U.S.C. §727(a)(2) (emphasis added); see, e.g., *In re Woller*, 483 B.R. 886, 901–02 (Bankr. W.D. Wis. 2012); *In re Przybylski*, 340 B.R. 624, 629–30 (Bankr. E.D. Wis. 2006); *In re Vangen*, 334 B.R. 241, 245–46 (Bankr. W.D. Wis. 2005); *In re Bogue*, 240 B.R. 742, 750–51 (Bankr. E.D. Wis. 1999); see also *Bronk v. Cirilli*, 11-CV-172, 2012 WL

---

the burden of proof.'" (quoting *Long v. Ardestani (In re Marriage of Long)*, 624 N.W.2d 405, 415 (Wis. Ct. App. 2001))). And, more likely than not, the Supreme Court of Wisconsin would rule that a party required to prove intent to defraud for purposes of section 815.18(10) must do so by clear, satisfactory, and convincing evidence, given Wisconsin's long tradition of applying this higher standard of proof to "cases involving fraud". See *Wangen v. Ford Motor Co.*, 294 N.W.2d 437, 457 (Wis. 1980) ("This court has required a higher burden of proof, *i. e.*, to a reasonable certainty by evidence that is clear, satisfactory and convincing, '[i]n the class of cases involving fraud, of which undue influence is a specie, gross negligence, and civil actions involving criminal acts.'" (alteration in original) (citation omitted) (quoting *Kuehn v. Kuehn*, 104 N.W.2d 138, 145 (Wis. 1960)) (citing Wis. Jury Instr. Civ. Nos. 205 & 210)). The court need not resolve these questions today: whoever has the burden and by whatever standard, the result is the same.

[4] Like many court decisions, WiscTex and the trustee consistently ignore the difference between "intent to hinder, delay, or defraud" creditors and "intention of defrauding" creditors—including by arguing that the court should apply to their requests to deny exemptions under section 815.18(10) caselaw construing 11 U.S.C. §727(a)(2). But this difference has the important consequence of making "intent to defraud" distinct from intent to hinder or delay collection efforts. *Pilling v. Otis*, 13 Wis. 495, 497 (1861) (A statute's use of "hinder, delay *or* defraud" recognizes "the distinction between the mere intent to hinder and delay creditors, and the intent to defraud them", and "implies that the intent to 'defraud' is something distinct from the mere intent to 'delay.'"); see also *Smiley v. First Nat'l Bank of Belleville (In re Smiley)*, 864 F.2d 562, 568 (7th Cir. 1989) ("Since Mr. Smiley was trying to take advantage of legal exemptions, it is not clear that he intended to *defraud* his creditors. Nevertheless, it is at least a reasonable inference to draw from his behavior that he intended to hinder and delay them.").

12012746, at *2 (W.D. Wis. Sept. 28, 2012) ("Because the standard is the same whether a trustee seeks to deny a discharge or disallow an exemption, [11 U.S.C. §727(a)(2)(A) and Wisconsin Statutes section 815.18(10)] are properly analyzed together."), aff'd in part, rev'd in part sub nom. *Cirilli v. Bronk (In re Bronk)*, 775 F.3d 871 (7th Cir. 2015).

In all events federal and Wisconsin law align in endorsing the following key principle: a debtor does not defraud his creditors when he does no more than convert assets from non-exemptible to exemptible forms before a bankruptcy case or efforts to collect by attachment, execution, or other process, even if he does so intending to put his property beyond the reach of his creditors. See, e.g., *Wittman v. Koenig*, 831 F.3d 416, 423–24 (7th Cir. 2016) ("There is nothing unlawful about structuring one's assets to take advantage of the bankruptcy laws as Congress and the Wisconsin Legislature have seen fit to write them."); *Smiley*, 864 F.2d at 567 ("[W]e do not find bankruptcy planning necessarily to be a fraud on creditors."); *Kapernick v. Louk*, 62 N.W. 1057, 1057 (Wis. 1895) ("The mere fact that such exchange may be highly advantageous to an insolvent debtor is not conclusive evidence of an intention to defraud his creditors."); *Comstock v. Bechtel*, 24 N.W. 465, 466 & 468 (Wis. 1885) (A debtor who sold non-exemptible property to purchase exemptible property while "wholly insolvent" presumptively acted with "the intention . . . to place his property beyond the reach of legal process" but nevertheless obtained "absolute title to the property so purchased", including "the right under the exemption laws to hold it against his creditors", because "[t]he purchase . . . of exempt property . . . was a legal transaction, containing no element of fraud."); S. Rep. No. 95-989, at 76 (1978) ("[T]he debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.").

To warrant denial of exemptions, the debtor must misrepresent his financial circumstances or otherwise engage in conduct that limits his creditors' ability to collect

their due, beyond the mere use of exemptions to put assets out of their reach, and with the requisite intent to defraud. See, e.g., *Germania Nat. Bank of Milwaukee v. Lachenmaier*, 146 N.W. 779, 780 (Wis. 1914) (affirming a lower court's conclusion that the defendant in an attachment action "assigned, conveyed, disposed of, or concealed his property, or was about to do so with intent to defraud his creditors", where the defendant, who operated "a clothing and furnishing store", "conducted a cleanout sale . . . in a manner which tended to show that he was manipulating the proceeds in ways calculated to conceal the real transactions and the disposition of the cash realized on such sales" and engaged in "transactions . . . characterized by secret and surreptitious dealings with his property and the disposition of the proceeds of his sales", among other things). Intent to defraud may be shown where, for example, a debtor actively lies to creditors, thereby gaining time that he uses to convert assets from non-exemptible to exemptible forms. See, e.g., *Smiley*, 864 F.2d at 568 (discussing *First Tex. Sav. Ass'n v. Reed (In re Reed)*, 700 F.2d 986 (5th Cir. 1983)) ("Reed's entire course of conduct evidenced that he intended not only to take advantage of his exemption rights, but that he intended to deceive his creditors into thinking that there would be assets available to them when, in fact, Reed was converting every one of his assets to an exempt form."); see also, e.g., *Miller v. McNair*, 27 N.W. 333, 334–35 (Wis. 1886) (reversing a lower court's order in favor of the defendant in an attachment action based on "strong and convincing" evidence of the defendant's intent to defraud his creditors, including that "he caused letters to be written to . . . creditors in which he said he . . . could pay only 25 cents on the dollar of his debts", though "he had the money on hand to pay three times as much"); *Lord v. Devendorf*, 11 N.W. 903, 905 (Wis. 1882) (A debtor who "for several months" had made "no secret" that he "contemplated going to the Red river country, in Dakota, and there going into farming," who "had for that purpose acquired several horses and other property suited to the business", while "put[ting] off" a creditor's attorney, did not, by "the mere change of locality" show "an intent to defraud", though "the inference of

[such] intent . . . would be irresistible" had it "been shown . . . that the purpose was [instead] to take advantage of more liberal exemption laws, and to convert property not exempt into property which was exempt".). And a debtor's deliberate commission of a transfer deemed fraudulent by applicable law may also suggest that he acted with intent to defraud his creditors. See Wis. Stat. §§242.04 & .05; cf. *State v. Christopherson*, 153 N.W.2d 631, 635 (Wis. 1967) ("The intent to defraud is to be inferred from the deliberate commission of a forgery." (quoting 37 C.J.S. *Forgery* §100)). But cf. *Wachter v. Famechon*, 22 N.W. 160, 162–63 (Wis. 1885) (That a conveyance is "void and of no effect" by operation of statute because it was "made by an insolvent debtor of his property within 60 days prior to the making of an assignment for the benefit of his creditors, and in contemplation thereof," "is no evidence in itself of any intent to defraud creditors."). The requisite intent may, perhaps, also be shown where a debtor has converted assets to exemptible forms as part of a scheme to thwart collection efforts, intending all the while to convert them back to non-exemptible forms once he has repelled his creditors' efforts to reach them, or when he nominally conveys property to another—especially an insider—but retains actual possession and use of the property, such that the transfer of legal title masks the property's true owner. See *Flanders v. McDonald*, 39 Wis. 288, 289–90 (1876) (reversing a lower court's dissolution of an attachment based on "evidence . . . ample and clear" that the defendant conveyed property "with intent to defraud his creditors" when he gave "his brick yard property, worth $2,000 or more", first in exchange for a debt of $200, then for a $150 note, and finally for "another note of a like amount", "to place the . . . property beyond the reach of his creditors", all the while "dealing with the property as his own, and as if he had never parted with the title").

Here, there is no evidence of fraud or intent to defraud. WiscTex and the trustee point to no false statements by the debtor, nor do they identify any misrepresentations about the nature of his exempt assets or anything he did or said at any point to give anyone a false impression about anything. To the contrary, the evidence shows that his

exempt assets are precisely what he says they are—the 35th Street property is his homestead and has been for years, and his annuity actually holds retirement benefits—and that he procured them with every intention of using them as such. WiscTex and the trustee identify no false or deceptive means by which the debtor was able to convert assets into exemptible forms when he would not otherwise have been able to do so. Instead, for the most part, their objections reduce to typical griping that the debtor used exemptions created by Congress and the Wisconsin Legislature to minimize the value of his bankruptcy estate that was available for liquidation and distribution to his creditors. See ECF No. 143, at 11 ("The transfers in 2019-2020 left the Debtor insolvent, affected his asset mix and left no non-exempt assets left [sic] for creditors.");[5] ECF No. 141, at 9 ("[T]hough Debtor's transfer of property that was not exempt under the Wisconsin statues did not directly affect Debtor's balance sheet, it significantly affected his collectability."). Which is to say, they primarily object to the debtor's prepetition arranging of his financial affairs so as to pay his creditors no more "than the law demands." *Wittman*, 831 F.3d at 424. They need not cheer that, of course, but that, in itself, is not fraud. See *Butler Mfg. Co., Inc. v. Vissers (In re Vissers)*, 21 B.R. 638, 642 (Bankr. E.D. Wis. 1982) ("[P]laintiff is critical of defendant's actions in converting [a]

[5] The repeated assertions in WiscTex's post–evidentiary hearing briefs that the debtor's transfer of his homestead and liquidation of assets to purchase an annuity left him insolvent because they left him without non-exemptible assets is in one sense false and in another sense misleading. The debtor did not convert *all* of his non-exemptible assets into exemptible forms. See, e.g., ECF No. 166, at 1 (reporting the trustee's sale of the debtor's sailboat for $32,500); ECF No. 12, at 11 (exempting only about $3 thousand dollars of the boat's value). But even if he had, insolvency under Wisconsin law "means that the assets of the alleged insolvent are insufficient, at a fair valuation, to pay his debts." *Schmitz v. Wisconsin Soap Mfg. Co.*, 235 N.W. 409, 410 (Wis. 1931); see also *Beloit Liquidating Tr. v. Grade*, 677 N.W.2d 298, 310 n.16 (Wis. 2004). The debtor may have been insolvent when one or more of the transfers at issue occurred, given the amount owed on the guaranty, but WiscTex did not prove that, and the extent to which the debtor held non-exemptible versus exemptible property is not necessarily relevant under Wisconsin law to whether he actually was insolvent when any of those transfers occurred. But see 11 U.S.C. §101(32)(A) (defining "insolvent" in relevant part to mean that an individual's debts exceed the fair value of his property after excluding "property that may be exempted from property of the estate under [§]522").

note receivable which was due her into an exempt homestead. There is nothing improper in doing this, and such action by a debtor on the eve of bankruptcy is approved."); see also *Hanson v. First Nat'l Bank in Brookings*, 848 F.2d 866, 868 (8th Cir. 1988) ("It is well established that under the Code, a debtor's conversion of non-exempt property to exempt property on the eve of bankruptcy for the express purpose of placing that property beyond the reach of creditors, without more, will not deprive the debtor of the exemption to which he otherwise would be entitled."); *Vangen*, 334 B.R. at 245 ("As Judge Learned Hand stated in a similar context, '[T]here is nothing sinister in so arranging one's affairs as to keep taxes as low as possible.'" (alteration in original) (quoting *Comm'r v. Newman*, 159 F.2d 848, 850–51 (2d Cir. 1947) (Hand, J., dissenting))).

WiscTex and the trustee spotlight certain of the debtor's transactions, pointing to their timing and effect, among other things, as circumstantial evidence of fraud or the debtor's intent to defraud, but these critiques do not amount to much. They attack Byway Investment's transfer to the debtor of his homestead as a transfer to an insider in return for essentially no value. It inarguably was, but so what? There is no evidence that Byway Investment transferred the property with the intent to defraud anyone, much less any of *its* creditors, or that it was insolvent at the time or as a result of the transfer. (A suggestion of its insolvency made at the evidentiary hearing was not meaningfully substantiated.) The evidence simply does not show the transfer was in any way fraudulent under Wisconsin law. See §§242.04 & .05. And more to the point, even if it *was* a fraudulent transfer, it would only have been fraudulent as to *Byway Investment's* creditors. The scant evidence of such creditors is that, at the time of the transfer, Byway Investment may have owed taxes on real property it owned in Indiana and that those taxes were later paid. The evidence does not show that transfer was fraudulent as to anyone—or even that anyone has sought to set the transfer aside as such. Regardless, the court cannot discern how this transfer shows (or even suggests) that the debtor intended to defraud *his* creditors. Under the totality of the circumstances, moreover,

even if Byway Investment's transfer of real property to the debtor could be deemed to have been made "with the intention of defrauding creditors" for purposes of section 815.18(10)—an inference unsupported by the evidence—the court would not exercise its discretion to deny the debtor's exemption of that, or any other, property.

WiscTex and the trustee also criticize the debtor's sale of the Marshall Avenue property for $135 thousand despite someone appraising it for $170 thousand—hearsay that the debtor confirmed. These critiques are similarly insubstantial. The debtor credibly testified, as the property's then owner, that he accepted for it what he thought was a fair price given its condition and that he avoided paying a broker's commission by relying on his sister and brother-in-law to manage the sale for him. There were intimations at the evidentiary hearing that the debtor's sister may have engaged in some side-dealing with the buyer (e.g., to remain in the property as a tenant after the sale, to obtain an option to purchase the property herself at a later date), but the evidence does not demonstrate that either the debtor or his sister actually did anything improper—much less that anything they did would, for example, jeopardize the validity of the sale or render it a fraudulent transfer—or that the debtor was even aware that his sister may have been pursuing her own interests, as well as his, during or after the sales process. That the debtor sold the Marshall Avenue property while WiscTex was suing him is not, without more, evidence of fraud, nor is the suggestion that he sold that property for somewhat less than it might have been worth. Evidence of the $170 thousand appraisal is entitled to no weight. Neither the appraisal nor any facts surrounding it were admitted: Who performed the appraisal? What were the appraiser's qualifications? What were the bases for the appraisal? The evidence answers none of these questions. WiscTex and the trustee made no effort to prove the value of the property at the time of the sale. And no credible evidence contradicts the debtor's testimony that he sold it for a fair and reasonable value.

WiscTex's and the trustee's remaining arguments for relief under

section 815.18(10) are vague, perfunctory, or ill-formed, such that they do not merit serious discussion, and the court adjudges them waived. See *M.G. Skinner & Assocs. Ins. Agency, Inc. v. Norman-Spencer Agency, Inc.*, 845 F.3d 313, 321 (7th Cir. 2017) (citing *United States v. Hook*, 471 F.3d 766, 775 (7th Cir. 2006)) ("Perfunctory and undeveloped arguments are waived, as are arguments unsupported by legal authority."). For example, WiscTex cites Wisconsin caselaw holding that a homestead cannot be exempted to the extent that it was "created and maintained with stolen or embezzled property, or by the wrongful appropriation of property rightly belonging to others". *Paulman v. Pemberton (In re Estate of Paulman)*, 633 N.W.2d 715, 718 (Wis. Ct. App. 2001) (quoting *Warsco v. Oshkosh Sav. & Tr. Co.*, 208 N.W. 886, 888 (Wis. 1926)). This caselaw—which concerns the scope of the homestead exemption under section 815.20, not denial of an exemption under section 815.18(10)—stands for the proposition that the Wisconsin homestead exemption does not shield recovery of wrongfully acquired funds by those rightfully entitled to them simply because the funds are invested in a homestead. How that principle applies here is a mystery. Perhaps WiscTex means to suggest that the debtor's transfer of his homestead out of Byway Investment was a theft or wrongful appropriation of someone else's property, but the court cannot discern how, and regardless, it was not a misappropriation of *WiscTex's* property. There is no evidence that Byway Investment was liable to WiscTex, much less that it owed WiscTex the house deeded to the debtor. There is no evidence that the debtor or Byway Investment improperly acquired or maintained the property, nor that anyone other than the LLC (and the debtor as its only member) had an interest in the property. Vague aspersions, even if accompanied by a citation to legal authority, provide no basis for relief.

WiscTex also argues that the debtor's attempt, on the date of the filing of the petition in this case, to transfer about $4 thousand from one bank account to another is "[q]uite telling of badges of fraud in this case". ECF No. 143, at 3, ¶13. The debtor conceded that he initiated the transfers before filing the petition and that his account

statements date the transfers to the following day, after the petition was filed. See ECF No. 107-1, at 1 (explaining that transfers of $140 and $4,000 on August 9, 2020, the day the petition was filed, do not "show up on the bank statements" until the next day). WiscTex does not explain how these transfers were fraudulent or suggest fraudulent intent. The debtor credibly testified that he tried to transfer the funds to isolate exempt veterans' and Social Security disability benefits payments in one account by placing funds obtained from other sources in another account and that his only intent in doing so was to make it easier to trace his deposited funds from different sources. The debtor disclosed both accounts in his schedules, and WiscTex has not disputed since before the evidentiary hearing that the funds the debtor tried to move from one account to another on the petition date were exemptible *whether or not* they were transferred. See Wis. Stat. §815.18(3)(k) (permitting exemption of "[d]epository accounts in the aggregate value of $5,000 . . . to the extent that the account[s are] for the debtor's personal use"). The court cannot discern how the debtors' attempted transfer of apparently exemptible funds from one disclosed bank account to another, no matter how close in time to the filing of the petition, suggests that he did anything with the intention of defrauding anyone.

Ultimately, the evidence shows that the debtor, as the only member of an LLC, transferred his homestead from the LLC to himself; he liquidated assets to purchase an annuity during a lawsuit against him in state court; he tried to move some funds between bank accounts to isolate exempt veterans' and Social Security disability benefits from other funds; and he then filed a bankruptcy case, claiming assets as exempt under applicable nonbankruptcy law. Considering and giving due weight to all of the evidence, the debtor did not do any of this with the intention of *defrauding* anyone. The evidence instead shows that the debtor used legal means to protect assets from liquidation and distribution for the benefit of his creditors as expressly permitted by the Bankruptcy Code, federal nonbankruptcy law, and Wisconsin law. Any perceived excess generosity in the amount and availability of exemptions afforded by

applicable law is a matter reserved for Congress and the Wisconsin Legislature.

III

WiscTex raised other objections to the debtor's state-law exemptions. WiscTex objected that neither the debtor's annuity nor his Roth IRA is exemptible under Wisconsin Statutes section 815.18(3)(j), which broadly permits exemption of retirement benefits, but its critiques here are, at best, scattershot. WiscTex has offered nothing but bald assertions that the annuity is not exemptible under section 815.18(3)(j), so it has waived its right to prosecute that issue, and the court will not discuss it any further.

With respect to the IRA, WiscTex asserted that "Debtor's self-dealing with the IRA remove[s] any exemption protections Debtor would have been afforded." ECF No. 143, at 5, ¶18. WiscTex did not identify any self-dealing, however. It criticized the debtor's expert witness for being unable to assess whether "the transfer of assets into the IRA" involved any "disqualified transactions" in violation of §4975 of the Internal Revenue Code, 26 U.S.C. §4975—which could perhaps endanger the debtor's exemption of the IRA, see §815.18(3)(j)(2)(a). ECF No. 143, at 5, ¶19. But it offered no evidence of any such transactions, e.g., a fiduciary's sale of property to the IRA. §4975(c)(1)(A) & (e)(2)(A). It also criticized the debtor's role in managing the IRA as too extensive, but it cited no legal authority imposing any relevant limitations on his involvement, and the court cannot discern any such limitations that the debtor may have circumvented.

WiscTex noted that the LLC the debtor organized to hold the IRA's assets, MGJR Investments, was not in good standing with the State of Wisconsin Department of Financial Institutions for about 10 months (from April 2019 to February 2020) and that the debtor did not inform the IRA's custodian, Midland IRA Inc., of this change in the company's status, as he agreed to do. The only citations that WiscTex put forth in support of these assertions, though, are to an exhibit that was not offered or admitted (the debtor's exhibit number 13) and Wisconsin Statutes section 183.09025, which provides for administrative dissolution of an LLC that is more than a year behind in

filing its annual report with the DFI. As MGJR was never shown to have been dissolved, administratively or otherwise, the court cannot discern how section 183.09025 applies here, and WiscTex made no meaningful attempt to explain how technical lapses like these, with respect to the LLC, might render the IRA itself non-exemptible.

WiscTex asserted that because the IRA's property is held by MGJR, which is not an individual, the debtor cannot exempt it. See §815.18(2)(c) ("'Debtor' means an individual."). Putting aside that if the property at issue is owned not by the debtor but by a separate non-debtor entity, then it is not property of the estate subject to the claims of creditors in this case, WiscTex's contention here lacks merit. Wisconsin law allows a debtor to exempt "[a]ssets held or amounts payable under any . . . individual retirement account . . . and payments made to the debtor therefrom." §815.18(3)(j)(1). That is, the exemption applies to amounts that a debtor may be paid from an IRA, payments he has already received from the IRA, and assets held by the IRA. The debtor's IRA fits comfortably within the scope of this exemption.

WiscTex seems to have abandoned its remaining objections to the debtor's state-law exemptions. Before the evidentiary hearing, WiscTex objected to the debtor's exemption of a brokerage account and a depository account under section 815.18(3)(k), asserting that they are not "for the debtor's personal use" as required by that statute. But WiscTex made no mention of this objection at the evidentiary hearing, and its post-hearing briefs do not address it, so the court deems this issue waived. WiscTex also objected to the debtor's exemption of up to $10 thousand of the value of his 2014 Dodge Ram because the vehicle might be worth more, but aside from half-heartedly offering and then immediately withdrawing as an exhibit a document purportedly showing the estimated value of the vehicle type according to NADA (the National Automobile Dealers Association), WiscTex made no effort to prove the value of the vehicle when the debtor claimed it as exempt. And the debtor's testimony—as persuasive as such evidence, which is permitted, ever is—supports his valuation of the truck.

Moreover, that property claimed as exempt may have more value than can be exempted is not, strictly, an objection to the claimed exemption. If the property is worth more than the debtor can exempt or has exempted, the trustee can attempt to sell it and distribute the sale proceeds as the Code requires. If not, the trustee will abandon it and the debtor will retain it. Either way, the debtor's exemption of $10 thousand of the vehicle's value has not been meaningfully opposed or proved inapplicable.

IV

WiscTex raised objections to the debtor's federal exemptions too.[6] WiscTex objects that the debtor's Roth IRA is not exemptible under §522(b)(3)(C). The evidence shows that the IRA is exemptible under section 815.18(3)(j), as discussed above, so the court need not determine whether it is separately exemptible under §522(b)(3)(C).

WiscTex also asserts that, like the debtor's state-law exemptions, his federal exemptions should be denied based on his "bad faith and intent to defraud his creditors". ECF No. 143, at 5, ¶18. But the Bankruptcy Code does not, either generally or as applicable here, provide for the denial of exemptions based on "the debtor's misconduct", nor does the Code admit "a general, equitable power in bankruptcy courts to deny exemptions based on a debtor's bad-faith conduct", and "*federal law* provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code." *Law v. Siegel*, 571 U.S. 415, 424–25 (2014). Moreover, even if federal law recognized WiscTex's "bad faith" arguments for denying the debtor's

[6] Under §522(b) of the Bankruptcy Code a debtor may exempt either the property specified in §522(d) (unless applicable "State law . . . specifically does not so authorize") or "property that is exempt under Federal law, other than [§522(d)], or [applicable] State or local law" *and* "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. §522(b)(1), (2), (3)(A) & (3)(C). In addition to the exemptions he claimed under Wisconsin law, the debtor claimed exemptions under federal nonbankruptcy law—specifically, federal statutes that broadly exempt veterans' and Social Security benefits from all legal process, see 38 U.S.C. §5301(a)(1) & 42 U.S.C. §407(a)—and claimed his Roth IRA as exempt under §522(b)(3)(C), because it is exempt from taxation under 26 U.S.C. §408A.

federal exemptions, they are essentially the same as those discussed above with respect to the debtor's state-law exemptions, and they would fail for the same reasons.

WiscTex additionally argues that the debtor's exemption of a depository account that contains only veterans' and Social Security disability benefits should be denied in whole or in part because the debtor failed to show that the account contains funds only from those sources. This argument does not withstand scrutiny. The debtor's testimony and exhibits show that the funds in the account on the petition date were traceable to exempt benefits and that the debtor transferred (or tried to transfer) all other funds out of the account before filing the petition. (And, as mentioned above, when the petition was filed, to the extent the debtor's depository accounts held funds *other than* exempt federal benefits, those funds were exemptible under section 815.18(3)(k) anyway, because their aggregate value was less than $5,000.) According to WiscTex, the debtor should have traced the funds in the account from an earlier date or employed one or more other tracing methods, but it did not explain or establish why the law so requires or what would be different if he had. WiscTex, of course, could have traced the funds itself, from an earlier date or using another method, or both, as it had all of the usual discovery mechanisms available to it to compel the debtor's production of account records predating his chosen tracing period and to force his deposition and hearing testimony about the sources of funds in the account at any given time. It did not do that, and there is nothing objectionable about the analysis offered by the debtor, so WiscTex's objection to the debtor's exemption of his federal-benefits account is unsupported.

V

WiscTex initially raised other objections to the debtor's claim of exemptions, but those objections were not mentioned (or were inadequately developed) in its pretrial report, at the evidentiary hearing, or in its post-hearing briefs. Accordingly, any other objections WiscTex may have raised and prosecuted are deemed forfeited.

VI

For the reasons stated above, IT IS ORDERED that WiscTex's and the trustee's objections to the debtor's claim of exemptions are overruled.

#####