

**SO ORDERED.****SIGNED this 20th day of July, 2021.**

  
 LENA MANSORI JAMES  
 UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
 WINSTON-SALEM DIVISION**

IN RE:	)	
	)	
Cynthia Amelia Butler,	)	Chapter 7
	)	
Debtor.	)	Case No. 20-50897
	)	
_____	)	

**ORDER  
 SUSTAINING TRUSTEE'S OBJECTION TO EXEMPTION**

THIS MATTER came before the Court on the Objection to Debtor's Claim for Property Exemptions (Docket No. 17, the "Objection") filed by the chapter 7 trustee (the "Trustee"). The Trustee objected to the Debtor's claimed exemption under N.C. Gen. Stat. § 1C-1601(a)(8) (2021) of a \$15,000 settlement the Debtor reached with her former employer, Home Depot U.S.A., Inc. ("Home Depot"), in exchange for the full withdrawal of the Debtor's claims, charges, and complaint filed with the U.S. Equal Employment Opportunity Commission ("EEOC") (Docket No. 17, Ex. A, the "Settlement").<sup>1</sup> The Court held a virtual hearing on May 13, 2021, at which Daniel

<sup>1</sup> The Trustee filed a copy of the Settlement as an attached exhibit with his Objection (Docket No. 17).

Bruton appeared in his capacity as Trustee, William P. Miller appeared as the United States Bankruptcy Administrator, and Benjamin Busch appeared on behalf of the Debtor, who was also present.

Prepetition, the Debtor filed a charge with the EEOC alleging that she was subjected to sexual harassment and then wrongfully terminated.<sup>2</sup> The Settlement requires Home Depot to pay the total sum of \$15,000 to the Debtor, with \$7,500 of such funds directed “as payment for claims for lost wages” and the remaining \$7,500 devoted “as payment for [the Debtor’s] non-wage claims (including claims of emotional distress).” After the Debtor filed amended schedules and an amended claim for property exemptions to reflect the full value of the Settlement (Docket No. 12, 13), the Trustee timely filed an objection under Federal Rule of Bankruptcy Procedure 4003(b)(1). The Trustee objects to the Debtor’s claimed exemption in the \$7,500 portion of the Settlement for lost wages, arguing that payment does not constitute “compensation for personal injury” as required by § 1C-1601(a)(8). The Trustee does not object to the claimed exemption in the remaining \$7,500 directed to settling the Debtor’s claims of emotional distress.

The Debtor filed a response to the Objection, along with supporting caselaw, asserting that the challenged portion of the Settlement is properly conceived of as compensation for a personal injury, and thus properly exempted under § 1C-1601(a)(8) (Docket No. 27, 29). The Trustee then filed a reply arguing the decisions relied upon by the Debtor are distinguishable from the instant case because the

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<sup>2</sup> Both the Debtor and the Trustee filed, and offered into evidence, copies of the Debtor’s charge with the EEOC, which alleged discrimination based on sex (Docket No. 36, 37).

compensation for lost wages in the Settlement “is wholly independent and separate from the Debtor’s alleged personal injury claim” (Docket No. 28).

At the hearing, the Debtor testified as to the circumstances surrounding the alleged harassment and her wrongful termination. The Debtor also confirmed that she had already received the settlement proceeds from her former employer, \$7,500 of which she understood to be for “pain and suffering” and “the stress that [she] went through [due to the termination]” and \$7,500, less taxes and payroll deductions resulting in net pay of \$4,875, as recoupment of “backpay ... from the time they terminated [her] until the time of mediation.”

The question presented to the Court is whether the \$7,500 portion of the Settlement awarded for lost wages due to wrongful termination may be claimed as exempt under § 1C-1601(a)(8). N.C. Gen. Stat. § 1C-1601 provides in pertinent part:

(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

...

(8) Compensation for personal injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

N.C. Gen. Stat. § 1C-1601(a)(8) (2021). The Trustee has the burden of proving the exemption is not properly claimed, Fed. R. Bankr. P. 4003(c), and in North Carolina, exemption laws are to be liberally construed in favor of the debtor and allowance of the exemption. *In re Wright*, 618 B.R. 743, 746 (Bankr. M.D.N.C. 2020) (quoting *In re Parker*, 610 B.R. 535, 537 (Bankr. E.D.N.C. 2019)).

As a preliminary matter, the parties disagree as to whether the settlement proceeds for lost wages and for emotional distress pertain to, and are derived from, one claim or two wholly separate claims. While the Settlement contains a waiver and general release of multiple potential claims the Debtor may bring against Home Depot, the “Statement of Pending Claims” section indicates the settlement payment is aimed at resolving the Debtor’s charge filed with the EEOC under Title VII (Docket No. 17, Ex. A, ¶ 3). Title 42, United States Code, Section 1981A, amended to Title VII by the Civil Rights Act of 1991, provides for compensatory and punitive damages in cases of sex discrimination in employment, and may include, inter alia, future pecuniary losses, emotional pain, suffering, inconvenience, and mental anguish. 42 U.S.C. § 1981A (2021). Title VII also allows equitable relief, which could include back pay. 42 U.S.C. § 2000e-5(g); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 366 (2011).

Whether the settlement proceeds are derived from the same Title VII claim has no bearing on whether the separate damages stemming from that claim may be exempted, in whole or in part, under North Carolina law. Section 1C-1601(a)(8) only permits resident debtors of North Carolina to exempt “compensation” for personal injury, as opposed to the personal injury claims or causes of action in their entirety, as some state exemption statutes provide. *See, e.g., Va. Code § 34-28.1* (2021) (providing, with some exceptions for specific statutory liens, that “all causes of action for personal injury or wrongful death and the proceeds derived from court award or settlement shall be exempt”); *Minn. Stat. § 550.37* (2021) (exempting

“[r]ights of action for injuries to the person of the debtor or of a relative whether or not resulting in death.”). The North Carolina Supreme Court has, for the purposes of assignment, noted the distinction between a claim for personal injury and the proceeds of such a claim. *Charlotte-Mecklenburg Hosp. Auth. v. First of Ga. Ins. Co.*, 455 S.E.2d 655, 657 (N.C. 1995) (observing that the assignment of a claim for personal injury is void as against public policy while the assignment of proceeds of a personal injury claim is not). The court has also, within the context of equitable distribution, recognized the separate categories of damages from a personal injury claim, rather than a single lump sum award. *Johnson v. Johnson*, 346 S.E.2d 430, 436 (N.C. 1986).

Thus, the Debtor may only exempt the \$7,500 of compensation devoted to lost wages if it is “compensation for personal injury” under § 1C-1601(a)(8). “The goal of statutory interpretation is to determine the meaning that the legislature intended upon the statute’s enactment,” and North Carolina courts are directed to give effect to the statute’s plain meaning when unambiguous text yields only one meaning. *In re J.E.B. II*, 853 S.E.2d 424, 428–29 (N.C. 2021) (internal citation omitted). Section 1C-1601(a)(8) does not contain a definition for “personal injury,” and in fact, the phrase is recognized as having a range of meanings. *Misenheimer v. Burris*, 637 S.E.2d 173, 175 (N.C. 2006) (finding that “[t]he term personal injury has a wide range of meanings” depending upon the context of the statute and “could be defined as either: any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury; or any invasion of a personal right, including mental suffering and

false imprisonment.”) (cleaned up). Other tools of interpretative guidance are also of little utility here. Not only is there no legislative history for § 1C-1601, *In re Ragan*, 64 B.R. 384, 387 (Bankr. E.D.N.C. 1986), there are also no state court decisions addressing the question at hand. The North Carolina judiciary has not directly considered the scope of § 1C-1601(a)(8) and has provided little guidance on the meaning of “compensation for personal injury” as used in the statute. *Cf. Haarhuis v. Cheek*, 820 S.E.2d 844, 853 (N.C. Ct. App. 2018) (citing in dicta bankruptcy court findings that personal injury under § 1C-1601(a)(8) is not limited to physical bodily injury and may include emotional distress).

It has instead been left to bankruptcy courts to address the interpretative vacuum around § 1C-1601(a)(8). While the bankruptcy court decisions have not delineated the precise boundaries of the available exemption under § 1C-1601(a)(8), several conclusions may be drawn from those decisions as to what constitutes “compensation for personal injury.” First, bankruptcy courts have uniformly found that, unlike the comparable federal exemption in 11 U.S.C. § 522(d)(11)(D), § 1C-1601(a)(8) does not limit the “personal injury” exemption to compensation for personal “*bodily*” injury, thereby allowing a North Carolina debtor to exempt compensation for emotional distress. *In re Thompson*, 313 B.R. 683, 685 (Bankr. M.D.N.C. 2004); *In re LoCurto*, 239 B.R. 314, 317–18 (Bankr. E.D.N.C. 1999).<sup>3</sup>

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<sup>3</sup> At least one court has determined that a debtor would need to show “severe emotional distress” to claim an exemption under § 1C-1601(a)(8). *See Brantley v. CitiFinancial, Inc. (In re Brantley)*, No. 13-00483, 2015 WL 230186, at \*4 (Bankr. E.D.N.C. Jan. 15, 2015). In addressing a similar question, however, the North Carolina Supreme Court has rejected the contention that a plaintiff would need to show “severe emotional distress” to invoke a discovery rule for actions in “personal injury,” noting that it “find[s] nothing in our case law, or any other authority cited by defendant that mandates such a holding.” *Misenheimer v. Burris*, 637 S.E.2d 173, 176 (N.C. 2006).

Compensation for personal injury does not encompass life insurance proceeds, *Ragan*, 64 B.R. at 389, but does include compensation for medical expenses, albeit with a specifically stated exception for services related to the personal injury, i.e. funeral, legal, medical, dental, hospital, and health care charges. *Thompson*, 313 B.R. at 685. Settlement proceeds directed to a debtor's lost wages, which were the direct result of automobile accident injuries, constitute "compensation for personal injury," *Id.* at 685–86, while lost wages paid as part of a settlement involving charges of wrongful termination, sex discrimination, and libel, are not similarly exempt under § 1C-1601(a)(8). *LoCurto*, 239 B.R. at 317. Finally, a court should examine the discrete categories of damages within a settlement to determine eligibility for exemption under § 1C-1601(a)(8). *Thompson*, 313 B.R. at 685–86; *LoCurto*, 239 B.R. at 317–318. The fact that some portion of a settlement may constitute "compensation for personal injury" does not extend the available exemption to the entirety of the broader settlement if the remaining categories of damages cannot be similarly defined as such. *Brantley*, 2015 WL 230186, at \*5.

Given the absence of any single, plain meaning for the term "compensation for personal injury" and the lack of any guidance from the North Carolina legislature or judiciary, the Court will apply the interpretation of § 1C-1601(a)(8) already utilized by North Carolina bankruptcy courts. The interpretative through line that connects those decisions is embodied, and illustrated, in two decisions of the United States Supreme Court that considered similarly worded legislation. *See Comm'r v. Schleier*, 515 U.S. 323 (1995) and *O'Gilvie v. United States*, 519 U.S. 79

(1996). The analytical approach employed in *Schleier* and *O’Gilvie*, which is applicable to the comparable phrasing within § 1C-1601(a)(8), clarifies and connects the underlying reasoning of those bankruptcy court decisions considering the scope of the North Carolina personal injury exemption.<sup>4</sup>

In *Schleier* and *O’Gilvie*, the Court assessed the meaning of “damages received ... on account of personal injuries or sickness” within the context of section 104(a)(2) of the Internal Revenue Code.<sup>5</sup> The phrase “on account of” did not “unambiguously define itself” and the Court was faced with two competing interpretations: a reading that would require no more than a “but-for” connection between *any* damages and a lawsuit for personal injuries, and a reading that would encompass only those personal injury damages “that were awarded by reason of, or because of, the personal injuries.” *O’Gilvie*, 519 U.S. at 82–83. The Court adopted the latter interpretation, in part because it “gives the phrase ‘on account of’ a meaning consistent with the dictionary definition.” *Id.* at 83 (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 13 (1981) (“for the sake of: by reason of: because of”). The Court also looked behind the curtain of the gross amount of a settlement to consider whether particular categories within that settlement

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<sup>4</sup> The Court invokes the reasoning at work in *Schleier* and *O’Gilvie*, not to set forth an innovative construction of § 1C-1601(a)(8), but merely to explain, and demonstrate the interconnectedness of prior bankruptcy courts’ interpretive approach to the statute. The analysis the Court employs herein is in no way a departure from the existing bankruptcy caselaw on § 1C-1601(a)(8).

<sup>5</sup> Following the decision in *Schleier*, and in an effort to exclude emotional distress damages, Congress amended I.R.C. § 104(a)(2) to specifically encompass only those damages received “on account of personal *physical* injuries or *physical* sickness.” See *Tritz v. Koskinen*, No. 14-1653, 2016 U.S. Dist. LEXIS 86229, at \*3 (C.D. Cal. June 30, 2016). While the specific findings of *Schleier* have now been superseded by statute, the reasoning employed by the Court therein remains viable and particularly useful to interpreting the similar wording of § 1C-1601(a)(8).



constitute “damages received ...on account of personal injuries or sickness,” which is the same approach adopted by bankruptcy courts considering “compensation for personal injury” under § 1C-1601(a)(8). The Supreme Court noted that “each element of the settlement is recoverable not simply because the taxpayer received a tort settlement, but rather because *each element of the settlement* satisfies the requirement set forth ... that the damages were received ‘on account of personal injuries or sickness.’” *Schleier*, 515 U.S. at 330 (emphasis added). In short, the Court found only those damages that are linked or attributable to personal injury or sickness would fall within the operative language of I.R.C. § 104(a)(2).

To illustrate its reasoning, the Court distinguished proceeds of a settlement received under the Age Discrimination in Employment Act of 1967 (ADEA) from a hypothetical settlement in an automobile accident. *Id.* at 329–330. In the latter, the Court explained that medical expenses, pain, suffering, and emotional distress would clearly constitute damages received on account of personal injuries. *Id.* at 329. The Court also found lost wages from the automobile accident would be encompassed “as long as the lost wages resulted from time in which the taxpayer was out of work *as a result of* her injuries.” *Id.* at 329–330 (emphasis added). In contrast, the lost wages received from an ADEA violation could not be characterized as damages received on account of personal injury or sickness. While the automobile “accident causes a personal injury which in turn causes a loss of wages,” age discrimination may cause both personal injury (in the form of emotional distress) and loss of wages, “but neither is linked to the other.” *Id.* at 330. The amount of

back wages recovered from the ADEA violation, the Court explained, “is completely independent of the existence or extent of any personal injury.” *Id.* In applying this reasoning, the Court found the back wages portion of the taxpayer’s ADEA settlement did not constitute “damages received ... on account of personal injuries or sickness.”

The reasoning expounded upon by the Supreme Court in *Schleier* and *O’Gilvie* mirrors that implicitly employed by North Carolina bankruptcy courts in discerning the scope of § 1C-1601(a)(8). The language the Supreme Court considered, “damages ... on account of personal injuries[...],” essentially mirrors the phrase “compensation for personal injury” and the operative words “for” and “on account of” carry the same definition. *See* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 886 (1981) (defining “for” as “because of; on account of”); THE RANDOM HOUSE COLLEGE DICTIONARY 515 (rev. ed. 1980) (defining “for” as “by reason of; because of”). Akin to the hypothetical used in *Schleier*, the *Thompson* court found lost wages recovered for “work missed because of [the debtor’s automobile accident] injury” were exemptible as compensation for personal injury. Compare *Schleier*, 515 U.S. at 329–30 with *Thompson*, 313 B.R. at 685–86. *LoCurto*, however, found lost wages stemming from a wrongful termination and sex discrimination settlement—a cause of action similar to the ADEA violation considered in *Schleier*—did not fall within the meaning of “compensation for personal injury.” Compare *Schleier*, 515 U.S. at 330 with *LoCurto*, 239 B.R. at 317–18. Collectively, the caselaw established by North Carolina bankruptcy courts over the course of several decades aligns with

the reasoning in *Schleier* in focusing on the individual categories of damages, rather than the settlement as a whole, to determine whether all or some of those categories are linked or attributable to the personal injury.

Here, the Court finds the Settlement of the Debtor's EEOC charge, alleging harassment and wrongful termination, has two components, a \$7,500 payment for emotional distress and a \$7,500 payment for lost wages.<sup>6</sup> While the Court finds, and the Trustee does not contest, that the \$7,500 payment for emotional distress is exempt under § 1C-1601(a)(8), the remaining balance of the Settlement directed to lost wages does not constitute "compensation for personal injury." Unlike the lost wages resulting from an automobile accident, as discussed in *Thompson*, the lost wages here are not attributable to the personal injury. Rather, the portion of the Debtor's Settlement directed to lost wages "is completely independent of the existence or extent" of the Debtor's emotional distress. Because the Debtor's lost wages are not linked or attributable to the Debtor's emotional distress, those proceeds do not constitute "compensation for personal injury" under § 1C-1601(a)(8).

Based upon the foregoing, IT IS HEREBY ORDERED that the Trustee's Objection is SUSTAINED, and the Debtor's amended exemption is denied as to the \$7,500 portion of the Settlement devoted to lost wages.

IT IS FURTHER ORDERED that the Debtor is allowed fourteen (14) days from entry of this order to either file an amended claim for exemptions or to deliver

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<sup>6</sup> While the language of a settlement "is helpful but not controlling[.]" *In re LoCurto*, 239 B.R. 314, 317 (Bankr. E.D.N.C. 1999), the parties agree, and the Debtor testified that the Settlement allocates proceeds to two categories of payments: non-wage claims including emotional distress and payment for claims of lost wages. Though not bound by the parties' characterization of the compensation, the Court concurs with the parties' position as to categorization of the Settlement proceeds.

any non-exempt assets to the Trustee, pursuant to the Debtor's affirmative duties under 11 U.S.C. § 542(a).

**END OF DOCUMENT**

PARTIES TO BE SERVED

Cynthia Amelia Butler (Ch.7)

20-50897

Benjamin Busch

*via cm/ecf*

John T. Orcutt

*via cm/ecf*

Daniel C. Bruton, Trustee

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