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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:)	
)	No. 98-07547-W1R
MARY KATHRYN SANOWSKI,)	
)	MEMORANDUM DECISION RE:
Debtors.)	MOTION TO REQUIRE TRUSTEE
)	TO DELIVER FUNDS DISTRIBUTED
)	BY STATE COURT

On December 4, 2000, the court heard oral argument regarding William Sanowski, III's Motion to Require Trustee to Deliver Funds Distributed By State Court. The court took the matter under advisement in order to fully review the voluminous record in this case. After the hearing, Ms. Russell also filed some additional pleadings which were also reviewed. The court now enters its Memorandum Decision.

The Trustee is currently holding \$77,014.64.¹ By previous Memorandum Decision dated January 27, 2000 and order of this court, the Trustee is to distribute from that amount the sum of \$24,335.39 in satisfaction of a secured claim held by creditor Drury. That prior ruling concluded that sum was not property of the bankruptcy

¹Interest is accruing on at least some portion of this amount. The Trustee has withdrawn his motion to recover the \$10,918.44 "Hansen funds" and the Trustee has abandoned any interest of the estate in those funds. If that assumption is incorrect, any recovery of such funds by the estate would also be distributed in accordance with this decision.

FILED

JAN 10 2001

J. S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

ENTERED
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1 estate as a final order had already been entered by the Grant
2 County Superior Court awarding that sum to creditor Drury in
3 satisfaction of its lien. This court's prior ruling has been
4 appealed so no distribution has yet occurred.

5 The debtor has claimed \$13,248 as exempt. The actual amount
6 of the debtor's exemptions however, cannot be determined as the
7 Order on Objections to Exemption Sustaining in Part and Denying in
8 Part is on appeal. Administrative expenses as of the date of the
9 hearing were \$10,058.71. After payment of the exempt amount, the
10 secured claim and the administrative expenses, this would leave
11 \$29,372.54 available to pay the remaining allowed claims, all of
12 which are unsecured.

13 The present controversy at its most simplistic arises from the
14 request of the debtor's former spouse, Mr. Sanowski, that the
15 Trustee disburse to him \$51,971.93 as his share of the \$77,014.64
16 held by the Trustee in accordance with the Judgment of the Circuit
17 Court of the State of Oregon, County of Crook, Cause No. 98-00-
18 00055 (the "Oregon State Court"). Reducing the well crafted and
19 thorough decision of the Oregon State Court to its most simplistic
20 terms, it determined that Mr. Sanowski's share of the parties'
21 community property should be \$51,971.93. Obviously distribution of
22 that amount to him would mean that the estate would not hold
23 sufficient assets to fully satisfy the secured claim of creditor
24 Drury and the debtor's exemptions and the administrative expenses.
25 The debtor requests this court to order distribution to her of the
26 full exemption claimed of \$13,248. An unsecured creditor objects
27 to the distribution to Mr. Sanowski as if such distribution
28 occurred that unsecured creditor and all other unsecured creditors

1 would receive nothing. Secured creditor Drury also objects to the
2 distribution to the extent it would affect any right of Drury to
3 receive the \$24,335.39 as previously ordered by this court.

4 This controversy is resolved by the application of essential
5 bankruptcy principles. 11 U.S.C. § 541(a)(2) provides that the
6 property of the estate consists of

7 (2) All interests of the debtor and the debtor's spouse
8 in community property as of the commencement of the case
that is

9 (A) under the sole, equal, or joint management
10 and control of the debtor; or

11 (B) liable for an allowable claim against the
12 debtor, or for both an allowable claim against
13 the debtor and an allowable claim against the
debtor's spouse, to the extent that such
interest is so liable.

14 For purposes of that statute, former spouses are included in the
15 term "spouse". *Miller v. Walpin (In re Miller)*, 167 B.R. 202
16 (Bankr. C.D. Cal. 1994) and cases cited below.

17 One spouse may commence a bankruptcy proceeding without the
18 consent or involvement of the other spouse. The filing of the
19 bankruptcy petition creates an estate. That estate includes all of
20 the community property, assuming state law places community
21 property under the joint and equal control of both spouses, which
22 Washington law does. WASH. REV. CODE § 26.16.030. In fact it is
23 common for one spouse to file without the consent of the other
24 spouse on the eve of or during a marital dissolution proceeding.
25 The Bankruptcy Court then has the exclusive jurisdiction to
26 administer all of the property of the estate, which includes the
27 community property and the separate property of the bankruptcy
28 filing spouse. The property of the estate is then administered to

1 pay creditors with any remaining property returned to the spouses
2 or, in appropriate circumstances, to the state court in which the
3 marital dissolution is pending.

4 In this particular situation, this Chapter 7 was commenced on
5 December 17, 1998. Prior to that, the Washington State Court had
6 entered a Decree of legal separation between the spouses and on
7 December 18, 1998, without notifying the Washington court of the
8 bankruptcy filing, the debtor requested the Washington court to
9 enter a Dissolution of Marriage. It did so, but did not divide the
10 community property and liabilities between the parties as that
11 issue had been reserved for determination by the Oregon State
12 Court. On August 18, 1999, this court entered its Amended Order
13 Lifting Stay re State Court Proceedings to allow the Oregon State
14 Court to divide marital assets. As stated in that order, the
15 Oregon State Court was to divide assets and liabilities between the
16 spouses ". . . subject to claims of creditors as determined by
17 Bankruptcy Court" and that distribution of the 'Waldo funds' and
18 other property of the bankruptcy estate would "remain subject to
19 claims of creditors as provided by the Bankruptcy Code, which
20 claims will be determined by this court."

21 The Oregon State Court scheduled trial in May of 2000. Its
22 final order dividing assets and liabilities between the former
23 spouses was entered June 1, 2000, more than 2 years after
24 commencement of this bankruptcy.

25 As this bankruptcy was commenced prior to entry of a final
26 order dividing the community property, all of the community
27 property became property of the estate. There has never been any
28 dispute as to the community nature of the so-called 'Waldo funds',

1 which represent nearly all of the funds held by the Trustee,² and
2 in a prior bankruptcy proceeding of this debtor, this court held
3 they were community property. The 'Waldo funds' arose from the
4 sale of the community real estate. As community property, they
5 become property of the bankruptcy estate on December 17, 1998
6 (except the \$24,335.39 as Grant County State Court had entered a
7 final order which deprived the community of any interest and
8 awarded the funds to creditor Drury). Post-petition termination of
9 the marriage does not change the analysis that an undivided
10 community property constitutes property of the bankruptcy estate
11 when one spouse files bankruptcy. *Dumas v. Mantle (In re Mantel)*,
12 153 F.3d 1082 (9th Cir. 1998), cert. denied 526 U.S. 1068, 119
13 S. Ct. 1461, 143 L. Ed. 2d 547 (1999). For purposes of 11 U.S.C.
14 § 542 (a)(2), all community property not yet divided by a state
15 court at the time of a bankruptcy filing is property of the estate
16 even though a dissolution of the marriage itself has occurred pre-
17 petition. *In re Miller, supra*.

18 Distribution of funds from the sale of community real property
19 was at issue in *In re McCoy*, 111 B.R. 276 (B.A.P. 9th Cir. Cal.
20 1990). The funds had been placed in escrow and the state court had
21 indicated that creditors holding liens should be paid with net
22 proceeds which would then be divided evenly between the spouses.

24 ²\$2,499.66 of the funds held by the Trustee represents
25 proceeds from settlement of a claim held by the bankruptcy estate
26 against the third "Ford" defendants. Debtor has claimed and the
27 court has already determined that \$673.00 of that amount is exempt.
28 Since the claim which gave rise to these funds arose long before
any division of the community assets or the commencement of the
bankruptcy, the court assumes these proceeds are also community
property.

1 No order to that effect was entered. On the contrary, the state
2 court set a trial on the issues in the case leaving open a final
3 determination regarding division of the proceeds between the
4 spouses. Just before trial, one of the spouses commenced
5 bankruptcy. The escrow funds were determined to be property of the
6 bankruptcy estate and it was the Bankruptcy Court which determined
7 the distribution of the escrow proceeds for the benefit of those
8 holding claims against the bankruptcy estate. Only in situations
9 in which the state court has made a final division of the community
10 assets between the spouses prior to the commencement of the
11 bankruptcy are the assets awarded to the former spouse excluded
12 from the bankruptcy estate of the filing spouse. *Gendreau v.*
13 *Gendreau (In re Gendreau)*, 191 B.R. 798 (B.A.P. 9th Cir. Nev. 1995);
14 *Keller v. Keller (In re Keller)*, 185 B.R. 796 (B.A.P. 9th Cir. Cal.
15 1995).

16 Again, a basic bankruptcy principle is that when a spouse
17 commences a bankruptcy proceeding all community property becomes
18 property of the estate and is to be administered under the
19 Bankruptcy Code. Post-bankruptcy filing, a state court is
20 determining the spouses' interest only in whatever community
21 property remains after its administration under the Code. This is
22 also the result in non-community property states; *In re McCulley*,
23 150 B.R. 358 (Bankr. M.D. Pa. 1993), post-bankruptcy petition state
24 court distribution of property between spouses subordinate to right
25 of trustee to liquidate the property as property of the estate; *In*
26 *re Greer*, 242 B.R. 389 (Bankr. N.D. Ohio 1999), post-bankruptcy
27 petition state court decision did not affect administration of both
28 spouses' property as property of the estate; and *Anderson v. Conine*

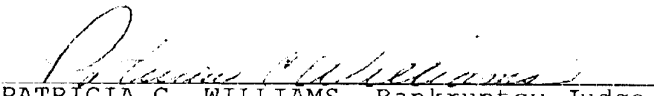
1 (In re Robertson), 203 F.3d 855 (5th Cir. La. 2000) pre-bankruptcy
2 petition consent judgment entered in state court which divided
3 property between the spouses placed the property awarded to the
4 non-filing spouse outside the estate of the bankruptcy filing
5 spouse.

6 In the present situation the Bankruptcy Code requires
7 distribution of the \$77,014.64 as follows: \$24,335.39 to secured
8 creditor Drury (subject to final resolution of the pending appeal);
9 \$13,248.48 of exempt property to the debtor (subject to final
10 resolution of the pending appeal); and \$10,058.71 (or whatever sum
11 is finally due) for administrative expenses. The balance is to be
12 distributed by the Trustee to whatever allowed unsecured claims
13 exist. If allowed unsecured claims do not exhaust the funds held
14 by the Trustee, any funds remaining would ordinarily be distributed
15 to the debtor. As to the \$13,248 exempt funds and any excess funds
16 which might remain after satisfaction of creditors, it is not the
17 function of the court to interpret or apply the final decision of
18 the Oregon State Court. In the discretion of the Trustee, those
19 funds may be distributed to the registry of the Oregon State Court
20 or may be distributed based upon further order of the Oregon State
21 Court specifically determining the appropriate distribution of
22 those funds between the former spouses.

23 The Clerk of the Court is directed to file this Order and
24 provide copies to counsel and pro se debtor.

25 DATED this 10th day of January, 2001.

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PATRICIA C. WILLIAMS, Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

CERTIFICATE OF SERVICE

The undersigned deputy clerk of the United States Bankruptcy Court for the Eastern District of Washington hereby certifies that a copy of the document, of which this is attached, was mailed this date to the following parties as required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

Per Chambers:

Atty Stengel _____

" Reeves _____

" Neill _____

Debtor _____

Joyce J. Peters

Deputy Clerk

JOYCE J PETERS

JAN 10 2001

Date

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

CERTIFICATE OF SERVICE

The undersigned deputy clerk of the United States Bankruptcy Court for the Eastern District of Washington hereby certifies that a copy of the document, of which this is attached, was mailed this date to the following parties as required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure.

<i>Atty Bassett</i>	_____
<i>" Miller</i>	_____
_____	_____
_____	_____
_____	_____

Joyce J. Peters

Deputy Clerk JOYCE J PETERS

JAN 11 2001

Date