
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
)
JOHN WEBSTER) Chapter 13 Case
ROBIN WEBSTER) Number 93-40163
)
)
Debtors)

MEMORANDUM AND ORDER
ON DEBTORS' MOTION TO ALLOW SETTLEMENT

This matter comes before the Court on Debtors' Motion to Allow Settlement. The Court entered an Interim Order on August 9, 1994, permitting the Debtors to settle their personal injury claim for the sum of \$10,000.00, but requiring the net proceeds after payment of attorney's fees and expenses to be paid over to the Chapter 13 Trustee pending resolution of the Trustee's objection to that portion of the Motion which proposed that Debtors retain the net proceeds of settlement. Having considered the further argument and the citations provided by both parties, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code on January 29, 1993. On June 29, 1993, the court confirmed Debtors' Chapter 13 plan. The plan calls for Debtors to pay \$235.00 per month to the Chapter 13 Trustee and is expected to yield a 100% dividend to unsecured creditors. However, Debtors have not made a plan payment to the Trustee since March 9, 1994.

Prior to the commencement of their Chapter 13 case, Debtors were involved in an automobile accident in which Debtor, John Webster, sustained serious bodily injury. The operator of the other vehicle involved in the accident was uninsured, and as a result, Debtors were forced to settle their claims stemming from the accident with their uninsured motorist insurance carrier for the sum of \$10,000.00. On May 31, 1994, Debtors brought their Motion to Allow Settlement, seeking approval of the settlement and permission to distribute the proceeds as follows:

- 1) \$3,333.33 to Debtors' attorney in payment of attorney's fees;
- 2) \$665.08 to Debtors' attorney as reimbursement for expenses incurred in pursuing the claim;
- 3) Payment to the Chapter 13 Trustee in an amount necessary to bring their Chapter 13 case current; and
- 4) Payment of the remaining balance of the proceeds to Debtors for home and automobile repairs.

The Trustee consented to settlement of the claim for \$10,000.00 and payment of attorney's fees, but objected to that portion of the motion seeking disbursement of the remaining proceeds to Debtors. On August 9, 1994, this court entered an order approving the settlement, authorizing the payment of attorney's fees and expenses to the attorney in the amounts set forth in the motion, approving payment of all sums necessary to bring Debtors' Chapter 13 case current, and directing that any remaining balance be paid over to the Trustee pending further order from this court.

Debtors thereafter filed amended schedules on August 30, 1994. Among the items listed as exempt in Amended Schedule "C" is a "Personal Injury Settlement - Debtor Interest \$6,012.00." Thus, Debtors claim the remaining proceeds as exempt under O.C.G.A. Section 44-13-100(a)(11)(D),¹ which provides for an exemption of up to \$7,500.00 paid on account of personal bodily injury.

Trustee does not dispute that Debtors are entitled to exempt the remaining

¹ O.C.G.A. § 44-13-100(a)(11)(D) provides:

(a) In lieu of the exemption provided in Code Section 44-13-1, any debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property:

(11) The debtor's right to receive, or property that is traceable to:

(D) A payment, not to exceed \$7,500.00, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.

proceeds under O.C.G.A. § 44-13-100(a)(11)(D), but does dispute their entitlement to receipt of the funds prior to the successful completion of their Chapter 13 plan. Relying upon this court's decision in Matter of Mattie M. Deeble, et. al. and David McBride, Ch. 13 Case Nos. 92-41155 and 93-41634, slip op. (Bankr. S.D.Ga. May 17, 1994), the Trustee asserts that, under section 522(c) of the Code, Debtors may not receive the funds until they have made all payments under their Chapter 13 plan and a discharge has been entered in their case.

In response to this assertion, Debtors cite section 1327(b) of the Code, which provides that "the confirmation of a [Chapter 13] plan vests all of the property of the estate in the debtor."² Thus, according to Debtors, they are entitled to an immediate disbursement of the remaining proceeds because the confirmation of their plan vested all property of their bankruptcy estate, including the settlement proceeds, in them.

CONCLUSIONS OF LAW

There is no dispute in this case that the settlement funds, as proceeds of a pre-petition cause of action, are property of the bankruptcy estate under section 541 of the Code. There is also no dispute that Debtors are entitled, under O.C.G.A. § 44-13-100(a)(11)(D), to exempt the settlement proceeds from the bankruptcy estate. The principal point of contention is the timing of the distribution of the proceeds: Are Debtors

² 11 U.S.C. §1327(b).

entitled to an immediate distribution or are they required to complete their Chapter 13 plan and receive their discharge before receiving the funds? This court recently ruled on a similar question in Matter of Mattie M. Deeble, et. al. and David McBride, Ch. 13 Case Nos. 92-41155 and 93-41634, slip op. (Bankr. S.D.Ga. May 17, 1994).

In Deeble, a Chapter 13 debtor sold a parcel of real estate during the pendency of her case and claimed a \$5,400.00 exemption in the net proceeds received from the sale under O.C.G.A. § 44-13-100(a)(6). The Chapter 13 Trustee did not object to the debtor's claim of exemption in the proceeds, but did object to the debtor receiving her exemption prior to the successful completion of her Chapter 13 case. In support of her objection, Trustee cited In re Holiday, et. al., Ch. 13 No. 91-10426 (Bankr. S.D.Ga. March 30, 1993) (Dalis, J.), for the proposition that a debtor is not entitled to the benefits of a Chapter 13 bankruptcy until the debtor fulfills all of his or her obligations under the confirmed plan.

Relying upon the portion of section 522(c) that provides that a property exempted by a debtor is not liable for pre-petition debts, "*unless the case is dismissed*," as well as the fact that the exemptions created by O.C.G.A. § 44-13-100 are not available to debtor outside of bankruptcy,³ I held that the debtor was required to complete her Chapter

³ O.C.G.A. § 44-13-100 is, as noted in Deeble, also available to intestate insolvent estates when there is a surviving widow or child of the intestate. See O.C.G.A. § 44-13-100(c).

13 plan before she was entitled to receive a cash payment representing her \$5,400.00 exemption. Deeble, *supra* at 8-9. In reaching this holding, I observed that, unlike a debtor in Chapter 7, a Chapter 13 debtor who has cashed out his or her exemption may dismiss his or her case at any time, in which case the "debtor would have benefitted fully from the exemption, without the *quid pro quo* anticipated in the Code of final payment in accordance with debtor's confirmed plan." Id. at 8. This, I concluded, was impermissible in view of the language used in section 522(c):

Clearly, Section 522 contemplates that exempt property is beyond the reach of creditors "unless the case is dismissed." To effectuate that condition, a debtor's realization of a claim of exempt property must be contemporaneous with completion of the case, which in a Chapter 13 case, occurs when all payments under the plan have been completed and a discharge has been entered or is to be entered subject only to minor delays in performance of ministerial acts. So long as the case is pending and payments are still due to be made under the terms of a confirmed plan, however, permitting the debtor to realize the benefits of the exemption would be equally as offensive to the spirit and purpose of bankruptcy envisioned by Title 11 as that which was disapproved by Judge Dalis in the Holiday decision.

Id. at 8.

I find no basis on which to distinguish or limit the holding in Deeble in the instant case. Contrary to Debtors' assertion, Section 1327(b) compels no different

result. Assuming that the phrase "vests all of the property of the estate in debtor" means that debtor is vested with a present fee interest in all estate property upon confirmation,⁴ Section 1327(b) is nevertheless inapplicable to this case. When Debtors amended their Schedule "C" to claim these proceeds as exempt they became "exempt from property of the estate." *See* 11 U.S.C. § 522(b). In other words, Debtors "carved out" those proceeds from what would otherwise have been their character as estate property. Thus, upon confirmation, the "property of the estate" which vested in Debtor did not include the proceeds of this cause of action.

By exempting these proceeds Debtor protected them from claims of post-petition creditors. It was Debtors' election to make. Had the proceeds not been claimed exempt, Debtors presumably could assert a present possessory right to the proceeds but post-petition creditors, under the McKnight decision, could collect any claims against those funds. Moreover, because they are claimed as exempt, the funds are beyond the reach of the Trustee's and/or creditors' rights to modify the Debtors' plan to increase payments under Sections 1325(a)(4) and 1329. Debtors asserted the exemption for a legitimate bankruptcy purpose but by doing so the proceeds lost their character as estate property and, therefore, did not revert in Debtor. As a result, the timing of their disposition is governed by Section 522(c) and the Deeble decision.

⁴ In re McKnight, 136 B.R. 891 (Bankr. S.D.Ga. 1992).

Clearly, Debtor, as a result of his physical injuries desperately needs these funds to support his family and to modify or repair his home to accommodate his disability. If ever a debtor were deserving of consideration, it is this Debtor. However, my reading of the Code allows no such exception from the requirement that enjoyment of the claim of exemption must be deferred until the entry of discharge and closing of the case. It is a hard result, yet one which is dictated by the Code, which also imposes restrictions on creditors which they often feel to be harsh. That is the nature of the balancing act performed by Congress in seeking to coherently deal with the competing interests of debtors and creditors in fashioning a modern Bankruptcy Code. If the price is too high, the debtor may elect to dismiss or convert his case. Chapter 13 relief is purely voluntary, but if refuge is sought there, then all its provisions must be vigorously applied. The Debtors' Motion is granted in part and denied in part as follows:

- 1) The Trustee is directed to remit the sum of \$3,333.33 and \$665.08 to Debtor's counsel as attorney's fees and to reimburse expenses advanced;
- 2) The Trustee is directed to apply such portion of the balance as will bring Debtors' case current; and
- 3) The Trustee is directed to hold the remainder until further order of Court or until completion of Debtors' plan and entry of discharge at which time said remainder

shall be remitted to Debtor on account of his claim of exemption under O.C.G.A. Section 44-13-100(a)(11)(D).

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Chapter 13 Trustee remit the sum of \$3,333.33 and \$665.08 as attorney's fees and to reimburse expenses advanced;

FURTHER ORDERED that the Trustee apply such portion of the remaining proceeds as will bring the Debtors' case current; and

FURTHER ORDERED that the Trustee retain any remaining settlement proceeds for distribution to Debtors under the claim of exemption upon the successful completion of their Chapter 13 case.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of October, 1994.