

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:)
)
WILLIE E. BOYD,) CHAPTER 13 BANKRUPTCY
) CASE NO. 94-40136
)
)
DEBTOR)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For the Debtor: Tammy L. Bowen
12 West State Street
Savannah, Ga. 31401

Chapter 13 Trustee: Sylvia Ford Brown
P.O. Box 10556
Savannah, Ga. 31412

MEMORANDUM OPINION

This matter is before the Court on a Motion to Allow Settlement of Personal Injury Claim filed by Willie Boyd ("Debtor"). This is a core matter within the meaning of 28 U.S.C. § 157(b) (2) (B). For the reasons stated and on the terms specified in this opinion, Debtor's motion will be denied.

FINDINGS OF FACT

Debtor settled a personal injury lawsuit for a total of Four Thousand Two Hundred Dollars (\$4,200.00). The Court approved the settlement in an order dated September 22, 1994. The Court ordered that Mr. Boyd's attorney in the personal injury suit receive 40 percent of the proceeds as payment for services. The balance was ordered by the Court to be set aside as the exemptible interest of Debtor.

Debtor seeks an order from this Court approving the

immediate disbursal of exempt settlement proceeds to Debtor.¹ Debtor has neither listed the lawsuit in question as an asset, nor claimed the proceeds as exempt within his bankruptcy schedules. However, Debtor did disclose the existence of the lawsuit at the section 341 meeting of creditors. Debtor's plan was confirmed with a 32.64 percent dividend to unsecured creditors.

CONCLUSIONS OF LAW

Bankruptcy Rule 4003 requires a debtor to provide the Court with a list of property in the schedules filed under Rule 1007 which the debtor claims as exempt pursuant to section 522 of the Code. A debtor must claim assets as exempt in the schedules if the debtor wishes to assert any exemptions in the bankruptcy case. In re Rhinebolt, 131 B.R. 973 (Bankr. S.D. Ohio 1991). However, the fact that Debtor has both failed to list the personal injury lawsuit as an asset of the estate and failed to claim the proceeds as exempt is not fatal to Debtor's motion. Bankruptcy Rule 1009(a) states "A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter

¹ It is uncertain from the record who is presently in possession of the proceeds claimed as exempt.

of course at any time before the case is closed." Fed.R.Bankr.P. 1009(a) (Law. Co-op. 1994). An amendment which claims exemptions not included in the original petition may be allowed while the case remains open. In re Blaise, 116 B.R. 398 (Bankr. D. Vt. 1990). Debtor did not seek to deceive the Court or creditors of the estate, having disclosed the existence of this potential asset at the meeting of creditors held pursuant to section 341. Debtor may therefore amend his schedules to reflect the existence of an additional asset and exemption.

The Bankruptcy Court for the Southern District of Georgia has addressed the timing for distribution of exempt assets in several recent cases. The court in In re Deeble, 169 B.R. 240 (Bankr. S.D. Ga. 1994) addressed claims of exemption in the context of motions to sell property. The debtors in that case wished to sell real property and retain a portion of the proceeds under state exemption laws. The court did not address the propriety of the exemptions, but rather the issue of when the debtors would be entitled to receive the exempt proceeds from the sales. The court found that the debtors were not entitled to the proceeds from exemptions until completion of the plan of reorganization.

The Deeble court relied upon the case of In re Holiday, et.al., No. 91-10426 (Bankr. S.D. Ga. Mar. 30, 1993). In

Holiday, the court refused to allow the release of liens pursuant to a confirmed plan prior to completion of payments under the plan. The plan in Holiday proposed to bifurcate the claim into its secured and unsecured components, and called for the release of liens once the secured component was paid. The court was concerned that the debtor could obtain the release of liens and sell property prior to completion of the plan, and then dismiss the case without paying the secured creditor for the unsecured portion of its debt under the plan. The court reasoned that such an attempt was against the "underlying spirit and purpose of Chapter 13." Holiday at 8. The Deeble court adopted the rationale of Holiday stating "a debtor is not entitled to the benefits flowing to a Chapter 13 debtor prior to the time the debtor fulfills all of his or her obligations pursuant to the confirmed plan." Deeble at 242. Since the applicable state exemptions are only available in bankruptcy, the court reasoned that exemptions constituted the type of benefits referred to in Holiday.

The Deeble court next looked to section 522(c) of the Code which provides that "[u]nless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose...before commencement of the case...." 11 U.S.C. § 522(c) (Law. Co-op. 1994). The

court placed emphasis on the language "unless the case is dismissed" and interpreted this to mean that "[t]he allowance of Debtor's claim of exempt property invariably comes after the discharge is entered, at a time when no remaining grounds exist for any party to seek dismissal of the case, and immediately prior to the closing of the case." Id. at 7 (emphasis in original). Under Deeble, the completion of the bankruptcy case is a condition precedent to the ability of debtors to obtain exemptions provided by law. Id. at 242. Therefore, the court ordered the Chapter 13 trustee to retain the exempt portions of the sale proceeds until the completion of the debtors' plans.

In Matter of Webster, Ch. 13 No. 93-40163 (Bankr. S.D. Ga. Oct. 18, 1994) the court applied the Deeble court's rationale to find that the debtor was not entitled to exempt proceeds stemming from a personal injury claim until after the completion of the plan. The court distinguished exempt property from property which reverts in the debtor under section 1327(b) stating:

By exempting these proceeds Debtor protected them from claims of post-petition creditors. It was Debtor's 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 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.

Id. at 8.

The Court finds the analysis set forth in the Deeble and Webster opinions to be persuasive, and adopts the rationale of those cases. The exempt proceeds from the personal injury lawsuit will be ordered turned over to the Chapter 13 trustee. Debtor will be directed to amend his schedules in conformity with applicable Bankruptcy Rules to reflect the existence of this asset as well as the claimed exemption. Should Debtor fail to amend his schedules within the fifteen (15) days following entry of this opinion and order, the Chapter 13 trustee will be authorized to disburse the funds as disposable income property of the estate to the extent that unsecured creditors are not receiving 100 percent payment on their claims.

If Debtor amends his schedules within the time allotted by the Court, the Chapter 13 trustee will be directed to hold the exempt proceeds from Debtor's lawsuit in trust pending completion of Debtor's plan. Upon completion of the plan, the Chapter 13 trustee will be directed to turn over to Debtor the entire proceeds claimed as exempt together with interest

accrued, if any.

An order in accordance with this memorandum opinion will be entered this date.

Dated this 9th day of February, 1995.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that a copy of the attached and foregoing was mailed to the following:

Tammy L. Bowen
12 West State Street
Savannah, Ga. 31401

Sylvia Ford Brown
P.O. Box 10556
Savannah, Ga. 31412

This 10th day of February, 1995.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

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IN RE:)
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WILLIE E. BOYD,) CHAPTER 13 BANKRUPTCY
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DEBTOR)

ORDER

A motion to allow settlement of personal injury claim has been filed by Willie Boyd, the Debtor in this case. For the reasons stated and on the terms specified in the accompanying memorandum opinion published pursuant to Fed.R.Bankr.P. 7052, it is hereby

ORDERED that any entity possessing control over the Debtor's exemptible interest in the settlement proceeds shall immediately turn over any funds held representing proceeds from the lawsuit described in the accompanying memorandum opinion to the Chapter 13 trustee;

ORDERED that the Debtor shall amend his schedules in conformity with applicable Bankruptcy Rules to reflect the existence of an asset in the form of a lawsuit more fully described in the attached memorandum opinion;

ORDERED that the Debtor shall amend his schedules in conformity with applicable Bankruptcy Rules to reflect assets claimed as exempt;

ORDERED that should the Debtor fail to amend his schedules as set forth above within the fifteen (15) days following entry of this opinion and order, the Chapter 13 trustee shall submit an affidavit to the Court stating that the Debtor has failed to comply with the order of this Court. Upon such event, the Chapter 13 trustee will be authorized to disburse the funds described in the accompanying memorandum opinion as disposable income property of the estate to the extent that unsecured creditors in this case are receiving less than 100 percent of their claims; it is further

ORDERED that should the Debtor amend his schedules within the time allotted by the Court, the Chapter 13 trustee shall hold the exempt proceeds from the Debtor's lawsuit in trust pending completion of the Debtor's Plan of Reorganization. Upon completion of the plan, the Chapter 13 trustee shall turn over to the Debtor the entire proceeds claimed as exempt together with interest accrued, if any.

SO ORDERED, this 9th day of February, 1995.

James D. Walker, Jr.
United States Bankruptcy Judge

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