

In the United States Bankruptcy Court

for the Northern District of Iowa

KELLY J. SCHULTZ and
RENAE C. SCHULTZ

Bankruptcy No. X87-01936S

Debtor.

Chapter 7

DONALD H. MOLSTAD Trustee
Plaintiff

Adversary No. X88-0162S

vs.

KELLY J. SCHULTZ and
RENAE C. SCHULTZ

Defendants

ORDER RE: TRUSTEE'S COMPLAINT FOR TURNOVER

This adversary proceeding was initiated by the trustee, Donald H. Molstad (Trustee), to recover from the debtors \$132.95. Hearing was held at Sioux City, Iowa on October 6, 1988. The court now issues the following ruling which shall constitute findings of fact and conclusions of law pursuant to Bankr. R. 7052.

This is a core proceeding under 28 U.S.C. § 157(2)(e).

FINDINGS OF FACT

Debtors filed their joint voluntary petition under Chapter 7 of the Bankruptcy Code on September 14, 1987. At the time of the filing of bankruptcy case, there was on deposit in their joint bank account at The Toy National Bank in Sioux City, Iowa the sum of \$102.95. Debtors' checking account at Toy National Bank was identified as number 00-00525529. On the date of filing, debtors were also in possession of \$30.00 in cash.

Subsequent to the filing of the bankruptcy case, The Toy National Bank honored checks made and delivered by debtors to third parties prior to the filing of the bankruptcy case.

The trustee seeks turnover from the debtors of the \$30.00 in cash held by the debtors at the time of filing. Debtors had, by amendment to their bankruptcy schedules, claimed this \$30.00 as exempt. The court, however, following a hearing on October 6, 1988, issued its order sustaining the trustee's objection to the claim of exemption in this cash.

The court concludes that the \$30.00 in cash held by the debtors at the time of the filing of the case should be turned over to the trustee pursuant to 11 U.S.C. § 542.

The remaining question before the court is whether debtors should be required to turn over \$102.95 which was on deposit at The Toy National Bank on the date of filing.

Trustee argues that this was property of the estate and must be turned over. Debtors argue that trustee is not entitled to these funds inasmuch as the money was on deposit to pay checks which were outstanding on the date of filing.

DISCUSSION

The filing of the bankruptcy case created an estate comprising all legal and equitable interests of the debtors. 11 U.S.C. § 541(a)(1).

The court concludes that the cash on deposit at the time of the filing of the bankruptcy case was property of the estate.

At the time of the filing of this case, the money was not in the possession of the debtors but was rather in the possession of The Toy National Bank which was required under 11 U.S.C. § 542(a) to deliver the funds to the trustee.

The automatic stay of 11 U.S.C. § 362 generally prevents actions by third parties in disposing of property of the estate. Code § 549 empowers the trustee in certain instances to recover post-petition transfers.

Section 542(c) of Title 11, however, protects innocent transferors of property of the estate if the transfer is made without actual notice or knowledge of the commencement of the case and where the transfer was made in good faith.

Trustee seeks turnover of these funds from the debtors. However, it is clear from the evidence that the debtors are not in possession of the funds inasmuch as the bank has transferred the funds to the payees of the checks following the filing of the case.

The funds having been transferred, the trustee might seek a return of the funds from the bank or the payees of the checks themselves. Whether these parties are protected from liability for such return is a matter not before the court.

CONCLUSION OF LAW

Debtors are not obligated to return \$102.95 to the trustee pursuant to 11 U.S.C. § 542.

The debtors are obligated under 11 U.S.C. § 542 to turn over to the trustee \$30.00.

ORDER

IT IS ORDERED that the debtors shall turn over to the trustee \$30.00.

SO ORDERED ON THIS 7th DAY OF OCTOBER, 1988.

William L. Edmonds
Chief Bankruptcy Judge