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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED

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NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 97-18950
)
CHARLES SEYMOUR,) Chapter 13
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**

The United States, on behalf of the Internal Revenue Service (the "IRS"), objects to confirmation of Debtor Charles D. Seymour's proposed plan of reorganization on multiple grounds. Of these, the parties submitted for decision on briefs the issues relating to Debtor's dower interest in his residence.

JURISDICTION

The Court has jurisdiction to determine this matter under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

FACTS

The material facts are not in dispute.

Debtor filed this Chapter 13 case on December 29, 1997. The schedules filed in support of the petition state that Debtor does not own any interest in real property. (Docket 1). Debtor's proposed amended plan of reorganization does not list any secured creditors and offers to pay unsecured creditors a 21% dividend. (Docket 10). The IRS objects to confirmation on the ground that it is a secured creditor and is entitled to be paid in full plus interest. (Docket 5).

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The IRS claim to be a secured creditor is based on an interest it asserts in real property located at 7480 River Oak Trail, Gates Mills, Ohio (the "Property"). The Property was purchased in 1986 and is titled solely in the name of Debtor's wife, Marion Seymour. The parties agree that Debtor has a dower interest in the Property that is inchoate and contingent. The IRS filed a Notice of Tax Lien against Debtor on December 16, 1992.

Additional facts are set forth below.

DISCUSSION

I.

Debtor argues that his dower interest is not property of the estate because it is not vested under Ohio law and cannot be valued until it vests. The IRS contends that the interest is part of the estate because it is a chose in action, the IRS lien attached to it, and as a result of the lien the IRS is entitled to be treated as a secured creditor in this case. The IRS further submits that it is possible to value the dower interest.

II.

The bankruptcy estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, with certain exceptions not relevant here. 11 U.S.C. § 541(a)(1). In enacting § 541, Congress intended the scope of its reach to be broad. *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983). The nature of Debtor's interest in the Property is defined by state law. *Butner v. United States*, 440 U.S. 48 (1979). Federal bankruptcy law then determines the extent to which that interest is part of the bankruptcy estate. *Bavely v. United States (In re Terwilliger's Catering Plus, Inc.)*, 911 F.2d 1168 (6th Cir. 1990). Various contingent and non-vested interests in property have been found to be property of the estate under 11 U.S.C.

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§ 541(a). *Neuton v. Danning (In re Neuton)*, 922 F.2d 1379 (9th Cir. 1990); *Anderson v. McGowan (In re McGowan)*, 128 B.R. 850 (D. R.I. 1991); *In re Knight*, 164 B.R. 372 (Bankr. S.D. Fla. 1994); *In re Hoblit*, 89 B.R. 756 (Bankr. C.D. Ill. 1986).

Debtor's dower right is created by Ohio Revised Code § 2103.02:

A spouse who has not relinquished or been barred from it shall be endowed of an estate for life in one third of the real property of which the consort was seized as an estate of inheritance at any time during the marriage. Such dower interest shall terminate upon the death of the consort except:

(A) To the extent that any such real property was conveyed by the deceased consort during the marriage, the surviving spouse not having relinquished or been barred from dower therein;

(B) To the extent that any such real property during the marriage was encumbered by the deceased consort by mortgage, judgment, lien except tax lien, or otherwise, or aliened by involuntary sale, the surviving spouse not having relinquished or been barred from dower therein. If such real property was encumbered or aliened prior to decease, the dower interest of the surviving spouse therein shall be computed on the basis of the amount of the encumbrance at the time of the death of such consort or at the time of such alienation, but not upon an amount exceeding the sale price of such property.

In lieu of such dower interest which terminates pursuant to this section, a surviving spouse shall be entitled to the distributive share provided by section 2105.06 of the Revised Code.

Dower interest shall terminate upon the granting of an absolute divorce in favor of or against such spouse by a court of competent jurisdiction within or without this state.

Ohio Rev. Code Ann. § 2103.02 (Banks-Baldwin 1997). Under Ohio law, the "[i]nchoate right of dower is a contingent interest in the land of the consort and is of substantial value. The right to inchoate dower cannot be taken away nor barred by any act of the consort." *Grundstein v. Suburban Motor Freight, Inc.*, 92 Ohio App. 181, 194, 107 N.E. 2d 366, 373 (1952).

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Debtor clearly has an interest in the Property under Ohio law by virtue of his dower rights. As the Bankruptcy Code brings into the estate all interests of the Debtor in property,¹ the dower interest is part of the estate. The contingent or inchoate nature of the dower interest does not change this result. 5 Collier on Bankruptcy ¶ 541.05[5] (15th ed. revised 1996). (As a general rule, where the debtor is the spouse claiming a dower right in property of a non-debtor, ". . . if the dower . . . interest is vested, the title to it becomes property of the estate. The same is true where the interest is still inchoate, initiate, or contingent.")

The case of *In re Miller*, 151 B.R. 800 (Bankr. N.D. Ohio 1992), supports this conclusion. That court considered whether a debtor was entitled to claim a homestead exemption with respect to her inchoate dower interest. The case is premised on the finding that the dower interest was property of the estate. See *Airlines Reporting Corp. v. Lambert (In re Lambert)*, 57 B.R. 710 (Bankr. N.D. Ohio 1986).

In arguing against this conclusion, Debtor relies chiefly on *State v. Thrower*, 81 Ohio App. 3d 15, 610 N.E. 2d 433 (1991). There, the husband pleaded guilty to violations of Ohio's Racketeer Influenced and Corrupt Organizations statute, after which the trial judge ordered the husband's real estate forfeited to the state. The wife then claimed a dower right in that property. On appeal, the court found that the plain terms of the RICO statute only entitled the wife to relief from the forfeiture if she met certain stated conditions, one of which was that she had a vested interest in the property. As she did not have such an interest, she was not entitled to compensation for the taking of the property. In contrast to Ohio's RICO statute, Debtor has not

¹ Debtor does not argue that his dower rights fall within the exceptions stated in 11 U.S.C. § 541(b) and (c).

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cited to anything in the Bankruptcy Code that requires a debtor to have a vested interest in property before that interest becomes property of the estate. Debtor's dower interest in the Property is, therefore, property of the estate even though it is not vested.

III.

The IRS next argues that its lien attached to all of Debtor's property, including Debtor's dower interest. Debtor does not dispute this point. (Supplemental Dower Brief at 2) (Docket 19).

IV.

Given that Debtor's dower interest is property of the estate, and the IRS lien attached to it, the final issue is the value of that interest for purposes of determining the amount of the IRS secured claim.

The IRS posits that the value is determined by using the "American Experience Table" under Ohio Revised Code § 2103.02 and .041, citing *In re Miller*, 151 B.R. 800 (Bankr. N.D. Ohio 1992). (United States' Reply Brief at 6) (Docket 17). The IRS provides these additional facts in order to make the calculation: the Property has a value of \$495,000 based on the Cuyahoga County Property Records; the Seymours have been married since 1961 and were both 59 years old on the filing date; and the amount of the IRS claim is \$33,623.58. (Declaration in Support of United States' Reply Brief) (Docket 18). Using that table and applying these facts, the IRS calculates that the dower interest has a value of at least \$56,940.84. (United States' Reply Brief at 6) (Docket 17). As the value of the dower interest is greater than the amount of the IRS claim, the IRS contends that its claim must be paid in full under the plan.

Although Debtor stands by his argument that he does not have *any* interest in the Property that comes into the estate, he did not dispute the IRS method of calculating such an interest in the

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event that one was found to exist. (See absence of response to United States' Reply Brief in Debtor's Supplemental Dower Brief) (Docket 19). The Court will, therefore, accept the IRS calculation for purposes of this issue. That calculation establishes that the IRS has a secured claim in the amount of \$33,623.58 that must be paid in full by Debtor under the plan.

VI.

For the reasons stated, the Objection of the IRS to confirmation of Debtor's plan is sustained in part. As noted, this Opinion determines one of several objections raised by the IRS to confirmation. This case will be placed back on the regular Chapter 13 docket on **August 11, 1998 at 1:30 p.m.** for the parties to report on the status of the remaining objections.

IT IS SO ORDERED.

Date: 22 July 1998

Pat E. Morgenstern-Clarren
Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Anita Gill, Esq.
Thomas Pavlik, Esq.
Myron Wasserman, Trustee

By: Joyce L. Gordon, Secretary
Date: 7/22/98