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FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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CLERK OF COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 01-14814
)
GREGORY CHARLES HILLOW,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

On the day the Debtor Gregory Hillow filed his Chapter 7 petition, he had funds on deposit in a checking account and an interest in future insurance renewal commissions that were subject to a perfected federal tax lien. The Debtor moves to require the Chapter 7 Trustee to abandon these estate assets because they are fully encumbered by the lien and of no value to the estate. The Trustee and the IRS both take the position that the assets should be turned over to the Trustee for administration, with the Trustee retaining some funds for distribution to the unsecured creditors. (Docket 25, 28, 30, 31, 32, 33).¹

JURISDICTION

Jurisdiction exists 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)(A) and (O).

¹ The Trustee filed an adversary proceeding to require the Debtor to turnover the funds, which raises the same issues. (Adv. Pro. No. 02-1160). The parties asked the Court to decide the Debtor's motion first.

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FACTS

The parties stipulated to these facts:

1. That at the time the debtor filed the above referenced Chapter 7 he had on deposit in his checking account number 350681001771 with Key Bank, N.A., the sum of \$5,335.43.
2. That prior to the time the debtor filed the above referenced Chapter 7 the Service filed a Notice of Federal Tax Lien covering the debtor's 1997 and 1998 income tax liabilities.
3. That the Service's lien attaches to all property and rights to property belonging to the debtor including exempt property.
4. That the Internal Revenue Service has agreed to allow the Chapter 7 Trustee to collect its secured property.
5. That the Internal Revenue Service and the Chapter 7 Trustee have agreed to a 50% carve out for the funds held at Key Bank for the benefit of the unsecured creditors.
6. That in addition to the checking account that the debtor has a pre-petition interest in future renewal commissions to be received from Nationwide Insurance Company.
7. That the debtor's interest in the renewal commissions is at most \$165,400.00.

(Docket 34).

ISSUE

The issue is whether the Trustee should be required to abandon the assets.

DISCUSSION

The Chapter 7 estate generally includes all legal and equitable interests of the debtor as of the filing date. 11 U.S.C. § 541. The parties agree that cash in a bank account and insurance commissions fall within this definition. The Chapter 7 trustee has the responsibility under the

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Bankruptcy Code to review the estate and decide whether to administer property for the benefit of creditors or to abandon it. The test for abandonment is whether the property “is burdensome to the estate or . . . is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). A debtor may also ask the court to order a trustee to abandon property that the debtor believes falls within this definition. 11 U.S.C. § 554(b).

Here, the Debtor argues that the Trustee should be required to abandon the assets because they are fully encumbered by the IRS lien and, therefore, have no value or benefit to the estate. This, however, ignores the agreement reached by the IRS and the Trustee that the IRS agrees that the Trustee will retain certain funds for administration and distribution to unsecured creditors. That is a palpable benefit to the Chapter 7 estate.

In arguing against this conclusion, the Debtor cites *In re K.C. Machine & Tool Co.*, 816 F.2d 238 (6th Cir. 1987) and *In re Buchanan*, 270 B.R. 689 (Bankr. N.D. Ohio 2001). Neither case supports the Debtor’s argument. Both recognize the general principle that a Chapter 7 trustee is usually expected to abandon estate property where administering it would not benefit the unsecured creditors. The situation here is that administering the property *will* benefit the unsecured creditors because the IRS and the Trustee have agreed that 50% of the funds in the bank account and 30% of the commissions paid will be reserved for those creditors.

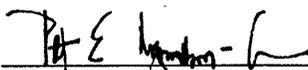
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CONCLUSION

Because administering the disputed assets will benefit the Chapter 7 estate, the Trustee is not required to abandon them. The Debtor's Motion to Abandon is denied.

A separate order will be entered reflecting this decision.

Date: 30 Sept 2002



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mary Ann Rabin, Esq.
Stephen Hobt, Esq.
Anita Gill, Esq.

By: Joyce S. Gordon, Secretary

Date: 9/30/02

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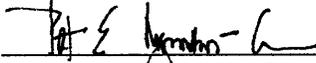
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GREGORY CHARLES HILLOW,) Chapter 7
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Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **ORDER**

For the reasons stated in the Memorandum of Opinion issued this same date, the Debtor's motion to require the Chapter 7 Trustee to abandon assets is denied. (Docket 25).

IT IS SO ORDERED.

Date: 30 Sept 2002



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Mary Ann Rabin, Esq.
Stephen Hobt, Esq.
Anita Gill, Esq.

By: Joyce L. Gordon, Secretary
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