

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
MARION PRUSS,)	CASE NO. BK98-80239
)	A
<u>DEBTOR(S)</u>)	
)	CH. 13
)	Filing No. 49, 62
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
)	
)	
)	DATE: August 12, 1998
<u>Defendant(s)</u>)	HEARING DATE: May 11, 1998

MEMORANDUM

Hearing was held on May 11, 1998, on an Objection to Claims of Exemption and Resistance by Debtor. Appearances: Steven Woolley for debtor, Kathleen Laughlin as Chapter 13 Trustee, and Richard Butler as Chapter 7 Trustee for James Sauer & J.A.S. Enterprises, Inc. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(B).

IT IS ORDERED:

The debtor, a practicing attorney in the State of Nebraska, has filed this Chapter 13 case and has claimed as exempt her accounts receivable from her law practice. The statutory authority for such exemption arguably is Section 25-1558 of the Nebraska Statutes.

Richard Butler, the Chapter 7 Trustee for James Sauer and J.A.S. Enterprises, Inc., creditors of the debtor, has objected to the exemption. He suggests that commercial accounts receivable derived from personal services provided to clients in the practice of law do not fit under the statutory language of Section 25-1558.

The statute provides:

25-1558. Wages; subject to garnishment; amount; exceptions. (1) Except as provided in subsection (2) of this section, the maximum part

of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall not exceed the lesser of the following amounts;

(a) Twenty-five percent of his disposable earnings for that week;

(b) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time earnings are payable; or

(c) Fifteen percent of his disposable earnings for that week, if the individual is a head of a family.

(2) The restrictions of subsection (1) of this section shall not apply in the case of:

(a) Any order of any court for the support of any persons;

(b) Any order of any court of bankruptcy under Chapter XIII of the Bankruptcy Act. . .

(4) For the purposes of this section:

(a) Earnings shall mean compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program;

(b) Disposable earnings shall mean that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld; . . .

Neb. Rev. Stat. § 25-1558.

There is no question that the accounts receivable from personal services provided as a lawyer are property of the bankruptcy estate of this debtor. The Bankruptcy Code at 11 U.S.C. § 541(a)(1) provides that all legal or equitable interests of the debtor in property as of the commencement of

the case are property of the estate. In addition, the Bankruptcy Code at 11 U.S.C. § 1306(a)(2) provides that property of the estate also includes earnings from services performed by the debtor after the commencement of the case.

The debtor proposes to exempt some undetermined amount of prepetition net accounts receivable and to do so pursuant to Section 25-1558. That section appears to limit judgment creditors from garnishing disposable earnings for any work week in excess of certain percentages.

Although the statute is not perfectly clear on the point, for the purposes of this case, it will be assumed that a limitation on garnishment is the equivalent of providing that the balance remaining after garnishment is "exempt" from creditors' claims.

In this case, there is no evidence that the accounts receivable resulting from personal services provided by the debtor and/or her employees, are actually "disposable earnings of an individual for any work week." In other words, there is no evidence that any of the accounts receivable are directly related to any particular work week.

There is no Nebraska case law to support the position of the debtor that a professional person who does not work for wages or salary, is protected by the limitation on garnishment in Section 25-1558. The actual disposable earnings of a self-employed attorney in private practice equal the net amount available to the attorney after deducting from gross income all of the expenses of operating the professional office.

The definition of disposable earnings in Section 25-1558(4)(B) is considerably different from the above-described definition of disposable earnings of a professional. That statutory definition provides that disposable earnings are that part of the earnings of an individual remaining after the deduction of amounts required by law to be withheld. The law probably requires certain tax and social security amounts to be withheld from persons who receive wages or salary. The law does not require a self-employed professional to "withhold" anything. Instead, the self-employed professional is required to make certain tax deposits based on estimated obligations for taxes and social security payments. In addition, the law does not require a self-employed professional to have "withheld" the costs of running the office. In other words, "disposable income" as used in the statute, does not mean

"gross accounts receivable less operating expenses, less tax deposit." Instead, "disposable earnings" under the statute is defined to mean the net amount received by a person for personal services after deduction of items required by law to be withheld, such as taxes and social security payments.

It is clear that the law of Nebraska, under the Uniform Commercial Code, permits a party to assign, sell, transfer, or pledge accounts receivable. In this case, the debtor has actually done that very thing. She has pledged accounts receivable as collateral for a loan. This statute, at Section 25-1558(5) prohibits and makes void and unenforceable any pledge of wages or salary exempted by this section. The debtor can't have it both ways. She can't claim her accounts receivable due from providing personal services as subject to the limitations on garnishment and, therefore, exempt, and at the same time pledge those same dollars as collateral for a loan.

The statute does not support the position of the debtor with regard to her claimed exemption. The objection to exemptions filed by Mr. Butler, as trustee of other cases, is sustained.

Separate journal entry to be filed.

DATED: August 12, 1998.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

WOOLLEY, STEVEN	(36)
WOOLLEY, JANICE	(36)
BUTLER, RICHARD	402-475-6416

Copies mailed by the Court to:

Kathleen Laughlin, Trustee
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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Before a United States Bankruptcy Judge for the District of Nebraska regarding Objection to Claims of Exemption and Resistance by Debtor.

APPEARANCES

Steven Woolley, Attorney for debtor
Kathleen Laughlin, Trustee
Richard Butler, Chapter 7 Trustee for James Sauer & J.A.S. Enterprises, Inc.

IT IS ORDERED:

The objection to exemptions filed by Mr. Butler, as trustee of other cases, is sustained. See memorandum entered this date.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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