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Wage Order
Automatic Stay
Property of Estate
Chapter 13

In re Edward and Judith Dutra 696-64374-fra13
4/7/99 FRA Unpublished

Valley Credit Service (VCS) obtained a post-petition judgment against the Debtors which was not stayed by Code § 362 because it was not related to a claim which could have been pursued prior to the petition for relief. VCS attempted to enforce its judgment by delivery of a writ of garnishment to the Debtor's employer. The employer responded by refusing to deliver any funds to VCS because of a wage order requiring the employer to pay excess wages to the trustee in furtherance of the Debtors' Plan of Reorganization. VCS asked to intervene in the bankruptcy case and for clarification of the wage order.

While neither the Plan of Reorganization nor the confirmation order explicitly made provision for retention of assets by the estate after confirmation, the wage order provided that the "Court has jurisdiction over all earnings of the debtor(s) during the course of the case, except for deductions required by law." The court held that the confirmation order also indirectly reserved the earnings of the Debtor for the estate, not just the amount required to fund the plan, but all disposable income over the life of the plan. The writ of garnishment thus violated the automatic stay and was void. VCS must obtain relief from the automatic stay to collect that part of Debtor's wages not required to fund the plan of reorganization.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case No.
) 696-64374
EDWARD A. DUTRA and)
JUDITH A. DUTRA,)
) MEMORANDUM
_____ Debtors.)

This matter came on for hearing in Salem, Oregon, on April 5, 1999. Valley Credit Service, Debtor, and the Chapter 13 trustee appeared through counsel. Marion County, Oregon, waived appearance.

Valley Credit Service (VCS) has obtained a judgment against Debtor, presumably on a post-petition claim. The action was not stayed under § 362(a)(1), since it was not related to a claim which could have been pursued prior to the petition for relief. VCS has attempted to enforce its judgment by delivery of a writ of garnishment to Debtor's employer. The employer has responded by refusing to deliver any funds to VCS, because of an order of this Court requiring the employee to pay excess wages to the trustee in furtherance of the Debtor's plan of reorganization.

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1 VCS seeks leave to intervene in this bankruptcy case, and for
2 clarification of the wage order. Since VCS is directly effected by
3 the Court's Wage order, and the operation of Bankruptcy Code § 362
4 (as discussed below), it is an interested party under bankruptcy
5 law, and is entitled to be heard. Fed R. Bankr. P. 2018. The Court
6 has noted some concern whether the matter is properly raised here,
7 as opposed to the State Circuit Court, which issued the writ of
8 garnishment.¹ Since that time the Court of Appeals for the Ninth
9 Circuit has held that State Courts are without jurisdiction to
10 consider the reach of the automatic stay. In re Gruntz, 166 F.3d
11 1020 (9th Cir. 1999). It follows that the rights of the parties
12 should be determined by proceeding in this Court.

13 The plan calls for \$100/month payments. All of it goes to
14 secured or priority claims, and the plan has a 0% composition rate,
15 i.e., nothing is paid to general unsecured creditors. The
16 \$100/month payment is consistent with the income and expenses set
17 out in Exhibits I and J.

18 The plan of reorganization (Doc. #3) is on a local form last
19 revised in 1996, and in use until 1998. It makes no provision
20 regarding retention of assets by the estate after confirmation. The
21 order confirming the plan (Doc. #8) does not either, at least not
22 explicitly. Paragraph 2 of the order does provide that

23 "The debtor shall incur no credit obligations during
24 the life of the plan without the trustee's written

25 ¹See Doc. #21, a letter to VCS's counsel, raising the issue and
26 requiring service of the motion on Marion County in its capacity as
employer and garnishee.

1 consent unless made necessary by an emergency or
2 unless incurred in the ordinary course of the debtor's
3 operation of a business. Unless waived by the trustee
4 in writing, the debtor shall immediately report to the
5 trustee if actual or projected gross monthly income
6 exceeds by more than 10% the gross income projected by
7 the debtor in the most recently filed Schedule I.
8 Except for those amounts listed in the schedules, the
9 debtor shall immediately report to the trustee any
10 right of the debtor or the debtor's spouse to a
11 distribution of funds (other than monthly income) or
12 other property which exceeds a value of \$2,500.00.
13 This includes the right to disbursements from any
14 source, including but not limited to bonuses and
15 inheritances. Any such funds to which the debtor
16 becomes entitled shall be held by the debtor and not
17 used without the trustee's permission. Or, if such
18 permission is not obtained, a court order. The debtor
19 shall, immediately upon filing with the taxing
20 authority, provide the trustee with copies of all tax
21 returns during the life of the plan. The debtor shall
22 not buy, sell, lease, encumber, or otherwise dispose
23 of any interest in: (1) real property; or (2) personal
24 property with a value exceeding \$10,000.00 outside the
25 ordinary course of business without notice to all
26 creditors and the trustee with an opportunity for
hearing."

15 Accompanying the Order Confirming Plan is an Order Directing
16 Chapter 13 Payment to Trustee (Doc. #9). The order, directed to
17 Marion County, Oregon, the Debtor's employer, provides that the
18 "Court has jurisdiction over all earning of the debtor(s) during the
19 course of this case, except for deductions, required by law". The
20 employer is required by the order to honor writs of garnishment for
21 alimony or child support, before making the plan payment to the
22 trustee.

23 Bankruptcy Code § 1327 (b) provides for control of estate
24 assets after a plan is confirmed:

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2 (b) Except as otherwise provided in the plan or the
3 order confirming the plan, the confirmation of a plan
4 vests all of the property of the estate in the
5 debtor."

6 The order of confirmation requires the Debtor to retain
7 distributions or inheritances, and to account to the trustee for any
8 material increase in income. Armed with this knowledge, the trustee
9 can seek modification of the plan to provide for higher payments to
10 reflect the Debtor's increased income. Code § 1329(a). The effect
11 of the order is, as the wage order confirms, to retain present and
12 future earning as property of the estate.

13 Since the confirmation order reserves Debtor's wages for the
14 estate, VCS's efforts to gain possession of part of them is
15 prevented by Code § 362(a)(3), which stays any act to obtain
16 possession of property of the estate. In re Mason, 45 B. R. 498,
17 (Bankr. Or. 1984), aff'd 51 B. R. 548 (D. Or. 1985), relied on by
18 VCS, is inapposite, in light of the fact that the confirmation order
19 here does provide for the continued existence of a estate in
20 bankruptcy.

21 The estate's interest is not limited to that part of the
22 Debtor's wages necessary to make the payment required by the
23 confirmed plan. Reorganization under Chapter 13 requires that the
24 debtor submit all of his disposable income to the trustee for
25 distribution, unless the trustee and creditors consent to lower
26 contributions. § 1325(b)(1)(b). For that reason the trustee is
empowered under § 1329 to seek a modification of the plan if the

1 debtors' income increases. All of the debtor's disposable income
2 over the life of the plan is therefore presumptively reserved for
3 his pre-petition creditors. This is only fair, in light of the fact
4 that these claims will eventually be discharge, while those of
5 post-petition creditors such as VCS will not be.

6 The writ of garnishment served by VCS on Marion County
7 constituted a violation of the automatic stay, and was, therefore,
8 void. See Stringer v. Huet (In re Stringer), 847 F.2d 549, 551 (9th
9 Cir. 1988). Marion County was, therefore, correct in its response.
10 Any future efforts by VCS to enforce its judgment against the income
11 of the Debtor may proceed only to the extent the automatic stay is
12 modified or terminated pursuant to Code § 362(d).

13 The parties at the hearing conceded that collection of the
14 amount claimed by VCS would not materially interfere with continued
15 execution of the plan. Accordingly, counsel for VCS may submit a
16 form of order modifying the stay in order to permit collection from
17 that part of Debtor's after-tax earnings not required to make the
18 plan payments.

19 The foregoing constitutes the Court's findings of fact and
20 conclusions of law.

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23 Frank R. Alley, III
24 Bankruptcy Judge
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