

In re Hill, Case No. 05-47061-tmb7  
Appellate No. CV 07-710-MO

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Debtor's attorney appealed a bankruptcy court order directing him to turn over to the bankruptcy trustee the unearned portion of the Debtor's retainer. Prior to filing his Chapter 7 petition the Debtor paid his attorney a retainer, a portion of which remained in his attorney's trust account at the time of the filing of the Debtor's chapter 7 petition. The Chapter 7 trustee sought turn over of those funds, contending that the Supreme Court's ruling in Lamie v. United States Trustee, 540 U.S. 526 (2004) prohibited payment of a Chapter 7 attorney from estate assets.

The attorney conceded that the funds at issue became property of the estate upon filing but argued that he held a pre-petition lien in the funds and that state lien law permitted payment of his post-petition fees from the retainer. The bankruptcy court disagreed and directed turnover of the funds.

The attorney appealed to the district court which affirmed the bankruptcy court's ruling, holding that "to apply state lien law to permit payment of post-petition fees from estate funds seriously undermines the Bankruptcy Code and the Lamie decision."

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JOHN EDWARD HILL,  
SHAWN P. RYAN,

Appellants,

v.

RODOLFO A. CAMACHO,  
ILENE LASHINSKY, UNITED STATES TRUSTEE,  
REGION 18,

Appellees.

No. CV 07-710-MO

OPINION AND ORDER

**MOSMAN, J.,**

Before the court is appellants' appeal of U.S. Bankruptcy Judge Brown's order that Mr. Ryan turn over to the bankruptcy trustee the unearned portion of Mr. Hill's retainer that he holds in his client trust account. On appeal, appellants argue Or. Rev. Stat. § 87.430, Oregon's retaining lien statute, entitles Mr. Ryan to compensation from the unearned portion of Mr. Hill's prepetition retainer for work performed after the case was converted to a Chapter 7 proceeding.

The issue of this appeal—whether a debtor's Chapter 7 attorney, who is not employed under 11 U.S.C. § 327, can collect postpetition fees by enforcing a state-law attorney's lien against the prepetition retainer that became property of the bankruptcy estate at the time of the

Chapter 7 filing—sets up a direct competition between federal and state law. As the bankruptcy court noted, that competition begins with the Supreme Court's decision in *Lamie v. United States Trustee*, 540 U.S. 526 (2004). In that case, the court, using a plain language approach, held that after a Chapter 7 conversion, 11 U.S.C. § 330(a)(1) "does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by [11 U.S.C.] § 327." 540 U.S. at 538. Although *Lamie* provides for what some courts have termed a "retainer exception," *id.* at 537, that exception does not apply here.

Appellants concede the unearned portion of Mr. Hill's retainer became property of the estate at the time of the Chapter 7 conversion and that Mr. Ryan was not employed pursuant to § 327. Despite these concessions and the court's decision in *Lamie*, appellants continue to argue state-lien law permits payment for postpetition work from estate funds. I disagree. To apply state-lien law to permit payment of postpetition fees from estate funds seriously undermines the Bankruptcy Code and the *Lamie* decision. As a number of courts, including the court below, have explained, "[w]here the Supreme Court has interpreted § 330(a)(1) as preventing payment from the debtor's estate to counsel not appointed under § 327, authorization of such payment on the basis of state law is forbidden by the Supremacy Clause." *Morse v. Ropes & Gray, LLP*, 343 B.R. 376, 383-84 (D. Mass. 2006); *see also Fiegen Law Firm, P.C. v. Fokkena*, 324 B.R. 342, 347 (8th Cir. BAP 2005). The bankruptcy court's decision is therefore AFFIRMED.

IT IS SO ORDERED.

DATED this 24th day of July, 2007.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court