

Property of the Estate
Automatic Stay

Erwin v. Fed.-Metals Credit Union

99-6291-fra

In re Pamela Erwin

Dist. Ct.# 00-6314-AA

Case # 699-64318-fra7

12/18/00

Dist. Ct. (Aiken) aff'g Alley

Unpublished

The Defendant, Fed.-Metals Credit Union, obtained a judgment against the debtor Plaintiff in state court and served a writ of continuing garnishment on Debtor's employer. The Debtor filed bankruptcy to stop the garnishment, sending a letter to the Defendant and Debtor's employer informing them of the filing and requesting a release of the garnishment. Defendant's attorney informed Debtor's employer that it was his opinion that the automatic stay did not prevent the post-petition garnishment of pre-petition wages. When the employer issued Debtor's paycheck, it sent \$330.73 to Defendant pursuant to the writ of garnishment. The Trustee filed an Inventory and Report of No Assets with the court and the Debtor thereafter demanded that Defendant return the \$330.73. When Defendant refused, Debtor filed suit against Defendant for violation of the automatic stay.

The District Court affirmed the Bankruptcy Court's ruling that the Debtor lacked standing to bring the action for violation of the automatic stay. The garnished wages were property of the estate at the time the automatic stay applied. The claim for violation of the automatic stay was not formally abandoned to the Debtor by the Trustee and, because the claim was not scheduled, it was not deemed abandoned under § 554(c) to the Debtor when the case was closed. As the claim remained property of the estate, the Debtor could not bring the claim herself under § 362(h) because she had no compensable injury.

E00-19(5)

No underlying bankruptcy opinion

FILED

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
EUGENE, OREGON

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BY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:

PAMELA M. ERWIN,
Debtor.

Case No. 00-6314-AA
(Adv. Pro. No. 99-06291-fra)

PAMELA M. ERWIN,
Plaintiff,

ORDER

E.

FEDERAL-METALS CENTRAL
CREDIT UNION,
Defendant.

AIKEN, Judge:

This case arises from a proceeding brought by plaintiff, a Chapter 7 debtor, against a judgment creditor for an alleged violation of the automatic stay under 11 U.S.C. § 362, after the creditor garnished pre-petition wages from a paycheck issued post-petition. Upon hearing, the Bankruptcy Court found that plaintiff could not assert a claim under § 362, because the wages remained property of the estate and plaintiff did not have an interest in the wages. Plaintiff now appeals from the order granting summary judgment in favor of defendant. The decision of the Bankruptcy Court is affirmed.

1 - OPINION AND ORDER

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1 STANDARD

2 The bankruptcy court's findings of fact shall not be set aside
3 unless clearly erroneous. Fed. R. Bankr. P. § 8013. Issues of law are
4 reviewed *de novo*. U.S. v. Horowitz, 756 F.2d 1400, 1403 (9th Cir. 1985).

5 FACTUAL BACKGROUND

6 Defendant obtained a judgment against plaintiff in Benton County
7 Circuit Court on June 14, 1999. Defendant then served a writ of
8 continuing garnishment on plaintiff's employer on June 22, 1999.
9 Defendant received \$163.35 from plaintiff's employer on or about July 9,
10 1999.

11 Plaintiff filed a Chapter 7 bankruptcy petition on July 20, 1999,
12 in order to stop the continuing wage garnishment. On July 21, 1999,
13 plaintiff's counsel faxed a letter to defendant and plaintiff's
14 employer, notifying them of the bankruptcy filing and requesting release
15 of the writ garnishment.

16 On July 21, the office of defendant's counsel called plaintiff's
17 employer, notifying the employer of the bankruptcy filing and requesting
18 discontinuance of the of the garnishment as of the filing date.
19 However, counsel's office told the employer of its opinion that the
20 garnishment remained effective with respect to plaintiff's prepetition
21 wages.

22 On July 23, 1999, plaintiff's employer issued paychecks for the pay
23 period ending July 18, 1999. The employer withheld \$330.73 from
24 plaintiff's paycheck and mailed it to counsel for defendant. The
25 \$330.73 represents prepetition wages.

26 Defendant did not file a motion for relief from stay with respect
27 to the funds at issue.

1 On September 22, 1999, the estate trustee filed an Inventory and
2 Report of No Assets with the court. Thereafter, plaintiff demanded that
3 defendant relinquish the \$330.73. Defendant refused, and plaintiff
4 filed suit.

5 The bankruptcy court found that plaintiff could not establish that
6 she was damaged by defendant's alleged violation of the automatic stay,
7 because the funds in question remained the property of the estate and
8 plaintiff could show no personal interest in the funds. Expert of
9 record, pp 2-4. Accordingly, the bankruptcy court found that plaintiff
10 had no standing to bring an action against the defendant and granted
11 summary judgment in favor of defendant.

12 DISCUSSION

13 The issue presented in this appeal is whether the bankruptcy court
14 correctly found that plaintiff could not establish damages resulting
15 from defendant's alleged violation of the automatic stay under § 362(h),
16 because the disputed wages remained the property of the estate. I find
17 that the bankruptcy court was correct.

18 Wages earned but not paid become property transferrable to the
19 estate once a petition for bankruptcy petition is filed. 11 U.S.C. §
20 541(a)(6). Here, plaintiff had earned the wages by July 18, 2000, but
21 had not been paid when she filed her bankruptcy petition on July 20,
22 2000. Hence, plaintiff's wages for the pay period ending July 18, 2000,
23 became the property of the estate as of July 20, 2000. It follows that
24 any subsequent claim based on the alleged violation of the automatic
25 stay belonged to the estate, not to plaintiff. Plaintiff cannot
26 establish damages for the alleged violation of the automatic stay,
27 because plaintiff had no interest in the garnished wages when the

1 automatic stay applied.

2 Plaintiff argues that the estate trustee abandoned any claim
3 against defendant at a creditors meeting and therefore she is entitled
4 to bring an action against defendant to enforce the automatic stay
5 provision. The bankruptcy court did not make any findings whether the
6 trustee abandoned any claim. However, based on the bankruptcy court's
7 finding that the wages at issue remained the property of the estate, it
8 follows that the bankruptcy court found no abandonment. Further,
9 abandonment of a claim requires notice and hearing. 11 U.S.C.
10 §554(a), (b). Plaintiff provides no evidence that the trustee provided
11 notice of an abandonment or that any hearing on abandonment occurred.

12 Regardless, no claim against defendant could revert to plaintiff.
13 At the close of the bankruptcy proceeding, any claims that were
14 scheduled by the debtor but not disposed of are deemed abandoned and
15 revert to the debtor. 11 U.S.C. § 554(c). Unscheduled claims remain
16 the property of the estate and under the trustee's control. Id. §
17 554(d); Tyler House Apartments, Ltd. v. United States, 38 Fed.Cl. 1, 6
18 (1997) (citing Vreugdenhill v. Navistar Int'l Transp. Corp., 950 F.2d
19 524 (8th Cir. 1991)). Here, plaintiff scheduled no claim against
20 defendant and no such claim could possibly revert to plaintiff, because
21 at no time did plaintiff have a claim against defendant. Thus, any
22 claim the estate had against defendant for violating the automatic stay
23 provision was and remains the property of the estate. Accordingly,
24 plaintiff lacks standing to bring this suit.

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CONCLUSION

The bankruptcy court's decision is AFFIRMED. Plaintiff's Complaint is DISMISSED.

IT IS SO ORDERED.

DATED this 15 day of December, 2000.



Ann Aiken
United States District Judge

FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
EUGENE, OREGON

BY: *SN*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

In Re:

PAMELA M. ERWIN,

Debtor.

PAMELA M. ERWIN,

Plaintiff,

Civil No. 00-6314-AA

Adv. Pro. No. 99-06291-fra

v.

FEDERAL-METALS CENTRAL
CREDIT UNION,

Defendant.

JUDGMENT

This action is dismissed.

Dated: December 18, 2000.

Donald M. Cinnamond, Clerk

by

Leslie Malley

Leslie Malley, Deputy

JUDGMENT

DOCUMENT NO: 38