


Dated: March 11, 2014
The following is ORDERED:




Jennie D. Latta
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
PATRICIA KOCHMAN LICHTERMAN,
Debtor.

Case No. 13-24549-L
Chapter 7

Rae Jean Lichterman,
Plaintiff,
v.
Lynda F. Teems, Chapter 7 Trustee,
Defendant.

Adv. Proc. No. 13-00251

**ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
GRANTING DEFENDANT'S JUDGMENT ON THE PLEADINGS**

BEFORE THE COURT are the Motion for Summary Judgment filed by the Plaintiff, Rae Jean Lichterman, and the Motion for Judgment on the Pleadings filed by the Defendant, Lynda F. Teems, Chapter 7 Trustee. The Motion for Summary Judgment is supported by excerpts from the depositions of Rae Jean Lichterman and Patricia K. Lichterman, as well as a Statement of Undisputed Material Facts and Memorandum in Support of the Motion. In addition to the Motion

for Judgment on the Pleadings, the Trustee filed a Memorandum in Support of the Motion for Judgment on the Pleadings, a Response to the Plaintiff's Statement of Undisputed Facts, a Memorandum in Opposition to the Motion for Summary Judgment, and additional excerpts from the depositions. The Plaintiff then filed a Reply in Support of Her Motion for Summary Judgment, a Response to Trustee's Additional Material Fact, and a Response in Opposition to the Trustee's Motion for a Judgment on the Pleadings.

The underlying Complaint requests a declaratory judgment that a certain diamond ring is not property of the bankruptcy estate of Patricia Kochman Lichterman (the "Debtor"), and that it should be turned over to the Plaintiff by the Trustee. The Motion for Judgment on the Pleadings alleges that the Complaint fails to state a claim for relief under Rule 12 of the Federal Rules of Civil Procedure, made applicable in this adversary proceeding by Federal Rule of Bankruptcy Procedure 7012, and/or that the Plaintiff lacks standing to bring her complaint.

JURISDICTIONAL STATEMENT

Jurisdiction over a complaint arising under the Bankruptcy Code lies with the district court. 28 U.S.C. § 1334(b). Pursuant to authority granted to the district courts at 28 U.S.C. § 157(a), the district court for the Western District of Tennessee has referred to the bankruptcy judges of this district all cases arising under title 11 and all proceedings arising under title 11 or arising in or related to a case under title 11. *In re Jurisdiction and Proceedings Under the Bankruptcy Amendments Act of 1984*, Misc. No. 81-30 (W.D. Tenn. July 10, 1984). The determination of the property of the bankruptcy estate is a core proceeding arising under the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(2)(A); 11 U.S.C. § 541(a). Accordingly, the bankruptcy court has authority to enter

judgment on the motions subject only to appellate review under section 158 of title 11. 28 U.S.C. § 157(b)(1).

SUMMARY JUDGMENT STANDARD

A motion for summary judgment may be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), incorporated at Fed. R. Bankr. P. 7056. ““Summary judgment is proper if the evidence, taken in the light most favorable to the nonmoving party, shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.”” *Pazdzierz v. First American Title Ins. Co. (In re Pazdzierz)*, 718 F.3d 582, 586 (6th Cir. 2013), quoting *Mazur v. Young*, 507 F.3d 1013, 1016 (6th Cir. 2007). When a cross motion for summary judgment (or judgment on the pleadings) is filed, the court must consider each motion in turn to determine whether it may be granted. *Westfield Ins. Co. v. Tech Dry, Inc.*, 336 F.3d 503, 506 (6th Cir. 2003); *Taft Broadcasting Co. v. U.S.*, 929 F.2d 240, 248 (6th Cir. 1991).

FACTS

The Debtor commenced her bankruptcy case by filing a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on April 29, 2103 (Bkcty. Dkt. No. 1). Among her assets, the Debtor listed a ring with a diamond described as “2.5 European cut, round diamond, appraised by Robert Irwin Jewelers 4/25/2009” (the “Diamond”) (Schedule B, Bkcty. Dkt. No. 1). Lynda F. Teems was appointed Chapter 7 Trustee on April 29, 2013 (Bkcty. Dkt. No. 6).

The Plaintiff filed the Complaint commencing this adversary proceeding on June 6, 2013 (Adv. Proc. Dkt. No. 1). The Complaint alleges that the Diamond belongs to the Plaintiff but that it was in the possession of the Debtor at the time of the filing of her bankruptcy petition pursuant

to an agreement executed by the Debtor on or about December 30, 1988 (the "Agreement"). A copy of this Agreement is attached to the Complaint as Exhibit A. It recites:

December 30, 1988

It is my desire to welcome Patti into our family by giving Jeffrey the 2.5 carat flawless, European cut, round diamond, left for him by Grandma Fannye, to be used in Patti's engagement ring.

They both understand, agree, and accept that the above-described diamond shall remain in perpetuity with a descendent of the Peterman/Blatnikoff family.

Signed Rae Jean Lichterman.

Accepted by Jeffrey Scott Lichterman and Patti Anderson.

There were three witness, but their signatures are illegible. The parties have not offered the testimony of the witnesses in this adversary proceeding.

The Complaint further states that:

13. The Diamond is one of two identical diamonds that were originally set in earrings that belonged to Rae Jean's great grandmother, Lizzie Peterman. The earrings were given to Ms. Peterman by her husband, Jacob Peterman, in the late 1880s.
14. In 1888, the Petermans had a daughter, Fannye Peterman. She later married Harry Blatnikoff, and took his name. Fannye Peterman Blatnikoff is Rae Jean's grandmother. She is identified in the agreement as Grandma Fannye.
15. Before Fannye Peterman Blatnikoff's death, she gave the earrings to her daughter-in-law, Rae Jean's mother, Faye Gerber Blatnikoff, with the

understanding that they would remain in the Peterman/Blatnikoff family in perpetuity.

16. Rae Jean's mother gave the diamond from one of the earrings to Rae Jean's brother, Sidney Blatnikoff. Sidney Blatnikoff also understood that the diamond he received was to remain in the Peterman-Blatnikoff family in perpetuity. The other diamond, the one at issue in this case, was given to Rae Jean.
17. At the time the Diamond was given to Rae Jean, her son, Jeffrey was seven years old. Rae Jean's mother gave Rae Jean the Diamond to be used by Jeffrey—when and if he become engaged to be married—for an engagement ring.
18. Debtor and Jeffrey Lichterman became engaged on December 31, 1988. The day before their engagement, they, along with Rae Jean, signed the Agreement. Debtor and Jeffrey Lichterman were married on June 17, 1989. Pursuant to the Agreement, the Diamond was used in Debtor's engagement ring.
19. Debtor has recently filed a complaint for divorce in Shelby County, Tennessee. That case remains pending.
20. Debtor and Jeffrey Lichterman have no biological children together.

The Trustee filed her Answer to Complaint on June 25, 2013 (Adv. Proc. Dkt. No. 5). The Trustee admits the jurisdiction of the bankruptcy court to finally determine this adversary proceeding and admits that she has possession of the Diamond. The Trustee denies that the

Diamond was in the Debtor's possession pursuant to the Agreement, asserting instead that the Diamond was given to Jeffrey Lichterman by the Plaintiff, and that in turn it was incorporated in the engagement ring that was given by Jeffrey Lichterman to the Debtor. The Trustee further states that the Debtor had two sons from a prior marriage at the time of her marriage to Jeffrey Lichterman, and that he adopted these boys as his own sons. The Trustee asserts that as a result of making a gift of the Diamond to Jeffrey Lichterman, the Plaintiff no longer has an interest in the Diamond.

Following the taking of depositions, the Trustee changed her position slightly. In her Response to Plaintiff's Statement of Undisputed Material Facts and Designation of Additional Material Facts Precluding Summary Judgment, the Trustee asserts that the Diamond was given to Jeffrey Lichterman by Grandma Fannye, not by the Plaintiff. The Trustee relies upon the deposition of the Plaintiff to support this statement. At pages 14-15 of the Plaintiff's deposition there appears the following exchange:

Q. But we still have the words "left for him by Grandma Fannye." Was Grandma Fannye living when Jeffrey was born?

A. Yes.

Q. So did Grandma Fannye say that this diamond was for Jeffrey?

A. Before she passed away.

Q. She said this diamond was for Jeffrey. Is that correct?

A. For when he became engaged to use in an engagement ring.

Q. And your grandmother said that, Fannye?

A. Yes.

Q. Okay. But I thought a minute ago we said the diamond was given by Grandma Fannye to Mother Faye.

A. Well, for safekeeping.

Q. And that Mother Faye gave the diamond to you.

A. She abided by the wishes of my grandmother.

Q. Okay. But Grandma Fannye gave the diamond to Faye Gerber-Blatnikoff, and Faye Gerber-Blatnikoff gave it to you. Is that correct?

A. Yes.

Q. In connection with any of this giving, these gifts, was there a will involved?

A. You are asking me something I don't know.

Q. Okay. Was there a written paper, either a--

A. I have no idea.

Q. But your mother didn't write out something and say "To my daughter, Rae Jean, I'm giving you a diamond"?

A. No. My mother was alive.

Q. Okay. So there is [sic] are no papers or written documents from Grandma Fannye or before her or your mother or anybody other than the one paper we're looking at--

A. Correct.

Q. --Exhibit 1?

A. As far as I know.

The Plaintiff argues that there are other statements in her deposition in which she testifies that the Diamond was a gift to her from her mother. The Plaintiff cannot create a disputed issue of fact by contradicting her own testimony. Moreover, the Agreement itself, which was prepared well prior to this dispute when the Plaintiff had no reason not to state the facts as she understood them, states that the Diamond was “left for him [i.e. Jeffrey Lichterman]” by Grandma Fannye. It is significant that Jeffrey Lichterman was alive when this gift was made. In other words, Grandma Fannye did not simply leave the Diamond with instructions that it be given to a future grandson for use in an engagement ring. She apparently made a specific gift of the Diamond to her great-grandson, Jeffrey Lichterman.

Based upon the admissions of the Plaintiff, I find that there is no genuine dispute that the Diamond was given by Grandma Fannye to Jeffrey Lichterman for use in an engagement ring. Possession of the Diamond was given first to Mother Faye and then to the Plaintiff, but only with the intent that Jeffrey Lichterman would be the ultimate recipient. There is no evidence of a gift by Grandma Fannye to anyone other than Jeffrey Lichterman.

ANALYSIS

A. Plaintiff’s Motion for Summary Judgment

The Plaintiff asks that she be declared the owner of the Diamond and that the Diamond be given to her. For the reasons that I have stated, there is no genuine dispute that the Diamond was given to Jeffrey Lichterman, not to the Plaintiff. According to the Plaintiff’s own testimony, she was never the owner of the Diamond. The Plaintiff’s Motion for Summary Judgment must fail.

B. Trustee’s Motion for Judgment on the Pleadings.

1. Standing

The Trustee argues that the Plaintiff is without standing to bring her complaint. I agree. Standing is the “threshold issue in every federal case.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975), quoted in *Coal Operators and Assocs., Inc. v. Babbitt*, 291 F.3d 912, 915 (6th Cir. 2002). See also *Harker v. Troutman Ent., Inc. (In re Troutman Ent., Inc.)*, 286 F.3d 359, 364 (6th Cir. 2002) (Standing is a jurisdictional requirement and the court is under a continuing obligation to verify its jurisdiction over a particular case.). The standing requirement limits federal court jurisdiction to actual controversies. *Coal Operators*, 291 F.3d at 915. In order to satisfy the federal standing requirement, “a plaintiff must have suffered some actual or threatened injury due to the alleged illegal conduct of the defendant; the injury must be ‘fairly traceable’ to the challenged action; and there must be a substantial likelihood that the relief requested will redress or prevent the plaintiff’s injury.” *Id.* at 916. In addition to the constitutional requirement, there are three prudential standing restrictions. Most important for present purposes, “a plaintiff must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *Id.*

As the Trustee correctly states, the Plaintiff has failed to demonstrate that she has a pecuniary interest in the Diamond. Therefore, the Complaint should be dismissed based on the Plaintiff’s lack of standing.

2. The Agreement

Although not strictly necessary to my determination, I will briefly address two additional issues. First, even if the Plaintiff does have standing to pursue this cause of action, the Agreement appears to be invalid on its face because it violates the rule against perpetuities. The Agreement attempts to create a perpetual trust for the benefit of unnamed members of the Peterman-Blatnikoff family. By statute, a nonvested property interest is invalid unless one of three conditions is satisfied:

- (1) When the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive;
 - (2) The interest either vests or terminates within ninety (90) years after its creation;
- or
- (3) The interest satisfies the conditions set forth in subsection (f).

(f) As to any trust created after June 30, 2007, or that becomes irrevocable after June 30, 2007, the terms of the trust shall require that all beneficial interests in the trust vest or terminate...within three hundred sixty (360) years.

Tenn. Code. Ann. § 66-1-202. Although enacted in 1994, this statute applies to all nonvested property interests regardless of whether they were created before or after the statute's effective date, July 1, 1994. Tenn. Code. Ann. § 66-1-206(a).

When the Plaintiff attempted to create remainder interests in unnamed members of the Peterman-Blatnikoff family, it was not certain that those interests would vest within 21 years after the death of a person then alive or within 90 years after the interest was created. In fact, the expressed intent was that interests in the Diamond would continue to vest in members of the Peterman-Blatnikoff family in perpetuity. Section (f) does not apply to the Agreement which was drafted in 1988. Therefore none of the three conditions is met and the Agreement is invalid.

3. Property of the Estate

The parties do not dispute that the Diamond was given to the Debtor by Jeffrey Lichterman on December 31, 1988. The Debtor and Jeffrey Lichterman were married on June 17, 1989. The

Tennessee Court of Appeals, the highest court to have addressed this issue in Tennessee, has held that an engagement ring is a conditional gift, but only until the marriage occurs. Once the marriage occurs, there is a completed gift and the ring given in contemplation of marriage becomes the property of the donee. *Crippen v. Campbell*, 207 WL 2768076, slip op. at * 4 (Tenn. Ct. App. 2007); *Wilson v. Wilson*, 2005 WL 2217085, slip op. at * 2 (Tenn. Ct. App. 2005); accord *Salens v. Tubbs*, 292 Fed. Appx. 438, (6th Cir. 2008) (Michigan law). Property of the bankruptcy estate includes “all legal and equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a).

When the Debtor and Jeffrey Lichterman were married on June 17, 1989, there was a completed gift of the Diamond to the Debtor and she became its owner. The Debtor was the owner of the Diamond some 23 years before her bankruptcy petition was filed. She properly listed the Diamond as property of the bankruptcy estate because it is property of the estate.

CONCLUSION

For the foregoing reasons, the Plaintiff’s Motion for Summary Judgment is **DENIED**. The Trustee’s Motion for Judgment on the Pleadings is **GRANTED**. The Diamond is property of the bankruptcy estate of Patricia Kochman Lichterman and should be administered by the Trustee accordingly.

cc: Plaintiff
Plaintiff’s Attorney
Defendant
Defendant’s Attorney
Debtor
Debtor’s Attorney(s)