

Dated: December 27, 2006
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re JAMES A. BROOKS,

Case No. 05-36186-L

Debtor.

Chapter 7

JAMES A. BROOKS and
MARGARET BROOKS,

Movants,

v.

GEORGE W. STEVENSON, Trustee,

Respondent.

**ORDER DENYING MOTION FOR ORDER DIRECTING TRUSTEE
TO ABANDON INTEREST**

BEFORE THE COURT is the motion of the Debtor, James A. Brooks, and his wife, Margaret Brooks, seeking an order requiring the Trustee, George W. Stevenson, to abandon his

interest in certain funds paid over to him by Creditors, John and Jacqueline Charles. These funds were obtained by the Creditors as the result of a writ of garnishment issued at their request in order to collect a judgment obtained by them against the Debtor and Delta Custom Medical Laboratory, Inc. (“Delta”). The Trustee demanded that the funds be paid over to him because they represented a preferential transfer to the Creditors. The Trustee has objected to the motion, and the Creditors have filed a response in which they assert that they merely complied with the written instructions of the Trustee in paying over funds to him. The Movants maintain that the funds paid to the Trustee represent the sole property of Margaret Brooks and are not property of the bankruptcy estate. As a result, they argue that Mrs. Brooks is entitled to the return of her property as it is burdensome and of inconsequential value to the estate. *See* 11 U.S.C. § 554(b). The parties submitted the matter to the court for determination without oral argument. Having carefully reviewed the record and memoranda of the parties, the court makes the following findings of fact and conclusions of law. The motion, which seeks relief against the Trustee alone, is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

FINDINGS OF FACT

The Creditors obtained a judgment against the Debtor and Delta in the Circuit Court of Yalobusha County, Mississippi in the amount of \$111,167.36 on March 12, 2004. They caused this judgment to be enrolled in the Circuit Court of Tennessee for the Thirtieth Judicial District at Memphis. On September 6, 2005, they caused to be issued a Writ of Fieri Facias directing the Sheriff of Shelby County, Tennessee, to recover any goods and chattels, lands and tenements, of Delta and the Debtor found in his county. This writ was executed upon SunTrust Bank on September 20, 2005, which paid over \$9,638.57 to the Clerk of the Circuit Court on October 4,

2005, representing the proceeds of two deposit accounts.

The Debtor and Delta filed voluntary petitions under chapter 7 of the Bankruptcy Code on October 5, 2005. Barbara Loevy was appointed trustee in the Delta case. On October 14, 2005, the Clerk of the Circuit Court paid over \$9,638.57 to the Creditors. The attorney for the Creditors deposited these funds to his trust account and promptly notified the Trustee and Ms. Loevy that he was holding these funds pending their instructions while reserving his clients' rights. The Trustee instructed the attorney for the Creditors to pay over \$5,810.86 to him, representing proceeds from an individual account, and to pay over \$3,827.71 to Ms. Loevy, representing proceeds from an account owned by Delta. The attorney for the Creditors complied with the Trustee's instructions, issuing two checks from his trust account, one payable to the Trustee and the other payable to Ms. Loevy. Although the Creditors obtained an extension of time to file a complaint to determine the dischargeability of the debt owed to them, it does not appear that a complaint was ever filed on their behalf. The Creditors filed a proof of claim on April 26, 2006, in the amount of \$130,724.72 (the original judgment amount together with post-judgment interest), which they assert is secured by real estate having a value of \$79,000.00. Other than filing a response to the pending motion, the Creditors have taken no other action to collect their judgment against the Debtor.

The motion of the Debtor and Mrs. Brooks was filed on May 19, 2006. It is supported by the affidavits of the Debtor and Mrs. Brooks, and asserts that the funds which were recovered by the Creditors and subsequently paid over to the Trustee were taken from a joint bank account held in the name of "James Allen Brooks or Margaret M. Brooks" and represented funds deposited by Mrs. Brooks or by her employer on her behalf. Specifically, Mrs. Brooks claims that the funds on deposit in the account represented a reimbursement of travel expenses incurred by her. Mrs. Brooks avers

that she has never been indebted to the Creditors. The affidavit of the Debtor is consistent with the affidavit of Mrs. Brooks.

The Trustee filed a memorandum in which he acknowledges that the funds were originally taken from a joint account¹, but asserts that he did not receive the funds from the joint account, but rather from the Creditors in response to his demand that they turn over to him the fruits of an avoidable transfer. The Trustee avers that Mrs. Brooks' dispute is with the Creditors, not with him, and that the dispute between Mrs. Brooks and the Creditors is a non-core dispute that should be resolved outside of the bankruptcy court, as it seems clear that the Debtor and Mrs. Brooks take the position that the Debtor has no interest in these funds.

The Trustee is factually correct. The checks that he received were drawn on the trust account of the law firm of the attorney for the Creditors. He received no funds from SunTrust or from the Clerk of the Circuit Court. The Trustee is also factually correct that the Creditors received a transfer for their benefit on account of an antecedent debt owed by the Debtor within ninety days prior to the filing of the Debtor's bankruptcy petition, which appears to have permitted them to receive more than they would have received had the transfer not been made.

CONCLUSIONS OF LAW

The Debtor and Mrs. Brooks rely upon section 554(b) of the Bankruptcy Code in support of their motion. That section provides, "On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). The Movants'

¹ No evidence of this fact appears in the record other than the affidavits of the Debtor and Mrs. Brooks.

reliance upon this section is misplaced for at least two reasons. First, the section, by its terms, only applies to property of the estate. The contention of the Movants is that the SunTrust account was not property of the bankruptcy estate. It is true that the Debtor listed no bank account on his Schedule B, but the Debtor does refer to the account in his Statement of Financial Affairs. There he states that the account was seized and “was a joint account. The money in the account belonged to Mrs. Brooks, who is not a debtor. To the extent the funds are deemed to belong to the Debtor, the payment is a preference.” In this statement, the Debtor takes the position that the account was not property of his estate, but does acknowledge the possibility that he had an interest in the account. No one has asked this court to determine whether the account was property of the estate.² Second, the Movants’ reliance upon section 554(b) is misplaced because it should be apparent that funds in the amount of \$5,810.86, are neither burdensome nor of inconsequential value. There is no apparent cost or burden to the Trustee to maintain these funds on deposit until time to make distribution to creditors, and if this amount is distributed to the creditors of the Debtor’s estate, the creditors will receive a substantial benefit.

The Trustee is correct in his analysis that the receipt of funds by the Creditors within the ninety-day period preceding the filing of the bankruptcy petition enabled the Creditors to receive more than they would have received had the transfer not been made. The Creditors’ contention that they did not hold the funds long enough to count is not persuasive. That is, it does not change the

² It is important to keep in mind that the relationship between a bank and its depositor is that of debtor and creditor. It is a mistake to conceptualize funds on deposit as if they were physically identifiable to any depositor. Rather, a depositor has the right to demand repayment of funds on deposit pursuant to the terms and conditions of the agreement between him and the bank. A depositor may be said to be the “owner” of an account, but not the owner of any physically identifiable funds on deposit.

relative positions of the parties. The Trustee was not the judgment creditor of the Debtor and did not cause the garnishment to be issued to SunTrust. The Trustee rather dealt with the Creditors as creditors of the bankruptcy estate who benefitted from a transfer on account of an antecedent debt owed by the Debtor in the ninety-day period preceding the filing of the bankruptcy case. *See* 11 U.S.C. § 547(b). If the Creditors take the position that they did not benefit from the transfer, they may file an appropriate complaint to recover the funds in the hands of the Trustee (and, of course, they could have resisted the Trustee's demand on this basis in the first place). Conversely, if Mrs. Brooks takes the position that the funds should not have been paid over to the Clerk of the Circuit Court for the benefit of the Creditors, her remedy is an action against the Creditors pursuant to state law. Indeed, the court would expect Mrs. Brooks to file an action in the Circuit Court naming the Creditors as defendants, and, in that event, would expect the Creditors to join the Trustee as a third-defendant. None of these things has occurred, and the motion is accordingly not well-taken.

CONCLUSION

For the foregoing reasons, the joint motion of the Debtor and his wife is DENIED.