UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

BRIAN S. KASSEL
VALERIE B. KASSEL

Case No. 95-10679 K

Debtors

DECISION AND ORDER DENYING MOTION TO AUTHORIZE DEBTORS' RENUNCIATION OF AN INHERITANCE

Brian and Valerie Kassel are Debtors in a Chapter 13 case, who continue to make payments under a confirmed Chapter 13 plan that provides for the payment of 24% of the claims of their unsecured creditors. Their case was filed on March 3, 1995, and at the time of their April examination at the meeting of creditors under 11 U.S.C. § 341, Mr. Kassel was aware of, and fully disclosed, the fact that he had a one-sixth interest in the decedent's estate of his great aunt. The value of that interest, however, was not known at that time.

The motion presently before the Court, filed by the Kassels, recites that Brian Kassel's monetary share of his great aunt's estate will be between $25,000 and $30,000. By this motion, he proposes to renounce his inheritance in favor of his relatives, and requests that the Court approve such renunciation. This has been opposed by the Chapter 13 Trustee. The motion will be denied.

The Debtors cite case authority for the proposition that renunciation of an inheritance is not a "transfer" of property within the purview of the fraudulent transfer provision, 11 U.S.C. § 548. The present issue arises under 11 U.S.C. § 549, however, not § 548; the Debtors here wish to engage in a post-petition transaction that will effect a diminution of the Chapter 13 estate.[1] But the Debtors ask the Court to interpret § 549 in light of the cases they cite which interpreted § 548 in such manner as to deem renunciation of an inheritance not to be a "transfer."

The Court has considered those cases and concludes that whatever their merit for § 548 purposes (a matter upon which this Court currently expresses no view), they are not pertinent to interpretation of § 549. Section 548 deals with transactions involving the debtor's property before any bankruptcy petition was filed. Once the petition is filed, however, a bankruptcy case is commenced, and:

> The commencement of a case under [the Bankruptcy Code] creates an estate . . . comprised of all of the following property, wherever located and by whomever held:
> (1) . . . all legal or equitable

[1]There can be no question about the fact that the inheritance is "property of the estate." 11 U.S.C. § 541(a)(5). While it is conceivable that the Debtors could posit a plan that would pay creditors the value of the inheritance without actually turning the full sum immediately over to the Trustee, they have not suggested such a plan. Rather, they simply do not want the value of that inheritance to go to creditors under § 1325(a)(4); they want it to go to co-legatees instead.

> interests of the debtor in property (as of the) commencement of the case . . . [and]
> . . .
> (5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date -
> (A) by bequest, devise, or inheritance.

11 U.S.C. § 541(a).

At the time of the filing of the Kassels' petition, there had been no renunciation. Consequently, Brian Kassel's inheritance is part of the Chapter 13 estate under § 541 and § 1306(a). How property of the estate is to be administered in a bankruptcy case is a matter defined extensively, exclusively and supremely in the Bankruptcy Code. Any provision of state law that effects a "relation back" may not defeat the federal statute.[2]

The Kassels base their argument largely on the case of *In re Simpson*, 36 F.3rd 450 (5th Cir. 1994), but that case is not contrary to the present ruling. Focusing on the definition of "transfer" contained in § 101(54) for purposes of testing a renunciation under the fraudulent transfer provision, § 548, that

[2]Some such "relations-back" are expressly recognized in the Bankruptcy Code, but renunciation of an inheritance is not one of them. *See, e.g.*, 11 U.S.C. § 546(b).

court held that the determination of whether a renunciation constituted a mode of "disposing of or parting with property or with an interest in property" was indeed to be made in reference to state law, but only "[i]n the absence of any controlling federal law." *Id.* at 451-52. Provisions such as § 363 (governing the use, sale or lease of property of the estate), § 542 (governing turnover of property of the estate), § 549 (governing post-petition transactions), and § 554 (governing abandonment of property) are "controlling federal law." Use of state statute to dispose of property of a bankruptcy estate is totally unlike the issues addressed in the cited case.

Whatever the effect of renunciation might be, a Chapter 13 debtor simply lacks authority, without permission of the bankruptcy court, to extinguish an interest which has already become part of his bankruptcy estate. To argue that the Court should grant such authority solely because the effect of renunciation under state law would be to treat the interest as if it never had existed, is circuitous reasoning.

Authority to renounce the inheritance will not be granted. Such authority would be permissible only under the circumstances set forth in § 554, governing "abandonment" of burdensome property or property of inconsequential value. This inheritance does not meet those criteria. The Debtors must turn the inheritance over to the Trustee or propose an otherwise confirmable modification that would pay its value over to

unsecured creditors over the life of the Plan.

In examining the file, the Court has observed that the Debtors did not give to their creditors any interest in the inheritance under the Plan or the order confirming the Plan.[3] Consequently, if they wish to exercise their right to withdraw their petition upon suitable notice to creditors, under § 1307(b), they may do so. They are cautioned, however, that if they withdraw the petition, and then renounce the inheritance and re-file under Chapter 13, there may be question as to whether this Court would agree that such renunciation was not a fraudulent transfer, and question as to whether any plan filed in that subsequent Chapter 13 case could be viewed as having been filed in "good faith" under § 1325(a)(3). And were they to file a Chapter 7 case after such renunciation, there might be question as to whether 11 U.S.C. § 707(b) (regarding dismissal for "substantial abuse" of the bankruptcy process) should be brought

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[3]This Court has often ruled that the fact that Chapter 13 debtors have an absolute right to the dismissal of their cases (if not previously converted) does not mean that rights that were given to creditors in the Chapter 13 plan or in the order confirming the plan are nullified as to a *res* in existence. "The provisions of a confirmed plan bind the debtor and each creditor . . . ." 11 U.S.C. § 1327(a). Dismissal of the case at a debtor's request does not undo that binding effect as to interests given to creditors as to property *in being*.

The Chapter 13 Trustee presumably chose not to elicit a Plan provision because he knew that in light of the death of the great aunt, the amount of the inheritance, when fixed, would be governed by § 541(a)(5) and would constitute "cause" for a Plan modification under § 1329 and Fed.R.Bankr.P. 1007(h).

to bear even if the Court were to conclude that the *Simpson* case is correct. The Court does not presume to rule on those questions today one way or the other; it offers these cautions only in connection with the permission being granted herein for the Debtors to apply to withdraw the present Chapter 13 Petition, if they wish, upon notice and hearing to be determined by the Court.

SO ORDERED.

Dated: Buffalo, New York
October 17, 1995

/s/ Michael J. Kaplan
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U.S.B.J.