

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

CASE NO. 01-20501

WILLIAM F. KANE, III and
DONNA M. KANE,

Debtors.

DECISION & ORDER

BACKGROUND

On February 16, 2001, William F. Kane, III and Donna M. Kane (the "Debtors") filed a petition initiating a Chapter 7 case. On or about April 10, 2001, the Debtors' attorney advised their Trustee (the "Trustee") that after the petition was filed, Donna Kane received a distribution of \$5,819.02 from her aunt's estate.

On the original Schedules and Statements filed by the Debtors they had claimed as exempt currency and various cash equivalents totaling \$425.00 pursuant to Section 522 and New York Debtor & Creditor Law (the "DCL") Section 283(2).¹

¹ DCL, Section 283(2) provides that:

2. Contingent alternative bankruptcy exemption. Notwithstanding section two hundred eighty-two of this article, a debtor, who (a) does not elect, claim, or otherwise avail himself of an exemption described in section fifty-two hundred six of the civil practice law and rules; (b) utilizes to the fullest extent permitted by law as applied to said debtor's property, the exemptions referred to in subdivision one of this section which are subject to the five thousand dollar aggregate limit; and (c) does not reach such aggregate

BK. 01-20501

On May 8, 2001, the Debtors filed an amendment to their Schedules which: (1) listed a "legacy" from the Estate of Helen Wilsey in the amount of \$5,819.02 and a \$275.32 New York State income tax refund as additional assets; and (2) claimed the income tax refund and \$2,500.00 of the "legacy" as exempt pursuant to DCL Section 283(2).

On May 17, 2001, the Trustee filed an Objection to the \$2,500.00 claimed "legacy" cash exemption, and on September 19, 2001, he filed a formal motion (the "Exemption Motion"), which requested that the Court disallow that claimed cash exemption. The Trustee asserted that any interest in the estate of Helen Wilsey which Donna Kane possessed when her petition was filed was not "cash" as defined in DCL Section 283(2).

On October 10, 2001, the Debtors interposed Opposition to the Exemption Motion which relied primarily on *In re Schapiro*,

limit, may exempt cash in the amount by which five thousand dollars exceeds the aggregate of his exemptions referred to in subdivision one of this section or in the amount of two thousand five hundred dollars, whichever amount is less. For purposes of this subdivision, cash means currency of the United States at face value, savings bonds of the United States at face value, the right to receive a refund of federal, state and local income taxes, and deposit accounts in any state or federally chartered depository institution.

NY DCL § 283(2) (2000).

BK. 01-20501

246 B.R. 751 (Bankr. W.D.N.Y. 2000) ("*Schapiro*"), a Decision from this Court's Buffalo Division.

At the hearing on the Exemption Motion, the Court granted the Motion and disallowed the claimed cash exemption, relying on its unpublished Decision in *In re Benjamin*, Ch. 7 Case No. 00-20534 (W.D.N.Y. March 7, 2001) and *In re Moody*, Ch. 7 Case No. 00-22921 (W.D.N.Y. March 7, 2001), and long-standing and consistent precedent in the Court's Rochester Division. After the Court announced its decision, the Debtors' attorney requested that the Court issue a written Decision & Order.

DISCUSSION

I. Prior Decisions

Since September 1984, when retired United States Bankruptcy Judge Edward D. Hayes filed his Decision in *In re Doyle*, 42 B.R. 615 (Bankr. W.D.N.Y. 1984), which held that a Debtor's interest in a bond fund was not "cash" as defined in DCL Section 283(2), the decisions filed in the Bankruptcy Court for the Western District of New York, Rochester Division, have consistently construed this exemption statute narrowly and held that only currency or one of the cash equivalents specifically enumerated in the statute can be claimed as exempt. For example, employee

BK. 01-20501

bonuses, determined pre-petition, but paid post-petition have repeatedly been held not to be "cash" and therefore could not be claimed as exempt. See *In re Joiner*, 52 B.R. 41 (Bankr. W.D.N.Y. 1985) (Hayes, J.); *In re Olmstead*, 82 B.R. 197 (Bankr. W.D.N.Y. 1988) (Hayes, J.); *In re Izzo*, Ch. 13 Case No. 90-21471 (W.D.N.Y. April 21, 1992) (Ninfo, J.). Other items claimed as exempt that have been determined not to be "cash" as defined in DCL Section 283(2) are TAP/PELL Grant payments paid post-petition and the unused portion of retainers held by law firms. See *In re Eggleston*, Ch. 7 Case No. 00-20136 (W.D.N.Y. Aug. 7, 2000) (Ninfo, CJ.); *In re Benjamin*, Ch. 7 Case No. 00-20534 (W.D.N.Y. March 7, 2001) and *In re Moody*, Ch. 7 Case No. 00-22921 (W.D.N.Y. March 7, 2001) (Ninfo, CJ.).

In each of the above cases, the Debtors had a pre-petition vested interest in and were due a liquidated amount certain from a third party. Nevertheless, for reasons of statutory construction, policy and equity, the Court in each instance held that these liquidated and certain amounts due were not "cash" as defined in DCL Section 283(2).²

² Even though the unpublished Decisions of the Court are available on its website (www.nywb.uscourts.gov), copies of these unpublished Decisions are being attached only to the original of this Decision & Order and the copies being sent to the parties.

BK. 01-20501

II. Schapiro

In *Schapiro*, the Honorable Carl L. Bucki, who sits in this Court's Buffalo Division, made a distinction between a specific bequest and a residuary bequest, holding that a specific dollar amount testamentary bequest that was vested at the time of the filing of the petition was "cash" for purposes of DCL Section 283(2).³

In my view, if the only requirement for an asset to be "cash" for purposes of DCL Section 283(2) were that it be due the debtor at the time of the filing of the petition in an amount certain, every interest of a debtor in a non-enumerated deposit, account receivable, retainer, escrow, bonus, estate and some trusts would qualify for the exemption. That would render the New York State Legislature's detailed and specific enumeration of cash equivalents in DCL Section 283(2) meaningless.

In my view, principles of statutory construction prevent me from finding that a specific testamentary bequest⁴ qualifies for

³ It is unclear to me from the Decision whether this was determined as a matter of law or equity.

⁴ A specific testamentary bequest simply gives a debtor a right to payment from an estate which may not even be holding any "cash" as specifically defined in DCL Section 283(2) at the time of the filing of the petition.

BK. 01-20501

the DCL Section 283(2) cash exemption. In addition, I do not believe that there is anything inherently equitable in finding that a distribution from an estate, even if in payment of a specific bequest, is "cash" as defined in DCL Section 283(2), when a hard earned employee bonus, account receivable for supplying goods or services or a much needed TAP/PELL Grant payment is not.

III. General

As this Court has expressed on numerous occasions, there are many assets which debtors commonly have when they file their petitions which entitle them to the payment of a sum certain, including a vested interest in an estate, that the New York State Legislature could have, but did not, include as exempt "cash" for purposes of DCL Section 283(2).

CONCLUSION

For all of the reasons set forth in this Decision & Order and in the above cited Decisions of the Bankruptcy Court for the Western District of New York, Rochester Division, the Exemption Motion is granted and the Debtor's \$2,500.00 claimed cash exemption in the distribution received from the Estate of Helen Wilsey is disallowed.

BK. 01-20501

IT IS SO ORDERED.

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dated: October 29, 2001