

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ANN EDWARDS REICH

Case No. 96-11243 K

Debtor

AMENDED ORDER

The Debtor, by her counsel, Falk & Siemer, LLP, Carol D. Collard, Esq., of counsel, having filed a Motion requesting permission to withdraw her bankruptcy petition and/or lift the automatic stay provided for in 11 U.S.C. § 362(a) to permit her to vacate her New York State Supreme Court Judgment of Divorce and Settlement Agreement, and in support of her Motion dated January 22, 1997 having submitted the Affidavit of ANN EDWARDS REICH sworn to the 21st day of January, 1997 and the Affirmation of Thomas J. Gaffney, Esq., record bankruptcy counsel for the Debtor, dated January 29, 1997, and the Trustee, Mark S. Wallach, having submitted a Declaration dated February 4, 1997, in opposition to the relief requested, and Robert I. Reich, the ex-spouse of the Debtor, through his counsel, Phillips, Lytle, Hitchcock, Blaine & Huber, William J. Brown, Esq., of counsel, having submitted an objection to the Debtor's Motion dated February 17, 1997, and the Court having held a hearing on the Motion on the 19th day of February, 1997, at which time the Court heard from Carol D. Collard, Esq., and Thomas J. Gaffney, Esq., on behalf of the Debtor, in support of the Motion, and from Mark S. Wallach, Esq., counsel for the Trustee, and William J. Brown, Esq., counsel for Robert I. Reich, in opposition to the Motion, and the Court having deliberated on the issues and set forth on the record certain guidelines concerning the Debtor's request for relief, the Court decrees the

following:

Whereas the continuing right of a Chapter 7 debtor to receive a stream of payments pursuant to a pre-bankruptcy agreement or award becomes a right belonging to a Chapter 7 Trustee, on behalf of the debtor's creditors, except to the extent that the right to receive payments is "exempt" property under N.Y. Debtor and Creditor Law § 282, and

Whereas the Bankruptcy Court has exclusive jurisdiction over "all property of the debtor as of the commencement of [the] case, and of the property of the estate [28 U.S.C. § 1334(e) and 28 U.S.C. § 157(a) and the General Order of Reference entered by the U.S. District Court of this District on July 13, 1984]," and

Whereas the Trustee in this case has announced his intention to challenge the Debtor's claim of exemption as to her former husband's ongoing financial obligations to her OTHER THAN as to her right to receive \$78,000 per year in support or maintenance from him, and

Whereas a determination by this Court as to whether the said obligations other than the said \$78,000 per year are "property of the estate" available to the Debtor's creditors, or instead are property to be set aside to the Debtor herself (and her dependents), cannot be made until the Trustee completes his investigation of the Debtor's financial affairs, and

Whereas the Debtor has indicated her desire to return to matrimonial court for further relief against her former husband in light of the possibility that the \$20,000 per year plus interest might be made available to her creditors rather than to her and her dependents, and

Whereas this Court cannot interfere with any effort of the Debtor to obtain a

modification of the matrimonial court's orders insofar as they pertain to future support, maintenance or alimony, it is now

ORDERED, that the Debtor is free to petition the Courts of the State of New York for any relief to which she may be entitled under state law, and any such proceedings are not subject to any bankruptcy stay except to the extent that they would convert non-exempt property into exempt property or would alter the nature, character, amount, frequency or other legal, physical or factual attribute of the obligations of the former husband which the Trustee has asserted may constitute "property of the estate," available to distribute to the Debtor's creditors; and it is further

ORDERED that the Trustee should be afforded a reasonable opportunity to perform his duties in the within case including the examination of the Debtor and the Debtor's ex-husband, Robert I. Reich, as previously ordered by the Court under the provisions of FRBP 2004; and it is further

ORDERED that the Debtor's Motion for stay relief and dismissal be, and the same hereby is in all respects, denied without prejudice to renewal at a later date if grounds exist, and after appropriate notice has been afforded to creditors and other parties in interest in accordance with the FRBP; and it is further

ORDERED over the objection of the Debtor by her counsel Thomas Gaffney, Esq., that in accordance with specifications placed on the record in open Court on March 21, 1997, all sums payable to the Debtor by or on behalf of her former husband, held by anyone, shall be paid or turned over to the Trustee, other than the said \$78,000 in support or maintenance

payments. Such payment or turnover shall be without prejudice to anyone's rights or claims.

The Trustee shall hold such monies at interest for the benefit of whoever prevails thereto.

SO ORDERED.

Dated: Buffalo, New York
March 27, 1997

Michael J. Kaplan, U.S.B.J.