

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

ROBERT J. BRADLEY, SR.
BBC REAL ESTATE PARTNERSHIP

Case No. 91-13893 K

Case No. 91-14183 K

Debtors

Robert Bradley, Sr. is an individual operating as a Chapter 11 Debtor-in-Possession. He has so operated for nearly four years, and a plan of reorganization has been filed, but not yet confirmed. At the time he filed Chapter 11, he was married to Sandra Bradley. In recent months they have separated, and a divorce proceeding is pending. She has filed a request for payment of an administrative expense in the estimated amount of \$1 million, claiming this to be the estimated amount of her right to alimony, maintenance or support, as will eventually be fixed by the divorce court. Her attorneys, the attorneys for the creditors' committee, and the attorneys for the Debtor have briefed this issue.

The Court finds that her claim is not entitled to administrative expense status, but that she is entitled to some forms of relief in this case.

By Order of November 24, 1992, this Court ruled that when a Chapter 11 Debtor-in-Possession is a natural person, his personal expenses and his obligations for incidents of his personal life are every bit as much a part of the ordinary course of his business and financial affairs as are expenses incident to

the operation of the various shopping malls, nursing homes, and office buildings that he owned.¹ That ruling was in response to an effort by the creditors' committee and a particular creditor to have the Court limit his personal allowance. The Court declined to fix his allowance and decide what amounts he could and could not spend and for what purposes. Rather, if his personal spending was so eroding property of the estate as to give rise to grounds for the appointment of a trustee or for conversion of the case, then the creditors' committee could make such a motion. It never did.

When the Court ruled that any and all property of the Debtor's estate could be used by the Debtor for the satisfaction of his personal obligations and expenses, that did not mean that every person to whom he became obligated had a right to look to property of the estate for payment. In other words, not all such obligees are entitled to payment as an administrative expense under 11 U.S.C. § 503. Rather, the import of the holding for purposes of Sandra Bradley, was that any and all property of the estate could be declared to be property of the debtor to the extent necessary for her to recover support on an ongoing basis. (Section 362(b)(2)(B) permits a debtor's former spouse to collect alimony, maintenance or support from "property that is not

¹A copy of that decision is appended hereto.

property of the estate" despite the existence of the automatic stay.)

In this regard, this Chapter 11 case is not unlike nearly every Chapter 13 case, in which the ordinary living expenses of the debtor are permitted to be paid out of his income - which is "property of the estate" under § 1306 - not because they are necessarily "administrative expenses" as contemplated under § 503, but because in Chapter 13 a debtor is required to commit only his or her "projected disposable income" to creditors, and ordinary and necessary expenses of living are allowed to the debtor as deductions from take-home income before arriving at "disposable" income. Because there is no provision in Chapter 11 that is similar to § 1306, the personal service income of a debtor in Chapter 11 would clearly be property of the debtor, rather than of the estate. But Bradley has little, if any, personal service income. Thus he must spend property of the estate, and something like the Chapter 13 analysis must appertain.

The fact that Sandra Bradley has not availed herself, since the marital separation, of the opportunity to ask this Court to declare a portion of the estate to be "property of the debtor" so that she could collect it (in accordance with § 362(b)(2)(B)), does not convert her claim for support arrears into an administrative expense claim under § 503. Monies which

this Court would surely have permitted her to collect² from monies that Mr. Bradley has otherwise spent may not now be collected at the expense of Mr. Bradley's creditors.³

Moreover, § 502(b)(5) clearly contemplates that unmatured claims for ^{non-}dischargeable alimony, maintenance or support, are allowable in a bankruptcy case only as to "property of the debtor," and not as to property of the estate. Hence, no

²Chapter 11 is not a haven from meeting such obligations.

³Although it would be convenient were the Court able to articulate some black-letter principle such as, "These liabilities are liabilities of the debtor, rather than liabilities of the debtor-in-possession," it seems to the Court that something more basic and less paradoxical is at work here. Section 503(b)(1) speaks of "costs and expenses" of preserving the estate, not of "claims" against or "liabilities" of the estate, or of claims or liabilities that "arise after the filing of the petition." One can intuit the sense in which such post-petition impositions as taxes, tort liabilities, environmental penalties, etc. are "costs of preserving the estate" even though they do not benefit the estate, because those expenses are caused by the operation of the estate. But no causal relationship can be perceived between the preservation or operation of Bradley's estate and a liability for alimony, maintenance or support, that would support the notion that the latter is a "cost or expense" of the former.

Except with regard to business entities that have some charitable, religious or educational purpose, it is hard to envision any liability that a Chapter 11 estate of a business entity (such as a corporation) might incur that would not fit a common sense definition of "cost or expense of" preservation, operation or liquidation. As to cases involving natural persons, on the other hand, liabilities arising out of separation or divorce seem to be the paradigmatic example of liabilities that are totally unrelated to whatever is being attempted for the benefit of the estate.

portion of the \$1 million administrative expense request may be allowable if it is for future alimony, maintenance, or support, if she is attempting to have that request allowed out of property of the estate rather than property of the debtor. But her request does suffice to establish that this Court may not confirm a plan of reorganization which places property of this Debtor beyond her reach.

While Sandra Bradley ought to fare no worse from her husband's bankruptcy than she would have had he not filed, she ought to fare no better either, relative to Robert Bradley's other creditors. Her injuries were not caused by the fact that Bradley is operating as a Debtor-in-Possession.⁴ To rule that she comes ahead of all unsecured creditors would be to put a premium on one's filing for divorce only after a Chapter 11 petition has been filed, since she would enjoy no special status outside bankruptcy as against Bradley's other creditors.⁵

The pending plan of reorganization is complex,

⁴Compare, for example *Reading Company v. Brown*, 391 U.S. 471 (1968), holding that fire damages to premises adjoining the Chapter XI debtor's premises, caused by negligence of the Chapter XI receiver, were "actual and necessary costs" entitled to administrative expense priority.

⁵Effective as to cases filed on or after October 22, 1994, however, Congress has given a distributive priority to claims for pre-petition alimony, maintenance or support arrearages. 11 U.S.C. § 507(a)(7).

involving the transfer or refinancing of properties, the creation of a trust, the flowing of an income stream from another asset into the trust, etc. Today's holding, that this Court may not approve a plan that places assets that should be viewed as property of the debtor, beyond the reach of Sandra Bradley to satisfy her alimony, maintenance, or support claims, should provoke realistic negotiation regarding the final version of the plan, since the possibility of conversion to Chapter 7 liquidation looms overhead.

A hearing on confirmation has been conducted and has been adjourned. Since it is unclear whether or when a plan of reorganization will be approved, the Court invites a motion from Sandra Bradley to declare a portion of the estate to be "property of the Debtor," on a monthly basis, so that she might pursue that property for her support needs under § 362(b)(2)(B). The Court expects that Robert Bradley will reduce his own personal expenditures by any amount so set aside. The Court will entertain such motion on an expedited basis if requested.

SO ORDERED.

Dated: Buffalo, New York
July 17, 1995

U.S.B.J.