



SO ORDERED.

SIGNED this 23 day of January, 2009.

Dale L. Somers

Dale L. Somers
UNITED STATES BANKRUPTCY JUDGE

DESIGNATED FOR ONLINE USE AND PRINT PUBLICATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:

**BRIAN PATRICK MULDOON and
CARRIE REH MULDOON,**

DEBTORS.

**CASE NO. 03-21332
CHAPTER 7**

**MEMORANDUM OPINION AND ORDER OVERRULING OBJECTIONS TO
TRUSTEE'S FINAL REPORT**

Following oral argument held on November 26, 2008, the Court took under advisement the objections of the Debtors¹ and Settlement Funding, LLC² to the Trustee's Final Report.³ The case trustee, David C. Seitter (hereafter Trustee), appears by Eric L. Johnson of Spencer Fane Britt & Brown LLP. Debtors, Brian and Carrie Muldoon (hereafter Debtors), appear by

¹ Doc. 61.

² Doc. 60.

³ Doc. 57.

Christopher T. Fletcher of Fletcher & Rohrbaugh, LLP. Settlement Funding, LLC, d/b/a Peachtree Settlement Funding (hereafter Settlement Funding) appears by Terry C. Cupps of Foulston Siefkin, LLP. There are no other appearances. The Court has jurisdiction.⁴

Having considered the joint stipulation of fact,⁵ the arguments of counsel, and the briefs,⁶ the Court is now ready to rule. The objections to the Trustee's Final Report arise from the estate's receipt of approximately \$41,000 in payment of Debtor Carrie Muldoon's settlement of the Trustee's objection to Debtors' claim of exemption of Ms. Muldoon's interest in an annuity owned by the United States purchased to pay the structured settlement of a prepetition tort claim. To raise the \$41,000, Ms. Muldoon assigned a portion of her future payments under the annuity to Settlement Funding, and Settlement Funding made payment to the Trustee on her behalf. After the payment but while the Trustee still held a portion of the \$41,000, the United States filed a suit in District Court challenging the validity of the assignment of the annuity payments to Settlement Funding and sought rescission of the assignment. The Trustee seeks to pay Trustee fees and costs, to distribute the estate property to unsecured creditors, and to close the estate. The objecting parties assert that the estate should not be closed until after resolution of the

⁴ This Court has jurisdiction pursuant to 28 U.S.C. § 157(a) and §§ 1334(a) and (b) and the Standing Order of the United States District Court for the District of Kansas that exercised authority conferred by § 157(a) to refer to the District's Bankruptcy judges all matters under the Bankruptcy Code and all proceedings arising under the Code or arising in or related to a case under the Code, effective July 10, 1984. Objections to a Trustee Final Report are core proceedings which this Court may hear and determine as provided in 28 U.S.C. § 157(b)(2)(A). There is no objection to venue or jurisdiction over the parties.

⁵ Doc. 88.

⁶ Docs. 87 (Settlement Funding) and 89 (Trustee).

challenge to the assignment. For the reasons stated below, the Court overrules the objections and approves the Trustee's Final Report.

STIPULATED FACTS.

For the purpose of ruling on the objections, the parties have stipulated to the following facts:⁷

1. On or about April 8, 2003, the Debtors filed a Voluntary Petition for relief under Chapter 7 of the United States Bankruptcy Code, with schedules attached commencing the above-captioned bankruptcy case (the "Bankruptcy"). David C. Seitter was appointed as the case Trustee and continues to serve in that capacity.

2. In their Schedule C, Debtors claimed that their interest in a certain annuity (the "Annuity") issued by Metropolitan Life Insurance Company ("Met Life") was exempt pursuant K.S.A. 60-2308 and K.S.A. 60-2313(a)(1). The Annuity was initially issued by The National Investors life Insurance Company which was subsequently acquired by Metropolitan Life Insurance Company ("MetLife").

3. The Annuity was funded by the United States of America in 1982 as the means of paying a settlement of a personal injury claim brought under the Federal Tort Claims Act by Theresa Jean Ruddy, Individually and as Guardian and Next-to-Kin of Carrie R. Ruddy v. United States, D. Colo. 79-K-126. Carrie R. Ruddy was a minor at the time the Tort Claim was filed and settled. Carrie R. Ruddy is also known as Carrie R. Muldoon. Ms. Muldoon is one of the Debtors in this Bankruptcy ("Ms. Muldoon").

⁷ Doc. 88.

4. The terms of the Annuity contract require payment to the "Payee," as that term is defined by the Annuity contract, of \$833.33 [monthly] beginning on March 1, 1982, increasing annually at 6 percent per annum compound rate, and payable on the first day of each month after March 1, 1982, until a total of 720 payments have been made.

5. Prior to her Bankruptcy filing, Ms. Muldoon entered into two Purchase Agreements with Settlement Funding in which she absolutely assigned and transferred to Settlement Funding all her right, title, and interest in and to her rights to receive certain of the Periodic Payments pursuant to the Annuity. In the first Purchase Agreement dated January 19, 1999, Ms. Muldoon assigned to Settlement Funding, 120 monthly payments of \$2,243.94 (with a 6% increase every March 1) beginning March 1, 1999 through and including February 1, 2009 ("First Assigned Payments") in exchange for a sum certain (the "First Purchase Agreement"). In the Second Purchase Agreement dated January 29, 2001, Ms. Muldoon assigned to Settlement Funding, 30 monthly payments of \$4018.55 (with a 6% increase every March 1) beginning March 1, 2009 through and including August 1, 2011 ("Second Assigned Payments") in exchange for a sum certain (the "Second Purchase Agreement"). The First Purchase Agreement and the Second Purchase Agreement are sometimes hereinafter collectively referred to as the "Purchase Agreements."

6. Ms. Muldoon did not list Settlement Funding as a creditor in her schedules or in the mailing matrix filed in this Bankruptcy.

7. On August 7, 2003, the Chapter 7 trustee (the "Trustee") filed an objection to the Debtors' claim of exemption as to the Annuity (the "Objection"). The Trustee claimed that the Annuity was not exempt under Kansas law. The Debtors file their response to the Trustee's

Objection on August 22, 2003 [Dkt. #15] and a hearing was eventually set for April 22, 2004. [Dkt. # 24.]

8. On April 20, 2004, the Trustee requested that a hearing on the Trustee's objection be stayed because the Debtors and the Trustee reached a tentative settlement of the Objection and that the Debtors were arranging financing of the settlement. [Dkt. # 28.]

9. The Trustee provided Settlement Funding with a letter on or about July 6, 2004 and on March 24, 2005 in support of Ms. Muldoon's sale of the periodic payments funded by the annuity to Settlement Funding.

10. On or about September 10, 2004, Ms. Muldoon entered into an Absolute Assignment and Uniform Commercial Code ("UCC") Article 9 Security Agreement with Settlement Funding ("Absolute Assignment"), in which she absolutely assigned and transferred to Settlement Funding all her right, title and interest in and to her right to receive certain of the Periodic Payments due and payable pursuant to the terms of the Release and funded by the Annuity, to-wit: 6 monthly payments of \$3002.90 beginning September 1, 2004 through and including February 1, 2005; 114 monthly payments each in the amount of \$3,183.07 (with a 6% increase every March 1) beginning March 1, 2005 through and including August 1, 2014 in exchange for a sum certain.

11. In connection with the Absolute Assignment, Ms. Muldoon executed an affidavit acknowledging that approximately \$41,000.00 of the proceeds from this transaction would be paid into the bankruptcy estate and that \$153,900.00 would be paid to Settlement Funding as consideration for the release of the encumbrances created in the First and Second Purchase Agreements.

12. The parties petitioned the appropriate state court to complete the transaction and by a Journal Entry dated March 23, 2005, the District Court of Johnson County, Kansas entered an order and judgment (the "State Court Order") in Case No. 04-CV09317, approving the transfer of Periodic Payments due and payable pursuant to the terms of the Release and funded by the Annuity from Ms. Muldoon to Settlement Funding.

13. Settlement Funding paid the \$41,171.12 directly to the Trustee to fund the settlement. Settlement Funding issued its check 38851 to " David C Seitter, Chapter 7 Trustee K#10324" in the amount of \$37,988.05 on March 31, 2005 and its check 39003 to "David C. Seitter, Chapter 7 Trustee, Kansas #10324" in the amount of \$3,183.07 on April 7, 2005.

14. By letter dated July 21, 2005, the United States Department of Justice advised MetLife that, inter alia, the United States contested the validity of the State Court Order approving and authorizing the transfer of payments by Ms. Muldoon to Settlement Funding.

15. MetLife has not made any payments to Settlement Funding since the payment Settlement Funding received on August 1, 2005.

16. On January 27, 2006, Met Life filed a civil lawsuit in the United States District Court for the District of Kansas (the "District Court") styled Metropolitan Life Insurance Company v. Carrie R. Muldoon a/k/a Carrie R. Ruddy and Settlement Funding, LLC d/b/a Peachtree Settlement Funding and the United States of America, Case No. 06-2026-CM-DJW (the "Lawsuit"). The Trustee is not a party to the Lawsuit. In the Lawsuit, Met Life alleges, in part, that the Annuity is non-assignable. Pursuant to an order of the District Court in the Lawsuit, MetLife is currently depositing the payments under the Annuity into the registry of the District Court.

17. On March 20, 2006, this Court entered an Agreed Order Resolving Trustee's Objection to Debtors' Exemptions (the "Order"). [Dkt. # 46.]

18. In the Lawsuit, the United States sought to quash discovery issued by Settlement Funding in April of 2007. The parties received a ruling on the discovery issues on December 20, 2007. A final pretrial conference was set and a pretrial order was filed in the Lawsuit on February 7, 2008. In accordance with the pretrial order Settlement Funding and the United States filed cross motions for summary Judgment on February 19, 2008. Responses were filed on April 8th, reply briefs were filed on May 1, 2008 and the matter was fully submitted to the District Court for decision at that time.

19. On September 30, 2008, the District Court entered an "Order and Order to Show Cause" (the "Show Cause Order"), denying the cross-motions for summary judgment without prejudice and directing the parties to brief the issue of whether the Lawsuit should be dismissed for lack of jurisdiction under the *Rooker-Feldman* doctrine. The parties filed their respective briefs and responses by the deadlines set forth in the Show Cause Order and the jurisdictional issue was fully submitted to the District Court as of October 21, 2008. This matter remains under advisement by the District Court. The District Court Case is currently set for trial on January 5, 2009.

20. On December 22, 2006, the Trustee filed his Notice of Final Report by Trustee and Intended Distribution of Estate Funds and Notice of Deadline for Filing Objections seeking to distribute the sum of \$32,004.48 for the payment of Trustee's fees, expenses and a dividend to creditors "Motion"). [Dkt. ## 57 & 58.] The Settlement Funding and the Debtors timely filed their respective objections to the Motion. [Dkt. ## 60 & 61.]

21. On March 6, 2007 this Court entered its "Order Granting Objections of the Debtors and Settlement Funding, LLC d/b/a Peachtree Settlement Funding to Notice of Filing of Final Report By Trustee and Intended Distribution of Estate Funds and Notice Of Deadline for Filing Objections" [Dkt. # 67] in which this Court ordered:

that the Trustee shall retain the funds which the Trustee has on hand, currently in the amount of \$32,004.48, pending the resolution of the civil action styled Metropolitan Life Insurance Company v. Carrie R. Muldoon a/k/a Carrie R. Ruddy and Settlement Funding, LLC d/b/a Peachtree Settlement Funding and the United States of America, Case No. 06-2026-CM-DJW pending in the United States District Court for the District of Kansas (the "Lawsuit"). The Court makes no ruling of the affect a resolution of the Lawsuit adverse to Peachtree and the Debtor Carrie R. Muldoon may have on the Trustee's proposed distribution of funds in this bankruptcy case and the Court expressly reserves this issue for later hearing and determination if it becomes necessary. To that effect, the Court expressly retains jurisdiction over the Trustee's proposed distribution of funds in this matter and is not relinquishing its authority to decide this matter at a later date.

22. Thereafter, this Court held a series of status conferences on the Trustee's Motion and set this matter for oral argument to be heard on November 26, 2008 at 1:00 p.m. (the "Oral Argument").

23. The Trustee's most recent Interim Report filed herein shows that the Trustee is currently holding the sum of \$32,663.66 in connection with this Bankruptcy case as of September 30, 2008. [Dkt. # 83.]

POSITIONS OF THE PARTIES.

There is no challenge to the substance of the Final Report and no contention that the Trustee has failed to complete his duties. Rather, Settlement Funding argues that if the Absolute Assignment is unwound in the Lawsuit, Settlement Funding is entitled to rescind the Absolute

Assignment and the payments to the Trustee; that the payment of the Trustee's fees, attorney fees and expenses from the settlement funds is not permissible or, if permitted, Settlement Funding should have an administrative claim for their reimbursement; and there is no exigency requiring the Court to approve the Final Order.

The Trustee argues that the resolution of the Final Report should not be further delayed on account of the Lawsuit; and that the equities favor closing the estate, since the basis for the requested delay is a challenge to agreement between Ms. Muldoon and Settlement Funding (not the Trustee) and, if the assignment of the Annuity is set aside and the estate required to return the payment, both the Trustee and Settlement Funding would have claims against Ms. Muldoon, and of these Settlement Funding, not the Trustee, should have the burden of collection. As to Settlement Funding's assertion of a possible administrative claim, the Trustee responds that the potential claim of Settlement Funding would not satisfy the § 503⁸ requirements for such a claim. Although the Trustee supports immediate closure of the case and distribution of funds before the Lawsuit is resolved, he suggests, as an alternative, that the estate funds be transferred to the District Court for appropriate distribution after the validity of the Absolute Assignment is determined.

The Debtors filed an objection to the Final Report urging that the case remain open until the issues in the Lawsuit are resolved. However, at oral argument Debtors' counsel said they generally support the Trustee's position that either the estate be closed, with the distribution of

⁸ 11 U.S.C. § 503.

the funds to unsecured creditors, or the Court order the Trustee's proposal for transfer of the funds to the District Court.⁹

ANALYSIS.

A. Controlling Legal Principles.

The Trustee is directed by § 704(a)(1) to “collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest.”¹⁰ The closing of a case “is triggered by the filing of the trustee’s final report” and likewise should be accomplished as expeditiously as possible.¹¹ Parties in interest may object to a final report. For the purpose of objecting to the trustee’s method of liquidation of assets under § 704, “[p]arties in interest include not only the debtor, but anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.”¹² Persons who have no financial stake in the Bankruptcy Court’s approval of the Final Report are not parties in interest and lack standing to object to the final report.¹³

B. Settlement Funding Lacks Standing to Object to the Final Report.

In this case, Settlement Funding has not filed a claim and has not demonstrated that it holds a legally protected interest that could be affected by the approval of the Final Report and the closing of the estate. When urging that the estate be left open until the Lawsuit is terminated,

⁹ Tr. Nov. 26, 2008, p. 38.

¹⁰ 11 U.S.C. § 704(a)(1).

¹¹ 3 *Collier on Bankruptcy* ¶ 350.02 (Alan N. Resnick & Henry J. Sommer eds.-in-chief, 15th ed. rev. 2007); see 11 U.S.C. § 350 and Fed. R. Bankr. P. 5009.

¹² *In re Kazis*, 257 B.R. 112, 114 (Bankr. D. Mass. 2001).

¹³ *Blodgett v. Stoebner (In re T.G. Morgan, Inc.)*, 394 B.R. 478, 483 (8th Cir. BAP 2008).

Settlement Funding relies upon the equitable argument that it would be “unfair” to allow the Trustee to retain the proceeds of the Absolute Assignment if the assignment is rescinded.

Fairness is not the test for being a party in interest.

Since the Trustee is not a party to the Lawsuit, rescission of the Absolute Assignment, if ordered by the District Court, would not result in a judgment against the Trustee in favor of Settlement Funding. This appears appropriate since the Trustee received proceeds of the Absolute Assignment because of the Debtors’ liability to the Trustee based upon the settlement of the objection to the claim of exemption, not because of any direct transaction between the estate and Settlement Funding. The Debtors had claimed their future payments under the Annuity exempt under K.S.A. § 60-2308 (exemption of pension and retirement money) and K.S.A. § 60-2313(a)(1) (exemption of life insurance). The Trustee objected, asserting that under Kansas law private annuities are not exempt as policies of life insurance or otherwise.¹⁴ The Trustee and the Debtors resolved the objection by the Debtors agreeing to pay the Trustee \$40,000, which she proposed to obtain through a sale of her future payments under the Annuity, the same property interest which the Trustee claimed was property of the estate. The order approving the settlement of the objection states in part:

8. Debtors and the Trustee have agreed that the Debtors will pay the estate \$40,000 to resolve the Objection. The \$40,000 will substantially pay the unsecured claims and administrative expenses of this estate.

9. On March 31, 2005, \$41,171.12 was paid to the Bankruptcy Estate on behalf of the Debtors by Peachtree Settlement Funding to consummate the settlement between the Debtors and the Trustee with respect to the Policy.

¹⁴ Doc. 13.

Although the settlement could have provided that the estate was the owner of future payments, which then would be sold by the estate, it did not do so.¹⁵ It was the Debtors, not the estate, that sold the future payments to Settlement Funding.

The only facts evidencing a relationship between the Trustee and Settlement Funding regarding the payment are two letters from the Trustee to Settlement Funding. These letters are nearly identical and state in part:

. . . It is my understanding that Settlement Funding, LLC has offered to purchase annuity payments awarded to Carrie Reh Muldoon in a tort settlement pre-petition which are now subject to the claims of the bankruptcy estate. Settlement Funding, LLC has offered Ms. Muldoon a purchase price of \$43,371.12 for those annuity payments, and proposes to pay \$41,171.12 directly to the bankruptcy estate upon judicial approval of the Trustee's Offer in Compromise with Brian and Carrie Muldoon.

. . . Subject to court approval, Settlement Funding, LLC must send the monies aforementioned within twenty-four (24) hours from the receipt of the Court Order approving this Compromise to [Trustee] . . .

Settlement Funding, based upon the foregoing and the circumstances of the assignment, argues that the execution of the Absolute Assignment and the payment to the estate are one transaction, so the estate should be considered a party subject to rescission if the Absolute Assignment is found invalid.

The Court finds this argument insufficient to confer standing on Settlement Funding. The Code provides no basis for Settlement Funding to recover from the estate if the Absolute Assignment is found invalid. The Trustee is not a party to the Lawsuit, so rescission of the payment to the estate would not be a remedy ordered in the Lawsuit. Here Debtors and

¹⁵ See 11 U.S.C. § 541(c)(1).

Settlement Funding, not the estate, were the parties to the Absolute Assignment. Accordingly, if the Absolute Assignment is set aside, it is the Debtors, who are parties to the Lawsuit, who may have liability to Settlement Funding.

Settlement Funding has no direct interest in the bankruptcy estate; its legal rights will not be affected by the closing of the estate. Settlement Funding is not a party in interest with standing to object to the Final Report.¹⁶

C. Debtors have Standing to Object to the Final Report but Provide no Basis for the Court to Delay the closing of the Estate.

The Debtors, on the other hand, do have standing to object to the Final Report, as it is their unsecured debts that will be paid by the distribution proposed by the Trustee. In their filed objection, Debtors state that the estate should remain open until, “various parties know how their rights are affected by any Orders/Judgment in” the Lawsuit.¹⁷ Examination of the matters in issue in the Lawsuit shows that this superficially appealing argument does not withstand close scrutiny.

The Lawsuit will not affect the Debtors’ obligation to the Trustee arising out of the settlement of the Trustee’s objection to the claimed exemption of the Annuity. The settlement is a final order, and the settlement obligation was satisfied by the payment from Settlement Funding. Payment from Settlement Funding, although part of the negotiations between the Debtors and the Trustee, was not an essential element of the settlement. Debtors could have

¹⁶ Because Settlement Funding does not have standing to object to the Final Report, the Court declines to address the issue raised by the Settlement Funding regarding an administrative claim for the recovery of fees to be paid to the Trustee from the settlement funds. As to Settlement Funding’s contention that there is no exigency supporting closure of the estate, the Code directs that cases be closed expeditiously, thereby not requiring an exigency to approve a Final Report and close an estate.

¹⁷ Doc. 61.

satisfied their liability to the Trustee with funds from any source. The Code provides no mechanism for a Debtor to recover from the estate payments made pursuant to a final order approving an agreed resolution of an objection to exemptions.

Further, the Court would not use its equitable powers to require the Trustee to return the payment to the Debtors if the Absolute Assignment is held invalid. From the stipulated facts the Court concludes that Ms. Muldoon and Settlement Funding, when entering into the Absolute Assignment and making payment to the Trustee, were aware of the anti-assignment language in the Annuity and chose to go forward with the funding transaction. The two prepetition Purchase Agreements between Settlement Funding and Ms. Muldoon expressly refer to the anti-assignment provisions bold type.¹⁸ On the other hand, there is nothing in the stipulated facts indicating that the Trustee was aware of the anti-assignment clause in the Annuity. Under these circumstances, Ms. Muldoon should be estopped to assert the anti-assignment provisions of the Annuity as a basis to set aside her payment to the Trustee, whom she induced to rely upon her ability to fund the settlement through sale of future rights under the Annuity to Settlement Funding.¹⁹

Further, to the extent there would be equitable reasons to allow Ms. Muldoon to recover the payments from the Trustee, they would be outweighed by the resulting detriment to the estate and Debtors' unsecured creditors. If the District Court rescinds the Absolute Assignment,

¹⁸ Exhibit C, p. 6; Exhibit D, pp. 10-11. The exhibits do not appear to include a copy of the full documentation to effect the Absolute Assignment.

¹⁹ See *In re Kaufman*, 37 P.3d 845 (Okla. 2001) (holding that assignor of future payments due under structured settlement could not invoke anti-assignment provision in structured settlement agreement to void purchase agreement with assignee); *Johnson v. Structured Asset Services, LLC*, 148 S.W.3d 711 (Tex. App. 2004) (holding that annuitant waived any contractual right he had to assert anti-assignment clause in settlement agreement when he assigned the right to the annuity's payments).

Debtors would still be bound by their agreement to pay \$40,000 to the Trustee, and the estate would suffer an unwarranted burden if it were required to return the settlement funds and then have to enforce the settlement agreement against the Debtors. As between the estate, which was not a party to the Absolute Assignment, and Debtor and Settlement Funding, who were parties to the Absolute Assignment, it is the later two parties, not the estate, who should bear the detriment if the Absolute Assignment is set aside.

The Code requires that the estate be expeditiously administered. This case was filed in 2003. One order delaying the approval of the Final Report because of the pendency of the Litigation case has already been granted. The statements of counsel at oral argument gave the Court no indication that the Lawsuit will be resolved in the near future at the trial level. Appeals resulting in additional delay appear to be a real possibility. The Debtors have not provided sufficient reason to further delay the closing of this case.

At oral argument, Debtors' counsel retreated from the filed objection and endorsed the Trustee's position of either approving the Final Report or transferring the money which would otherwise be distributed to unsecured creditors to the District Court for administration following resolution of the Lawsuit. The Court finds the first alternative the only acceptable course of action. Transferring the funds to the District Court would raise procedural questions. Further, this alternative, even if procedurally acceptable to the District Court, would cause the payment to unsecured creditors to be in issue before the District Court when it is the Bankruptcy Court to which such matters have been referred.

CONCLUSION.

For the foregoing reasons, the objections to the Trustee's Final Report are overruled. Settlement Funding lacks standing to object to the Final Report. The Debtors have standing, but there is not a sufficient basis to further delay the approval of the Final Report and closing of the estate. The alternative of closing the estate without making distributions to unsecured creditors and transferring the funds which would otherwise be paid to unsecured creditors to the District Court for administration based upon the outcome of the Lawsuit is not acceptable.

The foregoing constitute Findings of Fact and Conclusions of Law under Rules 7052 and 9014(c) of the Federal Rules of Bankruptcy Procedure which make Rule 52(a) of the Federal Rules of Civil Procedure applicable to this matter. A judgment based upon this ruling will be entered on a separate document as required by Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

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