

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

In re:)	
)	
LARRY R. MANNS,)	CAUSE NO. 95-CV-005-WDS
)	
Debtor.)	

MEMORANDUM OF OPINION

STIEHL, District Judge:

Before the Court is an appeal from debtor Larry R. Manns from several findings and rulings of the United States Bankruptcy Court for the Southern District of Illinois. This Court has jurisdiction over this appeal pursuant to **28 U.S.C. § 158(a)** and **Fed. R. Bankr. P. 8001**.

STANDARD OF REVIEW

In an appeal from the Bankruptcy Court's decision, the District Court will uphold the Bankruptcy Court's findings of fact unless they are clearly erroneous. **Fed. R. Bankr. P. 8013**. The District Court reviews the Bankruptcy Court's legal conclusions *de novo*. **In re Marrs-Winn Co., 103 F.3d 584, 589 (7th Cir. 1996), citing In re Fed Pak Systems, Inc., 80 F.3d 207 (7th Cir. 1996)**. In this case, the Court will "primarily utilize a *de novo* standard of review because . . . the Bankruptcy Court's decisions rested solely on legal conclusions." *Id.*

BACKGROUND

To say that the parties are engaged in one of the most hostile and contentious legal battles ever presented before the Court would be a gross understatement. What started as a divorce action filed by Ann Manns in Madison County, Illinois, has degenerated into a legal morass consisting of more than ten Court volumes and a full compliment of exhibit folders. The parties have taken what is, at its essence, a simple two-party domestic dispute, and turned it into the quintessential "Federal Case." Through their machinations, the parties have not only wasted the scarce judicial resources of the Bankruptcy, District, and Appellate

Courts, but they have also succeeded in incurring litigation costs well in excess of \$500,000. To fully understand how this case deteriorated, it is necessary to start at the beginning.

In June 1969, Larry and Ann married in Madison County, Illinois. For the next twenty years, they lived in Madison County and operated numerous business enterprises under various firm names including Manns Sales, Manns Mobile Home Sales, Manns Car Sales, and Stor-All. Larry apparently had considerable wealth before the parties married. It was through the operation of the parties' businesses, however, that they apparently accumulated the majority of their wealth.

Eventually the marital relationship began to deteriorate. On January 4, 1990, Ann filed for dissolution of marriage, in Case No. 90-D-22, in the Circuit Court of Madison County, Illinois. On April 26, 1990, Larry filed a petition for reimbursement in the amount of one-half of the sum of \$160,000, which he alleged he had been required to advance for payment of the parties' estimated income tax for 1989. Following a hearing on June 12, 1990, the trial court, that same day, entered an order granting Larry's motion and ordering Ann to pay Larry \$111,191.17 within three days.

Instead of paying Larry, Ann moved to voluntarily dismiss the divorce action without prejudice pursuant to **735 ILCS 5/2-1009**. The trial court dismissed the cause on the motion of Ann, but stated that it "retains jurisdiction for purposes of enforcing the Order entered on June 12, 1990. . . ." On August 2, 1990, Ann filed an appeal with the Illinois appellate Court. Specifically, Ann appealed the issues of:

- (1) whether in an action for dissolution of marriage a trial court may order a distribution of one party's separate property to the other party without a full hearing on the marital and non-marital nature of the property; and
- (2) whether a trial court may retain jurisdiction to enforce a temporary order even after the entire cause is dismissed upon the petitioner's motion for voluntary dismissal.

Larry also filed a cross appeal seeking a determination as to whether a party may voluntarily dismiss an action when a "preliminary mandatory injunction has been granted (to) the opposing party." During the pendency of the appeal, Ann filed an action for dissolution of marriage in the Circuit Court of Cook County, Illinois, on August 3, 1990 (the very day after filing the notice of appeal).

On August 15, 1990, the Madison County Court entered an order

enjoining and restraining Ann P. Manns . . . from proceeding with the divorce action Cause #90-D-10991 in the Circuit Court of Cook County or any other similar action at law or equity in Illinois while there exist[s] a pending appeal of her cause of action 90-D-22 originally filed in Madison

County and now on appeal.

Ann appealed this order.

On December 20, 1991, the Appellate Court of Illinois for the Fifth District ruled on Ann's appeals. Specifically, in *In re Manns*, 583 N.E.2d 707 (Ill. App. Ct. 1991), the court held that Ann was entitled to voluntarily dismiss her divorce action. That court further held that the Madison County Court's order of June 12, 1990, was no longer enforceable. The Appellate Court went on to hold that, in light of the dismissal, the Madison County injunction prohibiting Ann from proceeding with the Cook County action terminated.

Subsequently, on May 21, 1992, Larry filed a Chapter 11 Bankruptcy Petition. According to Larry, defending the long-distance litigation in Cook County made managing the parties' investment properties in Madison County difficult. As a result, Larry claims he lost tenants, experienced cash flow problems and pressure from secured creditors, and faced the prospect of much higher attorneys' fees and expenses with Chicago counsel. All of this, according to Larry, caused a cash flow squeeze that, despite the fact that the would-be bankruptcy estate was a surplus estate, necessitated his filing for bankruptcy protection.

On August 20, 1992, Ann filed a motion to dismiss Larry's bankruptcy case, and an alternative motion for relief from stay to permit the divorce action in Cook County to go forward. Ann made several allegations of bad faith. Despite these allegations, the Bankruptcy Court rejected Ann's argument that Larry filed bankruptcy in bad faith, and therefore denied Ann's motion to dismiss. The Bankruptcy Court did, however, grant relief from stay on November 4, 1992, thereby allowing the Cook County divorce proceeding to go forward over Larry's objection.

Previously, on June 12, 1992, Larry had filed a partnership dissolution action in Madison County. Ann, who claimed she had no notice of the action, failed to appear or file an answer. Therefore, on August 12, 1992, the Circuit Court of Madison County entered a default judgment against Ann finding that a partnership existed in which Larry owned 75% and Ann owned the remaining 25%. Ann filed a special and limited appearance to vacate this order, arguing that Larry obtained jurisdiction through fraud by way of publication notice. On April 18, 1994, the Madison County court denied Ann's special and limited appearance. Ann appealed, but on August 5, 1994, the Appellate Court of Illinois dismissed Ann's appeal as premature.

The dissolution of marriage proceeded in Cook County until May 11, 1994, when, for reasons that are unclear from the record, the Illinois Supreme Court transferred the case to Madison County over Ann's objection, and consolidated it with the partnership dissolution action pursuant to **Ill. S.Ct.R. 384**.

On September 27, 1994, Ann filed an "Emergency Motion Prohibiting Use of Joint Funds, with the Bankruptcy Court. The court held a hearing on September 28, 1994. At the hearing, Judge Meyers apparently encouraged the parties to file a motion to dismiss the bankruptcy. On September 26, 1994, shortly before the Bankruptcy Court invited the parties to move for dismissal, Ann filed a motion for appointment of a trustee and a motion to reimpose stay in bankruptcy and to estimate her "claim." Ann asked the Bankruptcy Court to again take jurisdiction of her equitable property distribution claim under the Illinois Marriage and Dissolution of Marriage Act, **750 ILCS 5/501***et seq.* On September 29, 1994, counsel for the debtor filed a motion for voluntary dismissal, and on October 1994, the United States Trustee filed a motion to convert or dismiss.

On October 26, 1994, the Bankruptcy Court conducted a hearing on the motion to dismiss and the motion to convert. No witnesses testified at the October 26 hearing, and no documentary evidence was introduced. Despite her prior attempt to dismiss the bankruptcy on the ground that Larry filed in bad faith, Ann argued that conversion was in her best interests because of unreasonable delay caused by Larry in state court. At the end of the hearings, the Bankruptcy Court announced that the case would be converted rather than dismissed, and that if the conversion order were stayed, a Chapter 11 Trustee would be appointed. On November 3, 1994, the Bankruptcy Court entered two orders. In the first order the Bankruptcy Court converted the case to a Chapter 7, and in the second order the Bankruptcy Court appointed a Chapter 11 Trustee. Larry filed a motion to reconsider and requested a new trial. No creditors appeared to oppose Larry's motions, but on December 7, 1994, the Bankruptcy Court denied the motion on the ground that it was in the "best interests" of Ann as a creditor to convert, rather than dismiss the bankruptcy case. At that time, Larry filed the first of his numerous appeals.

On January 30, 1995, Larry filed an objection and motion to strike Ann's proof of claim, and the proof of claim of Ann's attorneys, Schiller, DuCanto, and Fleck. Larry argued in his motion that neither Ann nor her attorneys had a "claim" in bankruptcy. On January 4, 1995, the Bankruptcy Court scheduled a hearing for February 8, 1995, on the existence of a partnership between Larry and Ann.

On January 30, 1995, Larry filed a motion asking the Bankruptcy Court, pursuant to 28 U.S.C. § **1334(c)**, to abstain from matters involving the dissolution of marriage and dissolution of partnership issues which were pending in state court. Larry requested both mandatory and discretionary abstention.

On February 8, 1995, the Bankruptcy Court held a hearing on the issue of the existence of a

partnership between Larry and Ann. At the outset, Larry objected to the Bankruptcy Court's jurisdiction pursuant to the Rooker-Feldman Doctrine¹. Ultimately, the Bankruptcy Court held that Rooker-Feldman did not apply and, accordingly, denied Larry's motion for abstention.

Larry also objected to the Bankruptcy Court's jurisdiction claiming that Am did not have a claim in bankruptcy. The Bankruptcy Court declined to hear any arguments on Ann's creditor status. After an evidentiary hearing, the Bankruptcy Court orally found that there was no partnership between Larry and Ann, and on March 9, 1995, entered a written order finding that no partnership existed. Larry appealed that order to this Court.

On March 29, 1995, the Bankruptcy Court conducted a status conference and scheduled a hearing for May 24, 1995, to determine what property comprised the estate. The Bankruptcy Court also entered a briefing schedule on the issue of whether Ann had a "claim" in bankruptcy.

Larry, Ann, and the Chapter 7 Trustee submitted briefs on the issue of Ann's creditor status. The United States Trustee did not file a brief, but submitted suggestions for resolution of the remaining issues in the case, suggesting that the court simply partition the jointly held properties.

At the May 24, 1995, hearing on the issue of what property belonged to the estate, the Bankruptcy Court announced its intention to follow the United States Trustee's suggestion. At that hearing, the Bankruptcy Court, *sua sponte*, ordered partition of the parties' jointly held property based solely on evidence of legal title. Larry objected on the ground that there had been no determination as to whether Ann even had a claim in bankruptcy. The Bankruptcy Court answered that Ann's interest in joint tenancy property was sufficient to qualify as a claim under the bankruptcy code. The court then ordered partition to "partially" satisfy Ann's disputed "claim," and held that after satisfaction of all unsecured claims, the case would be dismissed. Again, Larry appealed.

On July 6, 1995, the Bankruptcy Court entered an order directing the Chapter 7 Trustee to dispose of any remaining funds prior to dismissal of the bankruptcy case. The July 6th order directed the Trustee first to determine the amount of attorneys' fees previously paid by Larry and Ann, and to "pay so much of the attorney fees for either group of attorneys until such sums are equal." The order further directed the Trustee

¹Under the *Rooker-Feldman* doctrine, named after *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), the Supreme Court of the United States is the only federal court authorized to review a state court's judgment in civil litigation.

to use remaining cash for payment of administrative expenses and unsecured claims. Any remaining funds were to be divided equally between Larry and Ann, which could be used for payment of the balance of any attorney fees due.

On August 21, 1995, the Bankruptcy Court, *sua sponte*, reconsidered its earlier order dismissing the bankruptcy case, and entered an order of discharge. Larry objected to the discharge and filed another appeal to this Court in order to preserve previously appealed issues. Previously, at a hearing on August 6, 1995, the Trustee expressed concerns that the discharge would permanently enjoin litigation on Ann Mann's "claim." The Bankruptcy Court, however, indicated that Ann could liquidate her "claim" on the joint tenancy property in state court. In addition, the court stated that it did not "intend to hear any more litigation" and that it was "going to abstain from hearing any more [of the dispute]," because those issues were "more appropriately in the purview of the divorce court." On the same day, the court amended the discharge order to provide that the discharge would not enjoin any pending state action to determine Ann's "claim" on the joint tenancy property against the estate.

On December 27, 1995, after considerable discovery conducted by the parties, the Bankruptcy Court entered an order adopting the Chapter 7 Trustee's proposed findings regarding the amount of attorneys' fees that each party had spent on litigation, and directed the Trustee to proceed with equalization. Ann then received a payment from estate funds in the amount of \$108,453.79. The check was made payable to Ann and her attorneys.

On March 4, 1996, Ann filed a motion asking the Bankruptcy Court to conduct a pre-trial hearing for pending divorce litigation, and Larry objected. Even though the Bankruptcy Court had previously ordered dismissal, it again, *sua sponte*, changed its position and ordered a pre-trial hearing on Ann's "claim."

On May 15, 1996, the Bankruptcy Court, again *sua sponte*, directed the Chapter 7 Trustee to inventory and appraise property which had not been previously divided by the court. Larry objected, noting that Ann's entire claim was based solely on equitable distribution under the IMDNIA (Illinois Marriage and Dissolution of Marriage Act) and that the court had previously said it would not litigate equitable issues, and, in fact, was not even "conversant" with such issues.

On June 5, 1996, the Bankruptcy Court held a pre-trial hearing to estimate Ann's claim against the bankruptcy estate. The Bankruptcy Court denied Larry's motion to reconsider the May 15, 1996, order and stated that it intended to litigate whatever issues were necessary to determine Ann's claim. Larry again

objected on the ground that Ann did not have a claim. In response, the Bankruptcy Court invited Larry to renew his motion to dismiss on that basis.

On the same day, the state court conducted a pre-trial hearing, and Ann revealed that she had filed a motion to transfer the case to Cook County. She therefore objected to state court proceedings going forward. Ann also sought and received a stay of state proceedings two days before a hearing, on the merits in Madison County. On June 17, 1996, Larry, filed a motion to dismiss or., alternatively, to close the bankruptcy case. On June 27, 1996, Larry filed a supplement to his motion, indicating that the funds held by the Chapter 7 Trustee were his non-marital funds, and that in order to determine Ann's claim, **all** property (including the partitioned properties) must first be classified as marital or non-marital, and then the marital property must be divided according to IMDMA § 503(d) standards, **750 ILCS 5/503(d)**.

On July 1, 1996, the Illinois Supreme Court granted Ann's motion to transfer the case back to Cook County, and the judge who previously presided over the Cook County divorce *sua sponte* recused himself. Pursuant to Ann's request, state court proceedings are currently pending on the Cook County docket.

On July 24, 1996, the Bankruptcy Court held another pre-trial hearing. The Bankruptcy Court, *sua sponte*, vacated that portion of the June 16, 1995, partition order which held that Ann had a "claim." After two years of costly bankruptcy litigation, the Bankruptcy Court concluded that Ann had a property interest instead of a claim. The court then directed the Chapter 7 Trustee to satisfy all administrative expenses, unsecured claims, and any attorneys' fees previously approved by the Bankruptcy Court on a pro-rated basis. The Bankruptcy Court indicated that, as to the remainder of the proceeds held by the Trustee, it was not going to divide that money, but was going to leave it up to the divorce court.

On August 2, 1996, Ann's attorneys filed fee applications asking the Bankruptcy Court to pay them from funds held by the Trustee. These funds were property of the estate and were claimed by Larry to be his non-marital property. Without waiting for objections, the Bankruptcy Court entered its dismissal order on August 12, 1996, and included in the dismissal order was an award of attorney's fees to Ann and her counsel in the amount of \$549,538.79, be paid from cash held by the Trustee. The debtor timely objected to the fee applications and then filed another notice of appeal. Larry also filed an emergency motion on the matter before this Court. The Court denied Larry's motion, but cautioned Ann's counsel that if warranted by the merits of the bankruptcy appeal, Ann's counsel might be obligated to repay those funds. Presently, the bankruptcy case is closed, and all issues are before this Court on appeal.

ANALYSIS

A. ANN MANN'S: CLAIM VERSUS PROPERTY INTEREST

The primary issue on appeal in this case is whether the Bankruptcy Court properly concluded² that Ann, instead of being a creditor of the estate, held a property interest. Unfortunately, Illinois courts have not had occasion to address the precise issue of whether a non-debtor spouse is a creditor of a bankruptcy estate, or whether she holds a property interest. Both parties have looked to other states in an effort to support their positions. Despite Ann's attempt to establish uniformity, the Court concludes that the various state opinions differ on this issue. Ann relies on a line of cases holding that a non-debtor spouse, in the process of divorcing the debtor spouse, has a claim against the estate. Larry, on the other hand, relies on a line of cases holding that the non-debtor spouse holds a property interest and is not a creditor.³ Nevertheless, the issue of whether Ann holds a claim or a property interest must be analyzed on two levels. The first level concerns the parties' jointly held property. The second level concerns the parties' non-titled marital property and any property titled solely in Larry's name.

The distinction between a property interest and a claim is very important because of the Bankruptcy Code's treatment of these two types of holdings. **Collier Family Law and the Bankruptcy Code, ¶2.01[5], p. 2-7, 2-8.** "A property interest held by a person other than the debtor is usually retained by that person and protected during the bankruptcy case, or else exchanged for its full value, unless it can be avoided under some provision of the code." **Id. at 2-8.** "A claim, on the other hand, is paid according to the code's rules of distribution, which may provide little or no payment on the claim if it is not secured by a lien or some other property interest." **Id.**

In this case, the importance of determining whether Ann has a claim or a property interest is significant. If Ann holds a property interest, and is therefore not a creditor, the Bankruptcy Court improperly considered her best interests when it originally converted the case to a Chapter 7 rather than dismissing it. At the time of the conversion, the Bankruptcy Court found that the bankruptcy was filed in bad faith.⁴

²As a result of its ultimate determination that Ann was not a creditor of the estate, the Bankruptcy Court dismissed Larry's bankruptcy.

³Ann argues that the cases upon which Larry, relies are either contrary or inapposite to his position. A complete discussion by this Court of the relevant case law will follow.

⁴For reasons that are unspecified in the record, the Bankruptcy Court retained jurisdiction over the case by converting it to a Chapter 7 despite the fact it believed the bankruptcy was filed in bad faith.

Because this was clearly a surplus estate, and given the contentious nature of the parties in this proceeding, and in their state court divorce proceedings, if Ann was not a creditor, there were no other creditors remaining whose interests would be best served by converting the case rather than dismissing it.⁵ As previously noted, the various states differ in their treatment of the parties' status.

1. JOINTLY TITLED PROPERTY

In her brief, Ann asserts, without citing any authority, that as a joint tenant, she had a claim against the bankruptcy estate in the amount of her as-yet-undivided share in the joint tenancy property. Ann correctly notes that, as joint tenants, she and Larry each hold an undivided ½ interest in the present estate with each being seized of the whole. *See Kane v. Johnson*, 73 N.E.2d 321 (Ill. 1947). Ann further asserts that "the whole of all the parties joint tenancy properties were therefore part of the bankruptcy estate." Ann's position is contrary to the applicable case law.

Although the Court's research has failed to discover any binding authority addressing this specific issue, the Bankruptcy Courts of the Eastern and Western Districts of Wisconsin have noted that only the debtor's one-half joint tenancy interest becomes property of the bankruptcy estate. *In re Page*, 171 B.R. 349, 351-52 (Bankr. W.D. Wis., 1994), citing, *In re Passmore*, 156 B.R. 595, 599 (Bankr. E.D. Wis., 1993). The Court finds this result more logical than the result under Ann's approach. Ann, as an owner of the property, clearly holds a property interest. The fate of her joint tenant, Larry, does not affect her ownership interest in the property. As a result, her ownership interest does not become part of her co-tenant's bankruptcy estate. Ann makes the erroneous conclusion that the property itself becomes part of the bankruptcy estate. Rather, only, the debtor's interest becomes property of the estate. Thus, "only the debtor's undivided interest in joint tenancy and tenancy in common property is in the estate, and the trustee becomes a co-owner with the other tenant or tenants." **Collier Family Law and the Bankruptcy Code**, ¶ 1.03[10](b). As a result, The Court finds that Ann is not a creditor of the parties' property held in joint tenancy.

2. TITLED AND NON-TITLED MARITAL PROPERTY

Ann also claims that she is a creditor of the parties' non-titled marital property, and marital property titled solely in Larry's name. This issue is more complex than the issue concerning the parties' property held

⁵Assuming, *arguendo*, Ann was in fact a creditor, it is doubtful that it was in her best interest to have the case converted rather than dismissed. This issue is explored below.

in joint tenancy.

In support of his argument that Ann is not a creditor of the bankruptcy estate, Larry contends that Ann had a vested interest in the marital property upon filing her dissolution action. Because, according to Larry, Ann had a vested property interest in the marital property, she was not a creditor with a claim against the estate. As a result, Larry argues the Bankruptcy Court improperly considered Ann best interests as a creditor when it made its decision to convert, rather than dismiss, the bankruptcy.

As previously discussed, neither the Illinois Supreme Court nor the Seventh Circuit have had occasion to address the issue, and the jurisdictions that have addressed the issue differ on their treatment. In several jurisdictions,

[i]n the context of a divorce, the non-titled spouse may acquire rights in property owned by the other spouse, and may eventually acquire full title to such property through a marital settlement agreement or decree of dissolution. The crucial question is when the right to share in marital property titled in the other spouse first vests in the non-titled spouse. Depending upon state law, such rights may vest upon the filing or at some other time. A subsidiary question is when such rights become perfected as against bona fide purchases of property from the titled spouse, or lien creditors of that spouse, since that date may determine whether the interests of a non-debtor spouse may be avoided by the trustee or debtor in bankruptcy. This interest may turn on whether the interest was considered perfected by the filing of the divorce case, a *lis pendens* or some other document.

Collier Family Law and the Bankruptcy Code, ¶ 2.01[5], p. 2-9 (footnote omitted). In Illinois, as in these other jurisdictions, the spouses' interest in the property vests upon the filing of the petition for dissolution of marriage. Specifically, in Illinois, "[e]ach spouse has a species of common ownership which vests at the time dissolution proceedings are commenced and continues only during the pendency of the action." **750 ILCS 5/503(e)**. A vested interest is not a claim or right to payment. ***In re Beattie*, 150 B.R. 699 (Bankr. S.D. Ill. 1993); *In re Brown*, 168 B.R. 331 (Bankr. N.D. Ill. 1994).**

In several states with statutes similar to Illinois, where the non-titled spouse acquires a vested property interest in the property of the other spouse upon the filing of a divorce or dissolution action, the courts have held that the non-titled spouse holds a vested property interest rather than a claim. ***See In re Wilson*, 85 B.R. 722 (Bankr. E.D. Pa. 1988); *In re Bennett*, 175 B.R. 181 (Bankr. E.D. Pa. 194); *In re Perry*, 131 B.R. 763 (Bankr. D. Mass. 1991); *In re Fisher*, 67 B.R. 666 (Bankr. D. Colo.**

1986) (holding that the wife's interest, which vested upon separation, was cut-off by the bankruptcy filing because no *lis pendens* was filed, thereby failing to perfect her interests). In other contexts, state courts in Colorado, Oregon and Minnesota have come to the same conclusion with respect to their states' laws.⁶ Collier Family Law and the Bankruptcy Code, ¶ 2.01[5], p. 2-10.

Under the relevant case law, the Court, therefore, finds that Ann acquired a vested property, interest at the moment she commenced the marital dissolution proceedings in state court. As a result, Ann never had a claim against the bankruptcy estate and was, therefore, never a creditor of the bankruptcy estate.⁷

3. SUMMARY

Having determined that Ann is neither a creditor of the parties' property held in joint tenancy nor a creditor of the parties' non-titled marital property and property titled solely in Larry's name, the Court finds that the Bankruptcy Court improperly considered the best interests of Ann when it converted rather than dismissed the bankruptcy. By the parties' own admission, the bankruptcy estate was at all times a surplus estate. As a result, there were no creditors whose interests were best served by conversion rather than dismissal. Further, in light of the delay and expense incurred to the bankruptcy estate as a result of the conversion, any argument by any of the interested parties that conversion was in the best interest of the estate, is absurd. This bankruptcy, filed in bad faith, should have been dismissed rather than converted. The Bankruptcy Court's determination, on August 12, 1996, that the bankruptcy be dismissed was, finally, the correct result.

In light of the Court's finding that Ann was not a creditor of the estate, Larry's alternative arguments that the Bankruptcy Court improperly converted the case without an evidential hearing, and that he was denied due process by the lack of adequate notice of hearing, are now rendered moot.

⁶The Court notes that other jurisdictions have reached the opposite conclusion and have held that the non-debtor spouse acquires nothing more than a claim against the bankruptcy estate. This Court, however, finds the more logical approach to be that the non-debtor spouse holds a property interest, rather than a claim, because, after all, the property is marital property of both parties. It is illogical that the non-debtor spouse would have a claim on property that she partly owns. For a complete discussion of the case law from the various jurisdictions that have considered this issue, see **Collier Family Law and the Bankruptcy Code**, ¶ 2.01[5].

⁷The fact that the original dissolution proceeding was dismissed does not change the result because the parties' rights and interests are determined as of the date of the bankruptcy filing. See **Collier on Bankruptcy P 541.04, at 541-22 (15th ed. 1984)**.

Moreover, even if the Court were to find that Ann is a creditor of the estate, this Court, with the benefit of hindsight, finds overwhelmingly that conversion was not in her best interest. For whatever reason, Ann, who at the beginning of the bankruptcy sought dismissal, perceives some benefit to remaining in bankruptcy. A review of the record, however, plainly indicates that the parties have, through their litigious efforts, wasted well in excess of \$500,000 in attorney's fees during this bankruptcy. Despite Ann's perception of benefit, the Court finds that even if Ann were a creditor, dismissal rather than conversion would have avoided wasting the parties' assets, allowed the state court dissolution to proceed and, therefore, would have been in her best interest.

B. THE EFFECT OF DISMISSAL

1. PARTNERSHIP

The next issue on appeal concerns the Bankruptcy Court's determination that no partnership existed between Ann and Larry. Larry's first argument regarding the partnership issue is that the Bankruptcy Court lacked subject matter jurisdiction to re-litigate the issue of the existence of a partnership. In order to put Larry's argument in context, a brief review of the pertinent facts is necessary.

On June 11, 1992, Larry filed a partnership dissolution action in Madison County, Illinois. On August 12, 1992, after Ann failed to appear or file an answer,⁸ the state court entered a default judgment against her. Specifically, Larry's state court complaint contained an allegation that the parties were partners (75% in favor of Larry, and 25% in favor of Ann) in certain of the parties' businesses. As part of its entry of default judgment, the state court took Larry's complaint against Ann as confessed, presumably intending to find that the parties did in fact operate a business partnership and that Larry controlled a 75% share of the partnership, and Ann a 25% share.

Subsequently, Ann filed a motion seeking to have the state court vacate its entry of default judgment against her. The state court denied her motion and she appealed. The Illinois Appellate Court then denied Ann's appeal as premature. Larry filed the complaint that led to the default judgment three weeks after he filed for bankruptcy, but months before the Bankruptcy Court lifted the automatic stay and allowed the parties' divorce case to proceed. Therefore, the Bankruptcy Court ruled that at the time Larry brought the

⁸Again, Ann claims that she did not receive notice of the filing or any hearings thereon.

dissolution of partnership action in Madison County, the Bankruptcy Court had exclusive jurisdiction over all property of the estate. According to Ann, the Bankruptcy Court's exclusive jurisdiction over the property meant that the state court never acquired subject matter jurisdiction to enter any order concerning the property of Larry's bankruptcy estate.

Larry, on the other hand, first argues that the Bankruptcy Court improperly ruled that the Rooker-Feldman doctrine did not apply. Thus, according to Larry, had the Bankruptcy Court properly applied Rooker-Feldman, it would not have ruled on an issue previously ruled on in state court. Further, Larry argues that the Bankruptcy Court had original, but not exclusive, jurisdiction over core and non-core proceedings. Next, Larry argues that even if the Bankruptcy Court had subject matter jurisdiction, its ultimate finding that no partnership existed is incorrect as a matter of law. Larry next argues that the Bankruptcy Court should have abstained from ruling on the partnership issue. Finally, Larry, argues that the Bankruptcy Court should have vacated the partnership order upon dismissal of the bankruptcy case.

Larry's final argument, that the Bankruptcy Court should have vacated the partnership order when it dismissed the bankruptcy case, is most compelling. Pursuant to **11 U.S.C. § 349**:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(l)(2), or 551 of this title, and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(I)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2569; Pub.L. 98-353, Title III, § 303, July 10, 1984, 98 Stat. 352). Thus, absent a specific finding of cause by the Bankruptcy Court, § 349 operates, to the extent

possible, to reverse what has transpired during bankruptcy. *In re Newton*, 64 B.R. 790 (C.D. Ill. 1986); H.R. Rep. No. 595, 95th Cong. 1st Sess. 388 (1977), reprinted in App. Pt. 4(d)(1); 5 Rep. No. 989, 95th Cong. 2d Sess. 48 (1978).

In this case, the Bankruptcy Court failed to make a specific finding of cause. As a result, it appears that absent such a finding, the plain language of § 349 requires that the property then revert in the entity or entities in which it was titled prior to the commencement of the bankruptcy. Nevertheless, Ann argues that once the Bankruptcy Court granted Larry a discharge, § 349 was no longer available. Ann cites *In re Irons*, 173 B.R. 910 (Bankr. E.D. Ark. 1994) in support of her position.

In *Irons*, the bankruptcy court noted:

This section negates, as it was intended to, the consequences of the filing of the petition in bankruptcy where the case is dismissed without discharge Had the debtors completed their case, the debts would have been discharged. However, since they did not complete the case and it was dismissed, they are in the same position as if the bankruptcy had not been filed.

Id. at 911 (footnote omitted). Applying *Irons* to this case, a distinguishing fact emerges. Specifically, although the Bankruptcy Court granted a discharge to Larry on August 21, 1995, the Bankruptcy Court had not yet finally closed the bankruptcy case. The discharge was only of certain debts, not the discharging of the debtor from bankruptcy. As a result, dismissal of the pending bankruptcy remained a viable option in the case until the case was concluded. Moreover, Ann's reasoning is conclusory at best and ignores the compelling case law from within this Circuit.

Specifically, in the case of *In re Puckett*, 193 B.R. 892 (Bankr. N.D. Ill. 1996), the Bankruptcy Court for the Northern District of Illinois held that

the discharge of a debtor is not one of the orders vacated by Section 349(b)(2). Thus, an order of dismissal entered before a Chapter 13 debtor is given a discharge will prevent a discharge from being entered, but dismissal after the grant of a discharge does not vacate the discharge order.

Id. at 845. Implicitly, the Court recognized that dismissal under § 349(b)(2) is permissible despite the fact that the bankruptcy court may have previously entered a discharge order. This Court agrees with the Bankruptcy Court of the Northern District, and finds that the fact that the Bankruptcy Court has already entered an order of discharge does not make § 349 inapplicable. Therefore, the Bankruptcy Court's failure

to vacate its partnership order was incorrect as a matter of law.

2. PARTITION

Next, Larry argues that the Bankruptcy Court improperly partitioned the parties' jointly held property. In support of this argument, Larry again properly relies on § 349 of the Code. Specifically, Larry contends that because there is no "cause" to maintain the partition, and that the partition needlessly complicates divorce proceedings in state court, the partition order should be vacated. The Court agrees.

Applying the same reasoning to the partition order that the Court applied to the partnership order, the Court finds that the Bankruptcy Court's failure to vacate the partition order was incorrect as a matter of law. Therefore, in accordance with § 349, the Court finds that upon dismissal, the parties' jointly held property reverts in the parties jointly, thereby placing them in the same position as they were before the commencement of the bankruptcy.

3. SUMMARY

Ann argues that the Bankruptcy Court was neither able to vacate the partnership nor the partition orders because those orders did not fall under any of the qualifying case sections enumerated in § 349(b). Despite Ann's argument, this Court finds that in order to accomplish the intended purpose of § 349, to re-vest the property, as far as practicable, in the original title holders, this Court must disregard the partnership and partition orders of the Bankruptcy Court. The property, then, must re-vest in the parties to be held in the same manner as before the commencement of the bankruptcy case. This effectively requires the Court to reverse the partnership and partition orders of the Bankruptcy Court because they were incorrect as a matter of law. It then falls within the province of the state court to determine the parties' rights to the property.

D. FEES AWARDED TO ANN MANNS AND HER ATTORNEYS

Larry contends that the Bankruptcy Court improperly, arbitrarily, and summarily awarded \$549,538.79 in fees to Ann and her attorneys. By his own admission, the funds awarded to Ann were property of the bankruptcy estate.

The purpose of Larry's argument is to obtain the funds awarded to Ann by the Bankruptcy Court. As previously discussed, the Court finds that Larry commenced this bankruptcy in bad faith. *See In re*

Purpura, 170 B.R. 202 (Bankr. E.D. N.Y. 1994). Thus, but for Larry's initiation of the bankruptcy, neither party would have incurred any expense in litigating the bankruptcy. To order the return of the funds to Larry would be a financial detriment to Ann. Further, if the Court were to do so, it would, in effect, be condoning Larry's behavior and punishing Ann for Larry's bad faith filing. Thus, it is this Court's intent to affirm the Bankruptcy Court's fee determinations as a sanction against Larry for his bad faith filing of the bankruptcy. Larry is the party who deserves to be sanctioned for his bad faith conduct, not Ann. As a result, the Court shall affirm the propriety and amount of fees the Bankruptcy Court ordered the estate to pay Ann and her attorneys.

E. CHAPTER 7 TRUSTEE'S FEES

Ann challenges the Bankruptcy Court's denial of her limited objection as to the accounts from which the Trustee paid the fees. Since the fees were paid pro rata, the Court previously dismissed Ann's appeal as moot.

For his part, Larry argues that the Bankruptcy Court improperly determined the Chapter 7 Trustee's fees. Having reviewed the record as a whole, the Court finds that there is more than sufficient evidence upon which the Bankruptcy Court could base its determination as to the propriety and amount of Trustee's fees. Thus, Larry's challenge on this issue should be denied, and the order of the Bankruptcy Court will be affirmed.

CONCLUSION

Larry Manns came to this federal forum seeking to use the Bankruptcy Court in an apparent effort to thwart Ann Manns' state court divorce proceeding. In his own reply brief, Larry acknowledges that this case belongs in the state courts. Nevertheless, as the bankruptcy progressed, Larry Manns' unclean hands became even dirtier as he and Ann kept harassing each other at an enormous expense to themselves and the courts. Over time, Larry realized that the Bankruptcy Court was not doing to sit idly by and allow the parties to abuse the bankruptcy system. Thus, it became apparent to Larry that he was better-off outside bankruptcy, and upon that revelation, he then vigorously sought to dismiss the case. For her part, Ann was originally dragged into this dispute by Larry. Over time, however, Ann's hands also became unclean. Specifically, at the outset of the bankruptcy case, Ann sought to dismiss it, arguing that the case was filed

in bad faith. In an attempt to bring order to this two-party family dispute, the Bankruptcy Court converted the case instead of dismissing it. This prevented the parties, at that time, from concluding the state court dissolution of marriage action. Despite all of this, Ann now perceives some benefit to continuing the bankruptcy rather than dismissing it. Clearly, this bankruptcy has benefitted neither Larry nor Ann. Only the parties' attorneys have benefitted from Larry and Ann's fighting. As this Court previously noted, this case is essentially a two-party marriage dissolution dispute that clearly belongs in state court.

Accordingly, the Court **FINDS** that this bankruptcy was filed in bad faith and that Ann Manns holds a property interest in, rather than a claim against, the estate. Further, the Court **FINDS** that no creditors exist whose best interest would be served by continuing this bankruptcy. Therefore, the Court **AFFIRMS** the order of the Bankruptcy Court dismissing the bankruptcy case.

In accordance with § 349 of the Bankruptcy Code, the Court **REVERSES** the Bankruptcy Court's partnership and partition orders, and **REMANDS** this case with instructions to the Bankruptcy Court to restore all previously partitioned property to the original title holders. Ann's avenue of redress on the partnership order, however, remains in state court. Further, the Court **AFFIRMS** the Bankruptcy Court's order distributing attorneys' fees and those attorneys' fees previously paid out of the bankruptcy estate remain unaffected by this Opinion as a sanction against Larry Manns for filing this bankruptcy in bad faith. Finally, the Court **AFFIRMS** the propriety and amount of the Trustee's fees.

IT IS SO ORDERED.

DATED: January 30, 1998

/s/ William D. Stiehl
District Judge