

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

IN RE: ) In Proceedings  
) Under Chapter 7  
BILLY L. TRUSTY, and )  
RUBY MARIE TRUSTY, ) No. BK 87-40249  
d/b/a Trusty, Inc., )  
)  
Debtor(s). )

AMENDED ORDER

This matter is before the Court on the objection of Billy and Ruby Trusty ("debtors") to the Trustee's Petition to Employ Attorney for Special Litigation. The relevant facts are as follows:

Debtors' Chapter 7 Bankruptcy Petition was filed on April 20, 1987. The Trustee filed a no asset report and statement of abandonment on June 8, 1987 which the Court approved when it closed the case on July 16, 1987.<sup>1</sup>

On February 9, 1988, the Trustee moved to have the case reopened, pursuant to §350 of the Bankruptcy Code and Bankruptcy Rule 5010, for the purpose of instituting an action to bring assets into the bankruptcy estate and to administer the recovered assets. On February 12, 1988 the Court granted the motion to reopen.

The trustee then filed a petition to authorize the employment of an attorney, on a contingent fee basis, to represent him in the action to bring assets into the estate. The Trustee's proposed

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<sup>1</sup>It should be noted that counsel currently representing the Trustee was not representing him at the time the statement of abandonment was filed and approved.

litigation concerns debtor Billy Trusty's interest as a beneficiary of a testamentary spendthrift trust.

It is alleged by the Trustee that the corpus of the trust (reportedly over one million dollars) may be brought into the bankruptcy estate and made available for distribution to creditors because, (1) there was an "indication" that Billy Trusty treated the trust corpus as his own by selling off timber from the land and pocketing the proceeds; (2) the spendthrift provisions of the trust may have been negated since, under the terms of the trust, Billy Trusty had the right to farm the land of the trust without rental payment or accountability; and (3) under the Rule in Shelley's Case (which may be applicable to instruments like the trust in the present case which were executed prior to the abolition of the Rule), Billy Trusty would have a full interest in the trust rather than a life estate.

In their objections to the petition to employ attorney, debtors argue that once a potential asset of the estate has been properly disclosed to a trustee and he then decides to abandon it, he is precluded from coming in later and reclaiming it. Debtors claim that they fully disclosed the existence of the testamentary trust in their bankruptcy schedules and that they attached a copy of the instrument creating the trust to their bankruptcy petition. They argue that the result of their disclosure is that the testamentary trust was abandoned by the Trustee and cannot now be reclaimed by him.

A trustee is entitled to abandon "any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. §554(a). Once a trustee has

notified the parties of his intention to abandon property, the property is deemed abandoned unless a party in interest files an objection within 15 days of the mailing of the notice. Bankruptcy Rule 6007(a); In re Bryson, 53 B.R. 3, 4 (Bankr. M.D. Tenn. 1985). It is well settled that once a trustee knowingly and properly abandons property of the estate the abandonment is irrevocable regardless of any subsequent discovery that the property had greater value than previously believed. In re Atkinson, 62 B.R. 678, 679 (Bankr. D. Nev. 1986); In re Bryson, supra; In re Burch Co., Inc., 37 B.R. 273, 274 (Bankr. D. S.C. 1983); In re Sutton, 10 B.R. 737, 740 (Bankr. E.D. Va. 1981).

The only exceptions to the irrevocability of the abandonment rule are where property is not listed on the debtor's schedules or where the trustee's "knowledge of the existence of the property was one of mere suspicion, which engendered only a cursory investigation." In re Sutton, supra. See also, In re Atkinson, supra; In re Bryson, supra. 53 B.R. at 4-5. Generally, where the property has been scheduled by the debtor, information concerning the property has been properly disclosed to the trustee, and the property has been abandoned in accordance with the applicable provisions of the Bankruptcy Code and Rules, the title to the property reverts in the debtor as if it had never been held by the trustee. Matter of Hunter, 76 B.R. 117, 118 (Bankr. S.D. Ohio 1987); In re Tarpley, 4 B.R. 145, 146 (Bankr. M.D. Tenn. 1980).

In the present case, the Trustee claims that his abandonment of the trust was not an "intelligent" decision because debtors had not disclosed material facts, concerning the trust, i.e., that they were

invading the corpus of the trust. The Trustee has not explained the factual basis for his claim against debtors or why it took him until long after he had abandoned the property to discover this problem. The Court does not consider this argument persuasive in light of its finding below that the Trustee had sufficient knowledge to render his abandonment irrevocable.

The Trustee's remaining arguments, which concern debtor's right to farm trust land without payment of rent and the alleged violation of the Rule in Shelley's Case, go directly to the language of the trust instrument itself. This instrument was available to the Trustee from the very beginning of the case because it was attached by debtors to their bankruptcy petition.

"Where the trustee has knowledge that is certainly sufficient to put him upon diligent inquiry as to the transaction, the abandonment is held to have been knowingly made and hence irrevocable." In re Tarpley, supra, (citation omitted). In the present case, the language of the trust clearly indicates that Billy Trusty has the right to occupy and farm trust lands rent free. This language should have been sufficient to alert the Trustee to the potential negation of the spendthrift provisions of the trust. Additionally, the Trustee has failed to show why he could not discover the Rule in Shelley's Case problem from the information he had available before he abandoned the trust.

The Court finds that the Trustee had sufficient knowledge about the trust prior to abandoning it to have rendered the abandonment irrevocable. Accordingly, the Court will deny the Trustee's petition

to employ attorney. Since the sole reason for reopening this case was to administer a potential asset which has not been found to have been irrevocably abandoned, the Court will close the case pursuant to §350(a).<sup>2</sup>

IT IS ORDERED that the Trustee's Petition to Employ Attorney for Special Litigation is DENIED and that the case is CLOSED.

/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: July 29, 1988

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<sup>2</sup>The Court originally reopened the case without adequate knowledge of the issues which have now been addressed. Consequently, opening the case was improvident on the Court's part.