

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
DAVID PAUL RAINS and ) CASE NO. 03-63152 JPK  
DAWN KIMBERLY RAINS, ) Chapter 7  
 )  
Debtors. )

ORDER DENYING DEBTORS' CLAIM OF EXEMPTION

This matter is before the Court with respect to a contested matter arising from the Trustee's objection, filed on February 16, 2004, to an exemption claimed in Schedule C of the debtors' schedules filed on July 1, 2003.

I. Record and Proceedings

The debtors' schedules were filed on July 1, 2003. On August 11, 2003, the Chapter 7 Trustee filed his Motion for Extension of Time to Object to Exemptions, and a Notice of that motion. The record establishes that proper service of both the motion and the notice were made upon the debtors and upon their counsel. No objections to the Trustee's motion were filed, and on September 8, 2003 the Court entered its order granting the Trustee's motion. By that order, the Trustee was granted until the filing of a no asset report to file an objection to the debtors' claims of exemption.

The Trustee, by counsel, Lori D. Fisher, filed his Objection to Exemption on February 16, 2004. On March 2, 2004, the debtors, by counsel, Steven A. Wade, filed a motion requesting a hearing on the Trustee's objection.

A preliminary hearing in the contested matter was held on March 5, 2004. The Court's order of March 9, 2004 scheduled a final hearing for May 7, 2004, and provided each of the parties an opportunity to file one brief on the issues in the contested matter. The debtors filed their memorandum on April 19, 2004; no memorandum has been filed by the Trustee.

Oral argument on each party's contentions was held on May 7, 2004, and the matter

was taken under advisement by the Court.

## II. Facts of Record

In Schedule B, paragraph 20, the debtors listed an item of property as "Potential Workman's Comp claim", stated to be held jointly by the debtors, and valued at \$0.00. In Schedule C, the debtors designated this claim as being exempt pursuant to IC 22-3-2-17 and 802 ILCS 305/21. This schedule claimed "100%" of the claim as exempt, and stated its current market value as \$0.00.

The debtors have at all pertinent times been residents of the State of Indiana, and have had their domicile in the State of Indiana. The claim for workman's compensation benefits arises from an injury sustained by Dawn Kimberly Rains in the State of Illinois, while she was working for an employer subject to the workmen's compensation laws of the State of Illinois. At the time of the filing of the petition in this case, the claim had been filed, but no award had been made with respect to the claim and no decision had been made as to the validity of the claim. At the hearing held on May 7, 2004, neither party was certain of the current status of the claim: the Court will assume that it remains inchoate, and that an award has not yet been made to Ms. Rains.

## III. Legal Analysis

The parties concede, and the Court finds, that the Court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157(a), and N.D.Ind.L.R. 200.1. This contested matter is a "core proceeding" as defined by 28 U.S.C. § 157(b)(2)(B).

The precise issue before the Court is whether the claim of Dawn Kimberly Rains is exempt under either the Indiana statute or the Illinois statute cited by the debtors in Schedule C. This claim is clearly an item of "intangible personal property", as provided for by I.C. 34-55-10-2(b)(3), and as such would be subject to a maximum allowable exemption of \$100.00 (\$200.00 if the claim is in fact somehow held jointly by both debtors), if the debtors had not otherwise

exhausted their intangible personal property exemption on other property.<sup>1</sup>

During oral argument, debtors' counsel conceded that I.C. 22-3-2-17 would not provide an exemption for this claim, in that this Indiana exemption statute provides an exemption only for workmen's compensation claims arising under the workmen's compensation laws of the State of Indiana. The Court concurs with this concession, based upon the analysis of the Honorable Kent Lindquist stated in the Memorandum Opinion and Order entered on November 21, 1995 in the case of Richard Daniel Kiszka, case number 94-61639 in the United States Bankruptcy Court for the Northern District of Indiana, Hammond Division at Gary.

The Court hereby adopts and incorporates the analysis and legal conclusions of *Kiszka* as the legal framework against which the debtors' claim of exemption is to be determined in this case. The sole fact different in this case from the factual circumstances of *Kiszka* is that in this case the claim for Illinois workmen's compensation benefits had not yet been determined as of the date of the filing of the bankruptcy petition, while in *Kiszka*, the property claimed as exempt was the proceeds of an Illinois workmen's compensation award received by the debtor pre-petition but traceable, or potentially traceable, to funds on deposit in a bank account held by the debtor in the State of Indiana. The debtors' position in this case focuses upon that distinction. The debtors essentially argue that the inchoate claim of Dawn Kimberly Rains has a "situs" in the State of Illinois, and that thus principles of comity should dictate a result different in the instant case than that arrived at by Judge Lindquist in *Kiszka*.

It would be presumptuous of this Court to attempt an analysis of the applicable law as thorough and scholarly as that undertaken by Judge Lindquist in *Kiszka*. The Court agrees

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<sup>1</sup>Schedule C claims an exemption of \$200.00 with respect to a checking account, which does exhaust the joint exemption available to the debtors. Schedule C also claims an exemption of \$160.00 with respect to cash pursuant to I.C. 34-55-10-2(b)(2), on the assumption that "cash" is "tangible personal property" within the meaning of that exemption provision. The United States Court of Appeals for the Seventh Circuit has now determined that "cash" is intangible personal property; *In re Oakley*, 344 F.3d 709 (7<sup>th</sup> Cir. 2003).

entirely with both the legal analysis and legal conclusions arrived at in that decision. The Court deems the rationale of Judge Lindquist's decision to fully apply here with respect to the issue of comity. On pages 39-40 of the Memorandum Opinion and Order in *Kiszka*, the following is stated:

However, if this Court would find that the Indiana Courts would apply the Illinois exemption statute, 820 ILCS 305/21, to the proceeds of the Debtor's Illinois Workmen's Compensation Claim, the result might be different than would be reached as to the proceeds of a Workmen's Compensation Claim received by the Debtor under the Indiana Workmen's Compensation Act. Under Illinois law, it has been held that an exemption for garnishment attaches to Workmen's Compensation that has been paid, as well as to compensation that may be due or become due. *East Moline Works Credit Union v. Linn*, 51 Ill. App. 2d 97, 101, 200 N.E.2d 910, 912 (Ill. App. 1964). The *East Moline* Court observed that the Illinois statute used the broad language of "payment" which connotes that which has been paid. Thus, it was held that bank deposit funds, which constituted part of a settlement obtained by a judgment debtor on a claim by him under the Illinois Workmen's Compensation Act from an employer for injury sustained in the course of his employment were exempt from garnishment. *Id.* Accord: *Mentzer v. Van Scyoc*, 233 Ill. App. 3d 438, 442, 599 N.E.2d 58, 61 (Ill. App. 1992) (citing, *In re Estate of Callahan*, 144 Ill. 2d 32, 579 N.E.2d 985 (1991) with approval). Of course, the situs of the proceeds of the Illinois Compensation Claim claimed as exempt in these cases, was Illinois, which was the forum state. Here, the situs of the proceeds of the Illinois Workmen's Compensation Claim is presumably Indiana, the forum state, and Indiana's clear policy is not to extend its exemption laws to the proceeds of exempt property paid over to and received by the Debtor, unless that statute clearly so provides. Thus, the exemption laws of the State of Indiana do not have a common purpose with those of Illinois as to the proceeds of exempt property whereby Indiana would extend comity to the Illinois exemption laws.

Perhaps, if the "situs" of the claim at issue in this case were deemed to be in Illinois, Judge Lindquist might have reached a different result. Be that as it may, this Court does not deem the "situs" of Dawn Kimberly Rains' claim to be other than in Indiana, and thus the analysis of *Kiszka* fully applies to this case.

This Court deems the "situs" of an intangible property right to be the domicile of the

owner of that property right, subject to an exception in accordance with the concept of "business situs" which is not applicable to the facts of this case. The Court deems the concept of the situs of an intangible for purposes of the issues raised in this case, and the concept of the situs of an intangible for the purposes of the authority of a state or local taxing authority to tax that intangible, to be indistinguishable. In the latter context, the following was stated in 71 Am.Jur.2d *State and Local Taxation* § 666 (1973), as follows:

Personal property of an intangible nature, such as credits, bills receivable, bank deposits, bonds, promissory notes, mortgage loans, judgments, and corporate stock, does not admit of an actual location, and as to such property the maxim "mobilia sequuntur personam" embodies the general principle in relation to situs for the purposes of taxation. While intangible personal property may under given circumstances acquire a taxable situs in a jurisdiction other than the domicile of the owner, as, for example, under the exception regarding the "business" or "commercial" situs, and even perhaps lose its situs in the state of the owner's domicile, the general rule is that the situs of intangibles for the purpose of property taxation is at the domicile of the owner, and only there.

The principle that the situs of intangible personalty follows the domicile of its owner will give way to logical and rational exceptions. The maxim "mobilia sequuntur personam," upon which it is based, yields whenever it is necessary for purposes of justice that the actual situs of the thing be examined. Where intangible property has in fact a situs elsewhere than at the domicile of its owner, it may be taxed in the jurisdiction of the situs.

The foregoing principles of the tax situs of an intangible have been affirmed by the Indiana Supreme Court in *Croop v. Walton*, Ind., 157 N.E. 275, 277 (1927), as follows:

Property of an intangible nature, such as the property involved here, has no situs of its own for the purpose of taxation, and is therefore assessable only at the place of its owner's domicile. *Foresman v. Byrns*, (1879) 68 Ind. 247; *City of Evansville v. Hall* (1859) 14 Ind. 27; 37 Cyc. 955, note 84.

Moreover, apart from the concept of tax situs, the Court has no problem in deriving the legal conclusion that for the purposes of intestate succession, Indiana law would determine the heirs of the debtors with respect to interests in the Illinois workmen's compensation claim, because

the situs of the claim is in Indiana.

To the extent that the situs of the workmen's compensation claim is relevant at all to whether or not the courts of Indiana would grant comity to any exemption in that claim provided by the laws of the State of Illinois, the situs of the claim is the State of Indiana, and thus, as determined in *Kiszka*, principles of comity will not sustain the debtors' claim of exemption in this case.

IV. Conclusion

Based upon the foregoing, IT IS ORDERED, ADJUDGED AND DECREED that the debtors' claim of exemption for any property interest in, or arising from, the workmen's compensation claim of Dawn Kimberly Rains is denied.

Dated at Hammond, Indiana on May 27, 2004.



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J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtors, Attorney for Debtors  
Trustee, US Trustee