

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
DONALD W. PARRILLO,) CASE NO. 00-30605 HCD
) CHAPTER 7
)
DEBTOR.)

Appearances:

Robert C. Thomas, Esq., Attorney for Objector, 10 S. 381 Madison Street, Hinsdale, Illinois 60527; and
Joseph D. Bradley, Esq., Chapter 7 Trustee, 105 East Jefferson Boulevard, Suite 512, South Bend, Indiana 46601.

MEMORANDUM OF DECISION

At South Bend, Indiana, on January 27, 2004.

Joseph D. Bradley, Esq., Trustee of the chapter 7 bankruptcy case of the debtor Donald W. Parrillo, has moved for authority to make a second partial distribution in the amount of \$25,000 to the single remaining secured creditor of the estate, Nancy L. Reilly, former spouse of the debtor. Kimberly E. Schob filed an objection to the proposed distribution. After a hearing, the court granted the Trustee's motion. This Memorandum of Decision constitutes the court's findings of fact and conclusions of law in this matter.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and determination. After reviewing the record, the court determines that the matter before it is a core

proceeding within the meaning of § 157(b)(2)(O) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

In his Motion to Make Second Partial Distribution on Secured Claim, the Trustee set forth the relevant facts. He explained that Reilly is a secured creditor holding an Illinois judgment, in her favor and against the debtor, that was domesticated in Indiana on June 23, 1997. She holds a claim for \$384,408.62 in Donald Parrillo's bankruptcy. Reilly's judgment had been found to apply to the debtor's real estate, a condominium in Michigan City, Indiana, by the LaPorte Superior Court in LaPorte County, Indiana. The Trustee sold that condominium and recovered net proceeds from the sale in excess of \$104,000. He stated that Reilly's claim now attaches to the sale proceeds.

Pursuant to the court's Order of March 20, 2003, the Trustee made a partial distribution of \$25,000 to Reilly. In this Motion, he requested authorization to make a second distribution of \$25,000 to her. He explained that the proceeds remaining in the estate are sufficient to make that distribution and also to satisfy all administrative expenses of the estate.

At the hearing, the Trustee reiterated that Reilly is the only creditor remaining with a substantial claim in Parrillo's bankruptcy case. He stated that she is entitled to the net proceeds of the property recovered by the Trustee on behalf of the estate. The Trustee reported to the court that he recently received \$45,000 from a settlement with Safeway Insurance Company and now holds in excess

of \$110,000 in the estate. According to his calculations, if his request for permission to make a second partial distribution of \$25,000 to Reilly is granted, the amount remaining in the estate (over \$80,000) will cover the administrative expenses of this bankruptcy estate and leave excess funds.

Kimberly Schob filed an Objection to Second Partial Distribution, asserting first that the court's Order of November 19, 2001, is void. She also objected to the Trustee's motion on two other grounds: that the judgment lien against her was invalid, and that this court does not have jurisdiction over the Order of October 21, 1994, entered by the Circuit Court of the Eighteenth Judicial Circuit in DuPage County, Illinois.¹ That Order was domesticated in the LaPorte Superior Court in Indiana, and then was revived in the same state circuit court in DuPage County, Illinois.²

At the hearing, Schob, through her counsel, stated that she objected to the monetary distribution to Reilly because she has an interest in the funds that were paid by Safeway Insurance Company to the Trustee. According to Schob, the \$45,000 Safeway paid to the Trustee was owed by Safeway to her company, Printabilities, Inc. She therefore asked the court not to disburse the funds until the appeal of the Illinois judgment has been completed. Schob also contended that there may be an issue of this court's jurisdiction over the state court judgment that was resubmitted to the circuit court in Illinois, but he was unable to find any cases that would answer the issue.

¹ Parrillo and Reilly were divorced in 1970. The Order of October 21, 1994, issued by the DuPage County Circuit Court in Illinois, found that the lump sum property settlement between Parrillo and Reilly was in full force and that the judgment amount remaining due and owing to Reilly was \$333,608.00. Reilly took her judgment to Indiana and domesticated the judgment in LaPorte Superior Court on June 23, 1997. She then petitioned to revive the judgment in DuPage County Circuit Court, Illinois. On October 9, 2002, the Illinois state court granted her petition.

² The Illinois court's Order of October 9, 2002, granted Reilly's petition to revive the court's judgment of October 21, 1994, in the amount of \$333,608.00. That order was appealed, Schob informed the court, and the case is pending.

Discussion

A chapter 7 trustee is required to “collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of the parties in interest.” 11 U.S.C. § 704(a); *see In re Salzer*, 52 F.3d 708, 712 (7th Cir. 1995), *cert. denied*, 516 U.S. 1177 (1996). After marshaling the debtor’s property, the trustee has the duty of distributing the proceeds to the creditors, according to the priorities established in the Bankruptcy Code. *See* 11 U.S.C. § 726; *see also Midway Airlines, Inc. v. Northwest Airlines, Inc. (In re Midway Airlines, Inc.)*, 154 B.R. 248, 256-57 (N.D. Ill. 1993); *In re Fishman*, 241 B.R. 568, 573 (Bankr. N.D. Ill. 1999). In the satisfaction of the mandate, Trustee Bradley has collected the debtor’s assets and has reduced them to approximately \$110,000, which includes the \$45,000 settlement with Safeway Insurance Company. He now requests permission to make a partial distribution to Nancy Reilly, the only creditor in this case.

Kimberly Schob filed an Objection, asserting three reasons for the court not to grant the partial distribution. The first was that this court’s order of November 19, 2001, is void. This contention is incorrect. The Order of November 19, 2001 was affirmed first by the United States District Court, *see In re Parrillo*, No. 3:01-CV-0904 (May 29, 2002) (unpublished order), and then by the Seventh Circuit Court of Appeals, *see Parrillo v. Reilly*, 59 Fed. Appx. 129, 134, 2003 WL 137575 (7th Cir. 2003). The appellate court not only upheld this court’s decision but also ordered the debtor Donald Parrillo, his son Timothy Parrillo, and his daughter Kimberly Schob “to show cause why they should not be sanctioned for filing frivolous appeals.” *Id.* at *4. In fact, the court “recently sanctioned Donald Parrillo \$5,000 for filing a frivolous appeal in another case arising from this quagmire.” *Id.* It is clear that this twice-affirmed Order of November 19, 2001, is a valid judgment. After putting the Trustee to

the task of refuting the objection, Schob's attorney admitted that the Order had been upheld and was no longer at issue. The court finds that Schob's first objection is without merit.

Schob's second objection, again asserted without argumentation, was that the judgment lien placed on the Safeway funds owed to her or her company, Printabilities, Inc., was invalid. The court reminds Schob that its Order of November 5, 2003, denied Schob's emergency motion to declare the judgment lien void and unenforceable.³ The court concludes now, as it did then, that it was a valid judgment lien. It found noteworthy the Trustee's observation that Safeway Insurance Company, the garnishee defendant, did not challenge the judgment. The Trustee also reported that, as a result of the settlement with Safeway, the estate has recovered \$45,000 and Safeway was released from the judgment lien. The court finds Schob's second objection without merit.

The third objection raised in this proceeding is that this court does not have jurisdiction over the Illinois order that was domesticated in Indiana and revived in Illinois. The Illinois order, a state court property settlement judgment in favor of Nancy Reilly and against Donald Parrillo, was the basis for Nancy Reilly's claim in the Parrillo bankruptcy case. This court found her claim nondischargeable and denied Parrillo's motion for relief from that judgment.⁴ The court's rulings were affirmed on appeal in both the district court and the court of appeals.⁵ Moreover, Schob did not attempt to present legal

³ See *Bradley v. Parrillo et al.*, Adv. Proc. No. 01-3021, R. 178.

⁴ See *Reilly v. Parrillo*, Adv. Proc. No. 00-3059, R. 33, 34, 36.

⁵ The district court order expressly rejected Parrillo's "attempt to collaterally attack (perhaps to re-litigate) the LaPorte Superior Court Judgment." *In re Parrillo*, No. 3:01-CV-0904 (Order of May 29, 2002), at 12. The appellate court, consolidating appeals filed by Parrillo and Schob, reviewed an "avalanche of litigation" in different courts. It reviewed their challenge to the LaPorte Superior Court domestication judgment of the Illinois property settlement order and affirmed the underlying judgments. See *Parrillo v. Reilly*, 59 Fed. Appx. 129, 2003 WL 137575 (7th Cir. 2003).

arguments to prove this court's lack of jurisdiction. The court finds that Schob's jurisdictional challenge to the judgment underlying the nondischargeable claim is without merit.

Schob also notified the court, in her Objection, that she has appealed the Illinois state court order of October 9, 2002, which granted the revival of its earlier judgment in favor of Reilly. She asked this court to defer a distribution to Reilly until that appeal has been resolved, and claimed that jurisdiction over the "order of Nancy L. Reilly" is now in the Illinois courts rather than in the bankruptcy court. She contended at the hearing that there could be different judgments arising out of the two courts concerning the same earlier Illinois judgment.

The court first states that it has asserted no jurisdictional claim over the Illinois state court order reviving the earlier judgment. Indeed, that order is not a part of the record in this case.⁶ Moreover, the court finds that the proceeding in the Illinois state court has no effect or relevance on this court's jurisdiction over the underlying property settlement judgment, which this court found valid and nondischargeable. As the Trustee pointed out, creditors often go to more than one jurisdiction to pursue a judgment. Indeed, once a bankruptcy court has determined that a debt is excepted from a debtor's discharge under 11 U.S.C. § 523, the creditor "may pursue its claim for a money judgment in the state court which is the proper venue for its action." *American Express Centurion Bank v. Losanno (In re Losanno)*, 291 B.R. 1, 2 (Bankr. D. Mass. 2003). Reilly's decision to return to state court to seek collection of her judgment, after this court found it nondischargeable, was appropriate. The red herring jurisdictional issue raised by Schob certainly has no relevance to this court's ability to allow the Trustee

⁶ At the trial, Schob's counsel tendered the order as an exhibit but failed to ask for the admission of the document.

to make a distribution to a secured creditor. The court concludes that this jurisdictional challenge is not a valid reason to delay its partial distribution in this bankruptcy proceeding.

The court finds that the three objections Schob raised to the Trustee's motion for distribution are irrelevant to the issue of whether the Trustee should be allowed to make a second distribution. The Trustee gave valid reasons for distributing funds to the secured creditor at this time: (1) Reilly is in difficult financial circumstances and has no other income or source of relief; (2) she is the sole creditor with a claim to the net proceeds from this estate; (3) she holds a valid claim, based on a pre-bankruptcy state court judgment in the amount of almost \$385,000, and it was excepted from the debtor's discharge; and (4) the amount remaining in the estate account, over \$80,000, will more than cover the administrative expenses of this bankruptcy estate. The court finds that the Trustee has performed an extensive analysis concerning the best interests of the estate and the claims at issue. *See In re Energy Cooperative, Inc.*, 173 B.R. 363, 372 (N.D. Ill. 1994).

The court, having considered the arguments of the parties and the record in this case, notes that courts generally give trustees broad discretion to choose the best means of administering the bankruptcy estate. *See Hoseman v. Weinschneider*, 322 F.3d 468, 475 (7th Cir. 2003). It determines that the bankruptcy trustee in this case has fulfilled his fiduciary obligation to the claimants against the bankruptcy estate and has exercised due care in performing his activities. *See In re Bell & Beckwith*, 44 B.R. 664, 666 (Bankr. N.D. Ohio 1984). It finds that the Trustee took appropriate actions to accomplish his authorized duties. For example, he properly decided to settle with the Safeway Insurance Company rather than to engage in protracted litigation. The court further finds that, throughout this bankruptcy case, the Trustee diligently and thoroughly maximized the realization of estate property, in fulfillment of the creditors' claims, and in spite of many roadblocks set by the debtor and others. In addition, he

properly made one distribution to the remaining creditor in his administering of the estate. The court concludes that the Trustee has carried out his fiduciary duties and has exercised his “discretion in pursuing a fair and efficient administration of the bankruptcy estate.” *See Hoseman*, 322 F.3d at 476. It determines that the Trustee’s request to make a second distribution appropriately fits within his comprehensive plan of administering the estate.

The court notes that there was no objection to the amount of the distribution requested or to Reilly’s entitlement to it. *See In re Harrell*, 55 B.R. 203, (Bankr. E.D.N.C. 1985) (allowing trustee’s motion for distribution after determining the amount to which the creditor was entitled). The court finds that the Trustee presented clear reasons for his request to make a second partial distribution and further finds that sufficient funds remain for all administrative payments. Accordingly, the court grants the Trustee’s Motion to Make a Second Partial Distribution on Secured Claim.

Conclusion

For the reasons stated above, the court hereby grants the Chapter 7 Trustee’s Motion to Make a Second Partial Distribution on Secured Claim. Kimberly E. Schob’s Objection to Second Partial Distribution is overruled. The court authorizes the Trustee’s distribution of \$25,000 to the secured creditor Nancy L. Reilly.

SO ORDERED.



HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT