THIS OPINION IS NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE DENNIS HARGREAVES, Debtor.	))))))))))))	CASE NO. 92-51931 CHAPTER 7 JUDGE MARILYN SHEA-STONUM **ORDER DEFINING ESTATE** **ASSETS TO INCLUDE** **PREVIOUSLY UNSCHEDULED** **ASSETS, DENYING DEBTOR'S** **MOTION TO DISMISS AND** **MOTION TO STRIKE**

This matter is before the Court on a motion of the Debtor styled a "2d Motion To Reopen Case closed 1993." On September 20, 1996, this Court granted the motion to reopen for the limited purpose of reopening the case. However, the Court withheld judgment on the substantive issues raised in the debtor's motion to reopen. At a status conference on October 10, 1996, this Court determined that the remaining substantive issues actually raised in the debtor's motion to reopen as a motion were best summarized as seeking definition of estate assets in this case (the "Asset Definition Motion"). The Trustee, Marc Gertz, and Huntington National Bank, a creditor, filed briefs in response to the Debtor's motion. Thereafter, the Debtor filed a motion to dismiss (the "Dismissal Motion") and a motion to strike (the "Motion to Strike") on December 9, 1996. This order will resolve all three motions.

I. JURISDICTION

Each motion raises issues under 11 U.S.C. §§ 541 and 554 and involves a determination concerning property of the estate. Pursuant to 28 U.S.C. §

157(b)(2)(A), resolution of these motions is a core proceeding. This Court has jurisdiction over these matters pursuant to 28 U.S.C. § 157(a) and (b)(1) and by the Standing Order of Reference entered in this District on July 16, 1984.

II. UNDISPUTED FACTS

Debtor, Dennis Hargreaves, filed a Petition for Relief under Chapter 7 of the Bankruptcy Code on August 31, 1992. The debtor listed no assets on either schedule A (real property) or schedule B (personal property). On Schedule D(creditors holding secured claims) the debtor listed Bank One of Akron as holding a disputed secured claim in the amount of $1,425,239.60 which was based on a 1987 Revenue Bond that covered the construction of Hudson Commerce Center. Debtor listed Warren E. Carter, II as a co-debtor on this obligation. However, the debtor did not specifically list any partnership interest on any of the schedules. Debtor mentioned the partnership interest at the § 341 meeting; he said the interest was valueless or outweighed by the debts of the partnership.

On November 20, 1992, the Trustee, Marc Gertz, filed a no asset report based on information provided to him by the debtor. On January 7, 1993, the debtor obtained a discharge.

One year later, the debtor filed an action in Summit County Common Pleas Court against Warren Carter, Kenneth Payne, Glenn Moyneaux, Hudson Commerce Center, Milford Development Corp., and Kenneth Management, Inc., seeking damages for conduct related to a partnership interest held by the debtor which occurred between 1985 and 1991 (the "1994 Litigation"). Apparently the partnership interest which was not listed as an asset on the debtor’s schedules is an asset, not a liability. The 1994 Litigation was dismissed by the Summit County Common Pleas Court based on a finding that the debtor did not have

standing to bring the claim because the claim arose from the debtor's partnership interest, an "unscheduled asset" that still belonged to the debtor's bankruptcy estate. Specifically, the court found "that the Bankruptcy Trustee did not abandon Plaintiff's [debtor's] claim against the Defendant." The Ohio Court of Appeals for the Ninth District affirmed, and the Ohio Supreme Court declined jurisdiction.

The debtor has now returned to Bankruptcy Court seeking a definition of estate assets. The debtor argues that the claim was abandoned by the Trustee pursuant to 11 U.S.C. § 554. The Trustee disagrees.

III. LAW

A. ASSET DEFINITION MOTION

The Bankruptcy Code provides three methods of abandonment. First, under 11 U.S.C. § 554(a), a trustee may abandon property of the estate that is burdensome to the estate or of inconsequential value and benefit to the estate after notice and a hearing. Second, on the request of a party in interest and after notice and a hearing, the court may order the trustee 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(b). Third, property of the estate that is scheduled under § 521(1) but not otherwise administered at the time the case is closed is deemed abandoned to the debtor and administered for the purposes of section 350. 11 U.S.C. § 554(c).

The debtor argues that (1) the no asset report filed in this case operated as a formal abandonment of the claim under 11 U.S.C. § 554(a) or in the alternative(2) by operation of law the claim was abandoned when the case was closed pursuant to 11 U.S.C.§ 554(c).

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1. FORMAL ABANDONMENT

The debtor argues that the no asset report filed by the trustee on November 20, 1992 operated as a formal abandonment under 11 U.S.C. § 554(a). The burden of showing abandonment is on the debtor. *In re Peninsula Roofing & Sheet Metal, Inc.*, 9 B.R. 257, 260(W.D. Mich 1981). A formal abandonment of estate property by a trustee requires notice and a hearing. 11 U.S.C. § 554(a) and Bankr.. R. 6007(a). All creditors must receive notice of the proposed abandonment. Bankr.. R. 6007(a).

If the proper procedures are followed, a trustee's abandonment is irrevocable. *Huntington National Bank v. Hunter (In re Hunter)*, 76 B.R. 117, 118 (S.D. Ohio 1987). However, the procedures set forth in 11 U.S.C. § 554(a) and Bankr.. R. 6007(a) presuppose that no assets were concealed from the trustee and that all information concerning potential assets was properly disclosed. When the debtor does not properly schedule an asset, the trustee serving in the case cannot formally abandon the asset because there is no record that the trustee had sufficient knowledge of the asset. *See In re Hunter*, 76 B.R. at 118; *In re Peninsula Roofing & Sheet Metal, Inc.*, 9 B.R. 257, 260; *In re Bryson*, 53 B.R. 3, 4(M.D. Tenn. 1985); *In re King*, 27 B.R. 754, 755(M.D. Tenn. 1983) "Because the debtors failed to schedule the lawsuit as an asset, the trustee did not abandon the estate's interest in the lawsuit when the no asset[report] was filed." *In re King*, 27 B.R. at 755.

The parties do not dispute that the Debtor did not schedule the partnership interest as an asset. Nor do they dispute that Hargreaves made mention of an "oral partnership" agreement at his 11 U.S.C. § 341 meeting, but he testified that his interest in said partnership was valueless or, at best, was greatly outweighed by partnership debt. The trustee did not have sufficient

information to "knowingly" abandon the property that had not been properly scheduled by the debtor. In short, the scheduling of an asset puts the trustee on notice of his or her duty to investigate. Here, the debtor did not take that action and cannot claim the benefits that might have accrued had he done so. Any other approach simply invites mischief. Therefore, the trustee did not by virtue of his no asset report abandon the property pursuant to 11 U.S.C. § 554(a).

2. ABANDONMENT BY OPERATION OF LAW

In order for property to be abandoned by operation of law under section 554(c), the debtor must formally list the property on the appropriate schedules. *Vreugdenhill v. Navistar Int'l Trans. Corp.*, 950 F.2d 524, 526(C.A.8 1991); *Bittel v. Yamato Int'l Corp.*, 70 F.3d 1271,1995 WL 699672, 4(Unreported 6th cir. 1995) The statute reads, "Unless the court orders otherwise, any property *scheduled* under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title." 11 U.S.C. § 554(c)[emph. added]. A specific meaning is attached to the word "scheduled" in section 554(c). The word refers only to assets actually listed in a debtor's schedules. *In re Glenda McCoy*, 139 B.R. 430(S.D. Ohio 1991).

The debtor's Bankruptcy Schedules listed no assets. Thus, the claim arising from the debtor's partnership interest not listed by the debtor as an asset cannot be deemed abandoned under 11 U.S.C. § 554(c). The debtor argues that despite not having formally listed the partnership interest or the claim arising from the partnership interest as an asset, the property may be deemed abandoned because the trustee had knowledge of the partnership interest prior to the close of the debtor's bankruptcy case. The debtor is incorrect.

Only assets that are clearly scheduled can be deemed abandoned. *In re McCoy*, 139 B.R. 430, 432. The Trustee's knowledge of the partnership interest is irrelevant. "The language of § 554(c) is plain and unambiguous,..., and there is no support for the thesis that knowledge changes the express language of the statute." *Id.* at 432. Thus, the property not scheduled as an asset by the debtor remains property of the estate and the Trustee may administer the newly disclosed asset.

B. DISMISSAL MOTION

In light of this Court's determination on the status of the partnership interest as property of the estate, the Dismissal Motion cannot be granted until that asset is fully administered. That motion is denied.

C. MOTION TO STRIKE

On the current state of the record, this Court has nothing before it to indicate whether the nondisclosure was intentional or unintentional. At this point, the Court presumes the failure to disclose to be unintentional as intent has not been proven. Nothing scandalous is contained in the parties' briefs. The parties made civil arguments asserting their rights. Therefore, this Court denies the debtor's Motion to Strike.

IV. CONCLUSION

For the foregoing reasons, this Court denies the debtor's Motions to Dismiss and to Strike and determines that the partnership interest is property of the estate.

IT IS SO ORDERED.

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MARILYN SHEA-STONUM
Bankruptcy Judge

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DATED: 1/31/96