UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

JOHN HAMILTON — CASE NO. 9l-0l797

Debtor — Chapter 13

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court considers this contested matter on motion of John Hamilton ("Debtor") for an order compelling Crouse Irving Memorial Hospital, Inc. ("Crouse") to remove a pre-petition "restraint" placed on a joint bank account held by the Debtor and his non-debtor spouse.

The motion was heard at the Court's January 7, l992 motion term at Syracuse, New York and both parties were given until February 3, l992 to submit memoranda of law. No additional memoranda were filed.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §1334(b) and §157(a), (b)(l), (2)(A), (E) and (O).

FACTS

The facts as presented to the Court are sketchy at best.

Debtor filed a petition pursuant to Chapter 13 of the Bankruptcy Code (11 U.S.C. §101-1330) ("Code") on June 24, l99l.

Crouse, apparently a judgment creditor of both Debtor and his non-debtor spouse, had previously caused a restraint to be placed against a joint bank account established pursuant to §675 of the New York Banking Law ("Banking Law") in the name of the Debtor and his non-debtor spouse, Glorya.

Debtor has requested that Crouse remove the restraint from the joint account and Crouse has continually refused to do so.

ARGUMENTS

Debtor's moving papers assert that under Banking Law §675, a joint bank account, which is established in the name of the depositor or another, is payable in full by the banking institution to either depositor.

Thus, Debtor argues that since he has, or would have had, the right to withdraw all of the funds from the restrained account, those funds constitute property of the estate pursuant to Code §§54l and 1306.

Debtor asserts that the continued restraint of the bank account by Crouse post-petition constitutes a violation of the automatic stay imposed pursuant to Code §362(a)(2).

Crouse, appeared at the motion term in opposition to the relief sought by Debtor.

DISCUSSION

What constitutes property of a debtor's estate is a matter of federal bankruptcy law; conversely, what interest the debtor may have in specific property is left to state law for determination. See In re Armstrong, 56 B.R. 78l (W.D.Tenn. l986); In re Texaco,Inc., l09 B.R. 609 (Bankr. S.D.N.Y. l989); In re Smith l05 B.R. 50 (Bank. C.D.Cal. l989).

Clearly, to the extent that the Debtor herein had a legal or equitable interest in the joint bank account as of the commencement of the

Chapter l3 case, that interest became property of the Debtor's estate. See Code §54l(a) and §1306(a).

One must turn to New York law then to define the nature of Debtor's interest in the joint bank account.

As argued by Debtor, a bank account which is established in New York State "in a form to be paid or delivered to either, or the survivor of them, ... shall become property of such persons as joint tenants ... and may be paid or delivered to either during the lifetime of both or to the survivor." See Banking Law §675(a).

Additionally, Banking Law §675(b) provides the making of such a deposit shall create a presumption that the depositors intended to create a joint tenancy.

Thus, while the bank may pay over the entire proceeds of the account to one joint depositor or the other, without incurring any liability to the remaining joint tenant, that is not to be confused with the presumption that each depositor owns an undivided one-half interest in the account prior to withdrawal. See Angelo v. Angelo, 74 A.D.2d 327, 428 N.Y.S.2d l4; Warren v. Warren, 95 A.D.2d 807, 463 N.Y.S.2d 855.

While the presumption of joint tenancy is rebuttable, the burden of rebutting it is on the party challenging the presumption. See Warren v. Warren, supra, 95 A.D.2d 807, 463 N.Y.S.2d 855; McGill v. Booth, 94 A.D.2d 928, 463 N.Y.S.2d 333.

In the instant case, there is no proof before the Court that the account restrained by Crouse was other than one subject to a joint tenancy and thus, one-half of the restrained account on the date of Debtor's Chapter l3 filing was property of the non-debtor spouse, which one-half interest did not become property of the Debtor's estate.

Clearly, however, the remaining one-half of the account was Debtor's property to which the provisions of Code §362(a) applied. As to that portion of the account, Crouse should have released its restraint immediately upon the filing of the Chapter 13 petition and offers no explanation as to why it did not do so.

Debtor's counsel seeks an award of attorney's fees in the sum of

$200.00, presumably in reliance upon Code §362(h). In that regard, the Court believes that Crouse's continued refusal to remove or modify its restraint on one-half of the joint account post-petition constituted a willful violation of the stay, which deprived Debtor of the use of his share of the joint account in connection with the Chapter l3 case, albeit, that the one-half share was apparently minimal.

Based on the foregoing, it is

ORDERED that Crouse take immediate steps to cause the release and turnover to the Debtor of one-half of the balance in the joint account as of the date of filing of the Chapter l3 petition, together with any interest that has accrued on that portion of the account since that date, and it is further

ORDERED that Crouse shall pay to James F. Selbach, Esq., as Debtor's counsel, fees in the sum of $200.00, reasonably incurred in connection with the making of this motion.

Dated at Utica, New York
this day of June, l992

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STEPHEN D. GERLING
U.S. Bankruptcy Judge