

UNITED STATES BANKRUPTCY COURT  
For the Southern District of Iowa

In the Matter of

ALLAN A. DENNIS,  
MARILYN E. DENNIS,  
fdba Rainbow Inn,

Case No. 85-2514-D

Chapter 7

Debtors.

ORDER ON DEBTORS' OBJECTION  
TO AMENDED FINAL REPORT OF TRUSTEE

On April 15, 1987 a telephonic hearing on debtors' objection to the amended final report of the trustee was held before this court in Des Moines, Iowa. Randy E. Trca appeared on behalf of the debtors and Timothy K. Wink appeared on behalf of the Columbus Junction State Bank. Burton H. Fagan, the Chapter 7 trustee also appeared. At the April 15, 1987 hearing the court also heard the trustee's objection to the debtors' amended claim of exemptions. The issue presented concerns the debtors' entitlement to proceeds from a 1985 Ford vehicle abandoned by the trustee and subsequently claimed as exempt by the debtors.

Factual Background

The debtors, Allan and Marilyn Dennis, filed for relief under Chapter 7 on November 14, 1985. A 1985 Ford LTD vehicle was listed on the Schedule B-2 and valued at \$,8,000.00. Ford Motor Corp. was listed as a secured creditor on Schedule A-2 with a claim in the amount of \$8,000.00 secured by the 1985 Ford vehicle. On December 9 1985 the Chapter 7 trustee filed

an application for notice of report of abandonment which included the 1985 Ford LTD and gave fifteen days to file an objection to the application. No objections were filed. On August 6, 1986 the trustee filed a status report which indicated that Ford Motor Corp. had returned \$2,265.42 from the overage resulting from the sale of the vehicle to the trustee for administration.

The trustee filed a final report on November 19, 1986. The Columbus Junction State Bank filed an objection to the final report on December 18, 1986 seeking inclusion of the unsecured portion of its debt remaining after liquidation within the allowed unsecured claims. An amendment to the final report was filed on December 24, 1986 which allowed the Bank's unsecured claim.

On December 29, 1986 the debtors filed an amended schedule B-4 and listed the 1985 Ford LTD as exempt in the amount of \$2,265.42. The trustee filed an objection to the debtors' claim of exemption in the vehicle as being untimely filed. On January 5, 1987 the debtors filed an objection to the trustee's amended final report. The debtors request that the monies received from the sale of the vehicle be returned to them as either proceeds from property claimed exempt or in the alternative as proceeds from secured property abandoned to the debtors.

The debtors filed a brief in support of their objection to the trustee's amended final report on February 25, 1987. The trustee filed a reply brief in support of the final report on

March 23, 1987. On April 13, 1987 the Columbus Junction State Bank filed a brief in support of the trustee's final report. The trustee and the Bank argue: (1) that the amendment to the debtors' schedule B-4 should not be allowed because it is untimely; (2) that the abandonment of the vehicle does not bar the trustee from receiving the proceeds of the sale of the vehicle; and (3) that even if the vehicle is allowed as exempt the debtors should not be allowed to claim the cash proceeds as exempt.

#### Analysis

Resolution of the issue presented can be made solely upon an analysis of the principles surrounding the abandonment of estate property. 11 U.S.C. section 554(a) authorizes 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." Once a trustee has notified parties of an 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. Fed. R. Bankr. P. 6007. The effect of abandonment by a trustee is to divest the trustee of control over the property because, once abandoned, property is no longer a part of the bankruptcy estate. In re Polumbo, 271 F.Supp. 640, 642 (W.D. Va. 1967); Matter of Enriquez, 22 B.R. 934, 935 (Bankr. D. Neb. 1982); 4 Collier on Bankruptcy, 1 554.02 (15th ed. 1986). Abandonment of an asset immediately reverts title to the asset in the debtor. In re Polumbo, 271 F.Supp. at 643. The abandonment

is deemed to be irrevocable regardless of any subsequent discovery that the property had greater value than previously believed and precludes the trustee from later reclaiming the property. Id.; In re Bryson, 53 B.R. 3' 4 (Bankr. M.D. Tenn. 1985); In re Burch Co., Inc., 37 B.R. 273, 274 (Bankr. D. S.C. 1983); Matter of Enriguez, 22 B.R. at 935; In re Sutton, 10 B.R. 737, 740 (Bankr. E.D. Va. 1981). There are but two exceptions to the irrevocability of abandonment. Property will not be deemed to have been abandoned if it was actually concealed from the trustee, i.e., if the property was not scheduled by the debtor, or if the trustee's knowledge of the existence of the property is one of mere suspicion and engendered only a cursory investigation. In re Bryson, 53 B.R. at 4-5; In re Sutton, 10 B.R. at 740.

In the instant case the debtors clearly scheduled the 1985 Ford LTD. No objections were filed to the trustee's application to abandon the vehicle and thus the property reverted in the debtor. To both the trustee's and the debtors' surprise the sale of the vehicle by the secured creditor yielded a surplus. While the trustee and the Bank argue that the debtors in effect concealed the property from the trustee by undervaluing it in their schedules, the court does not agree. The trustee had a duty to examine the bankruptcy estate and the assets therein to determine values and potential benefit for the estate. The court is not convinced that the debtors intentionally misrepresented the value of the vehicle in an effort to induce the trustee to

abandon it. Accordingly, the abandonment was irrevocable and removed the vehicle from the estate and the trustee's control. The surplus proceeds received from the sale should not have been turned over-to the trustee as they too were no longer property of the estate. Since the proceeds were not property of the estate, the debtors' amended schedule B-4 seeking to exempt the funds was meaningless.

WHEREFORE, based on the foregoing analysis, it is found that the trustee's final report erroneously includes the \$2,265.45 received from Ford Motor Corp. following the sale of the abandoned vehicle.

THEREFORE, the debtors' objection to the trustee's final report is hereby sustained.

IT IS ORDERED that the trustee return said proceeds to the debtors forthwith.

Signed and filed this 3rd day of September 1987.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE