



SO ORDERED.

SIGNED this 6th day of July, 2015.

Lena Mansori James

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

In re:)	
)	
Derek Urban Ezzell and)	Case No. 14-51082
Sharon Jones Ezzell,)	
)	
Debtors.)	
_____)	

ORDER

This case came before the Court upon the Bankruptcy Administrator’s Motion to determine that funds collected by the Chapter 13 trustee but not disbursed are prepetition property. After considering the Motion and other matters of record, the Court finds and concludes as follows:

The Debtors filed a petition for relief under Chapter 13 of the Bankruptcy Code on September 29, 2014. As disclosed in the Debtors’ Statement of Financial Affairs, during the year prior to the petition date, the Debtors made a series of transfers to the male Debtor’s father that were potentially avoidable as preferential under 11 U.S.C. § 547. The Debtors’ confirmed plan provided for monthly plan payments in the amount of \$1,300.00 beginning October 2014. In addition to the monthly payments, the male Debtor was to pay into the plan 75% of the net

amount of all bonuses he received from his employment. The plan provided that all allowed costs of administration, priority, and secured claims were to be paid in full, with the exception of continuing long term debts. The plan had an additional requirement that “unsecured priority and unsecured general creditors receive at least \$3,600.00, which represents a preferential payment made to the male Debtor’s parents.”

The Debtors remained in Chapter 13 for over a year, and then on May 21, 2015, filed a notice of voluntary conversion from Chapter 13 to Chapter 7. At the time of the conversion, the Chapter 13 trustee was holding approximately \$4,900.00, all of which had been paid from the postpetition wages of the Debtors. The Bankruptcy Administrator filed the present Motion seeking a determination that \$3,600.00 of the funds held by the Chapter 13 trustee are prepetition property and an order that those funds be delivered to the Chapter 7 trustee. The Debtors filed a response indicating that they did not oppose the Motion as it would aid in the carrying out of the Chapter 7 trustee’s duties in this particular case and would be more efficient. The Debtors request that the Court enter an order providing for the \$3,600.00 held by the Chapter 13 trustee to be remitted directly to the Chapter 7 trustee as preference payment funds, and the Chapter 7 Trustee has confirmed his agreement not to pursue a preference action in this case in exchange for these funds.

Recently, the Supreme Court addressed the issue of who is entitled to a Chapter 13 debtor’s postpetition wages not yet distributed by the Chapter 13 trustee upon a good faith conversion of the case and held that these postpetition wages must be returned to the debtor. Harris v. Viegelahn, _U.S._, 135 S. Ct. 1829, 1837 (2015). In Harris, the Supreme Court reasoned that under § 348(f) of the Bankruptcy Code, absent a bad faith conversion, a converted Chapter 7 estate is limited to property belonging to the debtor as of the original petition date and,

therefore, does not include a debtor's postpetition wages.¹ To allow a Chapter 13 trustee whose services were terminated upon conversion to disburse those postpetition wages is "incompatible with that statutory design." Id. Furthermore, upon conversion to Chapter 7, the provisions of Chapter 13 are no longer applicable and the terms of a Chapter 13 plan are no longer binding. Id. at 1838 (citing 11 U.S.C § 1327(a)). As a result, the Court held that, after conversion, a former Chapter 13 trustee lacks authority to distribute payments as provided for under the plan, and accumulated wages, which are not property of the Chapter 7 estate, must be returned to the debtor. Id.

The Bankruptcy Administrator asserts that while postpetition wages are not a part of the Chapter 7 estate, preference actions under 11 U.S.C. § 547 are considered part of the estate on the petition date and are thus distinguishable from postpetition wages. Indeed, the law is clear that prepetition avoidance claims are property of the estate on the petition date. Section 541(a)(3) provides that property of the estate on the petition date includes any interest in property that the trustee recovers under § 550. Section 550 allows a trustee to recover a transfer avoided under § 547 from either the initial transferee or any immediate or mediate transferee of such initial transferee.

Here, however, there is no dispute that the funds held by the Chapter 13 trustee are in fact postpetition wages that were paid by the Debtors as part of an agreement with the Chapter 13 trustee rather than commencing a preference action against the male Debtor's parents under

¹ **§348 Effect of conversion**

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title –

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;

...

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

§§ 547 and 550. These funds represent the recovery of preferential transfers per the Debtors' agreement with the Chapter 13 trustee, but the source of these funds was postpetition wages. This agreement was incorporated into the terms of the Debtors' Chapter 13 plan, and as the Debtors have now converted this case, the terms of the Chapter 13 plan are no longer binding.

Based upon the foregoing, the Court declines to find that the funds collected by the Chapter 13 trustee in this case but not disbursed are prepetition property. Given the circumstances of this case and the consent of the parties, the Court will, however, grant the request of the Bankruptcy Administrator and Debtors for an order allowing the \$3,600.00 held by the Chapter 13 trustee to be remitted directly to the Chapter 7 trustee.

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PARTIES TO BE SERVED

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14-51082 C-7

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