

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

ENTERED

APR -14 2002

U.S. Bankruptcy Court
Winston-Salem, NC
TRO

IN RE:)
)
Judson S. Davis and) Case No. 96-51648C-7W
Lois A. Davis,)
)
Debtors.)
)

ORDER

This case came before the court on March 14, 2002, for hearing upon the claim of Susan A. Davis seeking allowance of an administrative expense of \$14,400.00 pursuant to § 503(b) of the Bankruptcy Code. Robert A. Lefkowitz appeared on behalf Susan A. Davis ("Claimant") and Bruce Magers appeared on behalf of the Trustee. Having considered the evidence offered by the parties, the matters of record in this case and the arguments of counsel for the parties, the court finds and concludes as follows pursuant to Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure:

FACTS

Claimant, the daughter of the Debtors in this case, asserts an administrative expense claim for storage charges for items of personal property that were located inside a residence owned by the Claimant from December of 1996 through July of 1997. Claimant inherited the residence from the grandmother, Lois Abernethy, who died on November 11, 1996.

The personal property involved in the claim consists of certain household furnishings and furniture ("Personal Property")

that were bequeathed to the female Debtor by her mother, Lois Abernethy. Mrs. Abernethy owned and resided in the residence located at 618 Roslyn Road, Winston-Salem, North Carolina, at the time of her death. When Mrs. Abernethy died, she owned numerous items of furnishings and furniture that were located in the residence. Under Mrs. Abernethy's will, most of these items were bequeathed to the female Debtor, who also was named as Executrix under the will. Some items of furniture and furnishings in the house belonged to the Claimant and her brother, J. Spencer Davis, Jr. These items also remained in the house throughout the period in question.

Because the death of Mrs. Abernethy occurred within 180 days of the commencement of this case, the Trustee claimed that any interest in property acquired by the female Debtor or that the female Debtor became entitled to acquire by bequest, devise or inheritance from Mrs. Abernethy constituted property of the bankruptcy estate in this case pursuant to § 541(a)(5)(A) of the Bankruptcy Code. The Trustee contended that such interest included the female Debtor's interest in the household furnishings and furniture that were bequeathed to the female Debtor.

Shortly after the death of Mrs. Abernethy, the female Debtor qualified as the Executrix of the estate of Lois Abernethy and the will was probated. As the personal representative of the Abernethy probate estate, the female Debtor disputed the Trustee's claim to

the Personal Property and refused to turn over the property to him. This dispute dragged on for several months. Finally, on June 30, 1997, in an effort to resolve the question of whether he was entitled to possess and sell the Personal Property, the Trustee filed a motion in this case seeking authorization to sell the Personal Property. The female Debtor, as personal representative of the Abernethy estate, objected to the motion. However, shortly thereafter and before any hearing on the motion was held, the female Debtor, individually and as personal representative of the Abernethy estate, entered into a settlement with the Trustee. Under the settlement, which occurred on August 4, 1997, the female Debtor, as personal representative of the Abernethy estate, paid \$9,000.00 to herself in her individual capacity for her interest in the Personal Property, which the female Debtor then paid to the Trustee. Under the settlement, the payment to the Trustee was in full settlement of any claim of the Trustee and the bankruptcy estate to "all tangible personal property of the estate of Lois Abernethy distributable to Lois Davis. . . ." Pursuant to the settlement, the Trustee withdrew his motion to sell and nothing more was heard regarding the Personal Property until the claim that is now before the court was filed on July 30, 1998.

ANALYSIS

Under § 503 of the Bankruptcy Code, the "actual, necessary cost and expenses of preserving the estate" are allowable as

administrative expenses. It is well established that providing storage for property of the estate constitutes "preserving the estate" within the meaning of § 503(b)(1)(A) and that post-petition storage cost therefore may be granted administrative expense priority. See In re Great Northern Forest Products, Inc., 135 B.R. 46, 59 (Bankr. W.D. Mich. 1991); In re Grimm & Rothwell, Inc., 108 B.R. 186, 190 (Bankr. S.D. Ohio 1989).

The amount of a cost of administration claim arising from the use of premises to store property of the estate is the benefit accruing to the estate for the use of the premises. In such circumstances, the measure of the benefit to the estate is the reasonable rental value of the premises which were occupied and used by the Trustee. See In re Williams Contract Furniture, Inc., 148 B.R. 799, 804 (Bankr. E.D. Va. 1992); In re K-Fabricators, Inc., 135 B.R. 654 (Bankr. W.D. Wash. 1992).

The burden of proof is on the applicant to establish her entitlement to an award under § 503(b) by a preponderance of the evidence. See In re Merry-Go-Round Enters., Inc., 180 F.3d 149, 157 (4th Cir. 1999). Moreover, the presumptive validity accorded properly filed proofs of claim under Bankruptcy Rule 3001(f) is not applicable to a request for payment of an administrative expense under § 503. See In re Fulwood Enters., Inc., 149 B.R. 712, 715 (Bankr. M.D. Fla. 1993).

When Lois Abernethy died on November 11, 1996, the female Debtor, as a beneficiary under the will of Lois Abernethy, was vested with an estate or interest under the will. That interest or estate vested as of the death of Lois Abernethy. See In re Chenoweth, 3 F.3d 1111 (7th Cir. 1993). However, as the court noted in the Chenoweth case, there is a "marked distinction between the vesting of an estate and the right to enjoy possession of the estate." Id. at 1113. This distinction between having an estate and the right to enjoy possession of the estate is of critical importance in the matter now before the court because, while the female Debtor stood to inherit the Personal Property, under the law of North Carolina her interest remained contingent and conditional throughout the period in question and did not include the right to possession of the Personal Property.

Ownership and possession of a decedent's personal property in North Carolina is controlled by N.C. Gen. Stat. § 28A-15-2. Under this statute "upon the appointment and qualification of the personal representative or collector, the heirs shall be divested of such title and right of possession which shall be vested in the personal representative or collector relating back to the time of the decedent's death for purposes of administering the estate of the decedent." In administering the estate of the decedent, the personal representative must retain possession and ownership of the personal property of the decedent until it can be determined

whether the personal property will be needed in order to pay the debts of the decedent and taxes. See N.C. Gen. Stat. § 28A-22-1 (personal representative makes distribution under the will after the payment of costs of administration, taxes and other valid claims against the decedent's estate).

Pursuant to N.C. Gen. Stat. § 28A-15-2, the female Debtor, as the duly qualified personal representative of the probate estate, became the owner of the Personal Property upon her qualification. She retained ownership and possession of the Personal Property as personal representative and had not made a distribution to herself when she entered into the settlement with the Trustee. This status of the Personal Property as of the time of the settlement is shown by the language used in the settlement agreement which describes the Personal Property as "all tangible personal property of the estate of Lois Abernethy distributable to Lois Davis. . . ." This language clearly reflects that the Personal Property was still owned by the estate of Lois Abernethy and was "distributable" (i.e., not yet distributed) to Lois Davis. While the motivation behind the female Debtor not distributing the Personal Property prior to the settlement may not be entirely clear, it is clear that she had not done so prior to August 4, 1997, when she settled with the Trustee.. Thus, although the interest of the female debtor, in her individual capacity, in the Personal Property did become property of the bankruptcy estate pursuant to § 541(a)(5)(A) when

Mrs. Abernethy died, such interest did not include the right to possession of the Personal Property. It follows that the Trustee, standing in the shoes of the female Debtor pursuant to § 541(a)(5)(A), had no greater rights than she did and therefore likewise had no right to possession of the Personal Property. The storage of the Personal Property by the Claimant benefitted the party that owned and had the right of possession of the Personal Property. That beneficiary was the personal representative of the probate estate of Lois Abernethy and not the Trustee or the bankruptcy estate in this case. It follows that the Claimant is not entitled to the allowance of an expense of administration under § 503(b)(1)(A) and that her claim should be denied.

IT IS SO ORDERED.

This 29th day of March, 2002.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge