

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION

In the Matter of: : Chapter 7  
: :  
WAYNE L. PULLIAM, : :  
: :  
Debtor : Case No. 00-31502 RFH

**MEMORANDUM OPINION ON TRUSTEE'S  
OBJECTION TO DEBTOR'S CLAIMED EXEMPTIONS**

William M. Flatau, Chapter 7 Trustee, filed on January 23, 2001, a Trustee's Objection to Debtor's Claimed Exemptions. A hearing was held on July 11, 2001. The Court, having considered the evidence presented and the arguments of counsel, now publishes this memorandum opinion.

Wayne L. Pulliam, Debtor, opened an Individual Retirement Account at SunTrust Bank in the 1980s. Debtor, around 1997, rolled over<sup>1</sup> his IRA at SunTrust into an IRA at Wachovia Securities, Inc. The funds in Debtor's IRA at Wachovia were invested in mutual stocks.

Debtor, in 1999, started a business known as Kim-Kris-Wood, Inc. Debtor and his wife were the sole shareholders of the corporation. Debtor was the

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<sup>1</sup> A rollover is a tax-free distribution of assets from one retirement plan to another retirement plan. The contribution to the second retirement plan is called a "rollover contribution." Individual Retirement Arrangements (IRAs), Internal Revenue Service Publication 590, p. 20 (2001).

president and was a full-time employee of the corporation. Debtor testified that he “cashed in” his 401(k) retirement plan<sup>2</sup> to meet his living expenses when Kim-Kris-Wood, Inc. began operations.

Pinnacle Bank provided financing for Kim-Kris-Wood, Inc. The corporation had financial problems. Pinnacle Bank, in the summer of 2000, notified Debtor that the bank would not provide further financing to Kim-Kris-Wood, Inc.

Ligna Machinery, Inc. filed on August 2, 2000, a complaint in state court against Kim-Kris-Wood, Inc. and against Debtor as guarantor of the corporation’s obligation. Ligna Machinery, Inc. sought a judgment for \$214,621.01.

Debtor decided to withdraw the funds in his IRA at Wachovia.<sup>3</sup> Debtor testified that the mutual funds in his IRA were not performing. Debtor testified that he would not have withdrawn the funds if he had been satisfied with the performance of his IRA. Debtor also testified that he intended to use the funds to pay “past and future creditors.”

The mutual funds in Debtor’s IRA were sold on September 1 and 15, 2000. Wachovia Bank, N.A. issued Debtor an “Official Check”<sup>4</sup> dated September 18, 2000, for the net proceeds in the amount of \$40,087.07. Debtor’s daughter picked

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<sup>2</sup> Debtor’s IRA and his 401(k) retirement plan were separate accounts.

<sup>3</sup> A withdrawal is referred to as a distribution.

<sup>4</sup> An official check is a check that a bank draws on itself. Cashier’s checks are often labeled as official checks. 12 C.F.R. Pt. 229.2(i), App. E. Commentary.

up the check at Wachovia on September 22, 2000, and delivered the check to Debtor.

Debtor put the check in a drawer at his residence. Debtor testified that he did not know where he wanted to invest the funds or if he would need the funds to meet his living expenses. Debtor understood that he had sixty days to decide.<sup>5</sup>

Debtor, some two weeks later, took the check to the residence of his father-in-law, Jay Haywood. Debtor offered the check to Mr. Haywood to repay loans that Mr. Haywood had made to Debtor. Debtor testified that he believed that Mr. Haywood would continue to help him, but that his other creditors would not. Mr. Haywood would not accept the check. Debtor left the check at Mr. Haywood's residence. About a week later, Mr. Haywood told Debtor to "forget it, you don't owe me."

Kim-Kris-Wood, Inc. closed for business during the first or second week of October of 2000.

Debtor's wife signed a check dated October 10, 2000, for \$3,900 to prepay for eye surgery for Debtor's adult daughter.<sup>6</sup> Debtor testified that his daughter attends college and that he is "still looking after her."

The Citizens Bank of Washington County filed on October 20, 2000, a

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<sup>5</sup> Debtor's IRA distribution would result in a ten percent tax penalty unless the distribution was "rolled over" into another IRA within sixty days after the date that Debtor received the distribution. See 26 U.S.C.A. § 408(d)(3) (West Supp. 2001).

<sup>6</sup> Debtor and his wife had a joint checking account.

complaint in state court against Debtor. The bank sought a judgment in the principal amount of \$241,600.58.

Debtor's wife signed a check dated October 24, 2000, for \$1,000 payable to ICM, a religious ministry. Debtor testified that this check was his tithe.

Debtor met with Ernest Harris, a bankruptcy attorney, on November 10, 2000. Debtor discussed his financial problems with Mr. Harris. After meeting with Mr. Harris, Debtor understood that he could claim his IRA in his exemptions if he filed for bankruptcy relief. Debtor signed a check dated November 10, 2000, for \$1,700 as a retainer for Mr. Harris's legal services.

Debtor went to his father-in-law's residence and picked up his IRA distribution check. Debtor's sixty-day window to roll over his IRA distribution was about to expire. Debtor endorsed the distribution check over to Wachovia on November 24, 2000. The transaction was treated as a rollover by Wachovia and Debtor. The funds were used to purchase certain mutual funds on November 29, 2000. Debtor admits that he was insolvent and unemployed at that time.<sup>7</sup> Wachovia is the custodian of Debtor's IRA.<sup>8</sup>

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<sup>7</sup> Debtor concedes that his liabilities exceeded his assets by \$4.5 million. See Debtor's letter brief, p. 3 (filed Aug. 2, 2001).

<sup>8</sup> The face of Debtor's IRA provides, in part:

WAYNE PULLIAM IRA  
WSI AS CUSTODIAN

(continued...)

Debtor filed a petition for bankruptcy relief on December 4, 2000. Debtor's bankruptcy estate has no assets available for distribution to unsecured creditors. Debtor claims, as exempt property, his IRA at Wachovia in the amount of \$40,000. Debtor is not currently employed.

Trustee contends that Debtor cannot claim as exempt property his IRA. Trustee contends that, on the eve of bankruptcy, Debtor converted a nonexempt asset (Debtor's IRA distribution check) into an exempt asset (Debtor's IRA) with the intent to hinder, delay, or defraud creditors.<sup>9</sup>

The United States Supreme Court has held that only property that is property of the bankruptcy estate can be claimed as exempt. Owen v. Owen, 500 U.S. 305, 111 S. Ct. 1833, 1835, 114 L. Ed. 2d 350 (1991).

The Eleventh Circuit Court of Appeals has held that a debtor's interest in an IRA in Georgia is excluded from property of the bankruptcy estate under 11 U.S.C.A. § 541(c)(2) because of the restriction on its transferability. Meehan v. Wallace (In re Meehan), 102 F.3d 1209 (11th Cir. 1997).

The Court can only conclude that Debtor's IRA is not property of his bankruptcy estate. Since the IRA is not part of Debtor's bankruptcy estate, he may

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<sup>8</sup>(...continued)

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<sup>9</sup> See 14 Collier on Bankruptcy CH.09, pp. CasHi 30-46 (15th ed. rev. 2001).

not claim it as exempt.

An order in accordance with this memorandum opinion will be entered  
this date.

DATED the 26th day of March, 2002.

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ROBERT F. HERSHNER, JR.  
Chief Judge  
United States Bankruptcy Court