

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION**

**IN RE: JERMAINE AND JENNIFER JONES, Debtor**

**No. 2:13-bk-73827  
Ch. 7**

**R. RAY FULMER**

**Plaintiff**

**2:17-ap-7034**

**JERMAINE AND JENNIFER JONES**

**Defendants**

**ORDER**

Before the Court are the *Trustee's Motion For Turnover of Assets* and the trustee's *Complaint Objecting to Discharge of Debtors*, both filed on July 5, 2017. The Court held a hearing on the pleadings on December 13, 2017. At the conclusion of the evidence, the trustee announced to the Court that he was no longer "going after" Jermaine Jones. Accordingly, the Court dismisses Jermaine Jones as a party/defendant in the trustee's complaint and denies the relief requested in the trustee's motion as it relates to Jermaine Jones. The Court will refer solely to Jennifer Jones for the remainder of this order.

The trustee's pleadings are based on the debtor, Jennifer Jones [Jones], receiving a personal injury award of approximately \$47,000.00 and her claimed exemption of \$22,975.00 for that award. In his motion, the trustee is asking the Court to order the debtor to turn over to the trustee \$24,465.56, the difference between the award and her claimed exemption. In his complaint, the trustee has objected to the debtor's discharge because "[t]he Debtors have willfully taken funds of the bankruptcy estate and did not disclose them until confronted at the Chapter 7 first meeting of creditors . . . ." For the reasons stated below, the Court denies the trustee's motion for turnover and denies the trustee's complaint in its entirety.

The debtors filed a voluntary chapter 13 petition on November 14, 2013. In their petition, Jones listed a personal injury claim of unknown value and exempted 100% of the claim. On January 8, 2014, the debtors amended their schedules and listed the personal injury claim with a value of \$22,975.00 and exempted the entire \$22,975.00. The debtors moved to Norman, Oklahoma, in November 2014. According to the debtor, she received her

personal injury settlement of approximately \$47,000.00 prior to their move to Oklahoma. On December 6, 2016, the debtors filed their notice of conversion to a case under chapter 7 and the trustee was appointed the following day. On March 15, 2017, the debtors amended their schedules once again but still listed the personal injury claim and related exemption with a value of \$22,975.00. The trustee filed the pending pleadings on July 5, 2017.

The Court will address the trustee's motion for turnover first. Instead of the projected settlement in the amount of \$22,975.00, Jones received settlement funds in excess of \$47,000.00. Both the initially claimed \$22,975.00 and the additional \$24,465.56 would have been property of the estate because they were proceeds of the debtor's pre-petition personal injury cause of action. 11 U.S.C. § 541(a)(6). Although the debtors amended their schedules sometime after Jones received the funds, the additional \$24,465.56 was never disclosed.

Section 348(f) of the bankruptcy code is relevant to both the trustee's motion for turnover and the trustee's complaint. It states as follows:

- (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 in the converted case shall consist of the property of the estate as of the date of conversion.

11 U.S.C. § 348(f) (emphasis added). The specific property of the estate the Court is concerned with consists of the debtor's pre-petition personal injury cause of action and the receipt of the settlement proceeds relating to that cause of action.

The debtor testified that she received the personal injury proceeds prior to her move to Oklahoma in November 2014. The debtors did not convert their chapter 13 case to chapter 7 until approximately two years later, in December 2016. There is no dispute that at the

time the case converted to chapter 7, the debtor's personal injury cause of action had been resolved, the debtor had been paid her settlement award, and the debtor no longer had possession of any of the settlement money. Therefore, in accord with § 348(f)(1), the Court finds that neither the debtor's personal injury cause of action nor the funds received from settlement of that cause of action were property of the estate at the time the debtors converted their case to chapter 7; neither were in the possession of or under the control of the debtor. Because the trustee did not allege that the debtors converted their chapter 13 case to a case under chapter 7 in bad faith, § 348(f)(2) is not applicable in this instance. Accordingly, the Court denies the trustee's motion for turnover.

In his complaint objecting to the debtor's discharge, the trustee failed to state under what statutory provision the Court should deny the debtor's discharge. Instead, the trustee simply alleges that "[t]he Debtors have willfully taken funds of the bankruptcy estate and did not disclose them until confronted at the Chapter 7 first meeting of creditors . . . ." At least one court has recognized that a chapter 7 trustee who seeks "former chapter 13 estate property under circumstances indicating abuse can be comforted by the availability of § 727 as a potential remedy." *In re Laflamme*, 397 B.R. 194, 206 (Bankr. D.N.H. 2008). However, because the trustee in this case did not allege that the debtors converted their case to chapter 7 in bad faith, denial of the debtor's discharge appears to be a draconian remedy. In any event, the Court has already found that the settlement funds, which were no longer in the debtor's possession when the case converted, were not property of the estate in the debtor's chapter 7 case. Hence, the debtor could not have willfully taken funds of the chapter 7 estate if that is what the trustee is alluding to in his complaint. At trial, even though the trustee did not cite § 727 in his complaint, when asked under which statutory provision the trustee was moving, the trustee suggested that § 727(a)(2), (a)(4), or (a)(5) may be applicable. The Court disagrees.

First, with regard to § 727(a)(2), the trustee did not introduce any evidence that the debtor had the requisite intent to hinder, delay, or defraud a creditor or officer of the estate. She testified credibly that she did not remember being told that she had to report the money or

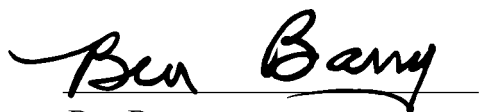
that she should have told her attorney about its receipt. After the debtor received her settlement funds, she cashed the check and used the money primarily to help the people who had helped her after her personal injury. She also used some of the money to pay people to help her move to Oklahoma and rent a trailer for the move. When the trustee asked her whether she thought anyone one else might know about the money and try to take it away from her she responded in the negative. The Court finds that the debtor answered all of the trustee's questions honestly and to the best of her ability and did not have the requisite intent under § 727(a)(2) to commit fraud. Likewise, the Court did not hear any testimony that would lead the Court to believe that this debtor knowingly and fraudulently made a false oath; presented a false claim; gave or received money, property, or advantage for acting or forbearing to act; or withheld recorded information relating to the debtor's property or financial affairs under (a)(4). Finally, the Court accepts the debtor's explanation concerning the alleged "loss of assets" relating to the personal injury settlement funds as detailed above and denies the trustee's cause of action under (a)(5). The debtor was not sophisticated but was able to explain with some lucidity what she did with the settlement funds.

Having presented no further reason to deny the debtor her discharge (with the exception of the trustee's candid statement that he has been able to "settle" with other unfortunate debtors who either could not or would not litigate), the Court denies the trustee's complaint in its entirety.

In sum, for the reasons stated above, the Court denies the trustee's motion for turnover and denies the trustee's complaint in its entirety.

IT IS SO ORDERED.

cc: Forrest Stolzer  
R. Ray Fulmer II

  
Ben Barry  
United States Bankruptcy Judge  
Dated: 01/10/2018