

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

**IN RE: THOMAS RUSSEL SIMPSON IV and
ANNE MARIE SIMPSON, Debtors**

**No. 5:18-bk-70290
Ch. 7**

ORDER DENYING MOTION FOR TURNOVER

Before the Court is the chapter 7 trustee's *Motion For Turnover* that was filed on July 3, 2018, and the debtors' *Response to Motion For Turnover*, that was filed on July 10, 2018. The subject of the trustee's motion is a bonus that separate debtor Thomas Simpson [Mr. Simpson] received approximately one month after the debtors filed their voluntary petition. The trustee argues that the bonus was earned pre-petition, giving Mr. Simpson a pre-petition interest in the bonus when he filed his petition. As such, the trustee believes the bonus is property of the debtors' bankruptcy estate and should be turned over to the trustee. Mr. Simpson argues that when they filed their petition, he did not know whether he would receive a bonus because the payment of the bonus is discretionary and he did not have a vested interest in the bonus. The Court heard the motion and response on August 29, 2018, and at the conclusion of the hearing took the matter under advisement. For the reasons stated below, the Court denies the trustee's motion for turnover.

The Court has jurisdiction over the trustee's motion under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(E). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

The debtors filed their petition chapter 7 on February 5, 2018. At the hearing, Mr. Simpson testified that he was currently employed as a manager at Wal-Mart Stores, Inc. [Wal-Mart] and had been in a management position with Wal-Mart for eight years. During those eight years, he had received a bonus each year, the lowest one being around

\$2000-\$3000. He said that he first received notice of the 2018 Management Incentive Plan [MIP] bonus in the approximate amount of \$12,000 on March 1, 2018. This is the same amount he received in 2017. The bonus was paid to Mr. Simpson on March 4, 2018. Because the bonus was paid as a result of Mr. Simpson's performance during the prior year, the trustee believes it is property of the debtors' estate as a legal or equitable interest held by Mr. Simpson as of the commencement of the debtors' case. *See* 11 U.S.C. § 541(a)(1).

The question before the Court is whether Mr. Simpson had a legally enforceable right to demand the payment of the MIP bonus on the date the debtors filed their bankruptcy petition or simply an expectation of payment. *See In re Gonzalez*, 559 B.R. 326, 331 (Bankr. E.D.N.Y. 2016) The trustee analogized Mr. Simpson's rights to the proverbial "bundle of sticks" that many first-year law students hear about. Even if Mr. Simpson may not have had possession of the "legal" stick—for instance, a statutory right to sue—Mr. Simpson retained an "expectation" stick or right based on his performance during the previous year, his seven prior MIP bonuses, and his continued employment with Wal-Mart. According to the trustee, this was enough to create an equitable interest in the bonus at the time the petition was filed.

The Court finds that the expectation of a bonus is not enough to bring the post-petition bonus into the estate. According to an Eighth Circuit case cited by both parties, even if (1) a bonus payment was based on pre-petition employment, (2) the bonus program existed on the petition date, and (3) the debtor was eligible for the bonus on the date of the petition, the bonus payment may not be property of the debtor's estate if the employer has the discretion to not make the bonus payment. *In re Klein-Swanson*, 488 B.R. 628, 633-34 (B.A.P. 8th Cir. 2013); *In re Gonzalez*, 559 at 331-32 ("if a debtor at the time of filing her petition has a bare expectation and hope of receiving a bonus payment then there is no property right to become property of the estate, even if that hope or expectation is ultimately realized.").

The trustee introduced Wal-Mart’s MIP that was in effect during the relevant time period. According to the terms of the MIP, the Compensation, Nominating and Governance Committee of the Board of Directors of Wal-Mart [the Committee] “shall have the discretion to reduce, eliminate, or increase any Incentive Plan Award for any individual or group” MIP section 4.2(c): Committee Discretion. Further, “[t]he payment of an Incentive Plan Award for any Performance Period does not guarantee any person eligibility for or payment of an Incentive Plan Award for any other Performance Period. . . . No absolute right to any Incentive Plan Award shall be considered as having accrued to any Participant prior to the payment of the Incentive Plan Award.” MIP section 6.3: No Guarantee; No Funding. Finally, “[t]he MIP is not a contract between the Company or any Related Affiliate and any . . . participant.” MIP section 6.7: Employment. The Court believes that these sections make clear that the payment of the MIP was discretionary with Wal-Mart and that Mr. Simpson did not have any legally enforceable rights in the 2018 MIP bonus until March 4, 2018, the date he received the bonus.

Because Mr. Simpson did not have a legally cognizable interest in the 2018 MIP bonus until after he filed his petition, the Court finds that the post-petition bonus payment of approximately \$12,000 is not property of the debtors’ estate. Accordingly, the Court denies the trustee’s motion for turnover.

IT IS SO ORDERED.

cc: Bianca Rucker, chapter 7 trustee
Mark Drake, attorney for the debtors
United States Trustee