

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

September 7, 2000

Lee Ann Pierce,
Chapter 7 Trustee
316 Fourth Street
Brookings, South Dakota 57006-0524

Chris A. Nipe, Esq.
Counsel for Debtor
200 East 5th Avenue
Mitchell, South Dakota 57301

Subject: *In re Casey J. Tebay,*
Chapter 7; Bankr. No. 00-40245

Dear Trustee and Counsel:

The matter before the Court is the Trustee's objection to Debtor's claim of exemption in a partnership asset under S.D.C.L. § 48-4-14. This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that the Trustee's objection must be sustained.

SUMMARY OF FACTS. The parties have stipulated that Casey J. Tebay is one of three partners who own, as partners, a sound system. His "share" of the partnership's equity in the sound system is valued at \$1,600. Casey Tebay ("Debtor") filed a Chapter 7 petition. Debtor declared exempt under S.D.C.L. § 48-4-14, \$1,600 as his interest in the partnership's sound system.¹

The case trustee objected to the claimed exemption in the \$1,600 interest in the sound system. The parties submitted the matter on agreed facts and briefs.

In his brief, Debtor argued that § 48-4-14 is an exemption statute for partnership property that is separate and apart from

¹ In her objection to exemptions, Trustee Pierce also argued that other personalty Debtor had claimed exempt under S.D.C.L. § 43-45-4 exceeded the \$4,000 in value allowed. That issue was not presented to the Court. Therefore, the Court assumes that issue has been resolved.

21

Re: Casey J. Tebay
September 7, 2000
Page 2

S.D.C.L. § 43-45-4, which allows a debtor, who is not a head of household, to exempt personal property with a total value of up to \$4,000. While Debtor admits that his interpretation of § 48-4-14 would allow a debtor to exempt his entire interest in any partnership property, regardless of value, he said that the Court could prevent abusive exemption claims under § 48-4-14 on a case by case basis.

Trustee Pierce argued § 48-4-14 does not work as an exemption statute for Debtor because the partnership was terminated upon the filing of his bankruptcy petition. She also stated that treating the statute as an exemption statute would allow a Chapter 7 debtor to keep all his assets from creditors by putting them into a partnership before filing.

DISCUSSION. Under South Dakota law, a partner is a co-owner of partnership property. S.D.C.L. § 48-4-11. Section 48-4-10 identifies three property rights that a partner has: (1) his rights in specific partnership property; (2) his interest in the partnership; and (3) his right to participate in the management. There are some qualifications. A partner can generally possess partnership property only for a partnership purpose. S.D.C.L. § 48-4-12. A partner cannot assign his right in specific partnership property. S.D.C.L. § 48-4-13. Further,

[t]he incidents of a tenancy in partnership are such that a partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership.

S.D.C.L. § 48-4-14 (in pertinent part).² These rights and limitations under ch. 48-4 thus define what property interest Debtor held, as a partner, on the petition date that became property of his bankruptcy estate. 11 U.S.C. § 541(a)(1). *Beaman v. Shearin (In re Shearin)*, _____ F.3d. _____, No. 98-2191, 2000 WL 1161694, at*2 (4th Cir. 2000) (bankruptcy courts look to state law when determining a debtor's interest in partnership property).

² The second sentence of § 48-4-14 states: "When partnership property is attached for a partnership debt the partners, or any of them, or the representative of a deceased partner, cannot claim any rights under the homestead or exemption laws." It is not relevant here since the partnership did not declare bankruptcy. It was inserted in the Uniform Partnership Act to make clear a change in law. Formally, if a partnership faced liquidation, the partners could each first take a share as exempt property before creditors took the remainder. See discussion in *In re Safady Bros.*, 228 F. 538 (W.D. Wisc. 1915).

Re: Casey J. Tebay
September 7, 2000
Page 3

law when determining a debtor's interest in partnership property).

Debtor has argued that the limitation in § 48-4-14 creates an exemption that allowed him to protect all partnership property from creditors. It does not. Instead, when considered in light of 11 U.S.C. § 541(a)(1), § 48-4-14 established that on the petition date it was Debtor's interest in the partnership itself that became bankruptcy estate property, not any interest specifically in the sound system or other partnership property. This is because § 48-4-14 provides that "specific" partnership property is not subject to attachment or execution for the debts against an individual partner. Section § 43-4-22 supports this interpretation of § 48-4-14 because it acknowledges that what Debtor may exempt is his interest in the partnership itself, not any specific interest in the sound system or other partnership property. *In re Burnett*, 241 B.R. 438, 439-40 (Bankr. E.D. Ark. 1999); *Firststar Bank of Iowa v. Magnani (In re Magnani)*, 223 B.R. 177, 181-82 (Bankr. N.D. Ia. 1997); see *In re Johnson*, 19 B.R. 371, 374 (Bankr. D. Kan. 1982) (in states where the Uniform Partnership Act is in effect, a partner cannot claim exemptions from partnership property) (citing 3 COLLIER ON BANKRUPTCY, 15th Ed). Section 48-4-20 completes the chapter's common scheme by telling Trustee Pierce, who stands in the shoes of a judgment creditor, how to execute against Debtor's partnership interest, if he cannot declare it exempt. Accordingly, Debtor may declare exempt his partnership interest (if he has any unused value under § 43-45-4), but he may not specifically declare exempt under § 48-4-14 his interest in the partnership's sound system.

The Trustee's objection to Debtor's exemption claim under S.D.C.L. § 48-4-14 shall be sustained. Trustee Pierce shall prepare an appropriate order.

Sincerely,




Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original and serve copy of parties in interest)

I hereby certify that a copy of this document
was mailed, hand delivered, or faxed this date
to the parties on the attached service list

SEP 08 2000

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By 

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
Entered

SEP 08 2000

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Case: 00-40245 Form id: 122 Ntc Date: 09/08/2000 Off: 4 Page : 1

Total notices mailed: 4

Debtor Tebay, Casey Ray 100 Cliff Avenue, No. 8, Valley Springs, SD 57068
Aty Nipe, Chris A. PO Box 396, Mitchell, SD 57301
Trustee Pierce, Lee Ann PO Box 524, Brookings, SD 57006
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321