UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re: MICHAEL C. HATTEN, Debtor.	Case No. A98-00174-DMD Chapter **Filed On** **4/10/12**

MEMORANDUM ON DEBTOR'S MOTION FOR STAY PENDING APPEAL

Debtor Michael C. Hatten filed a notice of appeal on April 4, 2012. The Clerk has transmitted his appeal to the Ninth Circuit Bankruptcy Appellate Court. On April 9, 2012, Mr. Hatten filed a document entitled "Motion to Appeal Judge's decision and to move this case to a higher court."[1] In this document, he demands that "all monies held in trust of the estate . . . be held in trust until such time that this case has been heard by a higher court," and argues that any attempt to disburse the funds in the estate until his appeal is determined "will constitute fraud and embezzlement in behalf of the Court Judge and or Trustee or his Attorney(s)."[2] Mr. Hatten indicates that he has sent a copy of this document to the trustee, Kenneth Battley, via facsimile.

The court will treat Mr. Hatten's April 9th pleading as a motion for stay pending appeal. A motion for stay pending appeal "must ordinarily be presented to the bankruptcy judge in the first instance."[3] The power to grant a stay "should be sparingly

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[1] Docket No. 175.

[2] *Id.*

[3] Fed. R. Bankr. P. 8005.

employed and reserved for the exceptional situation."[4] This case does not present an exceptional situation that would justify a stay.

"An appellant from a money judgment may, as a matter of right, obtain a stay of execution by posting a supersedeas bond in an approved amount at any time, whether before or after the time of filing the notice of appeal."[5] Mr. Hatten has not offered to post a supersedeas bond. Further, the judgment he has appealed is not a money judgment. Instead, it is a judgment authorizing the trustee to disburse funds in the bankruptcy estate in accordance with the distribution scheme set out in 11 U.S.C. § 726. These funds do not belong to the debtor, nor does the debtor owe the bankruptcy estate any money.

The bankruptcy court should consider four factors in deciding whether to grant a discretionary stay pending appeal:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.[6]

None of these factors weigh in Mr. Hatten's favor. First, he has not made a strong showing that he is likely to succeed on the merits. The funds the trustee seeks to disburse are property of the bankruptcy estate. On approval of the trustee's final report

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[4] *Wymer v. Wymer (In re Wymer)*, 5 B.R. 802, 806 (B.A.P. 9th Cir. 1980), *citing People v. Emeryville*, 446 P.2d 790, 793 (Cal. 1961).

[5] *Wymer,* 5 B.R. at 806, referring to Fed. R. Civ. P. 62(d).

[6] *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

before distribution, and in accordance with 11 U.S.C. § 726(a)(2)(A) and (b), the trustee disbursed $29,071.19 to the State of Alaska in partial payment of its general unsecured Claim No. 3. The State returned $28,121.81 to the trustee because Mr. Hatten had, post-petition, repaid all but $949.38 of the State's claim.[7] On December 12, 2012, the trustee filed a motion to disburse the amounts he had received from the State to the other creditors in this case, in accordance with the distribution scheme outlined in § 726(a). The result of this distribution is that the other timely filed general unsecured claims will be paid in full, and the balance will pay, in part, the late-filed claim of the debtor's former spouse.[8]

The debtor takes issue with the payment to his former spouse. He argues that this distribution cannot be made because the trustee had earlier indicated that there were insufficient funds in the estate to pay her.[9] He also argues that the funds the trustee will disburse belong to him rather than to the estate. However, the funds are property of the bankruptcy estate, and their distribution is governed by § 726. Mr. Hatten has not made a strong showing that his appeal is likely to succeed.

The second factor to be considered by the court is whether Mr. Hatten will be irreparably injured absent a stay. As previously noted, the funds at issue are property of the bankruptcy estate, and must be disbursed in accordance with the provisions of the Bankruptcy Code. Under 11 U.S.C. § 726(a)(6), Mr. Hatten is not entitled to receive any

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[7] Mr. Hatten indicates that he reaffirmed this debt (Docket No. 170 at 2), although a reaffirmation agreement with the State has not been filed in this case.

[8] During the pendency of this chapter 7 case, the trustee has expended a considerable amount of time to resolve the claim filed by the former spouse.

[9] *See* Docket No. 146 at 3.

portion of these funds until all timely and tardily filed claims have been paid in full, with interest. That will not happen here. The tardily filed claims will not be paid in full, and none of the creditors will receive interest on their claims. Mr. Hatten is not irreparably injured under these circumstances.

The third and fourth factors also weigh against the granting of a stay. This bankruptcy case has been pending since 1998 because of the long delay in realizing the estate's major asset, an EXXON claim arising from the disastrous oil spill in Prince William Sound. The creditors in this proceeding have waited more than a decade to receive payment on their claims. After receiving the check from the State, the trustee duly noticed a hearing on his proposed distribution in December of 2011.[10] The hearing, scheduled for December 28, 2011, was continued for two months, to February 28, 2012, at Mr. Hatten's request to give him time to retain counsel.[11] The February, 2012, hearing was continued, again at Mr. Hatten's request, to March 28, 2012.[12] Mr. Hatten's request for a further continuance was denied.[13] He appeared at the March 28th hearing, without counsel. To permit further delay in the trustee's final distribution would be injurious to the creditors who have filed claims in this case. Additionally, because there is an interest in finality of

[10] Docket Nos. 158, 159.

[11] Docket No. 160.

[12] Docket Nos. 162, 163.

[13] Docket Nos. 164, 165.

bankruptcy court judgments,[14] and Mr. Hatten has not shown a substantial likelihood of success on the merits, a stay pending appeal would not serve the public interest.

For the foregoing reasons, Mr. Hatten's motion for stay pending appeal will be denied. An order will be entered consistent with this memorandum.

DATED: April 10, 2012.

BY THE COURT

/s/ Donald MacDonald IV
DONALD MacDONALD IV
United States Bankruptcy Judge

Serve: Debtor, Pro Se
Bonita Mahan, Pro Se Creditor
W. Artus, Esq.
K. Battley, Trustee
U. S. Trustee

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[14] *See Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 280 (9th Cir. 1992) (importance of finality in bankruptcy sales); *Dynamic Fin. Corp. v. Kipperman (In re N. Plaza, LLC)*, 395 B.R. 113, 120 (S.D. Cal. 2008) (interest in finality mentioned in connection with appeal of discovery orders issued by bankruptcy court).