UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

In re: RICKEY DAN YOUNG, Debtor.	Case No. A00-00193-DMD Chapter 7

MEMORANDUM REGARDING CLAIM OBJECTION

Kenneth Battley, the chapter 7 trustee in this case, has filed an objection to the secured proof of claim submitted by the State of Alaska.[1] For the reasons set forth herein, the trustee's objection will be overruled.

Background

Ricky D. Young was a fisherman who held limited entry permits to fish for salmon and herring in Prince William Sound. On February 7, 1991, he obtained a $140,000.00 loan from the State of Alaska. Young's wife, who is not a debtor in this case, co-signed the note. The loan was secured by Young's limited entry permits.[2]

Young had claims against Exxon arising from the 1989 Exxon Valdez oil spill. On September 4, 1996, he executed an assignment in favor of the State for $85,000.00 of the proceeds he would receive as a plaintiff from the Exxon Valdez Oil Spill ("EVOS") Litigation, Case No. A89-0095, pending in the United States District Court for the District of Alaska. This litigation dealt with the civil suits that had been commenced against Exxon in the wake of the oil spill. With few exceptions, the civil cases which had been filed by

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[1] The State has filed two claims. Claim No. 9 is a secured claim for $104,113.18. Claim No. 11, which amends Claim No. 9, is bifurcated into a secured claim for $57,000.00 and an unsecured claim for $22,541.34.

[2] The permits were named as collateral in a security agreement signed by Young alone on September 1, 1992. A copy of the security agreement is attached to the State's Claim No. 9.

thousands of plaintiffs seeking damages from Exxon were ultimately consolidated into the District Court action.[3] The District Court appointed Lynn Sarko, with the firm of Keller Rohrback, as administrator of the Alyeska Qualified Settlement Fund on August 31, 1994.[4] Sarko was appointed administrator of the Exxon Qualified Settlement Fund ("EQSF") on January 25, 1995.[5]

After the Youngs executed the assignments, the State sent copies of these documents to the "Alyeska Settlement Claims Administration, c/o Keller Rohrback," on September 12, 1996.[6] The Keller Rohrback firm sent a letter to the State on October 1, 1996, in which it acknowledged receipt of the assignments on behalf of Sarko, as the "Alyeska Qualified Settlement Fund Administrator."[7] The letter also advised that the assignment was for "the Alyeska settlement claims program and Exxon settlement proceeds, and [would] be applied towards any future payments."[8]

Young filed for chapter 7 relief on March 6, 2000. He listed his Exxon oil spill claim as personal property, value "unknown," and "subject to assignment/offset to State."[9] He scheduled the State of Alaska as an unsecured creditor for $85,000.00. Ken Battley was appointed the chapter 7 trustee. Battley employed William Artus as his attorney. Artus sent

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[3] *In re the Exxon Valdez*, USDC Case No. A89-0095 CV (HRH), Order No. 364, entered Jan. 28, 2004 (Docket No. 7835), at 11.

[4] *Id.*, Order Establishing AQS Fund, entered Aug. 31, 1994 (Docket No. 5783).

[5] State's Supplemental Opp'n to Trustee's Obj. to Claim No. 9, filed Sept. 8, 2010 (Docket No. 37), Ex. A.

[6] State's Opp'n to Trustee's Obj. to Proof of Claim No. 9, filed Jul. 9, 2010 (Docket No. 30), Ex. B at 1.

[7] *Id.*, Ex. B at 2.

[8] *Id.*

[9] Sched. B, Personal Property, filed Mar. 6, 2000 (Docket No. 1), ¶ 22.

a letter to the EQSF administrator in April of 2000, to give notice of Young's bankruptcy filing and the appointment of a trustee.[10]

The State filed Claim No. 9 on June 12, 2000. The claim was timely filed. It indicated that the State was secured by limited entry permits and assignments of $85,000.00 from both the debtor's and his spouse's Exxon Valdez Oil Spill claims. The claim was supported by copies of the promissory note and security agreement Young had signed, a copy of Young's assignment of his Exxon claim to the State, and a copy of the Keller Rohrback letter acknowledging that it had received notice of the assignment.

The EQSF sent the State a letter on September 6, 2002, which advised that "all of Mr. Young's EQSF proceeds, if any, are subject to his bankruptcy" and would therefore be forwarded to Artus, as the trustee's attorney.[11] Artus received $57,000.00 from the EQSF in the spring of 2010. The trustee's objection to the State's claim was filed thereafter. The parties have attempted to negotiate a settlement of this matter without success. On June 30, 2010, the State filed an amended claim (Claim No. 11) which gave credit for funds it had received from the liquidation of Young's fishing permits and on account of Mrs. Young's assignment of Exxon proceeds to it. The amended claim is bifurcated into a secured portion for $57,000.00, the amount the EQSF paid to the trustee on account of Young's Exxon claim, and an unsecured portion for $22,541.34.

Discussion

A. Sufficiency of Notice of Assignment

The State argues that its interest in the Exxon proceeds, created when Young executed the assignment in 1996, trumps any interest the trustee might have in the funds. It

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[10] This information is found in Mr. Artus's itemized billing statements. *See* Trustee's Reply to Opp'n to Obj. re: Claim No. 9, filed Aug. 11, 2010 (Docket No. 33), Ex. 2 at 1.

[11] State's Opp'n to Trustee's Obj. (Docket No. 30), Ex. C.

cites *In re Shangin*[12] in support of its position. Shangin owed $130,000.00 to ADF, Inc. In 1995, he executed an assignment in favor of ADF for $130,000.00 from his EVOS Litigation claims. Shangin also signed two notices of assignment. One was served on the EQSF administrator and the other was served on Exxon. Each notice advised that Shangin had assigned his interest in the first $130,000.00 of any proceeds he might receive from the EVOS Litigation to ADF.

After Shangin filed for bankruptcy protection, ADF filed a secured claim, based on Shangin's assignment. The bankruptcy trustee objected to the claim, arguing that a security interest could not be created in commercial tort claims. I rejected the trustee's contention and found that there had been a valid assignment of the tort claim. I cited a Tennessee bankruptcy court decision, *Fugate v. Carter Country Bank*,[13] in support of my decision. The court in *Fugate* found that notice of an assignment must be given to the obligor before it is effective against a bankruptcy trustee.[14] This notice requirement is also stated in Am. Jur. "A valid assignment must contain clear evidence of the intent to transfer rights, must describe the subject matter of the assignment, must be clear and unequivocal, and must be noticed to the obligor."[15] Further, the assignment of a chose in action is incomplete until notice of the assignment has been given to the obligor/debtor.[16]

In *Shangin*, ADF had given written notice of the assignment to both the EQSF administrator and to Exxon itself. Here, the State gave notice of Young's assignment only to the EQSF administrator. It did not give notice to Exxon, the obligor on Young's claim. After the hearing on the trustee's objection to the State's claim, I asked both parties to

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[12] 8 A.B.R. 433 (Bankr. D. Alaska 2007).

[13] *Fugate v. Carter Co. Bank (In re Webb),* 187 B.R. 221 (Bankr. E.D. Tenn. 1995).

[14] *Id.* at 228.

[15] 6 Am. Jur. 2d *Assignments* § 82 (Thomson-West 2008).

[16] *Id.*, § 104.

provide supplemental briefing on the issue of whether the State's notice of the assignment to the EQSF administrator could be considered as notice to the obligor. The trustee's supplemental brief, relying on *Fugate*, argues that notice to the EQSF administrator was ineffective against a bankruptcy trustee. The State argues that once the EQSF was established, it was the only proper party for payment of the Exxon claims and there was no longer an obligation to provide notice of assignment to Exxon.

The State has provided a copy of the District Court's order which created the EQSF. The order is dated January 25, 1995. It specifies that the EQSF is to be administered "in accordance with the requirements of the Internal Revenue Code of 1986 (the Code) § 468B" and related Treasury Regulations.[17] Section 468B contains special rules for designated settlement funds.[18] Under § 468B, the EQSF was treated as the owner of any funds it held, and was the entity responsible for paying the civil claims which had been asserted against Exxon in the EVOS Litigation.[19] After the EQSF was established and funded by Exxon, through the original order which established it as well as several subsequent orders entered by the District Court, Exxon's liability for the EVOS Litigation claims was extinguished.[20]

The EQSF was established in January of 1995. In 1996, after the State acquired Young's assignment of his interest in the EVOS Litigation, it gave notice of the assignment to the proper obligor: the EQSF administrator. Notice to Exxon was not required.

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[17] State's Suppl. Opp'n to Trustee's Obj. (Docket No. 37), Ex. A (Order Establishing the Exxon Qualified Settlement Fund and Appointing an Administrator), at 2.

[18] 26 U.S.C. § 468B.

[19] 26 U.S.C. § 468B(b)(3)(C), (d)(2)(D).

[20] 26 U.S.C. § 468B(d)(2)(A), *see also* State's Suppl. Opp'n to Trustee's Obj. (Docket No. 37), Ex. A (Order Establishing the Exxon Qualified Settlement Fund and Appointing an Administrator), at 7. In the EVOS Litigation, the District Court issued several subsequent orders which reiterated this point.

B. The Trustee's Surcharge and Estoppel Arguments

When Young filed his bankruptcy petition, the State held a valid assignment of $85,000.00 of his EVOS Litigation claim. Young scheduled his interest in the EVOS Litigation as being subject to an assignment to the State. The State filed a timely proof of claim which established that Young had assigned it a portion of his Exxon claim. The EQSF administrator was aware of the State's assignment, but nonetheless transmitted $57,000.00 of Young's Exxon proceeds to the bankruptcy trustee. The trustee's attorney argues that the State is now, somehow, estopped from claiming an interest in the Exxon proceeds because it did not object to the EQSF administrator's transfer of the fund to the trustee. The trustee also argues that he should be able to surcharge the State's interest in the proceeds because of the effort he has expended in tracking Young's Exxon claim and collecting the funds.

In September of 1996, when Young executed the assignment to the State, no one could have anticipated the lengthy twists and turns that the EVOS Litigation would take. Further, it would have been impossible for either Young or the trustee to estimate, in 2000 when this bankruptcy was filed, the ultimate value of Young's Exxon claim. Now, more than a decade later, final distributions to the plaintiffs in the EVOS Litigation are being made. Given these uncertainties, the trustee cannot be faulted for tracking and collecting the Exxon proceeds in this case. However, the fact that he has done so does not change the nature of the State's interest in those funds. When Young's chapter 7 petition was filed, the State held a valid assignment as to $85,000.00 of Young's Exxon proceeds. As a consequence of the assignment, neither Young nor the bankruptcy estate had any interest in Young's Exxon claim unless the value of that claim exceeded $85,000.00.[21] The State owned the Exxon claim up to the amount of its assignment.

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[21] *Ketchikan Shipyard, Inc. v. Anchorage Nautical Tours, Inc. (In re Anchorage Nautical Tours)*, 102 B.R. 741, 744-45 (B.A.P. 9th Cir. 1989).

The trustee argues that he is entitled to surcharge the Exxon proceeds received in this case for administrative costs under 11 U.S.C. § 506(c). Section 506(c) allows a trustee to recover the costs and expenses of preserving or disposing of secured property to the extent of any benefit to the holder of a claim secured by such property. There are problems with the trustee's argument. First, despite the fact that the State filed a secured proof of claim, it is not a secured creditor as to the Exxon proceeds. Young's assignment transferred his interest in the Exxon proceeds, up to the sum of $85,000.00, to the State outright. Under these circumstances, § 506(c) doesn't apply. The cases cited by the trustee deal with secured claims, not assignments.[22] They do not aid his argument here.

Further, even assuming the State held a secured claim, the trustee and his professionals seek to surcharge the State for roughly $12,000.00 in this case. This amount is based on a calculation of the trustee's statutory commission under 11 U.S.C. § 326 and roughly $4,000.00 in attorney's fees and costs incurred by Mr. Artus for corresponding with the EVOS administrator, obtaining approval of the employment of professionals for the trustee, and objecting to proofs of claim. Under the circumstances found in this case, there would be no justification to surcharge a secured creditor for this amount. The trustee's commission is calculated on the full amount of the State's interest. The attorney's fees and costs are based upon the ministerial functions provided by Mr. Artus in tracking the Exxon claim in this case. These efforts provided no direct benefit to the State. There is no basis for a § 506(c) surcharge in this instance.

Finally, the trustee asserts a quasi-estoppel argument to support payment of the bankruptcy estate's administrative claims from the Exxon proceeds. He says the State never objected to the EQSF administrator's disbursement of the Exxon proceeds to him or advised that it would object to the payment of administrative expenses from those proceeds. This

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[22] The trustee cites *Heidelberg Harris, Inc. v. Grogan (In re Estate Design and Forms, Inc.)*, 200 B.R. 138 (E.D. Mich. 1996); *In re Guterl Special Steel Corp.*, 316 B.R. 843 (Bankr. W.D. Pa. 2004); and *In re Machinery, Inc.*, 287 B.R. 755 (Bankr. E.D. Mo. 2002).

argument overlooks two factors: the uncertainty in the value of Young's Exxon claim and the fact that the State filed a timely proof of claim at the onset of this case which gave the trustee notice of its assignment from Young. The trustee himself concedes that, had the punitive damage award not been reduced by half in the EVOS Litigation, Young's EVOS claim would have been large enough to pay not only the State's "secured" claim and estate administrative expenses in full, but also to pay in full the other creditors in this case and give a "significant" disbursement to the debtor.[23] Neither the State nor the trustee can be faulted for their conduct in this case, given the uncertainties in the EVOS Litigation. There is no basis for application of the doctrine of quasi-estoppel under such circumstances.

Conclusion

I conclude that all EVOS Litigation funds which the trustee has received from the EQSF administrator belong to the State, by virtue of its prepetition assignment. The State owns these funds outright; it is not a secured creditor. The trustee should turn these funds over to the State, without imposition of a surcharge of any kind.

The trustee's objection to the State's Claim No. 9 will be overruled. However, the court overrules the State's secured claim on a different ground. Claim No. 9 was amended by Claim No. 11. The State's secured proof of claim, in the sum of $57,000.00 as reflected on its amended Claim No. 11, will be disallowed because the State is not a secured creditor. It owns the EVOS Litigation proceeds outright. The general unsecured portion of the State's Claim No. 11, in the sum of $22,541.34, is allowed.

An order and judgment will be entered consistent with this memorandum.

DATED: October 18, 2010.

DONALD MacDONALD IV
United States Bankruptcy Judge

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[23] Trustee's Reply to Obj. re: Claim No. 9 (Docket No. 33), at 3-4.