

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT



In re:

**CARLYLE E. DEZOTELLE
CANDIE M. DEZOTELLE,
Debtors.**

**Case # 01-10539
Chapter 7**

Appearances: Carlyle E. Dezotelle,
Pro Se
707 Route 108 South
E. Fairfield, VT 05448

Douglas J. Wolinsky, Esq.
Chapter 7 Trustee
P.O. Box 1489
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MEMORANDUM OF DECISION
ON DEBTORS' MOTION FOR ABANDONMENT

On October 29, 2002, the Court held a hearing on Debtors' Motion for Abandonment (doc. #16) and the Chapter 7 Trustee's Objection (doc. #18) to that Motion. The Debtors sought to verify that they were entitled to exempt \$6,444 of the cash from Carlyle Dezotelle's share of inheritance from his father's probate estate; and to get an Order directing the trustee to abandon Carlyle Dezotelle's one-quarter interest in real property that was also part of his inheritance. The trustee did not object to the exemption of the \$6,444, but did object to the Debtors' request for the trustee's abandonment of Carlyle Dezotelle's interest in the real property. Based upon the papers and the representations made at the hearing, the Court allowed the Debtors to exempt the \$6,444, but sustained the trustee's objection as to Debtor Carlyle Dezotelle's request that for abandonment of the estate's interest in the Debtor's interest in the real property. This decision is issued to elucidate the Court's ruling.

Legal Analysis

Abandonment of property of the estate is governed by 11 U.S.C. § 554. The subsection pertinent to the instant motion provides:

- (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

While property interests are created and defined by state law, see In re Winsted Memorial Hosp., 249 B.R.

588, 591 (Bankr. D. Conn. 2000) (quoting Butner v. United States, 440 U.S. 48, 55 (1979)), the subject property interest is clearly property of the debtor's estate. See 11 U.S.C. § 541. A debtor's interest in an inheritance from a decedent's estate is property of the debtor's bankruptcy estate. See generally Butner, 440 U.S. at 55.

It is within the case trustee's discretion whether to abandon property of the bankruptcy estate. See In re Interpictures, Inc., 168 B.R. 526, 535 (Bankr. E.D.N.Y. 1994) ("From the beginning of modern bankruptcy law, the courts have uniformly held that a trustee's power to abandon property is discretionary.") (citations omitted). This discretion is "bound only by that of the court." Id. (citing Goger v. United States (In re Janmar, Inc.), 4 B.R. 4 (Bankr. N.D. Ga. 1979)). However, there is no duty to abandon property unless administration of the property would cause expense to the estate. The fundamental inquiry set forth in the statute, in fact, is whether the property is burdensome to the estate or of inconsequential value. See id. Moreover, the party seeking the trustee's abandonment of property "must prove by a preponderance of evidence that the property has no greater than inconsequential value" to the bankruptcy estate. In re Siegel, 204 B.R. 6, 8 (Bankr. W.D.N.Y. 1996); see also 11 U.S.C. § 554(b).

The Instant Case

As the trustee raises no objection to the Debtors' exempting Carlyle Dezotelle's cash inheritance of \$6,444, the Court need not address that matter.

However, the trustee raises two arguments in support of his objection to the abandonment of Carlyle Dezotelle's interest in the real property. First, the trustee points out that the real property at issue is still subject to probate in Vermont's Franklin County Probate Court. Second, until the real property is sold, neither the trustee nor the Debtors can ascertain its actual fair market value or what funds from the sale of the real property will be available to the Debtors' bankruptcy estate. On this point, the Court finds it significant that the probate schedule for the decedent's estate reflects a fair market value of \$100,000 for the subject real property. It is undisputed that Mr. Dezotelle is entitled to one-fourth of the value of the real property. Assuming this real property sells at the value listed on the probate schedule, Mr. Dezotelle's

interest in the real property will be approximately \$25,000. In this event, the proceeds from the sale of the real property will exceed what the Debtors have claimed as exempt¹ and will amount to a sum that one would hardly call inconsequential. Since the trustee has shown there is consequential value in Mr. Dezotelle's interest in the inheritance, it would be a breach of the trustee's fiduciary duty to abandon this interest. See generally In re Grodel Mfg., Inc., 33 B.R. 693, 694 (Bankr. D. Conn. 1983) ("It is well settled that trustees in bankruptcy occupy a fiduciary relationship with regard to administration of estate assets. This relationship is all pervasive. All of a trustee's obligations are fiduciary obligation." (citation omitted)). Thus, the trustee is correct to object to Debtors' Motion for Abandonment.

The Court finds that the chapter 7 trustee has raised a strong presumption that there is consequential value in the real property sought to be abandoned. Moreover, at the October 29, 2002 hearing, Debtor Carlyle Dezotelle admitted that his one-fourth interest in the real property from his deceased father did, indeed, have significant value. The Debtor requested an opportunity to work with the chapter 7 trustee to ensure that his interest in the real property was properly turned over to his bankruptcy estate, if the Court found that abandonment was not permitted.

Conclusion

Since the Debtors' Motion for Abandonment as to the \$6,444 is actually an unopposed motion to exempt this sum from the inheritance proceeds, and complies with the exemption statute, that portion of their Motion is granted. However, the Court denies the Debtors' Motion for Abandonment of Debtor Carlyle Dezotelle's one-fourth interest in real property, on the grounds that: (1) Mr. Dezotelle did not meet his burden of proof to show that the subject interest in real property is of inconsequential value to his

¹The trustee and Debtor Carlyle Dezotelle agreed on the record that the bankruptcy estate is due approximately \$19,000 from Mr. Dezotelle's one-fourth interest in his deceased father's probate estate:

	\$100,000	Estimated fair market value of real property subject to the jurisdiction of the Franklin County Probate Court
	x 25%	Carlyle Dezotelle's share of his deceased father's estate
	\$ 25,000	Approximate value of Carlyle Dezotelle's 25% interest in the real property
<i>Less</i>	<u>\$ 6,444</u>	Claimed exempted portion of inheritance
	<u>\$ 18,556</u>	Approximate value of inheritance that is property of Carlyle Dezotelle's bankruptcy estate

bankruptcy estate; and (2) the chapter 7 trustee produced credible evidence that the subject interest in real property has consequential value to Mr Dezotelle's bankruptcy estate.

This Memorandum constitutes the Court's findings of fact and conclusions of law.

Rutland, Vermont
December 9, 2002

A handwritten signature in black ink, appearing to read "Colleen A. Brown". The signature is written in a cursive style with a horizontal line underneath it.

Colleen A. Brown
United States Bankruptcy Judge