

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re

Case No. 8:94-bk-11705-KRM
Chapter 7

VINCENT J. MAYER et ux.,

Debtors.

R. JAY HARPLEY, TRUSTEE,

Plaintiff,

vs. Adversary No. 8:02-ap-655

BILLY F. HATCH et ux., et al.,

Defendants.

ORDER ON DEFENDANTS'
MOTION FOR STAY PENDING APPEAL

This case came on for hearing on July 22, 2005, on the Motion for Stay Pending Appeal filed by Virginia D. Hatch and Billy F. Hatch (the "Hatches") and their Supplemental Brief in Support of the Motion (Document Nos. 124 and 148) and on the Trustee's Response in Opposition to the Hatches' Motion (Document No. 151). The Hatches appeared at the hearing by telephone.

The Hatches have filed a notice of appeal of this Court's Final Judgment and related Findings of Fact and Conclusions of Law on March 18, 2005 (Document Nos. 119 and 120), determining that the debtor's estate is the owner of certain shares of Wal-Mart stock bearing the name of debtor Ramona Mayer.¹ The Hatches claim that they are the owners of this stock.

¹ In March 2003, this Court granted partial summary judgment to the trustee, determining that the bankruptcy estate owns certain shares of Wal-Mart stock. The District Court reversed and remanded for an evidentiary hearing solely on the issue of whether the Hatches could overcome the presumption that the debtor (Ramona Mayer) owned the shares of Wal-Mart stock on which her name appears. Following an evidentiary hearing, this Court entered the Final Judgment on March 18, 2005, from which the Hatches now appeal.

The Wal-Mart stock that is the subject of the appeal, has been sold by the trustee who is holding about \$190,195 in net proceeds.² The trustee now seeks to distribute these funds -- to pay all administrative and unsecured claims in full; any funds remaining would likely be paid to the debtor, Ramona Mayer.

The Hatches have not met their burden of showing that there is a likelihood of success on the merits on their appeal.³ Nevertheless, the Court concludes that it is an appropriate exercise of its discretion under Fed. R. Bankr. P. 8005, to hold in abeyance the distribution of the assets that are the very subject of the appeal.⁴ This Court will defer authorizing a distribution of those assets pending conclusion of the appeal from the Final Judgment. Accordingly, it is hereby

ORDERED:

The Appellants' motion for stay of enforcement of the Final Judgment is denied, in part; but the funds in the estate that are the subject of the appeal will not be distributed until conclusion of the appeal or further order of this Court.

DONE AND ORDERED in Tampa, Florida,
this 4th day of August, 2005.

/s/ K. Rodney May
K. RODNEY MAY
United States Bankruptcy Judge

Copies Furnished To:

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² The trustee sold the 3,931 shares of Wal-Mart stock for about \$215,300 and paid income tax of about \$25,414 on the sale.

³ See Ruiz v. Estelle, 650 F.2d 555, 565 (11th Cir. 1981); In re Lickman, 301 B.R. 739 (Bankr. M.D. Fla. 2003).

⁴ The second sentence of Bankruptcy Rule 8005 is an exception to Bankruptcy Rule 7062 (which incorporates the requirements of Fed. R. Civ. P. 62). Cf. Georgia Jewelers, Inc. v. Bulova Watch Co., 302 F.2d 362, 370 (5th Cir. 1962).

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