

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA
3

4 In re:) Case No. 01-25377-B-7
5 BEAU LAYTON-RALPH,) Adversary No. 05-2036
6)
7 Debtor.)
8 MICHAEL BURKART,)
9 Plaintiff,)
10 v.)
11 SHELLEY EVANS,)
12 Defendant.)
13

14 **MEMORANDUM DECISION**

15 I. INTRODUCTION

16 On June 1, 2005, the court held a trial in the above adversary
17 proceeding brought by the plaintiff chapter 7 trustee Michael
18 Burkart (the "Trustee") to obtain turnover of property of the
19 estate. This action had its genesis in a prior action by the
20 Trustee to deny the discharge of the debtor Beau Layton-Ralph (the
21 "Debtor") and for turnover of property of the estate. The
22 defendant in this action, Shelley Evans, ("Evans") is the Debtor's
23 sister.

24 The court has jurisdiction in this matter under 28 U.S.C.
25 section 1334(b). It is a core proceeding under 28 U.S.C. section
26 157(b)(2)(E), in which the court may make its own findings of fact
27 and conclusions of law. This decision constitutes the court's
28 findings of fact and conclusions of law under Federal Rule of Civil

1 Procedure 52, as incorporated by Federal Rule of Bankruptcy
2 Procedure 7052.

3 II. BACKGROUND TO THIS ACTION

4 The Debtor filed a voluntary chapter 7 case on May 2, 2001.
5 On November 5, 2001, the Trustee filed a complaint objecting to the
6 Debtor's discharge under various provisions of Bankruptcy Code
7 section 727 and also seeking a turnover of property of the estate.
8 The gist of the complaint was that the Debtor's schedules were
9 inaccurate, because they failed to disclose her interest in various
10 estate assets. At the conclusion of a two-day trial, the court
11 issued a Memorandum Decision dated November 7, 2002, concluding
12 that the Debtor would be denied her discharge.

13 In the Memorandum Decision, the court found that the Debtor
14 had failed to disclose the existence of three pieces of jewelry,
15 consisting of a 2.5 carat diamond ring, a 1.3 carat diamond ring,
16 and a diamond tennis bracelet (collectively, the "Jewelry"), in her
17 Schedules of Assets and Liabilities . The Memorandum Decision at
18 pages 4-5 states, with respect to the Jewelry, that:

19 At trial both the Debtor and her sister Shelly [sic]
20 Evans ("Evans") testified that the Debtor had sold these
21 items to Evans in June 1999 in forgiveness of loans Evans
22 had made to the Debtor. This testimony was at odds with
23 both the Debtor's and Evans's prior deposition testimony
24 that the three items were given to Evans as collateral
25 for the loans. The court did not find the inconsistent
26 testimony at trial, when the parties understood the
27 import of the distinction between a purchase and a
28 pledge, credible. Accordingly, it finds that this
expensive jewelry is property of the estate ...

25 Judgment was delayed following the trial and this decision to
26 permit the parties to brief legal issues concerning the Debtor's
27 interest in her ex-husband's retirement plan. Following resolution
28 of this issue, the court entered a Judgment on April 25, 2003 (the

1 "Judgment"), which provides in pertinent part that:

2 Three items of jewelry, described as (1) a diamond
3 wedding/engagement ring with a 2.72 carat diamond; (2) a
4 diamond wedding/engagement ring with a 1.41 carat
5 diamond; and (3) a 6 carat (total weight) diamond tennis
6 bracelet, are property of the chapter 7 estate. Beau
Layton-Ralph is hereby ordered to turn these items of
jewelry over to Michael Burkart, the Trustee, and to the
extent such items are not in her possession, assist and
cooperate with the Trustee in recovery of such items.

7 The Judgment was not appealed.

8 III. THIS ADVERSARY PROCEEDING

9 On January 24, 2005, the Trustee commenced the present
10 adversary proceeding against Evans seeking turnover of the Jewelry.
11 The action was based on the Judgment and the provisions of 11
12 U.S.C. section 542(a). According to the Complaint, Evans was in
13 possession of the Jewelry and had failed to account for or turn
14 over this estate asset.

15 The court denied the Trustee's motion for summary judgment on
16 the basis that Evans was not in privity with the Debtor, the only
17 defendant in the prior action. Prior to trial, the Trustee
18 provided additional authorities for the proposition that the
19 bankruptcy court's *in rem* jurisdiction over property of the estate
20 makes the Judgment binding as to the entire world, even non-
21 parties. Without deciding the *res judicata* effect of the Judgment
22 on Evans' claimed interest in the Jewelry, the court heard
23 additional testimony regarding the underlying transaction between
24 the Debtor and her sister.

25 IV. THE TRIAL

26 Evans' testimony at trial buttressed the court's prior
27 conclusion that Evans obtained the Jewelry as a pledge to secure
28 repayment of her loans to the Debtor. Her June 2002 deposition

1 testimony remains strikingly candid. During the deposition, taken
2 well before either trial, Evans contradicted the Trustee's attempts
3 to characterize the transaction as a purchase and suggested in her
4 own words that the Jewelry was "collateral" for loans to her
5 sister. When asked by the Debtor's attorney whether Evans had
6 "purchased" the jewelry, she responded unequivocally that "I didn't
7 purchase it."

8 Evans testified at this trial that she was "confused" during
9 the deposition. However, the confusion resulted only after Evans
10 learned she might have to return the Jewelry to the Trustee. The
11 court remains persuaded that the Jewelry was pledged to Evans to
12 secure the Debtor's repayment of loans totaling \$6,000. Any other
13 version of the transaction is riddled with inconsistencies that
14 Evans cannot credibly explain.

15 According to Evans' testimony, she sold the Jewelry to her
16 husband's friend for \$6,000 in November 2002, immediately after the
17 court's unfavorable decision but before entry of the Judgment. Due
18 to this development, the Trustee presented evidence of the value of
19 the Jewelry as an alternative to recovery of the Jewelry itself.

20 Alison LeBaron, an expert jewelry appraiser, testified that
21 the three items in question would have a total fair market value of
22 \$11,200 if sold by a private person in the secondary (or resale)
23 market. She based her testimony on earlier appraisals, lab reports
24 and receipts for the items in question. Evans did not present any
25 evidence to rebut the values established by LeBaron. Rather, she
26 attempted to demonstrate that the items appraised by LeBaron were
27 not necessarily the same three items of jewelry identified in the
28 Judgment.

The Judgment refers to a 2.72 carat diamond ring. This description is an obvious typographical error in that the original Memorandum Decision (based on a June 18, 1999 writing signed by Evans) refers to a 2.5 carat diamond ring. Evans did not question that the diamond tennis bracelet, which is the subject of the writing and the Memorandum Decision is the same item LeBaron appraised.

The final item is a diamond ring, described in the June 18, 1999 document, as having 1.33 carats. Donald Evans, the defendant's husband, testified that he was familiar with one of the rings that the Debtor gave to his wife in 1999. He described this ring as "small, less than one carat in size." He further testified that he had been present when the Debtor's former husband, purchased the ring in 1995 for \$500 in San Francisco. LeBaron based her appraisal on a 1986 appraisal of a 1.4 carat ring, which would necessarily be a different ring. The court is not persuaded, however, that LeBaron relied on inaccurate documents. Until this trial, Evans did not challenge that she received a diamond ring of approximately 1.3 carats, certainly not the "small" diamond described by her husband.

Accordingly, the court concludes that the total fair market value of the Jewelry is \$11,200. The individual pieces have the following values: 1) the 2.5 carat diamond ring - \$8,000; 2) the 1.4 carat diamond ring - \$2,000; and 3) the tennis bracelet - \$1,200.

V. CONCLUSION

Based on the record in this trial, the court concludes that the Jewelry is property of the estate. It does not need,

1 therefore, to reach the legal issue of the *res judicata* effect of
2 the Judgment on Evans.

3 Under 11 U.S.C. section 542(a), a person "in possession,
4 custody, or control, during the case," of estate property "shall
5 deliver to the trustee, and account for, such property or value of
6 such property ..." Evans was admittedly in possession of the
7 Jewelry when this case was filed. She remained in possession until
8 the court's ruling in November 2002 that the Jewelry was property
9 of the estate. Immediately thereafter, she sold it to a friend.

10 The Trustee is entitled under section 542(a) to turnover of
11 the Jewelry, or, alternatively, its established value of \$11,200.
12 The Trustee shall present a proposed judgment consistent with this
13 decision.

14 Dated: June 2, 2005

15
16 /s/_____
17 JANE DICKSON McKEAG
18 United States Bankruptcy Judge
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