UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Ferris J. Alexander, Sr.,

Debtor

James E. Ramette, Trustee of the
Bankruptcy Estate of Ferris J. Alexander, Sr.,

Appellee,

VS.

Carolyn J. Alexander and Wilson Law Firm,

Appellants,

Paine Webber Incorporated and
Meshbesher & Spence, Ltd.,

Defendants.

Civ. No. 3-95-805
BKY No. 4-90-6274-NCD
ADV No. 4-95-30-NCD

NMMORANDUM OPINION
AND ORDER

Thomas Bennett Wilson III and Gayle Gaumer, Wilson Law Firm, Edina, Minnesota, for Appellants.

Matthew R. Burton, Fuller, Seaver & Ramette, Edina, Minnesota, for Appellee.

Introduction

Before the Court is Appellants' appeal from four orders of the United States Bankruptcy Court.(FN1) The Orders: 1) granted Paine Webber Incorporated's "PWI") request for garnishment discharge and released PWL from further liability with respect to a PWI account in the name of Carolyn J. Alexander ("Alexander"); 2) granted partial summary judgment in favor of Trustee James E. Ramette, ("Trustee") against Wilson Law Firm ("Wilson"); 3) granted summary judgment in favor of Trustee against Alexander and ordered PWI to liquidate the account; and 4) authorized Trustee to sell stock formerlv included in the PM account. Appellants argue that the bankruptcy court lacked subject matter jurisdiction and misapplied state law with regard to the subject matter of the orders. For the reasons outlined below, this Court will affirm the bankruptcy court's decisions.

Background

Alexander is the daughter of the debtor, Ferris J. Alexander, Sr. ("Debtor"), and the registered owner of Paine Webber account number LO-84498 ("account"). The United States became a creditor of the account by virtue of a judgment entered against Debtor in a forfeiture proceeding in the United States District Court for the District of Minnesota on August 6, 1990. On October 23, 1990, the United States served a writ of execution against the account on PWI to collect a portion of the judgment. Alexander disputed the lien and moved the district court to set aside the writ of execution through her attorneys, Meshbesher & Spence ("Meshbesher"). The United States opposed the motion, claiming that Debtor had fraudulently conveyed the account to Alexander. Debtor declared bankruptcy on November 5, 1990, before the District Court had ruled on this issue. The district court noted that " [b] oth the government and counsel for the Alexander family members then requested referral of the issue to the bankruptcy court for resolution." U.S. v. Alexander, Crim. No. 4-89-85 (D. Minn. July 23, 1991) attach. at Appellant's app. 31-32. Accordingly, the district court referred the matter to the bankruptcy court. The referral order was based upon a finding by the district court that "claims against the accounts in question are 'related to' the Ferris Alexander bankruptcy case." Id. This finding was not disputed by the parties.

In December, 1993, Meshbesher withdrew from representing Alexander for nonpayment of fees. Wilson subsequently replaced Meshbesher as counsel for Alexander in this matter. On February 8, 1994, Meshbesher filed an attorney's lien with PWI on the account in the amount of $ 12,000.41.

On June 10, 1994, the bankruptcy court entered judgment in favor of Trustee and against Alexander based upon a finding that Debtor had fraudulently conveyed the PWI account and other assets to Alexander. In an attempt to collect on the judgment, Trustee served a garnishment summons on PWI with respect to the account on December 12, 1994. Trustee served Wilson with notice of the summons.

On December 21, 1994, Wilson served PWI with notice of an attorney's lien on the account in the amount of $20,000-00.

Wilson recorded its attorney's lien with the Minnesota Secretary of State on December 23, 1994. On January 11, 1995, the United States released its writ of execution on the account.

On January 20, 1995, Trustee served PWI with a writ of execution. PWI refused to honor the execution, citing the competing claims to the account. Afterwards, on February 3, 1995, Trustee initiated an adversary proceeding before the bankruptcy court seeking an order: 1) authorizing turnover of the account by PWI; 2) allowing Trustee to liquidate the account and apply the proceeds in satisfaction of Trustee'sjudgment; and 3) entering judgment against PWI for the balance due to Trustee. On April 12, 1995, the bankruptcy court granted PWI's request for a garnishment discharge pursuant to Minnesota Statutes Section 571.79(b) and released PWI from further liability with respect to the account. The bankruptcy court ordered PWI to hold the account pending further instruction.

On April 24, 1995, the bankruptcy court granted partial summaryjudgmcnt in favor of Trustee and against Wilson, finding that Trustee's garnishment lien was superior to Wilson's attorney's lien. Trustee and Meshbesher subsequently entered into an agreement whereby Trustee allowed Meshbesher's lien in the amount of $5,500.00.

On July 12, 1995, the bankruptcy court granted summary judgment in favor of Trustee and against Alexander. Accordingly, the court ordered PWI to liquidate the account and pay the proceeds to Trustee, who was then to pay $5,500.00 to Meshbcsher. Pursuant to this order, PWI paid Trustee $6,923.07 and delivered to Trustee a stock certificate for 308 shares of Burlington Resources, Inc. which Trustee could not liquidate without Alexander's signature. On August 23, 1995, the bankruptcy court authorized Trustee to sell the stock. Upon receipt of the bankruptcy court's order, Trustee liquidated the stock and paid $5,500 of the proceeds to Meshbesher.

Issues on Appeal

Four issues are raised on appeal; the first by Appellee, and the remaining three by Appellants. They are:

1 . Whether liquidation of the PWI account rendered Appellants' appeal moot;

2. Whether the present matter constituted a core proceeding under 28 U.S.C. Section 157 and was therefore properly resolved by the bankruptcy court;

3. Whether Trustee's garnishment of the account was effective; and

4. Whether Wilson's attorney's lien has priority over trustee's garnishment summons.

Analysis

I. Standard of Review

A district court reviews a bankruptcy court's findings of fact under a clearly erroneous standard. Wieczorek v. Woldt an re Kiellsen), 53 F.3d 944, 946 (8th Cir. 1995) (per curiam). The bankruptcy court's conclusions of law, however, are reviewed by this Court de novo. Id.; see also Q.T. Dev. Corp. v. Barnes (In re Oxford Dev., Ltd.), No. 95-1330, at 3-4 (8th Cir. Oct. 10, 1995) (citing (citing Wegner v. Grunewaldt, 821 F.2d

1317) 1320 (8th Cir. 1987)). A bankruptcy court's equitable determinations are reviewed for abuse of discretion. Q.T. Dev. Co , at 4 (citing Foy v. Klaprmeier, 992 F.2d 774, 779 (8th Cir. 1993)).

II. Mootness of Appellants' Claims

Appellee argues that the present litigation cannot affect the legal rights of Appellants because the property at issue (namely, the account) has been liquidated. This contention is without merit. If this Court finds that Wilson's interest in the account was superior to that of Trustee, Wilson will have an interest in the proceeds of the account. Alexander stands to benefit from this transfer of proceeds through the resulting reduction in her debt to Wilson. 'As a practical matter the debtor retains an interest in the outcome of the case because the proceeds paid pursuant to the security agreement reduce or eliminate the debt secured by those proceeds." Williams v. Dow Chemical Co., 415 N.W.2d 20,27 (Minn. Ct. Appl. 1987). Thus, the parties'legal rights are very much at issue in the present matter.

Appellee further argues that Appellants' appeal is moot because Appellants failed to seek a stay of any of the bankruptcy court's orders. In support of this proposition, Appellee cites In Re Mann, 907 F.2d 923 (9th Cir. 1990). That case, however, does not apply to the present facts. In Mann, the Ninth Circuit Court of Appeals held the Debtor's claim moot because Debtor sought to set aside the sale of foreclosed real property to a good-faith purchaser, without seeking or obtaining a stay of the bankruptcy court's 9 s order. Under I I U.S.C. Section 363(m), the rights of a good-faith purchaser are protected by prohibiting the district court's decision on an appeal of a bankruptcy court's ruling from affecting a good-faith purchaser's rights, unless the debtor first obtains a stay. Because the purchaser in Mann was a good-faith purchaser for value, the court was not empowered to set aside the sale. In the present matter, Appellants do not seek to set aside a sale of foreclosed real property; rather, they simply seek redistribution of the proceeds of the now-liquidated account. Under the basic jurisdictional authority granted the Court by 28 U.S.C. Section 158(a), this Court has the power to reverse decisions of the bankruptcy court, and in this case has the capacity to order a redistribution of the account proceeds, if such a course of action is war-ranted. Because a favorable decision will affect the legal rights of the parties in those proceeds, Appellants' appeal is not moot.

III. Bankruptcy Court Jurisdiction and Core Proceedings

Appellants set forth several intertwined contentions concerning the bankruptcy court's inability to exercise jurisdiction over the original fraudulent conveyance proceeding and the later, related matters. Appellants argue that the bankruptcy court abused its discretion in determining that the present matter involved a "core proceeding" under 28 U.S.C. Section 157(b)(2), and that the bankruptcy court had nojurisdiction to render a final determination.(FN2)

A. Northern Pipeline and the Congressional Response

Appellants first contend that the bankruptcy court lacked jurisdiction to decide the present matters under Northern Pipeline Construction Co. v. Marathon Pipeline Co.,58 U.S. 50, 102 S458 U.S. 50, 102 S. Ct. 2858 (1982). In Northern Pipeline, the Bankruptcy Reform Act of 1978 was declared unconstitutional because Congress created non-Article III courts and vested them with Article III powers, thereby encroaching upon the judiciary. In the Bankruptcy Reform Act of 1978, bankruptcy courts were given directjurisdiction over bankruptcy-related matters and were labeled "adjuncts" of the district courts. Congress reformed the Act, as Appellants recognize, in passing the Bankruptcy Amendments and Federal judgeship Act of 1984. See Celotex Corp, v. Edwards, 115 S. Ct. 1493, 1505 (1995) (Stevens J., dissenting). (FN3)

Springing from the 1984 Amendments, Section 157 allows bankruptcy courts, upon referral from the district courts, to "hear and determine all cases under title I I and all core proceedings arising under title I 1, or arising in a case under tide I I.... and may enter appropriate orders and judgments..... Congress provides a non-exclusive list of proceedings which Congress deemed to be "core proceedings." 28 U.S.C. § 157(b)(2). Section 157 further provides that where a proceeding is not a core proceeding, but is "related to" a case under title 11, the bankruptcyjudge may hear the case as an adjunct of the district court and submit proposed findings of fact and conclusions of law to the district court. Under Section 157(c)(2), however, the parties may consent to the bankruptcy court's jurisdiction and authority to enter judgments in "related" proceedings.

Appellants claim that the adjudication of rights in the account cannot be decided by a bankruptcy court because it involves purely "private rights," and therefore must be decided by an Article III court. Appellants' Brief 3. The Northern Pipeline Court stated that the "adjudication of state-created private rights" must be performed by an Article IIIcourt, but distinguished these private rights from the apparently public right of a discharge in bankruptcy. The Court explained that these public and private rights must be separated:

> But the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case. The former may well be a "public right," but the latter obviously is not.

Northern Pipeline, 458 U.S. at 71, 102 S. Ct. at 2871.

Congress noted and specifically incorporated this distinction into the Bankruptcy Amendments of 1984 by promulgating a non-exclusive list of "core proceedings" (i.e., proceedings concerning the restructuring of debtor-creditor relations which lies at the core of the federal bankruptcy power) in 28 U.S.C. Section 157(b)(2). Congress

stated that bankruptcy courts may hear and determine these core proceedings in a title I I matter. Id. In responding to the Supreme Court, Congress clearly desired to clarify which proceedings implicated "public rights," empowering bankruptcy courts to determine those proceedings, and which proceedings consisted of "private rights," leaving jurisdiction of these matters in the Article III courts. See Northern Pipeline, 458 U.S. at 71, 102 S. Ct. at 287 1.

Appellants' related claim that bankruptcy courts cannot determine rights in property based on state law is misguided. As stated by the Second Circuit "the mere fact that [Appellants] claim raises issues of state law does not preclude a holding that the adversary proceeding is core"; the relevant inquiry is whether the proceeding falls within the core of federal bankruptcy power. In re Manville Forest Prods. Corp., 896 F.2d 13841 1389 (2d Cir. 1990); see also In re Kings Falls Power Corp., 185 B.K 431, 438 (Bankr. N.D.N.Y. 1995). Section 157 (b)(2)(H) expressly includes within the ambit of core proceedings matters involving "proceedings to determine, avoid, or recover fraudulent conveyances." Congress has also stated that "determinations of the validity, extent, or priority of liens" are core proceedings. 28 U.S.C. Section 137(b) (2)(K). It is not disputed that the original action before the bankruptcy court was indeed an action to recover a fraudulent conveyance from Debtor to Alexander. It is also not disputed that the appealed orders involve the determination of a lien's validity and priority, although whether the lien is on "property of the estate" has been hotly disputed by courts. Thus, simply reading the statute would appear to give the bankruptcy court jurisdiction to hear the matters, assuming a referral by the district court.

Appellants rely on 28 U.S.C. Section 157(b)(2)(N) to contend that the matter does not fall within the core of federal bankruptcy power. Section 157(b)(2)(N) states that core proceedings include "orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate" (emphasis added). Appellants claim that the "other than" language demarcates a distinction between "public rights" and "private rights" as contemplated by Northern Pipeline. Appellants' Brief 3. The bankruptcy court stated the general language of Section 157(b)(2)(N) does not impact the more specific provisions of that section, such as the explicit grant of jurisdiction by Congress to bankruptcy judges over core proceedings to determine, avoid or recover fraudulent conveyances, or the power to determine or avoi'd liens. Memorandum Order of Aug. 23, 1995, attach. at Appellant's app. 29. The inclusion of such language in Section 157(b)(2)(N) does not vitiate Congress's delineation of fraudulent conveyance and lien validity and priority proceedings as core. However, the private/public rights distinction touched upon by Appellants was addressed in Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S. Ct. 2782 (1988), the impact of which the Court considers in the next section.

B. Granfinanciera and its Implications

Appellants also contend that the bankruptcy court's analysis is fundamentally improper because it rests upon a flawed premise: that Congress's inclusion of proceedings such as those in issue here in the definition of "core

proceedings" is constitutional. Appellants cite Granfinanciera, S.A. v. Nordberg, 492 'U.S. 33, 109 S. Ct. 2782 (1988) in support of their argument that the bankruptcy court cannot determine the private rights at issue where the responding party has not filed a claim against the bankruptcy estate. Appellants claim applying Granfinanciera to the present case compels the conclusion that the bankruptcy court lacked jurisdiction to determine this matter, especially because Wilson has not filed a claim against the bankruptcy estate. See Appellants' Brief 5.

Granfinanciera did not, however, decide the issue of whether the bankruptcy court had-jurisdiction when certain parties had not filed a claim against the estate. Rather, the Court in Granfinanciera noted that "[t]he sole issue before us is whether the Seventh Amendment confers on petitioners a right to a jury trial in the face of Congress' decision to allow a non-Article III tribunal to adjudicate the claims against them." 492 U.S. at 50, 109 S. Ct. at 2795. The Court held that the petitioners in that case were entitled to a jury trial as they had requested, concerning a fraudulent conveyance action, because they had not submitted a claim against the bankruptcy estate; the Court explicitly declined to address whether such trial could be conducted before a bankruptcy court in a fraudulent conveyance action. 492 U.S. at 64, 109 S. Ct. at 2802. (FN4) The Supreme Court did not overrule "Congress' decision to allow a non-Article III tribunal to adjudicate the claims against them," nor did it decide any other issue aside from whether the Seventh Amendment granted the petitioners a right to a jury trial. 492 U.S. at 64 n. 19, 109 S. Ct. at 2802 n. 19. The Court was concerned with the issue of whether Congress could deprive parties who had not filed claims against the bankruptcy estate of their Seventh Amendment rights. 492 U.S. at 52-53, 109 S. Ct. at 2795-96. Appellants in the present matter did not request a jury trial, and such question is not at issue here.

Yet there is language in the Granfinanciera opinion that supports Appellants' conclusion. While the Court was extremely cautious in limiting its decision to whether petitioners had the right to a jury trial, the Court did find that its previous opinions "point to the conclusion that, if a statutory cause of action is legal in nature, the question whether the Seventh Amendment permits Congress to assign its adjudication to a tribunal that does not employ juries as fact finders requires the same answer as the question whether Article EII allows Congress to assign adjudication of that cause of action to a non-Article III tribunal." 492 U.S. at 53, 109 S. Ct. at 2796. This language recognizes a connection between the right to a jury trial and a bankruptcy court's permissible jurisdiction.

Further, the Court found that a bankruptcy trustee's right to recover a fraudulent conveyance is more accurately characterized as a private right, rather than a public one. 492 U.S. at 55, 109 S. Ct. at 2797. "There can be little doubt that fraudulent conveyance actions by bankruptcy trustees ... are quintessentially suits at common law that more nearly resemble state-law contract claims brought by a bankrupt corporation to augment the bankruptcy estate . . . ." 492 U.S. at 56, 109 S. Ct. at 2798.

The Court then went on to state the importance of filing

a claim against the bankruptcy estate in the context of the Seventh Amendment right to a jury trial:

> Because petitioners here . . . have not filed claims against the estate respondent's fraudulent conveyance action does not arise "as part of the process of allowance and disallowance of claims." Nor is that action integral to the restructuring of debtor-creditor relations. Congress therefore cannot divest petitioners of their Seventh Amendment right to a trial by jury.

492 U.S. at 58-59, 109 S. Ct. at 2799.

If a fraudulent conveyance action is not integral to the restructuring of debtorcreditor relations, and is not a public right, serious questions arise over whether it is a "core" proceeding, amenable to determination by the bankruptcy court. While the Granfinanciera opinion explicitly addresses only the right to a jury trial, the Supreme Court's reasoning does impact the constitutionality of the bankruptcy court's jurisdiction in a fraudulent conveyance case. There is more than a hint of truth injustice White's dissenting opinion which observes:

> the Court is rather coy about disclosing which federal statute it is invalidating today. Perhaps it is 28 U.S.C. Section 157(b)(2)(H) . . ., the statute which includes actions to avoid or recover fraudulent conveyances among core bankruptcy proceedings; or Section 157(b)(1), which permits bankruptcy judges to enter final judgments in core proceedings (given the inclusion of fraudulent conveyance actions among these proceedings); or perhaps it is 28 U.S.C. Section 141l(b) . . ., limiting jury trial rights in bankruptcy; or perhaps some part of Title 11 itself--- or some combination of the above. There is no way for Congress, or the lower Article III courts, or the bankruptcy courts . . . to know how they are expected to respond to the court's decision, even if they wish to be diligent in conforming their behavior to today's mandate.

492 U.S. at 72 n.2, 109 S. Ct. at 2806 n.2 (White, J., dissenting).

The Eighth Circuit has also adroitly sidestepped the issue of whether Granfinanciera should be read to hold that the action of Congress giving district courts the authority to refer disputes over fraudulent conveyances or preferential transfers to the bankruptcy courts, making "no attempt to decide whether Congress may or may not properly define a preferential transfer dispute such as we have here a "core proceeding". ' In re United Missouri Bank of Kansas City, N.A., 901 F.2d 1449, 1453 n.12 (8th Cir. 1990). It is against this jumbled and unfortunate backdrop that this issue is submitted to this Court.

The bankruptcy court not only relied on Section 157(b)(2)A to find that the matters here are "core proceedings," but also on other enumerated actions of

Section 157(b)(2); namely, subdivisions (A), (E), (K), and (0).(FN5) The bankruptcy court also found that all relevant parties had consented to the bankruptcy court's jurisdiction. The court will address these two bases forjurisdiction in reverse order, starting with consent.

C. Consent as a Basis for Bankruptcy Court Jurisdiction

The bankruptcy court properly determined that it had jurisdiction over Carolyn Alexander, regardless of whether proceeding is core or non-core. In deciding this particular question, it is unnecessary to look any further than the referral order dated July 23, 1991, issued by the district court. The order relates that a money judgment was entered against Debtor on August 6, 1990, and that the government claimed Debtor fraudulently conveyed his money to family members, including his daughter Alexander. Order of July 23, 1991, attach. at Appellant's app. 31. Alexander and other family members contended that they were the true owners of the accounts. Id. After Debtor filed for bankruptcy, and the court requested briefing on the effect of the bankruptcy filing, "both the government and counsel for the Alexander family members requested referral of this issue to the bankruptcy court for resolution." Id. Section 157(c) allows a district court to refer non-core proceedings that are "related to a case under title II" to the bankruptcy court with the consent of all parties; no party disputed that the recovery of the purportedly fraudulent conveyances was "related to" the bankruptcy case. Id.(FN6) Alexander., having already consented to the determination of all of the fraudulent conveyance matters by the bankruptcy court, submitted to the court's jurisdiction and cannot now complain that the bankruptcy court lacked subject matter jurisdiction when she agreed to the referral. See, e.g., Separate Answer of Carolyn Alexander Paragraph 5, attach. at Appellants' app. 63.

Appellants note this fact, and state that even if Alexander could be held to have consented to bankruptcy court jurisdiction, Wilson never consented. Appellants' Brief 5. Wilson did continually object to the jurisdiction of the bankruptcy court, ever since the Trustee brought the adversary proceeding to extinguish Wilson's purported rights in the account. See, e.g., Separate Answer of Wilson Law Firm Para. 5, attach. at Appellant's app. 66; Memorandum Order of Aug. 23, 1995, at 4 n. 1, attach. at Appellant's app. 26. Wilson argues that it is entitled to object to the 1991 order referring all fraudulent conveyance matters to the bankruptcy court. The question for this Court, then, is whether Wilson is a party whose consent is needed for jurisdiction to be granted the bankruptcy court under 28 U.S.C. Section 157(c).

In making its argument that it did not consent, Appellant Wilson merely states that the district court "with the consent of all parties to the proceeding" may refer a related case to the bankruptcy court, that it was a party to the proceedings below, and that it did not consent to jurisdiction. 28 U.S.C. Section 157(c)(2); Appellant's Brief 5. Appellant allows that the instant

proceeding involves the same subject matter, the account, but emphasizes that it involves different claims and new parties. Appellants' Reply 4. However, as the bankruptcy court determined, all parties did consent to the original referral of the fraudulent conveyance actions. As the bankruptcy court notes, "[t]he instant action is clearly ancillary to and in furtherance of the previously adjudicated fraudulent conveyance action." Memorandum Order of August 23, 1995, at 7, attach. at Appellant's app. 29. In referring this case to the bankruptcy court, the district court correctly noted that the account in question is 'related to" Debtor's bankruptcy case. United States v. Alexander, No. 4-89-85 (D. Minn.July 23, 1991) attach. at Appellants' app. 31 (FN7). The original parties did not merely consent to the transfer, but requested it. Id. The fact that Wilson later replaced the attorneys who consented to bankruptcy court jurisdiction did not, under the bankruptcy court's interpretation of the statute, require rescission of the consent of all original parties.

The language of Section 157(c)(2) supports the bankruptcy court's determination:

[T]he district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 1 1 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

From the language of the statute, the operative period for consent is obviously at the time of referral. The provision also contemplates that referral orders may encompass more than a single order or judgment, since bankruptcy proceedings may, as here, encounter complications.

Yet the Court is hesitant to eliminate Appellant Wilson's right to a determination by an Article III judge on the basis of consent given years before Wilson ever became involved in the dispute. The complications here involved a third party, albeit a knowing and voluntary act by a third party (the placement of the lien) affecting property already garnished by the bankruptcy estate. Had Wilson timely requested a jury trial in this case, Granfinanciera may have mandated the granting of that request. Under the law of the Eighth Circuit, that jury trial could not have been held in the bankruptcy court, and the district court would have had to preside over the trial. See In re Missouri Bank of Kansas Citv, N.A., 901 F.2d at 1454-57. In light of the concerns raised in Northern Pipeline and Granfinanciera, consent to jurisdiction should not be readily found, as the right to a jury trial and the right to Article III determination implicates personal rights, not rights connected with a certain subject matter. See In re M.S.V., Inc., 97 B.R. 721, 728 (D. Mass. 1989). Appellant Alexander has already expressed her consent to full determination of these issues by the bankruptcy court, and cannot now revoke it. But Appellant Wilson, ever since the trustee filed a complaint against them to effectively subordinate their attorney's lien, has strenuously and consistently objected to the bankruptcy court's jurisdiction. Neither the parties nor

the bankruptcy court extensively considered this issue, and, in these circumstances, this Court is reluctant to find consent on the part of Wilson. See In re IT. Moran Fin. Corp., 124 B.R. 931, 940-41 (S.D.N.Y. 199 1). Wilson was one of the defendants in the adversary proceeding brought by the trustee, indicating that its consent should be necessary for bankruptcy court jurisdiction in non-core proceeding, and there is no indication of implied consent by Wilson.

Therefore, as to Appellant Wilson, this Court must face the question of whether the bankruptcy court, and Congress, properly classified the matters at issue as "core proceedings."

D. Core Proceedings

Appellants ask this Court to declare the instant proceedings in front of the bankruptcy court "non-core." Appellants contend that Granfinanciera mandates the removal of all such issues against parties who have not filed claims against the estate from the jurisdiction of the bankruptcy court. Another district court has considered and rejected such an argument:

> Granfinanciera does not instruct courts to second guess Congress's determination that certain proceedings are classified as core under the 1984 Amendments. Moreover, there is sufficient logic in classifying a suit to recover a fraudulent conveyance as a core bankruptcy matter that such classification should not be subject to meritorious attack. Fraudulent conveyances are designed to remove certain assets from the bankruptcy estate. However, the assets which should be available for creditors are mustered in the bankruptcy, not the district, court.

In re Great Am. Mfg. Sales, Inc., 129 B.R. 633, 636 (C.D. Cal. 1991). Importantly, the fraudulent conveyance action in that case was brought against persons who had not submitted claims against the estate.

The Tenth Circuit has also allowed bankruptcy courts to exercise jurisdiction over fraudulent conveyance actions. In re Investment Bankers, Inc., 4 F.3d 1336, 1360-62 (10th Cir. 1993), cert. denied sub nom. Davis, Gillenwater & Lynch v. Turner, _ U.S. ___, 114 S. Ct. 1061 (1994).(FN8) Numerous courts have assumed that they have had jurisdiction over fraudulent conveyance actions simply by virtue of the fact of their designation of a core proceeding; since they do not discuss the impact of Granfinanciera, they offer little guidance to this Court. See, e.g., In re Rainbow Security Inc., 173 B.R. 508,510 (Bankr. M.D.N.C. 1994); In re Kindorf 113 B.R. 734 (Bankr. M.D. Fla. 1990); see also In re Love, 182 B.R. 161, 169-70 (W.D. Ky. 1995) (finding jurisdiction under " catch-all" provisions of 28 U.S.C. Sections 157(b)(2)(A) and 157(b)(2)(0)).

On the other hand, the Eleventh Circuit noted that Granfinanciera strongly suggested that common fraudulent conveyance and voidable preference actions must be tried under the auspices of an Article III court. In re Davis, 899 F.2d 1 136, 1140 n.9 (11 th Cir. 1990). It appears that the Fifth Circuit In Matter of Texas General Petroleum Corp.,

52 F.3d 1330, 1336-37 (5th Cir. 1995), has indeed read Granfinanciera to hold that litigants in a fraudulent conveyance action have a right to determination by an Article III court. The Fifth Circuit relied in part on the language in Granfinanciera, quoted previously in this opinion, that whether an Article III court is necessary involves the same inquiry as whether a litigant has a Seventh Amendment right to a jury trial. Id. at 1336.

The factual circumstances of this case are far different from Granfinanciera or Texas General Petroleum. There are three considerations that the Court has determined are entitled to substantial weight in its consideration of whether the bankruptcy court can properly hear this proceeding. These considerations allow this Court to follow in the footsteps of the Supreme Court and the Eighth Circuit and avoid the issue of whether a bankruptcy court permissibly has jurisdiction in the garden-variety fraudulent conveyance case where the recipient of the funds has not filed a claim against the estate. First, the action in this case, in conjunction with the case's procedural posture as opposed to the more common situation in Granfinanciera, heavily implicates the structure of debtorcreditor relations. Second, the instant proceedings implicate another enumerated core proceeding wholly different from the original fraudulent conveyance action; namely, the determination of the validity and priority of liens under Section 137(b)(2)(K). Under such a classification, it is clear that this matter is closely tied to the allowance and disallowance of claims, thus supporting the conclusion that the bankruptcy court exercised its jurisdiction in a valid "core proceeding." Finally, the Court cannot disregard the fact that Congress intentionally and explicitly determined bankruptcy courts could permissibly have jurisdiction under the core matters in Section 157(b)(2), setting this issue apart from Congress's apparent ignorance of the impact of the 1984 Act on the right to a jury trial. The Court will address each matter in turn.

1. Impact on Restructuring of Debtor-Creditor Relations

The Court notes that Appellant Wilson is most definitely not in the same position as the petitioners in Granfinanciera. In that case, the trustee sued the petitioners, who were the alleged recipients of fraudulent conveyances who had not filed claims against the estate. This is the situation of Appellant Alexander, who has submitted to the jurisdiction of the bankruptcy court in these matters, and thus is not considered in this section of the opinion. In this case, Wilson is a law firm which attached an account previously designated as the proceeds of a fraudulent transfer, under a trustee's garnishment summons; it is not contended that Wilson itself is the recipient of a fraudulent conveyance. This distinction is important to the following analysis of whether the actions appealed from lie at the "core of the federal bankruptcy power."

It is indisputable that any person who files a proof of claim against the bankruptcy estate must be deemed to have submitted to the bankruptcy court's jurisdiction. In Langenkamp

v. Culp, 498 U.S. 41, 44, 111 S. Ct. 330, 331 (1994), the Supreme Court reaffirmed the proposition that filing a claim against the bankruptcy estate triggered the process of allowance and disallowance of claims. "Mhe creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity - jurisdiction." Id. (emphasis in original).(FN9) See also, eg., In re Parker N. Am. Corp., 24 F.3d 1145, 1149 (9th Cir. 1994); In re American Export Group Int'l Sevs., Inc., 167 B. R. 311, 313-14 (Bankr. D.D.C. 1994). By filing a proof of claim, the creditor does not "waive" its Seventh Amendment rights; the right to a jury trial disappears because "any subsequent fraudulent conveyance or preference counterclaim by the trustee is equivalent to an objection to the creditor's claim, and therefore part of the claims allowance process." In re Washington Mfg. Co., 13 3 B.R. I 1 3, 117 (M.D. Tenn. 199 1) (citing Granfinanciera, 492 U.S. at 59 n. 14, 109 S. Ct. at 2 799 n. 14).

An issue which this Court must address is whether Appellant Wilson has triggered an action which has become integral to the restructuring of the debtor-creditor relationship. Wilson contends that it has not filed a "claim" against the "estate." Appellants' Brief 5. The Court agrees that, using definitions found in the Bankruptcy Code, Appellants have not filed a proof of claim against the bankruptcy estate, as contemplated by I I U.S.C. Section 501. Yet the relevant issue is whether the bankruptcy court properly considered this matter to be a core proceeding, directly implicating the restructuring of debtor-creditor relations. "The fact that a party has failed to submit a proof of claim does not render the matter non-core ... [r]ather, the bankruptcy court must focus its inquiry on whether the essence of the proceeding is 'at the core of the federal bankruptcy power."' In re Kings Falls Power Corp., 185 B.R. at 438. Reference to relevant definitional sections of the Bankruptcy Code, however, is instructive.

A " claim" is defined in the Bankruptcy Code as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." I I U.S.C. Section 101(5)(A). This broad definition certainly seems to cover the hen in this case. The definition of the "bankruptcy estate" is equally broad: it includes, absent some restrictions not applicable here, "all legal or equitable interests of the debtor in property as of the commencement of the case." I I U.S.C. Section 541 (a)(1). The bankruptcy estate also includes "[a]ny interest in property that the estate acquires after the commencement of the case." I I U.S.C. Section 541(a)(7). In determining which items of property were subject to bankruptcy's automatic stay, some courts have dwelt on an enumerated portion of the definition of the estate in 11 U.S.C. Section 541(a)(3) which includes only "any interest in property that the trustee recovers," pointing out that the provision does not cover any interest in property that the trustee is currently attempting to recover. See In re Colonial Realty Co., 980 F.2d 125, 131 (2d Cir. 1992); In re Keene Corp., 164 B.R. 844, 850

(Bankr. S.D.N.Y. 1994) (adopting Colonial Realty ; In re Thielking, 163 B.R. 543, 545 (Bankr. S.D. Iowa 1994) (same). Other courts disagree with this view. In relying on the Supreme Court's statement that the property of the estate includes "any property made available to the estate by other provisions of the Bankruptcy Code" in United States v. Whiting Pools, Inc., 462 U.S. 198, 205, 103 S. Ct. 2309, 2313 (1983), the Sixth Circuit has held "property fraudulently conveyed and recoverable under Bankruptcy Code provisions remains property of the estate." NLRB v. Martin Arsham Sewing Co., 873 F.2d 884) 887 (6th Cir. 1989), modified on other grounds, 882 F.2d 216 (6th Cir. 1989).(FN10) The Fifth Circuit relied on the broad language of Section 541(a)(1) and the legislative history behind it to find "property of the estate" included fraudulently conveyed property, terming Section 541(a)(1)'s language "all-encompassing." In re MortgageAmerica Corp, 714 F.2d 1266, 1273-74 (5th Cir. 1983). The court noted, however, that it was unnecessary to decide whether the phrase "[a]ny interest in property that the trustee recovers" may be read "might recover" under 28 U.S.C. Section 541(a)(3). Id. at 1273-74 n.7. See also, e.g., In the Matter of U.S. Marketing Concepts, Inc., 113 B.R. 487, 489 (Bankr. N.D. Ind. 1990) (and cases cited therein). One district court has apparently established a compromise between these two lines of authority and held that "fraudulently transferred property does not become property of the bankruptcy estate until there has been a judicial determination that the property was transferred" Klingman v. Levinson, 158 B.R. 109, 113 (N.D. III. 1993). In this case, of course, such a judicial determination has already been made.

The Supreme Court, in a post-Granfinanciera case, noted that "the property available for distribution" in a preferential transfer action is "best understood as that property that would have been part of the estate had it not been transferred before the commencement of bankruptcy proceedings." Begier v. Internal Revenue Serv., 496 U.S. 53, 58, 1 1 0 S. Ct. 2258, 2263 (1990);(FN11) see also In re Keller, 185 B.R. 796, 799 (9th Cir. BAP 1995). The same logic is easily applied to pre-petition fraudulent conveyancesnamely the estate could be thought of as remaining "in constructive possession of the fraudulently conveyed property as the conveyance does not effectively transfer title." In re Vylene Enters., 122 B.R. 747, 753 n.5 (C.D. Cal. 1990).

Thus, judicial disagreement exists over whether the account should be technically considered "property of the estate." Given that there has already been a judicial determination that the account represents a fraudulent conveyance or proceeds of a fraudulent conveyance, however, the account certainly approaches the definition of "property of the estate." The closer the account becomes to "property of the estate," the more deeply implicated is the "core of the federal bankruptcy power." It bears repeating that this is not a garden-variety fraudulent conveyance case with respect to Appellant Wilson. Here, the parties present a post-petition attorney's lien in conflict with a bankruptcy trustee's previously instituted garnishment proceedings. Appellant Wilson filed notice of its lien having at least constructive (and most likely actual) notice of the garnishment summons that was attached to the

account by the trustee for the purpose of reclaiming the property in the account. The trustee's garnishment action was instituted pursuant to judgment in its favor on its original fraudulent conveyance action (to which no party objected on jurisdictional grounds); the trustee was merely trying to effectuate that judgment. See Complaint, attach. at Appellant's app. 48-5 1. The placing of the attorney's lien on the account constituted a direct, affirmative and knowing challenge to the power of the trustee to effectuate the previous judgments in its favor, notwithstanding the fact that it is the trustee who instituted the instant adversary proceedings. (FN12)

In a case where a state law malicious prosecution action was brought against the trustee's attorneys and the chairman of the creditors' committee, the Ninth Circuit Bankruptcy Appellate Panel held that the matter was "core" and that the bankruptcy court properly exercised jurisdiction. In re DeLorean Motor Co., 155 B.R. 521 (9th Cir. BAP 1993). The action was characterized as the "functional equivalent" of an action against the trustee "which interferes with administration of the estate." Id. at 525. The language of the DeLorean decision, while employed in a slightly different setting, offers some guidance here:

> The action arises from the efforts of officers of the estate to administer the estate and collect its assets and therefore impacts the handling and administration of the estate. Although the ... action asserts a state law claim, as the functional equivalent of an action against the trustee, it is inextricably tied to the determination of an administrative claim against the estate and is similarly tied to questions concerning the proper administration of the estate. For these reasons, we determine that [the] action ... is within the scope of 28 U.S.C. Section 1334(b) and a core proceeding within the scope of 28 U.S.C. Section 157(b).

Id.

In DeLorean, as here, the trustee was in the process of administering the estate (as exhibited by the garnishment summons). In DeLorean, as here, a party is claiming an interest under state law which interferes with the administration of the bankruptcy estate.(FN13) In DeLorean, as here, the determination of the party's claim is inextricably tied to questions concerning the administration of the estate. While this Court makes no claim that an action against certain attorneys is equivalent to a lien imposed on property, the facts of DeLorean are similar to those in the instant case in many respects, and weigh in favor of finding bankruptcy court jurisdiction.

Without finding that the bankruptcy courts have permissibly been given jurisdiction to adjudicate all preference and fraudulent conveyance claims, this Court finds hat the circumstances of this particular case emphasize the constitutional propriety of allowing the bankruptcy court to decide this matter. The garnishment action pursuant to a favorable judgment, the subsequent

attorney's lien, and the subsequent action by the trustee are inextricably tied to both the trustee's power to enforce a fraudulent conveyance judgment and to the allowance and disallowance of claims affecting the estate. The filing of the attorney's lien, as noted in the following section, has also operated to create what is essentially a lien priority dispute; namely, whether Wilson or the trustee has priority concerning the account. Given that this post-petition lien dispute grows out an attempt to enforce the original and valid fraudulent conveyance judgment, this matter must lie at the "core of the federal bankruptcy power. (FN14)

2. Lien Determination Proceedings

The above conclusion is bolstered by the fact that the instant proceeding may be regarded as an action for the determination of "the validity, extent, or priority of hens," as briefly cited by the bankruptcy judge, but not mentioned by either party. Such a determination has also been specifically labeled a core proceeding by Congress. 28 U.S.C. Section 157(b)(2)(K). In fact, the complaint which instituted the entire action in the bankruptcy court seeks only a determination that Wilson's "claimed lien is inferior to the Trustee's garnishment lien" and that "[t]he Trustee's interest in Alexander's PWI accounts and stock is superior to the claimed interests" of Appellant and Meshbesher. Compl. Paragraphs 6, 9, attach. at Appellants' app. 49-50. Although neither the bankruptcy court nor the parties addressed the issue, Granfinanciera's discussion of fraudulent conveyance actions as "private rights" which require jury trials and perhaps Article III determination does not implicate lien determination proceedings. The Eighth Circuit noted that Grarifinanciera relied upon the history of the law of preferential transfers, not the law of lien priority or validity. United Missouri Bank, 901 F.2d at 451 n.7. Appellants seek vacation of four orders of the bankruptcy court which are related to the original fraudulent conveyance judgment, but may and perhaps should be viewed as essentially determinations of the parties' hen priority.

Whether the trustee is able to avoid Wilson's lien, or whether Wilson's lien will be allowed in the face of the trustee's garnishment lien, is closely analogous to the claims allowance process. Fundamentally, the situation is this: the trustee has a cognizable interest in the account; after the trustee received its cognizable interest, Appellant Wilson filed a lien against the account; the trustee wanted to protect its interest in the account; and did so by bringing an action to have Wilson's lien subordinated or declared invalid. In effect, the trustee wishes to disallow Wilson's post-petition lien; this action is not at all unlike the disallowance of a creditor's claim against the estate.

The same dispute of whether the account constitutes "property of the estate" under 28 U.S.C. Section 541 arises under a Section 157(b)(2)(K) analysis. See supra Section III.D. 1. "In referring to determination of the validity, priority and extent of liens, section 157(b)(2)(K) is to be construed to refer to liens on property of the estate." In re Holland Indus., Inc., 103 B.R. 461) 465 (Bankr.

S.D.N.Y. 1989). Yet the extent to which property must be connected with the estate has been disputed by courts. Compare Holland Industries, 103 B.R. at 466 ("There is not the slightest indication ... that Congress sought to empower the bankruptcy courts with jurisdiction to determine the validity of liens with respect to property in which the debtor has no legally cognizable interests's and In re Rarick, 132 B.R. 47, 51 (D. Colo. 1991) ("for a lien dispute to constitute a core proceeding under Section 157(B)(2)(K), the lien must touch property of the estate or the debtor.") with In re CIS Corp., 172 B.R. 748, 759 (S.D.N.Y. 1994) ("where, as here, there remains a significant dispute over whether the identified property is property of the estate, the claim cannot be made core by trying to bootstrap it into this provision."

Yet even granting that the account may not precisely fit under the Code's definition of "property of the estate," finding that this was not a "core proceeding" amenable to bankruptcy court jurisdiction here would place form over substance, embracing a technical definition instead of the character of the action. In Granfinanciera, the Court stated that the common fraudulent conveyance proceeding "more nearly resemble[s] state-law contract claims ... than ... creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res." 492 U.S. at 56, 109 S. Ct. at 2798. The determination of the priority and validity of Wilson's lien against the estate's hen resembles the latter situation more than the former--if successful, Wilson would leapfrog over all other creditors of the estate with regard to the funds in the account, and could thus claim first position. The common preference or fraudulent conveyance defendant, in contrast, is not in the position of having filed a post-petition hen on property in the process of being recovered by the estate; an action by the trustee against such a defendant does not invoke anything like the claims allowance process. Such a defendant has possession of property concerning which the trustee must file a fraudulent conveyance or preference action to recover. According to Granfinanciera this is analogous to a state-law contract action. Here, the trustee has initiated a proceeding to determine the validity and priority of Wilson's claimed lien, which is more properly seen as " equivalent to an objection to (a] creditor's claim, and therefore part of the claims allowance process." In re Wash. Mfg. Co., 133 B.R. at II 7. While Wilson's attorney's lien was filed under state law, and its validity and priority must be determined under state law, infra Sections IV and V, the trustee's action is integrally related to the claims allowance process under these unusual circumstances. By its maneuvering, Wilson has claimed a position analogous to that of a creditor of the estate, interfering with the estate's admitted cognizable interest in the account and the execution of the original fraudulent conveyance judgment, over which the bankruptcy court exercised jurisdiction with no complaint from the parties.

3. Congressional Intent

Any examination of the intent of Congress must weigh in favor of allowing the bankruptcy court jurisdiction over this matter. It is incontrovertible that Congress intended that bankruptcy courts have jurisdiction over fraudulent conveyance actions, upon referral of the district court, by designating them "core proceedings" in 28 U.S.C. Section

157(b)(2)(H). Section 157(b)(2)(K) represents Congress's intent that determinations of lien priority and validity also be considered "core," as do the "catch-all" provisions of subsections (A) and (0). The Granfinanciera court noted that it was offered "no evidence that Congress considered the propriety of its action under the Seventh Amendment." 492 U.S. at 62, 109 S. Ct. at 2801 n. 16. To the contrary, Congress obviously was forced to consider the constitutionality of giving bankruptcy judges the authority to hear fraudulent conveyance cases upon referral of a district court, as the previous scheme developed by Congress was invalidated by the Supreme Court in Northern Pipeline. When the Supreme Court said that bankruptcy courts may have jurisdiction over actions at "the core of the federal bankruptcy power," Congress promptly responded by designating fraudulent conveyance actions and hen determination and avoidance proceedings as "core." 28 U.S.C. Sections 157(b)(2)(H), 157(b)(2)(K). The Court noted that "Congress cannot eliminate a party's Seventh Amendment right to a jury trial merely by relabeling the cause of action to which it attaches and placing exclusive jurisdiction in an administrative agency or a specialized court of equity." 492 U.S. at 61, 109 S. Ct. at 2800. However, the Court went on to recognize that "we owe some deference to Congress' judgment after it has given careful consideration to the constitutionality of a legislative provision." Id. (citation omitted). While Congress did not contemplate the 1984 Amendments' effect on the Seventh Amendment, it could not help but consider and address the constitutionality of the Amendments under Article III, the grounds on which the Bankruptcy Reform Act of 1978 had been invalidated. Thus, at least some deference to the judgment of Congress is appropriately owing in this situation. See Investment Bankers, 6 F.3d at 1561-62.(FN15) Of course, this court cannot give effect to Congress's intent if to do so would violate the strictures of Article III; but such a violation does not occur by following the commands of Congress in these circumstances.

For the reasons set forth above, this Court finds that this matter was properly designated a core proceeding by the bankruptcy court, and that the bankruptcy court properly exercised jurisdiction over it.

IV. Whether Trustee's Garnishment Was Effective

Appellants contend that the account was not properly attachable at the time Trustee served his garnishment summons because the property was not "due absolutely" to Alexander. Appellants correctly point out that a creditor may not garnish a debt which depends upon a contingency. Aratex Servs. Inc. v. Blue Horse, Inc., 497 N.W.2d 283, 285 (Minn. Ct. App. 1993). In determining the existence of a contingency, the question is whether the garnishee's obligation is subject to a condition such that in fact it may never be due or owing to the garnishment debtor. Id. The contingency must control the obligation to pay, not merely the time or form of payment. See Rintala v. Shoemaker, 362 F.Supp. 1044, 1049 (D. Minn. 1973).

The bankruptcy court properly concluded that the account was absolutely due to Alexander from PWI on the date that Trustee served his garnishment Summons. PWI admits that it

unconditionally owed the money to someone, and Alexander was record owner of the account on that date. The fact that the United States had levied on the account did not render Alexander's ownership interest contingent. The only rights in property of a judgment debtor affected by levy thereon is the debtor's right to possession and control. See Memorandum Order of Apr. 21, 1995, attach. at Appellant's app. 17. The United States did not obtain any ownership interest in the account simply by virtue of its levy. 5ee id.; see also United States v. Whiting Pools, Inc., 462 U.S. 198, 2 1 0-1 1, 103 S. Ct. 2309, 2316-17 (1983). A debtor remains the owner of property subject to a hen until sale. Id. The same is true under Minnesota law, where, for example, a Hen on real estate does not grant a possessory interest in the underlying property. 5ee Granse & Assocs., Inc. v. Kimm, 529 N.W.2d 6,8 (Minn. Ct. App. 1995), rev. denied, Apr. 27, 1995 (and cases cited therein).

Appellants argue that the account was contingent, and therefore not attachable by Trustee, because the value of the government's lien exceeded the value of the account on the determinative date. Appellants'Brief at 7, citing S.T. McKnight Co. v. Tomkinson, 296 N.W.2d 569, 570 (1941). In McKnight, the defendant had pledged the accounts receivable to a bank (the garnishee) as security for a loan, and the plaintiff had served a garnishment summons on those accounts. The contingency arose in that the garnishee bank which held the notes was obligated to return them to the defendant only if he repaid the loan. "In fact, unless defendant's existing liability to the garnishee was discharged through liquidation of these receivables, defendant's supposed interest in the office check would be vacuous." 296 N.W. at 570. In other words, the notes would not become absolutely due and owing to the defendant debtor until the defendant took the required action, and only if defendant took that interest would the garnishee bank owe anything to the defendant. The use of the account by the garnishee bank as collateral, not the fact that the garnishee bank's claim to the funds may have equaled or exceeded the value of the account, created the dispositive contingency.(FN16) The McKnight case was explicitly interpreted in this manner by the Minnesota Supreme Court later that year in Northern Engineering Co. v. Neukom, 298 N.W. 47 (Minn. 1941). In its opinion, the court stated: "in the McKnight case the funds garnished were held by the garnishee as collateral for the defendant's obligations, and since their future payment or delivery to defendant was entirely dependent upon certain other pledged collateral there was nothing reached by the garnishment."). In this case, of course, the account was not being used as collateral by PWI. Appellants also misread Aratex Services, Inc. v. Blue Horse, Inc., 497 N.W.2d 283 (Minn. Ct. App. 1993) (bank's indebtedness to party was contingent upon execution of agreement; since garnishment summons was served before agreement was executed, bank was not required to disclose such indebtedness) and Stub v. Hein, 152 N.W. 136 (Minn. 1915) (securities held by bank were to be delivered only upon the performance of certain conditions, and since evidence was unclear as to whether conditions were performed, judgment could not be rendered

against garnishee).

Moreover, Appellants' construction of the statute is inconsistent with the recently revised statutory scheme. The scheme explicitly contemplates that a garnishment hen may attach even when the account is otherwise encumbered. "(A] perfected lien by garnishment is subordinate to a preexisting voluntary or involuntary transfer, setoff, security interest, lien, or other encumbrance that is perfected . . . ." Minn. Stat. Section 571.81, subd. 2. Appellants would then have this Court add the following language to the provision quoted above: "unless the previous encumbrances exceed the face amount of the property." Appellants offer neither a rational basis nor case law in support of such a construction. Indeed, taken to its logical conclusion, Appellants' argument would result in the unattachability of garnishment liens to any portion of property upon which a hen or other encumbrance existed--that portion of the account would not be "absolutely due" within the meaning of Section 571.73, subd. 4(l) (exempting any property due the debtor which depends on a contingency, making no distinction in its application as to a portion of the property or the entire disputed property).

In B & B Floor Covering v. Country View Builders, Inc., 504 N.W.2d 272 (Minn. Ct. App. 1993), the Minnesota Court of Appeals held that property earmarked for the debtor that is in possession and under control of the garnishee is attachable for garnishment purposes. In B & B Floor Covering, a husband and wife had refinanced their mortgage, specifically authorizing the garnishee to pay off a mechanics' hen to Country View on their property. Before the statutory three-day rescission period had passed, a party with an uncollected judgment against Country View filed a garnishment summons on the property. The court found the funds to be attachable by garnishment, since the money in the garnishee's possession had "a specific purpose: to be paid to Country View to satisfy the lien." Id. at 275.

In this case, it is not at all disputed that PWI had the obligation to disburse the funds in the account; indeed, it expressly disclaimed any interest in the account. The account was more than earmarked for Alexander--she was the record holder of the account, and the only one with an asserted ownership interest under Minnesota law in the account at the time the garnishment summons was served. No contingency of the nature contemplated by Section 571.73, subdivision 4(l), exists in the present case. There were no requirements that Alexander had to satisfy in order to collect the amount of the account from PWI. Rather, PWI absolutely owed Alexander the amount of the account, subject to the liens of the United States and Meshbesher.(FN17) Thus, Alexander's interest in the account was not contingent and was properly garnished by Trustee.

V. Whether Wilson's Lien Has Priority over Trustee's Garnishment

A trustee in bankruptcy can avoid a statutory lien on a debtor's property if the lien "is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property

at the time of the commencement of the case, whether or not such a purchaser exists." 11 U.S.C. Section 545(2) (1994). Thus, if a statutory attorney's lien is not perfected or enforceable, the trustee can avoid the hen under this section. In Re Pierce, 809 F.2d 1356, 1359 (8th Cir. 1987). The nature, extent and validity of a statutory attomey's lien are matters of state law. a. In this case, the dispositive question is therefore whether Wilson's lien was properly enforceable under Minnesota law at the time Trustee served his garnishment summons.

In Minnesota, an attorney's lien arises only when the attorney has complied with the attorney's hen statute. Id. at 1360 n. 13. The Minnesota attorney's hen statute states that "[i]f the lien is claimed on the client's interest in personal property involved in or affected by the action or proceeding, the notice shall be filed in the same manner as provided by law for the filing of a security interest." Minn. Stat. Section 481.13(4) (1990). Under Minnesota law, "a security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by the secured party. . . ." Krim Stat. Section 336.8-321 (I) (Supp. 1995). The account in this case was not transferred to Wilson.

Despite this statutory mandate, Wilson argues that it was not required to perfect its interest because its interest attached automatically and Trustee had constructive notice of the lien. This argument conflicts with the clear language of the statute. Section 481.13(4) states: "If the lien is claimed on the client's interest in personal property involved in or affected by the action or proceeding, the notice shall be filed in the same manner as provided by law for the filing of a security interest." The language requiring notice to be filed "in the same manner as for a security interest" indicates that the legislature intended to require such a filing in order for the interest to become enforceable. Pierce, 809 F.2d at 1360.(FN18)

Even if it had not been necessary for Wilson to take possession of the securities, Wilson's interest would still be inferior to Trustee's because Wilson did not file its attorney's lien prior to issuance of the Trustee's garnishment summons. See Williams v. Dow Chemical Co., 415 N.W.2d 20, 26 (Minn. Ct. App. 1987). The Minnesota Court of Appeals has held that an attorney's lien is enforceable only after it has been established, and that a lien is not established until it has been filed in accordance with Minn. Stat. Section 481.13(4). Pierce, 809 F.2d at 1361 (citing Boline v. DM, 345 N.W.2d 285, 289 (Nan. Ct. App. 1984)). The trustee obtained a perfected hen by serving the garnishment summons on the garnishee. Minn. Stat. Section 571.81. Wilson did not file its attorney's lien with the Secretary of State until December 23, 1994, which was subsequent to service of Trustee's garnishment summons. Thus, Wilson's lien, even if it were enforceable, would be inferior to Trustee's interest, and avoidable under I I U.S.C. Section 545(2). Wilson's argument in this regard is based on the erroneous premise that the garnishment summons attached nothing, an assumption considered and discarded in Section IV, supra.

Conclusion

Based upon the foregoing, IT IS ORDERED that the four Orders of the bankruptcy court set out below are AFFIRMED:

1) Order of April 12, 1995;

2) Memorandum Order Granting Plaintiffs Motion for Partial Summary Judgment of April 21, 1995 (filed April 24, 1995);

3) Findings of Fact, Conclusions of Law, and Order for Judgment of July 12, 1995; and

4) Memorandum Order of August 23, 1995.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 4 1995

RICHARD H. KYLE
United States District Judge

(FN1) The Honorable Nancy C. Dreher, United States Bankruptcy Judge.

(FN2) Section 157 provides that a district court may refer "any or all proceedings arising under title I I or arising in or related to a case under title I 1" to the bankruptcy court. 28 U.S.C. Section 157(a). Section 157 further states that bankruptcy judges may hear and determine all "core proceedings" arising under title 11 of a Bankruptcy Code referred by a district court to the bankruptcy court. 28 U.S.C. Section 157(b)(1).

(FN3) Appellants cite justice Stevens' dissent in Edwards with no indication that it is not the majority opinion. See, L.L., Appellants' Reply 3.

(FN4) At least five circuits, including the Eighth Circuit have held that bankruptcy courts lack the authority to conduct jury trials in core proceedings. See In re United Missouri Bank of Kansas City, N.A., 901 F.2d 1449 (8th Cir. 1990); In re Stansbury Poplar Place, Inc., 13 F.3d 122 (4th Cir. 1993); Matter of Grabill Corp_., 967 F.2d 1152 (7th Cir. 1992); In re Baker & Gettv Fin. Serys., Inc., 954 F.2d 1 169, 1172-74 (6th Cir. 1992); In re Kaiser Steel Corp., 911 F.2d 380, 389-92 (10th Cir. 1992). The Second Circuit has reached the opposite conclusion. In re Ben Cooper, Inc., 896 F.2d 1394, 1402-03 (2d Cir. 1990), cert. granted, 497 U.S. 1023, 1 10 S. Ct. 3269, judgment vacated on other grounds and remanded, 498 U.S. 964, 1 1 1 S. Ct. 425, opinion reinstated, 924 F.2d 36 (2d Cir. 199 1), cert. denied, 500 U.S. 928, 111 S. Ct. 2041 (1991).

(FN5) Sections 157(b)(2)(A) and 157(b)(2)(0) are most

properly regarded as "catch-all provisions," labeling as core proceedings "matters concerning the administration of the estate" and "other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship," respectively. The court should be careful not to construe these provisions too broadly, as to do so would be to effectively disregard the Supreme Court's pronouncements in Northern Pipeline and Granfinanciera. See, Cg., In re DeLorean Motor Co., 155 B.R. 521, 525 (9th Cir. BAP 1993). Yet this is not to say that courts should disregard these provisions entirely; see the discussion of DeLorean in Section III.D. 1, infra. The bankruptcy court also relied upon 28 U.S.C. Section 157(b)(2)(E), labeling "orders to turn over property of the estate" as core. Regardless of whether the broad language of these three provisions captures the interests in the present action, the concerns raised by Appellant in conjunction with Granfinanciera's discussion still exists. The lien determination provisions of 28 U.S.C. Section 157(b)(2)(K) are discussed infra in Section III.D.2.

(FN6) The Court notes that, even with the parties' consent, a bankruptcy court may only have jurisdiction of a matter if it falls within the ambit of statutes outlining the court's jurisdiction. In a case cited by Appellants, Celotex Corp. v. Edwards, _ U.S. _, 1 15 S. Ct. 1493 (1995), the Supreme Court affirmed the "comprehensive" nature of the jurisdiction given by Congress to bankruptcy courts so that bankruptcy courts could deal efficiently with all matters connected to bankruptcy estates. - U.S. at -, 115 S. Ct. at 1498-1500. The Supreme Court cited and broadly applied 28 U.S.C. Section 1334(b), which gives district courts original jurisdiction of Tide I I cases, and 28 U.S.C. Section 157(a), giving district courts power to refer all proceedings arising under Tide I I or related to proceedings under Tide I I to bankruptcy courts. Id. This "related to" language must be construed broadly, and the usual test for "related to" jurisdiction is whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. 115 S. Ct. at 1499 & n.6. Whether the account could be ultimately garnished by the trustee and whether the division of the estate would ultimately include those funds obviously impacts the estate. Therefore, the parties had the ability to consent to the bankruptcy court referral since the bankruptcy court's "related to" jurisdiction amply covered the issues raised.

(FN7) See supra note 6.

(FN8) While the Tenth Circuit did note that the party receiving the alleged preference had filed a claim against the estate, that fact was apparently not considered dispositive. See id. at 1361-62; see also infra Section III.D.2.

(FN9) The Court further clarified: "If a party does not submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only

by filing what amounts to a legal action to recover a monetary transfer. In these circumstances the preference defendant is entitled to a jury trial." 498 U.S. at 45, 111 S. Ct. at 331 (citing Granfinanciera J.

(FN10) "The Court notes that, in a general sense, "a determination of what is property of the estate... is precisely the type of proceeding over which the bankruptcy court has exclusive jurisdiction." In re Ascher, 128 B.R. 639, 643 (Bankr. N.D. El. 1991) (citations omitted). Yet this proposition cannot be automatically and limitlessly applied to ignore the teachings of Northern Pipeline and Granfinanciera.

(FN11) The Supreme Court did, however, then turn to Section 541 for guidance. Id.

(FN12) In their Reply, Appellants note that Carolyn Alexander has not filed a petition in bankruptcy, apparently distancing Alexander from the bankruptcy estate; yet Appellants do not explain why Wilson was forced to place a lien on the account for their legal fees. The relationship between Wilson and Alexander has at least some strangeness associated with it: Wilson has placed a lien on an account payable to its client, yet both Wilson and Alexander appealed the bankruptcy court's decisions jointly. While the extent of Alexander's unencumbered financial holdings is unclear, it is obvious that, if Wilson succeeded in enforcing its lien, Alexander would not be harmed--instead of having the account go to the trustee in execution of the fraudulent conveyance judgment, the proceeds of the account would go to Wilson. Alexander would thus pay no legal fees "out of pocket," leaving Wilson free to receive money that appears likely to be destined for the estate.

(FN13) See supra note 5.

(FN14) Indeed, even if it were held that the bankruptcy court did not have jurisdiction to hear this action, it is difficult to see any difference in the ultimate result, or the standard of review applied by this Court. If the bankruptcy court did not have jurisdiction to enter final orders in this case, it would still have the power to hear the case, and submit findings of fact and conclusions of law to this Court, pursuant to 28 U.S.C. Section 157(c)(1) and its " related to" jurisdiction. The Court would review de novo all portions to which the parties objected. Id. In this appeal, the two non-jurisdictional issues presented by Appellants are largely if not entirely legal in nature: namely, whether the Minnesota garnishment statute allows attachment of certain property when liens on that property exceeds its value, and whether Minnesota law gives priority to Wilson's attorney's lien over the garnishment summons of the trustee. On appeal, this Court must review the bankruptcy court's conclusions of law as to these two matters de novo. See C.T. Dev. Corp., No. 95-1330, at 3-4. Thus, while not to de-emphasize the crucial nature of the question of jurisdiction to the federal courts, Appellants

are receiving careful, de novo review from an Article III court on the only determinations of the bankruptcy court in dispute.

(FN15) Moreover, the Supreme Court recently recognized that Congress intended to grant " comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate." Celotex Corp. v. Edwards, - U.S. at _, 115 S. Ct. at 1499 (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)).

(FN16) "The Syllabus by the Court supports such a view: since the funds "future payment or delivery to defendant was entirely dependent upon the collectibility of certain other pledged collateral (a contingency), there was nothing of value belonging to defendant which plaintiff could reach by garnishment." 296 N.W. at 569. In McKnight it was the garnishee bank who had an interest in the property; no obligation ran from the garnishee to the defendant until and unless defendant satisfied his debt to the garnishee so that the money would be no longer held as collateral by the garnishee. By contrast, the lien of the United States here is a third-party interest; the garnishee admitted it had no interest in the money, so there was a non-contigent obligation running from the garnishee to Alexander. That concrete and definite obligation is not rendered contingent under Minnesota law because it is encumbered by a third-party's lien.

(FN17) This analysis by the bankruptcy court is correct even if the account comes within the broad definition of "property of the estate" under the Bankruptcy Code. See supra Section III.D. The possible classification of the account as "property of the estate" for jurisdictional and administrative purposes is based on the account's nature as a fraudulent conveyance or proceeds of a fraudulent conveyance, not just on the fact of the lien. The bankruptcy court correctly found that, at the time the garnishment summons was served, the account was absolutely due to Alexander and so, under Minnesota law, the garnishment summons could attach. Mem. Order of Apr. 21, 1995, attach. at Appellant's app. 16. Prior to the filing of the summons, neither the United States nor the estate had asserted an ownership right in the account, and PWI was thus required to pay out the account to record owner, Alexander. Id. at 16-17. As the Eighth Circuit has stated, property rights under 1 1 U.S.C. Section541 and the nature and extent of the debtor's int erest in property are defined by state law; but federal bankruptcy law dictates to what extent such interests are property of the estate. In re N.S. Garrott & Sons, 772 F.2d 462, 466 (8th Cir. 1985) (citing Butner v. United States, 440 U.S. 48, 55, 99 S. Ct. 914, 918 (1979)). Thus, considering an account "property of the estate" under federal bankruptcy law does not mandate a finding that no other party (i.e., Alexander) had rights in the account under state law at the time of the summons.

(FN18) Appellants argue that the lien had to be filed only for the interest to be protected against "third parties"--since

the trustee was the opposing party (and not a third party) in this proceeding, Appellants reason, they did not have to comply with Minn. Stat. Section 481.13(4). Appellants' Reply 8. Appellants not only overlook the fact that they have not complied with a statutory requirement for the lien's enforceability, but also ignore that in the attorney-client relationship giving rise to the lien, all parties are third parties except the attorney and the client. The interest represented by an attorney's lien exists from the point "as against third parties, from the time of filing the notice of such lien claim, as provided in this section," which includes subsection (4) for interests in the client's personal property. Concerning Wilson's relationship with Alexander, the estate is such a third party, and Wilson's attorney's lien is only enforceable against the estate from the time notice in conformity with subsection (4) was filed. Such notice was never filed; thus, Wilson cannot successfully claim its lien has priority over the trustee's garnishment.