**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF IDAHO**

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| **IN RE** | ) | |
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| **RONALD JAMES RYAN &** | ) | **Case No. 03-04278-TLM** |
| **LOTTE SUE RYAN,** | ) | |
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| **Debtors.** | ) | **MEMORANDUM OF DECISION** |
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## INTRODUCTION

This chapter 7 case comes before the Court on a motion of the Debtors, Ron and Lotte Ryan ("Debtors"), under § 554(a)[1] and Fed. R. Bankr. P. 6007(b) seeking an order abandoning from property of the estate Debtors' interests in a limited liability company. *See* Doc. No. 97 ("Motion"). The Office of the U.S. Trustee ("UST") opposes the Motion, as does adversary plaintiff and party in interest, Karen Rasmussen.[2] Disappointingly, the chapter 7 trustee in this case, Lois Murphy ("Trustee"), declined to take a position on the abandonment request.

The Court concludes from the evidence presented and arguments made, and

[1] Citations in this Decision are to the Bankruptcy Code, 11 U.S. Code §§ 101-1330, as extant prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005) ("BAPCPA").

[2] *Rasmussen v. Ryan (In re Ryan),* Adv. No. 04-6007-TLM.

from its own research and analysis, that the Motion should be granted. This Memorandum of Decision constitutes the Court's findings of fact and conclusions of law on the contested matter. Fed. R. Bankr. P. 7052, 9014.

**FACTS**

Debtors filed a chapter 7 petition for relief on November 21, 2003, commencing this case, *see* Doc. No. 1, and Trustee was appointed.

On December 15, 2003, Debtors filed their initial schedules. Doc. No. 6. Debtors' schedule B indicated they were the 100% owners of the membership interests in A-Z Electronics, LLC, an Idaho limited liability company (the "Company").[3] Doc. No. 6. They listed the value of this ownership interest as "$0.00." Debtors' initial schedule I indicated the Company employed Ron Ryan at a wage or salary of $6,000.00 per month and Lotte Ryan at $1,500.00 per month. *Id.*[4]

Trustee had not yet administered this asset, nor had Debtors sought to abandon it, when Debtors converted their bankruptcy to chapter 13 on February

[3] None of the parties presented any corroborating evidence during the hearing regarding the actual ownership in the Company, such as the Company's operating agreement or the records of the Idaho Secretary of State. However, neither the UST nor the objecting creditor dispute that Ron Ryan owns and holds 100% of the membership interests in the LLC. While there is no direct evidence of Lotte Ryan's interest, it is presumptively a community property interest. *See* Doc. No. 6 at schedule B (indicating ownership of LLC is community property); § 541(a)(2).

[4] A later amended schedule I asserted $9,000.00 per month in income from the Company for Ron Ryan and $1,500.00 per month for Lotte Ryan. *See* Doc. No. 23.

11, 2004. After a short and unsuccessful stay in chapter 13, the case was reconverted to chapter 7 on September 8, 2004. Doc. No. 68. Trustee again was charged with administration of this estate.

On August 25, 2005, Trustee filed a "no asset" report. Doc. Nos. 87, 88. The case was not subject to closing at that time, however, because Rasmussen had filed an adversary complaint seeking denial of Debtors' discharge under § 727(a) as well as nondischargeability of debt under § 523(a).[5]

On October 13, 2005, Trustee "withdrew" her no asset report, indicating that she had received information concerning a contract Debtors held with a satellite television company that might provide funds for distribution to creditors. Doc. No. 89.[6] Between that date and early December, 2005, Debtors provided a number of documents and records to Trustee, including the indicated contract.[7]

This contract is between EchoStar Satellite LLC and the Company. *See* Ex. B. It allows the Company to act as a "non-exclusive" retailer of digital broadcast satellite television services provided by EchoStar under the trade name of "DISH

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[5] Trial of this adversary proceeding concluded on February 10, 2006, and it soon will be taken under advisement upon the completion of post-trial briefing.

[6] There was no abandonment effected by the no asset report because the case was never closed. *See* § 554(c); *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1321 (9th Cir. 1991).

[7] At the same time, however, the Ryans were preparing a chapter 11 filing for the Company. Indeed, on December 18, 2005, Ron Ryan signed the Company's chapter 11 petition. *See* Case No. 05-05758-TLM. The UST moved to dismiss that chapter 11 case on the basis that the filing was not properly authorized. By a separate Memorandum of Decision and Order issued today, the Court grants that motion.

Network." The Company is identified as an independent contractor. The agreement allows the Company to solicit customers and to install DISH Network equipment. The agreement further provides for payment of "incentives" and other compensation, and for reimbursement of certain expenses, by EchoStar. The contract purports to be effective as of December 31, 2004, and to run for a two year term. Extension is not automatic, and the agreement may be terminated by either party for any reason and without cause on sixty days notice.

This contract, Ex. B, is not signed. Ron Ryan testified that an initial agreement was entered into in December, 2002, and was signed (though this contract was not introduced). He says that in December, 2004, he caused the Company to "renew" the agreement "over the Internet" and thus he has no signed copy. No evidence was introduced to dispute the testimonial contention that the original agreement between the Company and EchoStar was created in December, 2002, or that it was renewed over the Internet in 2004.

Ron Ryan testified that Debtors' 100% ownership of the Company is an interest that has no real value on the marketplace and something that no one else would conceivably want to purchase. He notes that the retailer agreement the Company has with EchoStar is non-exclusive and terminable without cause on only sixty days notice. Ron Ryan testified without contradiction that anyone wishing to enter the satellite television business could easily get its own retailer

agreement so long as its principal was not a felon and had a credit score meeting EchoStar minimums. Debtors' contentions that there are no likely buyers for the ownership interests in the Company, and that those interests had no realizable value in sale or transfer, were not rebutted. Trustee conceded that her efforts to sell Debtors' interests in the Company were not successful.[8]

**DISCUSSION AND DISPOSITION**

Under § 554(b), on request of a party in interest and after notice and 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."

A membership interest in a limited liability company is personal property, *see* Idaho Code § 53-635, and constitutes property of the member's bankruptcy estate. *See* § 541(a)(1); *see also In re Calhoun*, 312 B.R. 380, 384 (Bankr. N.D. Iowa 2004). The entirety of the member's rights, economic and non-economic,

[8] In addition to Trustee's rather remarkable passivity in responding to the instant abandonment request, the cold record does not reflect how Trustee attempted to administer this property of the estate. Debtors first filed for chapter 7 relief and declared their ownership interest in the Company in November, 2003. There was no evidence presented, or otherwise apparent from the Court's files, that Trustee undertook any investigation or action regarding the Company between that date and the conversion to chapter 13 in February, 2004. As noted, in September, 2004, the case was converted back to chapter 7. Trustee thus once again had an opportunity to deal with the estate's ownership of the Company. But there is no evidence of any investigation or action by Trustee from the date of reconversion through the filing of the "no asset" report almost a year later in August, 2005. Even when the question of the "contract" arose, leading to the withdrawal of that report, nothing reflects how Trustee turned her attention to the issues surrounding the Company and how this property should be administered. Her testimony about the attempts to sell Debtors' interests in the Company lacked detail and left much unanswered.

become property of the estate. *In re Garrison-Ashburn, L.C.*, 253 B.R. 700, 707-08 (Bankr. E.D. Va. 2000). Where, as here, the limited liability company is a single-member entity, the member's trustee gains sole and exclusive control over the management, governance and operations of the LLC, as well as the economic value of the member's ownership interest. *In re Albright*, 291 B.R. 538, 540-41 (Bankr. D. Colo. 2003).

The question, then, is whether this property of the estate is "burdensome" or of "inconsequential value and benefit" to the estate.

There is no competent proof presented by objectors or Trustee that there is any consequential value or benefit to the chapter 7 estate from Debtors' 100% ownership of the Company. It was not shown to be reasonably subject to marketing and sale, and no one has indicated who might wish to buy that LLC ownership interest for any amount.[9]

Obviously the "value" of the Company itself is potentially material to the issue of the value of Debtors' ownership of the Company, and whether the same can be liquidated in this chapter 7 case for the benefit of Debtors' creditors. But no accounting evidence (balance sheets, other similar documents, tax returns) was

[9] There is, obviously, one potential buyer – Debtors themselves. They have used and enjoyed the ownership of the Company for an extended period to generate personal income, have a relationship with EchoStar, and one might suspect would be motivated to retain the benefit of ownership as opposed to having Trustee liquidate the same through sale to a third party or through exercising the management rights that became solely vested in her at the time of the petition. Trustee did not explore this issue in her testimony.

introduced at the abandonment hearing.[10] The sole evidence touching on the subject of the Company's net value appears to be the schedules the Company filed in its chapter 11 case. *See* Ex. A at schedules A - F. Those schedules show total assets of $1,546.00 and liabilities in excess of $300,000.00.[11]

The parties' focus on the nature, value or worth of the contract between the Company and EchoStar is somewhat misplaced. That contract is property of the Company, a separate legal entity, and not property of Debtors' estate.[12] Thus, it is not the subject of the present abandonment debate.

However, the nature of the contract informs the analysis of the Company's value. The agreement appears to be the main source of income for the Company. But it is terminable, without cause, upon sixty days notice. And, since it appears similar DISH Network retailer agreements are quite easy to obtain, the fact that the

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[10] The UST had marked, but failed to offer, Ex. 1, Debtors' 2003 tax return. *See* Doc. No. 110. The Court therefore does not consider the document. The Court, however, can and has evaluated Ron Ryan's testimony related to the document. On balance, that testimony does not reflect that there is positive net value to the Company in the sense addressed in this Decision.

[11] It is difficult to believe that the snapshot painted by these schedules is accurate. A business that generates $1 million to $3 million a year in gross receipts, *see infra* note 13, almost certainly has accounts receivable or work in progress of a substantial value, as well as significant cash flowing through bank accounts on an ongoing basis. Yet the schedules filed by the Company asserted that as of December 18, 2005, the Company had $450.00 in a bank account, $1,500 in furniture and fixtures, and nothing else. On the other hand, no evidence was presented at the hearing herein to establish some other asset figure, particularly one meeting or exceeding the outstanding liabilities of $300,000.00.

[12] *See, e.g.*, Idaho Code § 53-633(1), (2). *See also In re Hale*, 04.3 I.B.C.R. 128, 129 (Bankr. D. Idaho 2004); *Hopkins v. Brossard (In re Neuroscience Ctr., P.C.)*, 04.1 I.B.C.R. 45, 47 (Bankr. D. Idaho 2004); *In re Brown*, 00.3 I.B.C.R. 123, 124-25 (Bankr. D. Idaho 2000).

Company already has such an agreement does not lead to the conclusion that the Company's worth is especially enhanced by it, despite the significant income that the Company has been able to generate with or through it.[13]

There is another area of inquiry that touches on the value of Debtors' interests in the Company, and the value of the Company generally. Under Idaho Code § 53-641, a person is "disassociated" and ceases to be a member of a limited liability company if his interests are assigned or if he files a voluntary petition in bankruptcy. *See* § 53-641(1)(b) (referencing § 53-638) and § 53-641(1)(d)(ii). Under Idaho Code § 53-642, a limited liability company is dissolved and its affairs shall be wound up upon the disassociation of a member. *See* § 53-642(3). None of the parties, however, addressed any of these statutory consequences to the single-member LLC when Debtors filed bankruptcy.[14] The Court need not do so now, beyond noting that the result of a dissolution under § 53-642 is a winding up

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[13] The bankruptcy filings by the Company in Case No. 05-05758-TLM indicate estimated gross business income of $2,500,000.00 in 2003, $3,000,000.00 in 2004, and $1,200,000.00 in 2005 through December 18. *See* Ex. A at statement of financial affairs, response to question 1. Those filings also indicate that distributions were made by the Company to Ron Ryan of approximately $85,000.00 in the year prior to the December 18, 2005 chapter 11 petition. *Id.* at response to question 3(c). Debtors did not disclose *their* gross income in the calendar year up to filing (2003) and the prior two years, as they were required to do. *See* Doc. No. 6 at statement of financial affairs, response to question 1. They did, however, project that $7,500.00 per month ($90,000.00 per year) would be received personally by them from the business. *Id.* at schedule I. As noted above, that estimate later increased to $10,500.00 per month ($126,000.00 per year). *See* Doc. No. 23 at amended schedule I.

[14] Similarly, the parties here, and the Company as chapter 11 debtor in possession, failed to address the fact that the contract between EchoStar and the Company "automatically terminated" when Company filed its bankruptcy case. *See* Ex. B at § 10.4.

under § 53-644 and a distribution to creditors and members under § 53-644 and § 53-646.[15] The evidence is not sufficient to determine that in a dissolution and distribution process, at any of the potentially relevant dates, the Company's assets (even including work in progress) would satisfy all outstanding liabilities.

In sum, the evidence the parties elected to present on the subject Motion does not support the idea that the property of the estate – the 100% ownership of the Company – is of consequential value or benefit to this chapter 7 estate. Therefore, abandonment is proper.

The UST expressed concern that abandonment would or might have repercussive effect on the UST's motion to dismiss the Company's chapter 11 filing, Case No. 05-05758-TLM. This is a relatively easy concern to assuage. First, Debtors' motion specifically requests that the abandonment be effective only on the Court's granting of the order. Doc. No. 97 at 2. Second, the Court has determined that the Order of abandonment entered upon today's Decision will be effective from the date of such Order, and not before. Third, the Court has today issued a decision in Case No. 05-05758-TLM granting the UST's motion to

[15] The winding up process includes prosecuting and defending suits, settling and closing the LLC's business, disposing of and transferring the LLC's property, discharging the LLC's liabilities, and distributing any remaining assets to members. Idaho Code § 53-644(2)(a) through (e). Under Idaho Code § 53-646, if a limited liability company is dissolved and wound up, assets are distributed first to creditors, then to members in satisfaction of certain distributive rights under § 53-629 and § 53-630, and then to members for return of contributions and other distributive rights. Under these provisions, if total assets are insufficient to pay non-member creditors, there is nothing available for the members.

dismiss under § 1112(b).

The UST also expressed some concern that abandonment would have an impact on what are anticipated to be motions or adversary proceedings, brought by either Trustee or the UST, seeking to recover the net business income generated by the Company during this case prior to abandonment. Neither the specific concern nor the theory of recovery were articulated in any of the objectors' pleadings. However, from the responses to the Court's questioning at hearing, it appears the contention is that, because Debtors' ownership of and member rights in the Company became property of Debtors' estate as of filing in November, 2003, the net income the Company generated from that date through conversion in February, 2004, and later from reconversion in September, 2004 through the date of abandonment (now February 23, 2006), are the "[p]roceeds, product, offspring, rents, or profits of or from property of the estate" under § 541(a)(6).

It is wholly premature to address these contentions. Issues regarding the estate's claim(s) against Debtors including claims to business income of the Company, whether to be advanced under § 541(a)(6) or otherwise, will need to be determined on applicable authorities and their own merits, and based on the record and evidence introduced, once appropriate pleadings are filed and hearings held. The abandonment order today would not appear to affect such matters except, perhaps, in one regard. The date the Debtors' interest in the Company was

abandoned is now set, and that might place a bookend on the period of time subject to that particular debate.

**CONCLUSION**

Upon the foregoing, the Court finds and concludes that abandonment is proper under § 554(b), as the property of the estate has been shown to be of inconsequential value and benefit to the estate. The Motion will be granted. The several objections of the UST and Rasmussen will be overruled. The Court will prepare an order accordingly.

DATED: February 23, 2006

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE