

**FILED**

SEP 15 2005

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

1		)	Chapter 7
2		)	No. 4-04-bk-01295-JMM
3		)	Adversary No. 4-05-ap-00164-JMM
4	In re:	)	<b>MEMORANDUM DECISION RE:</b>
5	JUSTIN WEISS, M.D.,	)	<b>MOTION TO INTERVENE</b>
6	Debtor.	)	(Opinion to Post)
7	MARGARETTA WEISS, an unmarried	)	
8	person,	)	
9	Plaintiff,	)	
10	vs.	)	
11	GAYLE ESKAY MILLS, Chapter 7 Trustee	)	
12	for Justin Weiss,	)	
13	Defendant.	)	

The Motion to Intervene, filed by the Debtor, Justin Weiss, came on for hearing on August 23, 2005. The parties' appearances were noted of record. After considering oral argument, the pleadings, the state of the record and the law, the court now rules, and denies the motion.

**PROCEDURAL FACTS**

On June 27, 2005, Margareta Weiss, the Debtor's ex-spouse, filed an action against the Trustee of the Debtor's chapter 7 estate. The action seeks a court declaration to the effect that any property distribution made by the state court, in the course of dissolution proceedings, was valid and not subject to any sort of collateral attack by the Debtor's Trustee.

The Trustee answered and counterclaimed, alleging fraudulent conveyances, preferential transfers, turnovers, and unauthorized post-petition transfers against Ms. Weiss, among other things. Ms. Weiss filed a reply thereto, and thus all issues have been joined, and a trial scheduling order will issue forthwith.

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1 In the meantime, the Debtor, Justin Weiss, has asked permission to intervene in the current  
2 dispute between his ex-wife and the Trustee, for the purpose of “protecting his interest in the validity of  
3 the state court decree.” (Motion at 11.)

4  
5 **THE LAW**

6  
7 FEDR. CIV. P. 24 (made applicable to bankruptcy proceedings by FED. R. BANKR. P. 7024)  
8 provides the framework for considering whether intervention is proper. Here, the Debtor has not  
9 indicated, in his moving papers, whether he seeks to intervene “of right” or by permission. Thus, the  
10 court finds that the Debtor does not have a right to intervene because, by filing a chapter 7 petition, he  
11 has transferred to his estate, any rights which he might otherwise have. The Trustee is the sole  
12 representative of an “estate.” 11 U.S.C. § 323.

13 In this case, the ex-spouse is attempting to retain property which she received in a divorce  
14 from the Debtor. The Debtor’s estate, represented by the Trustee on behalf of the Debtor’s creditors, is  
15 utilizing specific “avoiding powers” to attempt to undo what the Trustee asserts were fraudulent  
16 conveyances, preferential transfers, and/or unauthorized transfers. 11 U.S.C. §§ 544, 547, 548, and 549.  
17 Each of the aforementioned sections only confers status to act for the estate upon the Trustee.

18 The Debtor’s intervention, then, could be only to prevent his creditors from recovery, on  
19 estate theories, against his former spouse. However, the former spouse has able counsel, and needs no  
20 formal assistance. He has not indicated any specific right that he, personally, will lose if not allowed to  
21 intervene.

22 The Debtor, by filing chapter 7, has surrendered to his creditors any causes of action to  
23 be taken on behalf of the estate, to the estate’s only representative, the Trustee. A cause of action is  
24 property of the estate under 11 U.S.C. § 541(a). *See, e.g., Sender v. Simon*, 84 F.3d 1299 (10th Cir.  
25 1996). Even more compelling, however, is that the Trustee is asserting bankruptcy causes of action,  
26 specifically created by statute for the benefit of the estate, and is not attempting to undo the state court



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