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Smith
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IN THE UNITED STATES BANKRUPTCY COURT

FILED

FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:)
)
Robert W. Dole, Jr.,)
)
Debtor,)
)
_____)

Chapter 7

Case No. 96-77677-W

JUDGMENT

ENTERED

FEB 21 1997

V.L.D.

Based upon the Findings of Fact and Conclusions of Law contained in the attached Order of the Court, the Motion of Joanne Lazowski Dole for relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) is granted.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
February 20, 1997.

97-58

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FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. BANKRUPTCY COURT
DIST. OF SOUTH CAROLINA

IN RE: }
Robert W. Dole, Jr., }
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Chapter 7

Case No. 96-77677-W

ORDER

This matter is before the Court on the Motion of Joanne Lazowski Dole ("Ms. Dole"), seeking relief from the automatic stay in order to establish and receive support, to equitably divide marital property, and to obtain a divorce in an action against the Debtor pending in the General Court of Justice, District Court Division, State of North Carolina, County of Mecklenburg, Case Number 96-CVD-288VME.

A hearing on the motion was held on February 4, 1997. The Debtor did not appear or respond to the motion, but the Chapter 7 Trustee filed an objection. The Trustee did not object to allowing Ms. Dole to proceed in order to obtain a divorce, alimony, and child support, however, relying on In re Ackerman, 194 B.R. 404 (Bkrtcy. D.S.C. 1996), the Trustee objected to Ms. Dole obtaining relief from the automatic stay in order to prosecute her action seeking an equitable division of marital property, contending that this Court would be the better forum to decide the issues of a marital property division.

Based upon the pleadings filed herein, and the statements and arguments of counsel at the hearing, this Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On October 23, 1996, Robert W. Dole, Jr. filed for relief under Chapter 7 of the United States Bankruptcy Code. Robert F. Anderson was appointed Trustee on October 24, 1996.

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On March 4, 1996, a complaint was filed against the Debtor in the General Court of Justice, District Court Division in Mecklenburg County, North Carolina (the "State Court") in which Ms. Dole seeks a divorce, support, and an equitable division of marital property. No adjudication of the marital property division had been determined as of the date the Debtor filed for relief under Chapter 7.

Ms. Dole filed the motion for relief from the automatic stay on January 14, 1997. Her Motion sought relief under both 11 U.S.C. §362(d)(1) and (2).

CONCLUSIONS OF LAW

The factors this Court must consider in deciding whether to lift the Stay include (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there will be great interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in the Bankruptcy Court; and (3) whether the estate can be protected properly by a requirement that the creditor seek enforcement of any judgment through the bankruptcy court. In re Robbins, 964 F.2d 342, 345 (4th Cir. 1992). Applying those factors to this case results in a determination that the stay should be lifted.

The pending State Court domestic action involves interpretation and application of North Carolina law. This Court recognizes the long standing principle that, absent unusual factors, federal law favors state retention of control over domestic relations. Caswell v. Lang, 7F7 F.2d 608, 610 - 611, (4th Cir. 1985). Generally, bankruptcy courts owe state courts deference in domestic matters. In re Robbins, 964 F2d 342, 344 - 347 (4th Cir. 1992).

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Previously, this Court in In re Ackerman, 194 BR 404 (Bkrcty. D.S.C. 1996) refused to grant a motion for relief from stay in order to allow a non-debtor spouse to prosecute an action seeking an equitable division of marital property in the family court. The Trustee relies on that case as authority to deny the Motion. However, Ackerman is clearly distinguishable from the facts of this case.

In the Ackerman case, the adversary proceeding initiated by the Trustee and already pending in this Court at the time of the 11 U.S.C. §362(d) motion involved not only the equitable division of marital property but also involved issues of fraudulent conveyances under 11 U.S.C. §544, which can be heard only in this court. The debtor, Mr. Ackerman, was an attorney who was representing himself in the adversary proceeding. The proceeding involved multiple parcels of real property, multiple conveyances and lienholders, and appeared to depend in large part on a diligent and thorough discovery and tracing process. For these reasons, among others, the non-debtor spouse in Ackerman stated that the equitable apportionment action would probably not be heard within a year in the state court, compared to the likelihood that the matter could be heard in this court within a few months. In Ackerman, an action in the State Court had not been filed at the time the debtor filed bankruptcy.

In comparison in the instant case, the Trustee has not raised fraudulent conveyance issues or other issues which uniquely require this Court's expertise. The only issues to be decided by the North Carolina State Court are issues involving domestic law. Furthermore, the action for an equitable division of marital property had been pending in the North Carolina State Court for a period exceeding 7 months when the Debtor filed his Petition for relief under Chapter 7. According to Ms. Dole's counsel, the North Carolina State Court will be able to address the equitable division

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of marital property after a 20 day notice period, after being granted relief from the automatic stay. Finally, the Trustee has not demonstrated other grounds, such as collusion between the spouses, which would indicate that the interests of the bankruptcy estate could not be protected by the Trustee in the North Carolina State Court.

After balancing the hardships to be suffered by the Debtor's spouse, with the potential prejudice to the bankruptcy estate, this Court concludes that the motion for relief from stay should be granted. Accordingly, it is

ORDERED, that the Motion of Joanne Lazowski Dole for relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) is granted. Movant is authorized to prosecute her action on the issues of support, an equitable division of marital property, and divorce. It is further

ORDERED, that this Court shall retain jurisdiction to determine the rights of creditors and the estate upon a determination of equitable distribution by the North Carolina State Court. Enforcement of the equitable distribution award shall be through this Court.

Columbia, South Carolina,
February 20, 1997.


UNITED STATES BANKRUPTCY JUDGE

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