

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

In re Mary Anne Goldsmith Beeson,)
Debtor)

Case No. 10-03678-hb
Chapter 11

ORDER GRANTING MOTION TO ABSTAIN UNDER 11 U.S.C. §305(a)(1)
AND ORDER DISMISSING CASE

The relief set forth on the following pages, for a total of 12 pages including this page, is hereby ORDERED.

FILED BY THE COURT
07/27/2010



Entered: 07/27/2010

US Bankruptcy Judge
District of South Carolina

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This matter comes before the Court for hearing on the Motion To Abstain Under 11 U.S.C. § 305(a)(1) (“Motion To Abstain”) [Docket Entry 12] filed by Joseph A. C. Beeson (“Husband”) seeking dismissal of this Chapter 11 case filed by Mary Anne Goldsmith Beeson (“Debtor-Wife”). The hearing on the Motion To Abstain was held on July 6, 2010, and July 19, 2010. At the hearing George L. Clauer III appeared for Husband, Nancy E. Johnson appeared for Debtor-Wife, and F. Marion Hughes appeared for Cornerstone National Bank.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Local Civil Rule 83.IX.01, D.S.C. This Motion To Abstain is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue is proper in this Court pursuant to 28 U.S.C. §1408 and §1409.

PROCEDURAL HISTORY

3. On May 23, 2010 (the “Petition Date”), the Debtor-Wife filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, commencing the above captioned bankruptcy case (the “Chapter 11 Case”).

4. The Debtor-Wife is an individual who is not in business other than as owner or holder of a marital property interest in certain residential and commercial real properties and marital property interests entities which own real property.

5. A response and opposition to the Motion To Abstain was filed by the Debtor-Wife [Docket Entry 35]. Notices of support for the Motion To Abstain were filed by and received in evidence from the three creditors to whom the largest marital debts are owed. [Docket Entries 27, 37, and 43] [Mover's Exhibits B, C, and D].

FACTS

6. The parties entered a stipulation of the following facts:

a. The Debtor-Wife and Husband were married in 1980.

b. Although the amounts are in dispute, the Debtor-Wife and Husband have substantial marital assets consisting mainly of real estate or interests in various entities which in turn own real estate and substantial marital debts including lines of credit, mortgage debt on real estate and guaranties on the debts of some of the real estate holding entities.

c. On December 3, 2008, the Debtor-Wife filed a petition for divorce entitled "*Mary Anne Goldsmith Beeson vs. Joseph Alford Crews Beeson*" in the Family Court, Tenth Judicial Circuit, Anderson County, South Carolina bearing Docket No. 2008-DR-04-2622 (Hereinafter the "Divorce/Property Action").

7. On December 10, 2009, the Divorce/Property Action Judge issued an order on motions for temporary relief (the "Order For Temporary Relief") [Exhibit S-1]. Among the findings and conclusions made in the Order For Temporary Relief are the following:

The parties agree their assets must be managed and sold, but cannot agree on the professionals to be involved in this process, and so far have had significant disagreements over the terms and structure of possible sales. Both parties recognize the need or professional attention to be given to the management of their assets and liquidation of them. There are creditors calling upon the parties for payment of various obligations. Given these circumstances, the complexity of the marital estate,

the depressed economy (particularly with respect to real estate development), the inability of the parties to agree on how to use their assets during pendency of this action, and the need for use of those assets to provide support for Plaintiff and the parties' daughter (at least on a temporary basis), **it is appropriate to appoint a sequestrator to take control over all of the assets of the parties.** Plaintiff previously filed a motion to appoint a sequestrator, but withdrew this motion prior to the hearing on November 9, 2009. . . . On my own motion, I conclude a sequestrator is necessary in this civil action." (Emphasis supplied)

8. The Order For Temporary Relief includes the following:

11. **A sequestrator shall assume control over all assets owned by either party, or in which either party holds any titled or equitable interest, including those assets titled in the name of either party individually, jointly with another, in any partnership, joint venture limited liability corporation, corporation, enterprise or other entity of any type or nature.** He sequestrator shall be identified in a supplemental order to be issued by the undersigned, in which the specific authority, duties, rights and responsibilities of the sequestrator shall be delineated. The undersigned retains and reserves jurisdiction to issue such an order.

12. Subject to the control and authority of the sequestrator to be named by supplemental order of this Court, **all real property** owned by Plaintiff, Defendant, 178 Associates, LLC (an entity owned by Plaintiff and Defendant), or Beeson Development Company (an entity controlled by Defendant), **shall be listed on the market for sale** with one or more independent. qualified and licensed agent(s) or broker(s). In this regard. the following terms and provisions shall apply:

* * *

d. **Each party shall act in good faith and in fair dealing and treat each other in a fiduciary capacity with respect to the efforts to list, market and sell the real property assets.**

9. The Order For Temporary Relief allowed the Debtor-Wife to temporarily remain in the approximately 7,000 square foot former marital home.

10. On December 22, 2009, the Judge in the Divorce/Property Action entered an Order Appointing Michael D. Glenn, as Sequestrator (the "Order Appointing Sequestrator") [Exhibit S-2]. The portions of the Order Appointing Sequestrator describing the powers and

authority of the sequestrator were made “[w]ith the consent of the parties . . .” The Order Appointing Sequestrator directed Mr. Glenn to take control of the marital property and granted him very broad powers in the management and sale of that property. Mr. Glenn is an attorney with more than 45 years of experience in divorce and marital property matters including several years service as a judge in the Family Court for Anderson County, South Carolina. Mr. Glenn also serves on the board of directors of a local community bank as well as the regulatory matters committee of that board.

11. Neither the Order For Temporary Relief nor the Order Appointing the Sequestrator was appealed by either party and those orders are now final [Stipulation No. 5].

12. The Order Appointing the Sequestrator included the following important orders directed to the parties:

8. **Each party shall cooperate with the Sequestrator** and do anything reasonably requested of him or her by the Sequestrator.

9. **Neither party shall interfere with the Sequestrator** or do anything to preclude the Sequestrator from performing his responsibilities and duties.

(Emphasis added)

13. In March, 2010, the Sequestrator filed a motion (the “Sequestrator’s Motion”)[Exhibit S-3] with the Family Court seeking an order:

1. **Requiring Plaintiff to cooperate with the Sequestrator and agents of First Citizens Bank to allow the appraisal of the marital home** and adjacent acreage located at or near 2150 River Road, Piedmont, South Carolina. the appraisal can be completed in a timely manner. . . .

2. **Requiring Plaintiff to cooperate with the Sequestrator and any real estate agent authorized by the Sequestrator to examine and tour the marital home** and adjacent acreage for the purpose of listing the property for sale. In the event Plaintiff refuses to cooperate with the Sequestrator and any real estate agent chosen by the Sequestrator, the Sequestrator requests that the Court appoint another individual to be responsible for assuring that any real estate agents chosen by the Sequestrator be given full and

adequate access to the marital home and adjacent property in a manner determined by the Sequestrator and/or real estate agent chosen by the Sequestrator.(Emphasis added)

14. The Sequestrator testified at the hearing on the Motion To Abstain that upon being appointed as Sequestrator, he learned that the mortgage on the family home and surrounding property, held by First Citizens Bank, was seriously in arrears and would soon be subject to foreclosure. Mr. Glenn aggressively negotiated a proposed forbearance agreement with First Citizens Bank [Exhibit S-4] which would have retroactively reduced the interest rate and provided a six month extension of time to market the family home. A condition of the forbearance agreement was that the bank be allowed to have its chosen appraiser enter the home to perform an appraisal. Mr. Glenn contacted the Debtor-Wife to make arrangements for the bank's appraiser to visit the former family home and was initially refused admittance. The appraisal was conducted later. The offer of the forbearance agreement was withdrawn by First Citizens Bank after the Husband and the Sequestrator agreed to sign the agreement but the Debtor-Wife refused to sign the agreement [Stipulation 6]. On April 29, 2010, First Citizens Bank filed a foreclosure action on the mortgage on the former family residence [Exhibit S-4]. That action was pending on the Petition Date [Stipulation 4].

15. Evidentiary hearings were held in the Family Court in the Divorce/Property Action on motions by the Sequestrator which resulted in the issuance on May 14, 2010, [Exhibit S-9] of an order:

- a. Approving the sale of the couple's interest in what is called the "Spinx" property and for the sale of Husband's interest in WBN, LLC which together are expected to net the parties approximately \$905,000.
- b. Approving the Sequestrator's plan for payment of a portion of those proceeds to pay \$483,000 toward an unsecured debt to Peoples National Bank for which

amount the bank has agreed to dismiss a collection suit seeking to recover that amount plus interest, attorneys fees and costs.

- c. Approving the Sequestrator's plan for payment of the balance of the sales proceeds to pay towards either a \$1,000,000 debt to Cornerstone Bank or towards a \$200,000 mortgage owed to Cornerstone Bank.

The May 14, 2010 order made express findings that the Spinx and WBN, LLC sales were "reasonable" and "should be approved."

16. John Beeson, brother of the Husband, and manager of WBN, LLC testified at the hearing on the Motion To Abstain that if the bankruptcy case was dismissed he was still prepared to proceed with the offered purchase of the Husband's interest in WBN, LLC.

17. On May 19, 2010, Counsel for the Debtor-Wife in the Divorce/Property Action filed a notice of appeal of the May 14, 2010 order. [Exhibit S-10].

18. In May, 2010, the Sequestrator received an offer from CJKS, LLC to buy the Family Home and approximately 63 acres of land for \$1,950,000 cash [Exhibit S-11]. The CJKS, LLC member signing the offer was a former business associate of Husband. That purchase price would have paid the marital debt owed to First Citizens Bank on the note securing the mortgage on that property. The Debtor-Wife made a personal visit to the wife of one of the principals of CJKS, LLC at her home to explain that Debtor-Wife did not wish to sell the Beeson family home. On May 17, 2010, CJKS, LLC delivered to the Sequestrator a notice of withdrawal of the CJKS offer "due to Mary Annes (sic) objection to the sale." [Exhibit S-12].

19. On Monday, May 24, 2010, a hearing was scheduled to be held in the Family Court on motions of the Husband which among other things were requesting an order directing the Debtor-Wife to cooperate with the Sequestrator in the marketing and sale of the former

family home or alternatively requesting an order that the Debtor-Wife vacate the former family home.[Exhibit S13]. This Chapter 11 case was filed on Sunday, May 23, 2010.

20. Although their estimates of the value of the couple's marital property are substantially different, both the Debtor-Wife and the Husband believe their marital property currently exceeds their marital debts. The only other debts shown in the schedules filed by the Debtor wife are a credit card debt of some \$34,637.50, an accountant's bill for \$3,064.71 and her attorney's fees bill for the Divorce/Property Action of over \$100,000.

21. On May 25, 2010, an offer was presented to the Sequestrator for the purchase of the family home including the surrounding 63 acres and a separate 180 acre tract of land for \$3,550,000 cash.[Exhibit S-14] The offeror appeared at the hearing to testify that if the bankruptcy case was dismissed he was prepared to proceed with the offered purchase.

22. If the sale of the Spinx property, the sale of Mr. Beeson's WBN, LLC interest and the sale of the former family home and acreage proposed in the May 25, 2010 offer are allowed to close, the net proceeds of those sales will eliminate substantially all of the marital debt of the Debtor-Wife and Husband.

23. The Husband's Motion To Abstain asserts that it is in the best interests of the creditors and of the Debtor-Wife for this Chapter 11 case to be dismissed. The evidence presented supports this assertion. There was no evidence from which the Court could conclude that the Debtor-Wife's or the Creditors' interests would be better served in the bankruptcy court and no evidence that she needs a bankruptcy discharge at this time—as the evidence indicated that substantial and sufficient assets exist to pay all of her marital and non-marital debts in full. At this point in time this is simply a dispute between the Debtor-Wife and Husband that falls squarely within the jurisdiction of the Family Court. Further, the Debtor-Wife did not appear to

have a plausible plan for going forward in this Chapter 11 case, and the evidence gave the Court reason to question her good faith in filing this bankruptcy.¹

24. The Debtor-Wife made several arguments and offered facts she contended support her claims that this bankruptcy case is necessary because her marital property interests and her procedural rights were not being properly protected in the Family Court. The Debtor-Wife claims that the jurisdiction and authority of this Court and the safeguards of bankruptcy procedure are necessary to ensure that processes for the sale of marital assets and payment of marital debts are transparent, fair, and equitable.

24. At most the Debtor-Wife offered unsubstantiated suspicions and unsupported innuendos concerning the transparency and fairness of proceedings in the Family Court to date. The facts offered by the Debtor-Wife to support her assertion that the proceedings to date in the Family Court or the actions of the Sequestrator were unfair or inequitable were not persuasive in convincing this court that dismissal is not in the best interest of creditors or the Debtor-Wife. Those assertions are more appropriately addressed to the Family Court.

DISCUSSION AND CONCLUSIONS OF LAW

This Court is authorized to abstain from exercising jurisdiction over this case and therefore to dismiss this case under the provisions of 11 U.S.C. § 305(a)(1) which provides, in pertinent part:

¹ Debtor-Wife's schedules filed shortly before the hearing include a 7,000 sq. ft. home on the Saluda river on more than 61 acres, yet she scheduled household goods having a value of only \$10,000, with clothing, shoes and accessories valued at \$250 and jewelry valued at \$1,980. On cross examination she admitted that she has a multi-karat diamond purchased for approximately \$24,000 and Movant's evidence includes pictures of the interior of her house which clearly indicate a far greater value for its contents than disclosed by Debtor-Wife. When questioned about this discrepancy, her response indicated that she viewed these details as trivial and unimportant. She did offer to get an appraisal for the ring upon request. The Court is unclear as to whether she misunderstands her responsibilities to list a fair value for her property in this matter, whether she has no idea of the fair value, or whether she undervalued the property intentionally or carelessly. Any one of these explanations supports dismissal of this case.

§ 305. Abstention

- (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if--
 - (1) the interests of creditors and the debtor would be better served by such dismissal or suspension

* * *

In *In re Golf Course Marketing Corp.*, 95-76646-W, 1996 WL 33340787 (Bkrtcy.D.S.C.

5/16/96)(JW) Judge Waites held that:

As stated in *In re ABQ-MCB Joint Venture*, 153 B.R. 338 (Bkrtcy.D.N.M.1993) in determining whether to dismiss an involuntary Chapter 7 proceeding under § 305, the court should consider fairness, priorities in distribution, capacity for dealing with frauds and preferences, speed, economy, freedom from litigation, the importance of a discharge to the debtor, a pending state proceeding, the small number of remaining creditors, the necessary complexity of the bankruptcy process, efficiency and economy of administration. *In re ABQ-MCB Joint Venture*, 153 B.R. at 341.

Similarly, the Court in *In re Spade*, 258 B.R. 221 (Bkrtcy. D. Colo. 2001) held that:

In determining whether dismissal under § 305 is appropriate, courts must look to the individual facts of each case. *See In re Trina Assoc.*, 128 B.R. 858, 867 (Bankr.E.D.N.Y.1991). Courts applying the broad interpretation of § 305 have considered a number of different criteria to determine whether a case should be dismissed under this section, including, but not limited to: (1) the motivation of the parties seeking bankruptcy jurisdiction; (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court; (3) the economy and efficiency of administration; (4) the prejudice to the parties; *See In re Fax Station, Inc.*, 118 B.R. at 177 (and cases cited therein); *In re Tarletz*, 27 B.R. at 793; *In re Realty Trust Corp.*, 143 B.R. at 926. *In re Spade*, 258 B.R. at 231.

Although most cases employing § 305 involve involuntary filings, the facts of this case warrant application to this voluntary proceeding. The relevant factors are analyzed and determined as follows:

a. Fairness

There is no evidence that maintaining a proceeding here on these facts would in any way produce a result that is superior to proceedings in Family Court.

b. Priorities In Distribution

The Debtor-Wife's arguments concerning alleged improper use of marital assets to pay certain marital debts should be made or have been made to the Family Court. Those matters involve issues that are squarely within the jurisdiction and expertise of that court.

c. Capacity For Dealing With Frauds And Preferences

There are no claims thus far asserting fraud and no bankruptcy type preferences.

d. Speed

The evidence indicates that continuation of this Chapter 11 proceeding to sell the marital property would require substantial additional time and expense. Similar proceedings are already well underway in Family Court.

e. Economy

There is no evidence that a bankruptcy proceeding will produce a result superior to proceedings in the Family Court, already well underway.

f. Freedom From Litigation

The Debtor-Wife stated that her plan was to sell properties to pay debt. However, many of the properties in question are not titled solely in her name, if the title contains her name at all. It appears that sales of these properties cannot be accomplished in the bankruptcy court without significant litigation between Debtor-Wife and Husband, and possibly others, over who has the authority to sell and on what terms.

g. The Importance Of A Discharge To The Debtor

If the approved and proposed sales are completed, the Debtor-Wife will not need either a reorganization of her financial affairs or a bankruptcy discharge.

h. A Pending State Proceeding

There is already Family Court proceeding in which the Court has demonstrated a hands-on supervision of the liquidation of the marital property with broad authority, and the Family Court has jurisdiction to resolve ownership and distribution matters between Debtor-Wife and Husband that this Court lacks.

i. The Small Number Of Remaining Creditors

There will be little or no remaining marital debt if the approved and proposed sales are completed, and the value of assets available to pay debt appear to be sufficient regardless of the forum.

j. The Necessary Complexity Of The Bankruptcy Process

A Chapter 11 proceeding with all of the required processes and procedures is unnecessary. The bankruptcy process to sell the marital assets may add substantial and unnecessary additional complexity to the liquidation process.

k. Efficiency And Economy Of Administration

A Chapter 11 proceeding with all of the additional costs, is unnecessary for what is essentially a two party dispute that can be handled and is being addressed by the Family Court.

l. The Motivation Of The Parties Seeking Bankruptcy Jurisdiction

This is a domestic relations and marital property dispute between two parties who appear to be unable to agree on most of the important aspects of the liquidation of their

marital property and payment of their marital debts. The filing of this bankruptcy case appears to be an attempt by the Debtor-Wife to get around the authority of the Family Court.

m. The Prejudice To The Parties

Maintaining this Chapter 11 case will cause substantial, unnecessary delays and additional costs to both the Debtor-Wife and the Husband.

For the foregoing reasons, the Court will abstain from exercising jurisdiction over this Chapter 11 case because the interests of the creditors and the Debtor-Wife will be better served by dismissal.

THEREFORE, IT IS ORDERED that the above numbered and entitled Chapter 11 case be and is hereby dismissed under the provisions of 11 U.S.C. § 305(a)(1).

AND IT IS SO ORDERED.