

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Eddie C. Stokes,

Debtor.

Robert F. Anderson, Trustee

Plaintiff,

v.

Larry N. Prosser and  
Audrey H. Stokes,

Defendants.

Case No. 94-71011

Adversary No. 94-8251

JUDGMENT

Chapter 7

ENTERED

AUG 10 1995

R. S. S.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the subject property shall be equally divided between the Plaintiff, Robert F. Anderson, Trustee and the Defendant Audrey H. Stokes. In the event that the parties are not able to determine an equal division within ten (10) days of the date of this Order, as indicated by affidavit of counsel of either of the parties to that effect, the Court will schedule a hearing at which time the parties will be allowed to submit limited additional evidence in the form of third party appraiser testimony as to the present value, location and condition of the marital assets for the Court's consideration in its division of the assets.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
August 10, 1995

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**ORDER**

Chapter 7

FILED  
JUL 1 1994  
R. S. S.

THIS MATTER comes before the Court upon the Complaint of the Trustee, Robert F. Anderson, ("Trustee") seeking the turnover of certain marital assets of the Debtor, Eddie C. Stokes, ("Debtor") from the Defendant Audrey H. Stokes ("Mrs. Stokes"). The other issues raised in the Complaint including the issues involving the Defendant Larry N. Prosser were resolved prior to trial. Based upon the evidence presented at trial, the pleadings filed by the parties, and the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

The Debtor and Mrs. Stokes were married in 1968. The Stokes subsequently separated and in September 1993, Mrs. Stokes filed an action against the Debtor for divorce in the Family Court of Florence County, South Carolina. In October of 1993, shortly after the divorce action was filed, the Debtor and Mrs. Stokes submitted sworn financial declarations to the Family Court

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listing the parties' assets to include household goods, clothing, jewelry, furniture, automobiles and an unincorporated business established in 1986 called Dixie Frame Products, a wholesale and retail distributor of picture frame supplies.

The Trustee alleges that the Debtor contributed substantially to the business and that he is an equal owner with Mrs Stokes, thereby making the business, along with the Debtor's share of the marital assets, property of the bankruptcy estate. Mrs. Stokes takes the position that Dixie Frame Products was her company and that the Debtor has never had an interest in the business.

Dixie Frame Products, now a closed business, operated out of a commercial building in Florence County, South Carolina which had previously been owned by Commercial Industrial Contractors, Inc., a corporation owned solely by the Debtor which filed for bankruptcy protection in 1986. After relief from the automatic stay was granted in that case, a foreclosure commenced with Mrs. Stokes purchasing the building from the foreclosing bank in 1988. That purchase was financed in large part by Southern National Bank with a personal guaranty from the Debtor.

At trial, the Trustee produced the testimony of the Stokes' certified public accountant. Despite his disagreement with the Trustee's action to recover a share of the business from Mrs. Stokes and his opinion that Mrs. Stokes was the owner of the business, the accountant's testimony indicated that Mr. Stokes worked a significant amount of time at Dixie Frame Products and that the Debtor provided a large part of the financing Dixie Frame Products needed.

The accountant's testimony is supported by the Stokes' tax returns for the years 1989, 1990, 1991, and 1992. In each year, Mr. Stokes' other businesses had a net profit, while Dixie Frame Products had a net operating loss and it appears that his profit funded the operations of Dixie Frame Products. Schedule C of the tax returns relating to Dixie Frame Products, which

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listed the Debtor's Social Security number but not Mrs. Stokes' number, also indicated that the Debtor and Mrs. Stokes were "joint sole proprietors" of Dixie Frame Products.

As other evidence indicating the Debtor's involvement in Dixie Frame Products, the Trustee also introduced a November 26, 1991 Promissory Note and Security Agreement between Dixie Frame Products and Southern National Bank for the purchase of a 1990 Mercedes-Benz automobile. The Promissory Note and the Security Agreement were each executed by "Eddie C. Stokes, Owner" on behalf of Dixie Frame Products, with the title placed in and payments made by Dixie Frame Products. That automobile has continuously been and still is in the possession of and is being used by the Debtor.

The Debtor and Mrs. Stokes have also held themselves out as joint owners of Dixie Frame Products in a civil collection action which was filed by one of Dixie Frame Products' suppliers, Piedmont Molding Company (hereinafter referred to as "Piedmont"). Piedmont brought the action against "Eddie C. Stokes and Audrey H. Stokes, individually and d/b/a Dixie Frame Products". On February 26, 1993, the Debtor and Mrs. Stokes, through common counsel, filed an Answer and Counterclaim against Piedmont and in that pleading, did not deny that they were both owners of Dixie Frame Products and plead that both the Debtor and Mrs. Stokes entered into the franchise agreement with Piedmont. During the discovery of the Piedmont litigation, the Debtor's deposition lasted at least 10 hours over the course of 3 separate days, indicating a significant knowledge on the part of the Debtor regarding that action. The Debtor was also present during the trial and was part of the subsequent settlement agreement wherein the Stokes agreed to settle the action by Piedmont paying \$30,000.00 to the Debtor and Mrs. Stokes.

On March 1, 1994, prior to the consummation of the Piedmont settlement, the Debtor filed a voluntary Petition for relief under Chapter 7 of the Bankruptcy Code. The Debtor's discharge has previously been denied by this Court pursuant to 11 U.S.C. §§727(a)(2) and 727(a)(4)<sup>1</sup>. The Petition also stayed the Family Court proceeding and the marital assets remain undivided.

### CONCLUSIONS OF LAW

The Trustee is seeking a turnover of the bankruptcy estate's interest in the marital property.<sup>2</sup> At the time the Debtor filed bankruptcy, the bankruptcy estate was created which included all of the Debtor's legal and equitable interests. Section 541(a) provides as follows:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Pursuant to § 541(a), the Debtor's legal and equitable interest in the marital property became property of the estate upon the filing of the Petition. Section 542 requires that property of the estate that the trustee may use, sell or lease pursuant to §363(b), be turned over to the trustee. Section 542 provides as follows:

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<sup>1</sup> Further references to the Bankruptcy Code, 11 U.S.C. §§101, *et. seq.*, shall be by section number only.

<sup>2</sup> This is a core proceeding pursuant to §157. See, In re: Duval County Ranch Co., 167 B.R. 848 (Bankr. S.D.Tex. 1994), and Perlow v. Perlow, 128 B.R. 412 (E.D.N.C. 1991).

(a) Except as provided in subsection © or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless the property is of inconsequential value or benefit to the estate.

The bankruptcy estate's interest in the marital property is determined under the laws of the State of South Carolina. South Carolina Code, Ann. §20-7-473 (1976) provides as follows:

The term "marital property" as used in this article means all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation as provided in § 20-7-472 regardless of how legal title is held, ....

It appears from the preponderance of credible evidence presented at trial, and despite the testimony of the Debtor and Mrs. Stokes, that the following assets are marital property as that term is defined above:

1. Household contents at 2000 S. Laurie Circle, Florence, SC.
2. Commercial building at 3224 Bryson Drive, Florence, SC.
3. 1990 Mercedes-Benz automobile driven by Mrs. Stokes.
4. 1990 Mercedes-Benz automobile driven by the Debtor.
5. 1987 Mazda pickup truck.
6. Business furniture and fixtures of Dixie Frame Products.
7. Claim of Eddie C. Stokes and Audrey H. Stokes against Piedmont Molding Company

Having met his burden that the property described above is marital property pursuant to South Carolina Code § 20-7-473, the burden shifts to the Defendant, Mrs. Stokes, to show one of the exceptions is applicable. See Johnson v. Johnson, 372 S.E. 2.d 107 (S.C. App. 1988). It is the finding of the Court that the Defendant has not presented credible evidence that any of the exceptions apply.

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Once marital property is determined, the property should be divided between the parties based on the parties' contribution to the acquisition of the assets. Johnson v. Johnson, supra provides as follows:

The doctrine of equitable distribution is based on a recognition that marriage is, among other things, an economic partnership. Upon dissolution of the marriage, property acquired during the marriage should be divided and distributed in a manner which fairly reflects each spouse's contribution to its acquisition, regardless of which spouse holds legal title.

A spouse may be awarded an interest in the other spouse's business where it appears that the spouse contributed to the acquisition of the business, by working in the business, or making financial contributions to the business. See Brandi v. Brandi, 396 S.E.2d 124 (S.C. App. 1990); Reid v. Reid, 312 S.E.2d 724 (S.C. App. 1994); Donahue v. Donahue, 384 S.E.2d 741 (S.C. 1989); Poniatowski v. Poniatowski, 266 S.E.2d 787 (S.C. 1980); McClerin v. McClerin, 425 S.E.2d 476 (S.C. App. 1992); and Crawford v. Crawford, 392 S.E.2d 675 (S.C. App. 1990).

The apportionment of the property is within the sound discretion of the Court. Brandi v. Brandi, supra. In the present case it appears that the Debtor contributed financially to the above assets in an amount which equals that of Mrs. Stokes. The Debtor also contributed significant amounts of his time and expertise in the development of the Dixie Frame Products business.

For all of the foregoing reasons, it is therefore

**ORDERED**, that the above-reference property shall be equally divided between Robert F. Anderson as the Trustee of the Debtor's bankruptcy estate and Mrs. Stokes. In the event that the parties are not able to determine an equal division within ten (10) days of the date of this Order, as indicated by affidavit of counsel of either of the parties to that effect, the Court will

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schedule a hearing at which time the parties will be allowed to submit limited additional evidence in the form of third party appraiser testimony as to the present value, location and condition of the marital assets for the Court's consideration in its division of the assets.<sup>3</sup>

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
August 10, 1995

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<sup>3</sup>At the hearing the Trustee presented evidence of value in the form of the family court financial declarations of the parties. The Defendant, Mrs. Stokes, presented no evidence of value nor evidence to contradict the values indicated in the financial declarations. The Trustee has met his burden of proof. However, since the financial declarations are dated in 1993 and because the testimony at trial revealed that some marital assets may have been disposed of, and in order to do equity, this Court will consider limited additional evidence before ordering the specific division of marital assets.

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