

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
Luther M. Montague,) Case No. 09-11026C-13G
)
Debtor.)
)

ORDER

This case came before the court on December 8, 2009, for a hearing upon a motion filed on behalf of Sharon F. Montague for an order lifting the automatic stay as to a civil action pending in state court in which the Debtor is a party. Aleta B. Kiser appeared on behalf of Sharon F. Montague ("Movant") and Anita Jo Kinlaw Troxler, the Chapter 13 Trustee, also appeared. Having considered the motion and the other matters of record in this case and having heard and considered the arguments of counsel, the court finds and concludes as follows:

1. On June 4, 2009, the Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code.

2. When this case was filed, the Debtor and the Movant were parties to a civil action pending in Guilford County District Court, involving claims for equitable distribution. The Movant seeks relief from the automatic stay in order to allow this civil action to proceed.

3. Under section 362(d) of the Bankruptcy Code, the bankruptcy court may lift the automatic stay "for cause." However, the Code provides no definition of what constitutes "cause" for

purposes of section 362(d). This means that the bankruptcy court must determine what constitutes "cause" on a case-by-case basis.

4. Divorce, alimony, division of marital property, child custody and child support are matters which are controlled by state law. The state matrimonial court is the appropriate forum to adjudicate the respective responsibilities, obligations and property entitlement of parties with claims involving such matters. This is true even though one of the parties may be a debtor in a pending bankruptcy case. In fact, under section 362(b)(2)(A), the automatic stay does not apply to the commencement or continuation of an action or proceeding for the establishment or modification of an order for alimony or support.

5. When the state matrimonial court awards alimony or child support or adjudicates an equitable distribution in favor of a non-debtor spouse, such an award constitutes a claim within the meaning of section 101(5) of the Bankruptcy Code. The claim of the non-debtor spouse is an entitlement against the Debtor's estate and the non-debtor spouse is a creditor of the estate within the context of section 101(10). While the adjudication of the marital rights, duties and entitlements as between a debtor and his or her spouse is the province of the state matrimonial court, it is within the exclusive province of the bankruptcy court to adjudicate the rights of all creditors as against property of the estate of the debtor.

6. When a bankruptcy case is filed under Title 11, a bankruptcy estate is created pursuant to section 541 of the Bankruptcy Code. The distribution of the property of the estate involves a federal question and pursuant to 28 U.S.C. § 1334, the federal courts have exclusive jurisdiction over all property which is property of the bankruptcy estate within the meaning of section 541 of the Bankruptcy Code. The enforcement or implementation of any rights recognized or created by the state matrimonial court, to the extent that they affect property of the bankruptcy estate of the debtor spouse is the sole and exclusive province of either the United States District Court or the bankruptcy court, depending upon whether an order of reference has been entered pursuant to 28 U.S.C. § 157(a). As recognized by the Court of Appeals for the Fourth Circuit, the state courts should determine "the amount of the parties' claims to the marital property in question, while the bankruptcy court would retain jurisdiction subsequently to determine the allowance of claims against the estate." In re Robbins, 964 F.2d 342, 346 (4th Cir. 1992).

7. The foregoing principles determine the extent to which the automatic stay should be modified with respect to a pending state court action involving an equitable distribution claim against a debtor in a pending bankruptcy case. Under these principles, the stay imposed by section 362 of the Bankruptcy Code

should be modified to the extent of permitting the state matrimonial court to adjudicate the marital rights, obligations, duties and property interests of the non-debtor spouse. However, the automatic stay should remain in effect with regard to the enforcement of any decree of the matrimonial court to the extent that such decree affects property of the bankruptcy estate. Any distribution of property of the estate is and remains the sole and exclusive province of the bankruptcy court as a unit of the United States District Court. Thus, once the non-debtor spouse has obtained an award in state court it is necessary that the non-debtor spouse then return to the bankruptcy court regarding the enforcement or collection of the award to the extent that it affects property of the estate.

8. Consistent with these controlling principles, the court will modify the automatic stay in the present case to the extent necessary in order to permit an adjudication by the state court of the marital rights, obligations, duties and property interests of Sharon F. Montague but not to the extent of authorizing the state court to transfer or distribute property of the bankruptcy estate in this case or to order the Debtor to transfer property of the estate to Sharon F. Montague.

Now, therefore, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The automatic stay is hereby modified with respect to action pending in Guilford County District Court involving the Debtor and Sharon F. Montague to the extent of permitting the adjudication in the state court of any equitable distribution rights, obligations, duties and property interests of Sharon F. Montague; and

2. The automatic stay pursuant to section 362 of the Bankruptcy Code shall remain in full force and effect with regard to the enforcement of any order, judgment or decree of the state court to the extent such order, judgment or decree affects property of the bankruptcy estate in this case.

This 11th day of December, 2009.



WILLIAM L. STOCKS
United States Bankruptcy Judge