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**IT IS SO ORDERED.**

**Dated: August 30, 2010**



*Burton Perlman*  
**Burton Perlman**  
**United States Bankruptcy Judge**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

In Re:	)	Case No. 10-12785
	)	
Phyllis A. Jacobs	)	Chapter 13
	)	
	)	
Debtor	)	Judge Burton Perlman

**DECISION AND ORDER**

This Chapter 13 case was filed April 24, 2010. A Chapter 13 Plan was filed in the case on May 26, 2010. A motion for relief from stay was filed by creditor Odis Jacobs, divorced spouse of debtor. Creditor CitiMortgage, Inc. also filed a motion for relief from stay, or in the alternative motion for relief from co-debtor stay.

This matter was set for hearing on confirmation on August 10, 2010, but that hearing was continued to September 14, 2010. An objection to confirmation was filed by creditor Odis Jacobs. Creditor CitiMortgage also filed an objection to confirmation. The Chapter 13 Trustee also filed an objection to confirmation.

The motions for relief from stay by creditors Odis Jacobs, and CitiMortgage, came on for hearing on August 18, 2010.

Debtor resides in a home at 5694 Camp Run Road, Georgetown, Brown County, Ohio ("the subject property"). The subject property is owned jointly with right of survivorship by debtor and her former husband, Odis Jacobs. Debtor and her husband were divorced April 13, 2010, pursuant to a Divorce Decree entered in the Court of Common Pleas, Domestic Relations Division, Clermont County, Ohio. The divorce decree makes the following specific provisions in regard the subject property:

Wife is awarded the real estate located at 5694 Camp Run Road, Georgetown, Ohio as her separate property. Effective July 3, 2008, Wife shall assume, pay and hold Husband harmless with respect to any expenses associated with the property, including but not limited to, any mortgage, all utilities, telephone, home owner's insurance premiums, real property tax payments, and any other regular maintenance expenses relating to the real property. Wife shall refinance the mortgages against the Camp Run property within three months of the date of journalization of the Decree of Divorce, to remove Husband's liability on the mortgages. In the event Wife is unable to refinance the mortgages against the Camp Run property within ninety days of the date of journalization of the Decree of Divorce, then the property shall be sold on the following terms:

- A. The real estate shall be listed for immediate sale with a major real estate broker. Wife shall choose the agent. The parties shall cooperate in all aspects with the sale of the marital residence. No listing contract shall exceed three months and the parties shall accept no real estate commission in excess of seven percent (7%). The parties shall not accept any land contracts or any rental agreements. The parties shall agree to the listing price, sale price, and the terms of any sale. If no agreement can be reached as to the listing price, the parties shall submit to each other their numbers for a listing price, and the price to be selected will be an average of their two numbers then averaged with the realtor's number for a listing price. If no agreement can be reached as to the sale price, the parties shall submit to each other their numbers for a sale price, and the price to be selected will be an average of their two numbers and the realtor's number for a sale price. If the terms of occupancy are disputed, the terms of occupancy shall be decided by Husband.

\* \* \*

- G. The Court of Common Pleas, Division of Domestic Relations, Clermont County, Ohio shall reserve jurisdiction to supervise all aspects of the sale, including but limited to selection of real estate broker, terms of the broker's employment contract, terms of listing, sale price, sale terms, payment of expenses to effectuate sale and disbursement of net proceeds.

The divorce decree makes an award of certain personal property to husband. (Paragraph 4) At

paragraph 13, husband is to pay wife the sum of \$2,277.29 within ninety days of the date of filing the Decree of Divorce.

It is not disputed that more than ninety days since the date of the divorce decree have passed, but debtor has not refinanced the subject property. In addition, debtor has failed to allow husband to retrieve his personal property pursuant to the decree, nor has Odis paid debtor the required amount.

This bankruptcy case was filed April 24, 2010, eleven days after the divorce decree was entered.

In support of his motion for relief from stay, creditor Odis Jacobs seeks relief from stay, and in his memorandum in support asserts that debtor is in violation of provisions of the divorce decree. The stay should be lifted, he says, so that he may, in the Clermont County Domestic Relations Court, pursue matters concerning the subject property, and liquidation and division of marital property.

In regard to its motion for relief from stay, creditor CitiMortgage in its memorandum asserts that it has a Note and Mortgage on the subject property, and that on January 26, 2010, it filed a foreclosure action against debtor and her then husband, Odis Jacobs. CitiMortgage states as reasons for the granting of its motion for relief from stay, in addition to those advocated by Odis Jacobs, that debtor's failure to comply with the divorce decree directly affects its foreclosure action. Implementation of the divorce decree in state court must occur, it says before debtor can propose any confirmable plan. CitiMortgage also argues that it is entitled to relief from the co-debtor stay, in place pursuant to 11 U.S.C. § 1301, so that it may pursue its rights against co-debtor Odis Jacobs.

At the hearing held August 18, 2010, no evidence was taken, but arguments were presented by counsel. The facts related above are not disputed by any of the parties. Counsel for both movants simply reiterated the grounds for relief which they had stated in their memoranda. Debtor's counsel argued against the motions that "property settlements are dischargeable" upon the bankruptcy filing. Counsel stated also that debtor's interest in the subject property was now property of the estate by virtue of the bankruptcy filing. The

second statement is not true, for 11 U.S.C. § 1306(b) provides that in Chapter 13 debtor retains possession of property. It appears that debtor's counsel intended by asserting that "property settlements are dischargeable", that the filing of the bankruptcy case enable debtor to affect the provisions of the divorce decree. If that is the intention, it is in error. The court is unaware of any basis for counsel's statement. While it is true that the divorce decree embodies a property settlement, it is not true that the bankruptcy filing vitiated the provisions of the divorce decree. Indeed, it is for a court to oversee the implementation of the divorce decree.

The U.S. Judicial Code at 28 U.S.C. § 157 provides that a district court may refer its bankruptcy jurisdiction to the bankruptcy judges of the district. An order to that effect was entered in the Southern District of Ohio. This bankruptcy court therefore has original but not exclusive jurisdiction over the matter before us, pursuant to 28 U.S.C. § 1334(b). In addition § 1334(C) addresses the subject of abstention. Thus,

28 U.S.C. § 1334. Bankruptcy cases and proceedings.

\* \* \*

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(C)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding in an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

\* \* \*

The Clermont County Domestic Relations Court has concurrent jurisdiction with this court in respect to disputes arising from the divorce decree. In the divorce decree that court specifically retained jurisdiction over such matters.

This court has concluded that the motions for relief by creditors in this case should be granted. We do so because it is the view of the court that the "cause" required by § 362(d) has been made out by creditors in that in the present matter, this court should abstain in deference to the Domestic Relations Court of Clermont County. Our conclusion is supported not only by the provisions of 28 U.S.C. § 1334, but also by the well reasoned decision in In re Lewis, 423 B.R. 742, 756-757(Bankr. W.D. Mich., 2010). That court there said:

In White v. White (In re White), 851 F.2d 170 (6<sup>th</sup> Cir. 1988), the Sixth Circuit Court of Appeals addressed the issue of whether the automatic stay should be modified to permit the state divorce court to identify marital property and to divide it between the debtor-husband and his wife. The wife commenced the Ohio state divorce proceedings on February 7, 1985. The debtor-husband "countered by instituting Chapter 11 proceedings in the bankruptcy court," which blocked the divorce action because of the automatic stay imposed by § 362. In re White, 851 F.2d 15 171. The wife requested relief from stay to permit "the state court to make an appropriate division of the marital estate which, of course, also constitutes the [debtor-] husband's bankruptcy estate." Id.

The bankruptcy court modified the automatic stay to permit the divorce action to proceed in the Ohio state court. On appeal, the district court affirmed.

After a preliminary discussion of a jurisdiction issue, the Sixth Circuit observed:

It is appropriate for bankruptcy courts to avoid invasions into family law matters out of consideration of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters.

In re White, 851 F.2d at 173 (quoting In re MacDonald, 755 F.2d 715, 717 (9<sup>th</sup> Cir. 1985) and In re Graham, 14 B.R. 246, 248 (Bankr. W.D. Ky. 1981)) internal quotation marks omitted). Given the language of § 362(d) (relief from stay for "cause"), it was proper for the bankruptcy court to defer to the "divorce court's greater expertise on the question of what property belongs to whom." The provisions for lifting the stay found in § 362(d) should be deemed to apply in these circumstances for the limited purpose of allowing the state court to exercise its exclusive domestic relations authority, including decisions concerning fair allocation of the marital estate." In re White, 851 F.2d at 174. Further, the Sixth Circuit recognized that, in some instances, "we are concerned that the Bankruptcy Code could otherwise be abused as a weapon in a marital dispute." In re White, 851 F.2d at 174.

Because abstention is appropriate, if not required, in this matter, cause for relief from stay has been made out by movants. The motions for the relief from stay, as well as CitiMortgage's motion for relief from co-debtor stay, are granted.

**SO ORDERED.**

Copies to:

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