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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Case No. 02-10524
)	
TERRELL L. SPAGNOLA,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
MARY ANN RABIN, TRUSTEE,)	Adversary Proceeding No. 02-1138
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OF OPINION</u>
)	
SALVATORE SPAGNOLA, et al.,)	
)	
Defendants.)	

The debtor Terrell Spagnola and her former spouse, Salvatore Spagnola, have been involved in contentious divorce proceedings since 1995. *See Terrell Spagnola v. Salvatore Spagnola*, Cuyahoga County Court of Common Pleas, Case No. DR-95-240178. In 1998, the Spagnolas entered into an agreed judgment in the domestics relations court that, among other things, divided their property between them. This did not, however, end their disagreements, as discussed further below.

Terrell Spagnola filed her Chapter 7 bankruptcy case on January 17, 2002. As part of an effort to collect property of the Chapter 7 estate, the Chapter 7 Trustee filed this adversary proceeding against Salvatore Spagnola and Point Group, Inc. In it, the Trustee seeks to obtain property from the defendants that she argues belongs to the estate under the domestic relations court judgment.

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The defendants filed a motion for abstention and dismissal, asking the Court to defer to the domestic relations court, which the Trustee opposes. (Docket 7, 8, 9). The Trustee moved to amend her complaint, which the defendants oppose. (Docket 13, 20, 21, 22). For the reasons that follow, the Court will abstain from hearing this adversary proceeding at this time under the doctrine of permissive abstention, which renders moot the remaining issues.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio.

FACTS

The relevant facts in this case involve an interplay between the bankruptcy case and the domestic relations proceedings. On January 29, 1998, the domestic relations court entered an Agreed Judgment approved by Terrell Spagnola (“Terrell”) and Salvatore Spagnola (“Salvatore”) (the “Judgment”). Among other things, the Judgment provided that Salvatore would transfer 40 of his 800 shares of Ohio Business Machine, Inc. stock to Terrell, subject to certain terms and conditions.

A dispute arose concerning whether, under the agreed-upon terms and conditions, Salvatore was presently required to transfer the stock to Terrell. Terrell filed various motions in which she attempted to compel Salvatore to transfer the stock to her. On June 5, 2001, the domestic relations court magistrate recommended to the domestic relations judge that Terrell’s motions relating to the stock be overruled. The magistrate made this recommendation based on her findings that, summarized generally, determined that (1) Salvatore was not required to transfer the shares until they were unencumbered; (2) the shares were pledged as collateral to

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Key Bank; and (3) they were not, therefore, subject to transfer.¹ The magistrate's recommendation, with Terrell's objection to it, then went to the domestic relations judge for review.

On April 1, 2002, while the domestic relations court had the magistrate's recommendation under review, the Trustee filed this adversary proceeding naming Salvatore and Point Group, Inc. d/b/a Ohio Business Machinery, Inc. as defendants. The Trustee's complaint demanded that the defendants turn over to the Trustee 40 shares of Point Group stock owned by Salvatore and that Salvatore be compelled to provide a redemption agreement that would enable the Trustee to obtain the share value from Point Group. The defendants responded with a motion to abstain and dismiss in which they contend that this Court either must or should abstain from hearing this dispute in favor of the domestic relations forum.

Returning to the domestic relations arena, on June 19, 2002, the domestic relations judge adopted the magistrate's recommendation and denied Terrell's motions regarding the stock.

On August 20, 2002, the Trustee filed in the bankruptcy court a motion to amend the original complaint to raise these additional allegations: the shares at issue had become unencumbered, at which time Salvatore took the unencumbered shares and wrongly pledged at least 40 of them to Minolta when those first 40 shares should have gone to Terrell (and hence to the Chapter 7 estate) under the Judgment. Further, the Trustee contends that the shares have now lost value and that Salvatore should be required to turn over the value of the shares on the date he pledged them to Minolta. The Trustee claims that she only learned of this new pledge when Point Group filed its own bankruptcy case.

¹ The magistrate ruled at the same time on other motions that do not appear to be directly related to the issue before this Court.

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Salvatore opposes the motion to amend on the grounds that such amendment would be futile because it would not survive a motion to dismiss under Federal Rule of Bankruptcy Procedure 7012. He argues that this matter has now been determined by the domestic relations court and, therefore, res judicata and collateral estoppel prevent this Court from adjudicating it. In addition, Salvatore incorporates by reference his motion to abstain as a separate basis to deny the motion to amend.

DISCUSSION

Where federal courts have jurisdiction over a case, they are generally expected to exercise it. *See Rouse v. DaimlerChrysler Corp. UAW*, 300 F.3d 711, 715 (6th Cir. 2002). Under certain circumstances, however, a bankruptcy court may decide in its discretion to abstain from exercising its jurisdiction in favor of another court. *See* 28 U.S.C. § 1334(c)(1). The concept of permissive abstention applies in all civil proceedings, including core proceedings. *See Brothers v. Tremaine (In re Tremaine)*, 188 B.R. 380 (Bankr. S.D. Ohio 1995).

In deciding whether to abstain, courts typically consider these factors:

- (1) any effect abstention may have on the efficient administration of the estate;
- (2) the extent to which state law predominates over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) if there is any related proceeding commenced outside of bankruptcy court;
- (5) any basis for jurisdiction other than 28 U.S.C. § 1334;
- (6) how related or remote the proceeding is to the bankruptcy case;
- (7) the substance rather than the form of the asserted core proceeding;

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- (8) the feasibility of separating the state law claim from the bankruptcy core proceeding in order to permit judgment to be entered in state court but enforced by the bankruptcy court;
- (9) the burden to the bankruptcy court docket;
- (10) the likelihood that commencing the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of any right to a jury trial; and
- (12) the presence of any non-debtor in the proceeding.

Nationwide Roofing & Sheet Metal, Inc. v. Cincinnati Insurance Co. (In re Nationwide Roofing & Sheet Metal, Inc.), 130 B.R. 768, 779-80 (Bankr. S.D. Ohio 1991).

Disputes related to domestic relations matters provide an extra wrinkle. The Sixth Circuit has held that domestic relations issues are generally best resolved by state courts. *White v. White (In re White)*, 851 F.2d 170, 173 (6th Cir. 1988). In reaching this conclusion, the Circuit emphasized that bankruptcy courts should avoid invasions into family law matters based on court economy, judicial restraint, and deference to state courts and their experience in such matters. *Id.*

In this case, the Trustee has the obligation “to collect and reduce to money property of [Terrell’s Chapter 7] estate.” 11 U.S.C. § 704(1). To do so, she filed a complaint seeking to have the defendants deliver—or turn over, in bankruptcy parlance—the assets to her. The defendants refuse to do so on the ground that the Trustee is not entitled to them, and so a court must resolve the factual dispute as to whether the Trustee has the right to possession of the shares or their value. The rights of Terrell and the Trustee flow from the Judgment or from such property division adjustments as the domestic relations court alone may deem appropriate. To pursue those rights, the Trustee asks this Court to find that the Judgment should be interpreted in a certain way to award the shares to the Trustee and/or to find that additional previously-unknown facts relating to Salvatore’s behavior warrant a property adjustment. The issue of whether Terrell

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is entitled to the shares or their equivalent value rests on state contract and domestic relations law. There are no substantive bankruptcy law issues raised to date.

The Court also notes that the Judgment has had a long and complicated history in the domestic relations court; that is the court that approved it and recently interpreted it, albeit in a different factual context. This Court is now being asked to interpret the Judgment and find that certain alleged behavior by Salvatore violates it. If this Court were to do so, there is a risk of inconsistent results because the domestic relations case apparently is still open and similar problems may surface in that forum as well. All of these factors militate in favor of abstention.

On the other hand, the case does not present any particular burden to the bankruptcy court, the estate administration cannot be completed until this issue is resolved, and the turnover action is literally a core proceeding, *see* 28 U.S.C. § 157(b)(2)(E), all of which weighs against abstention.

Having considered the relevant factors, the Court finds that the best course is to abstain from going forward with the adversary proceeding at this time to give the domestic relations court the opportunity to resolve the outstanding property questions. In reaching this decision, the Court is aware that in most cases there is a pending motion or proceeding in the state court that can just be reactivated upon abstention. Here, the domestic relations case still appears to be open, but as far as the Court is aware there is no pending motion that deals with the claims raised by the Trustee, particularly the claims made by the Trustee in her proposed amendments to the complaint. This decision to abstain is, therefore, made on the assumption that (1) the domestic relations case is still open; and (2) the domestic relations court will address the property issues raised by the Trustee; i.e., that acting on behalf of the Chapter 7 estate, she is entitled to the stock

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or its value. If the domestic relations court finds that the Trustee is entitled to any property, then this Court will hear the turn over action.

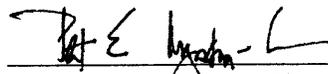
In sum, the Court will abstain from hearing the state law property and domestic relations questions, while retaining jurisdiction to determine the turn over issue, with action in this Court stayed pending a decision by the domestic relations court. *See* 11 U.S.C. § 105(a). *See also Somma v. United States (In re Somma)*, 147 B.R. 133, 136 (Bankr. N.D. Ohio 1992) (bankruptcy court deferred to tax court to determine underlying factual issue, but retained jurisdiction to address dischargeability issue). The parties are to file a joint report by **February 4, 2003** advising the status of the domestic relations proceeding.

Finally, the Court makes this observation: after seven years of litigation, the parties would be well served to renew efforts to resolve their differences, whether through mediation or otherwise.

CONCLUSION

For the reasons stated, the Defendants' motion is granted in part, with the Court permissively abstaining from going forward with the adversary proceeding at this time. A separate Order will be entered reflecting this decision.

Date: 18 Jan 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: John Sayre, Esq.
Bonnie Finley, Esq.

By: Joyce L. Gordon, Secretary

Date: 12/18/02

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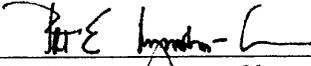
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TERRELL L. SPAGNOLA,) Chapter 7
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Debtor.) Judge Pat E. Morgenstern-Clarren
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MARY ANN RABIN, TRUSTEE,) Adversary Proceeding No. 02-1138
)
Plaintiff,)
)
v.) **ORDER**
)
SALVATORE SPAGNOLA, et al.,)
)
Defendants.)

For the reasons stated in the Memorandum of Opinion filed this same date, the Defendants' motion for abstention and dismissal is granted in part and denied in part. The Court will permissively abstain from going forward with the adversary proceeding to permit the state domestic relations court to determine the property and domestic relations issues. The Court will retain jurisdiction over this turn over action, with all actions stayed until the domestic relations court decides the state law issues or such earlier time as the Court deems it appropriate to move forward. The Plaintiff's motion to amend the complaint is denied as moot.

The parties are directed to file a joint status report by **February 4, 2003** advising the status of the domestic relations proceeding.

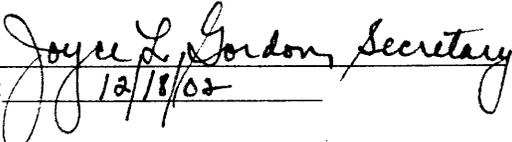
IT IS SO ORDERED.

Date: 18 Jan 03



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: John Sayre, Esq.
Bonnie Finley, Esq.

By:  Secretary
Date: 12/18/02