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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 03-18569
)	
GENA A. GUNDIC,)	Chapter 13
)	
Debtor.)	Judge Arthur I. Harris

MEMORANDUM OF DECISION

This matter is currently before the Court on the motion of Matthew Gundic for relief from stay (Docket # 4), the debtor's objection thereto (Docket #7), and the reply of Matthew Gundic (Docket #10). Matthew Gundic seeks relief from stay in order to allow the Lorain County Domestic Relations case of *Gundic v. Gundic* to proceed to judgment. For the reasons that follow, Matthew Gundic's motion for relief from stay is granted.

BACKGROUND

On July 29, 2002, Gena Gundic filed a complaint in the Domestic Relations Division of the Lorain County Common Pleas Court against her husband Matthew Gundic, Case No. 02AN060983. Trial in the domestic relations case was scheduled to begin on July 21, 2003; however, on June 30, 2003, Gena Gundic filed a petition under Chapter 13 of the Bankruptcy Code. Judge Paulette J. Lilly has stayed all proceedings in the domestic relations case as a result of the filing of this Chapter 13 petition.

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In the meantime, the debtor's Chapter 13 plan and schedules were due to be filed by July 15, 2003; however, the plan and schedules were not filed until September 4, 2003, the date when debtor's counsel appeared in response to an order to show cause why the case should not be dismissed for failure to file timely the plan and schedules. On September 4, 2003, the Court also heard oral argument from counsel on Matthew Gundic's motion for relief from stay and the debtor's brief in opposition. In addition, on September 4, 2003, Gena Gundic filed an adversary complaint, seeking to sell real property owned jointly by Matthew Gundic and herself. According to the debtor's petition and schedules, the real property at issue is the personal residence of Matthew Gundic, but not Gena Gundic. In response to the adversary complaint, Matthew Gundic has filed an answer and counterclaim, alleging abuse of process. (Docket #6 in Adv. Proc. 03-1343)

In order for the Court to determine whether an evidentiary hearing would be necessary to resolve the motion, the Court issued an Order on September 8, 2003, requiring counsel for the debtor to file with the Court on or before September 23, 2003, a proffer of evidence that would be presented at an evidentiary hearing and an indication regarding how such evidence would assist the Court in deciding

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whether to grant or deny the motion for relief from stay. The Order further required that "Debtor's counsel will indicate which witnesses will testify, the substance of witnesses' testimony, and what documentary evidence counsel intends to submit." Order (Docket #13) at 2. Based upon the evidence proffered, the Court would then either schedule an evidentiary hearing or treat the matter as heard and submitted. *See id.* Debtor's counsel, however, filed nothing in response to the September 8, 2003, Order.

DISCUSSION

"The classification and division of the marital estate are traditionally reserved for state courts." *In re Hohenberg*, 143 B.R. 480, 484 (Bankr. W.D. Tenn. 1992)(citing *In re White*, 851 F.2d 170, 173 (6th Cir.1988)). However, where property of the bankruptcy estate is involved, the bankruptcy court has exclusive jurisdiction over this property unless the automatic stay is lifted pursuant to § 362(d). 11 U.S.C. § 541; 28 U.S.C. §§ 157(a), 1334(a). *See In re White*, 851 F.2d at 174. In the present case, as in the majority of cases dealing with the interrelationship of divorce and bankruptcy proceedings, the divorce complaint was filed prior to the bankruptcy case. In that situation, the law in the Sixth Circuit is clear that the definition of the debtor's interest in property must be

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made after reference to state law. See *In re White*, 851 F.2d at 173; *In re Hohenberg*, 143 B.R. at 484. Until the state court classifies and equitably divides the marital property, what is property of the bankruptcy estate is unclear. 851 F.2d at 174. The Court of Appeals in *White* was persuaded that:

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."

851 F.2d at 174 (quoting *In re MacDonald*, 755 F.2d 715, 717 (9th Cir.1985)). In the normal case, the state court therefore defines what the debtor's rights are in the marital property, and then the bankruptcy court exercises exclusive jurisdiction over the debtor's property which has become property of the bankruptcy estate. *In re White*, 851 F.2d at 173-174.

While the Sixth Circuit in *In re White* refused to establish a per se rule that the stay be lifted in every bankruptcy case involving a domestic relations situation, 851 F.2d at 174, under the specific circumstances of the present case, this Court concludes that it is appropriate "to defer to the traditional and expert judgment of the divorce court of the State of Ohio for the sole purpose of deciding interests in the marital estate of the debtor [and her spouse]." *Id.* The specific circumstances

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of the present case include:

- the filing of the domestic relations case before the bankruptcy case;
- the filing of this bankruptcy case just one day before the scheduled settlement conference and final pretrial in the domestic relations case;
- the debtor's delay in filing her plan and schedules in the bankruptcy case;
- the Chapter 13 trustee's lack of opposition to the motion for relief from stay;
- the debtor's failure to file anything in response to the Court's September 8, 2003, Order requiring a proffer of evidence or stipulations of fact;
- the debtor's proposed plan, which proposes payments of only \$100 per month for 60 months, with only a 10 percent dividend guaranteed to general unsecured creditors.

In short, just as the Sixth Circuit noted upon reviewing the circumstances in *In re White*, this Court is "concerned that the Bankruptcy Code could otherwise be abused as a weapon in a marital dispute." 851 F.2d at 174.

Finally, the Court rejects as inapposite the debtor's argument based upon the Sixth Circuit's decision in *Corzin v. Fordu*, 201 F.3d 693 (6th Cir. 1999). While the Sixth Circuit in *Fordu* concluded that Ohio domestic relations courts apply a different standard than the "reasonably-equivalent-value test" in making an equitable division of property in a divorce proceeding, that conclusion was in the context of determining whether the findings in a Separation Agreement precluded

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the Chapter 7 trustee for the estate of the debtor husband from bringing an action to avoid and recover transfers that the wife received pursuant to the Separation Agreement. 201 F.3d at 696-97, 707-08. At no point did the Sixth Circuit in *Fordu* overrule *In re White* or hold that a bankruptcy court not defer to the traditional and expert judgment of the divorce court of the State of Ohio in making an equitable division of marital property.

Accordingly, the Court finds cause for lifting the automatic stay to allow the domestic relations case to proceed to judgment. 11 U.S.C. § 362(d)(1). *See also In re Trident Associates Limited Partnership*, 52 F.3d 127, 131 (6th Cir. 1995) (bankruptcy court must consider the "totality of the circumstances" when deciding to lift the automatic stay for cause); *In re White*, 851 F.2d at 173-174.

CONCLUSION

For the foregoing reasons, Matthew Gundic's motion for relief from stay is granted. A separate order shall be issued, consistent with this Memorandum of Decision.

IT IS SO ORDERED.

/s/ Arthur I. Harris 10/01/2003
Arthur I. Harris
United States Bankruptcy Judge