

MAR 18 2009

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE: KEVIN SEAN THOMPSON Debtor.	: : : : : :	CASE NO. 08-81673-JB CHAPTER 7
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**ORDER OVERRULING SPOUSE'S OBJECTION TO
SALE OF MARITAL PROPERTY AND SUPPLEMENTING
ORDER ON MOTION FOR RELIEF FROM AUTOMATIC STAY**

Linda Thompson ("Ms. Thompson"), the estranged wife of the Debtor, Kevin Sean Thompson (the "Debtor"), filed a *Motion for Relief from Automatic Stay* [Docket No. 23] (the "Motion for Relief") on December 12, 2008, and an *Objection to Sale of Marital Property* [Docket No. 26] (the "Objection to Sale") on December 26, 2008. In the Motion for Relief, Ms. Thompson seeks authority to proceed with divorce and related contempt proceedings that she initiated pre-petition in the Superior Court of Cobb County Georgia against the Debtor. In the Objection to Sale, Ms. Thompson seeks to prevent the Debtor's Chapter 7 trustee, Neil C. Gordon (the "Trustee") from selling certain real property titled solely in the Debtor's name (the "Real Property").

The Motion for Relief came before the Court for hearing on January 6, 2009, at which time the Court directed Ms. Thompson's counsel to submit a proposed order lifting the stay for the limited purpose of allowing the contempt proceeding and the divorce proceeding to dissolve the marriage to proceed. At the same hearing, the Court explicitly reserved ruling on the request for relief from the automatic stay relating to the division and distribution of marital property until the hearing on Ms. Thompson's Objection to Sale. On January 15, 2009, the Court entered an order lifting the automatic

stay which provided that "the automatic stay . . . is lifted and the divorce proceedings, to which debtor is a party, may continue"

The Objection to Sale came before the Court for hearing on January 21, 2009. Counsel for the Trustee as well as counsel for Ms. Thompson and counsel for the Debtor were present at that hearing. After hearing from the parties, it became apparent that the Objection to Sale was prematurely filed, as the Trustee had not employed a realtor or moved for authority to sell the Real Property. Nonetheless, counsel discussed the fact that Ms. Thompson had a claim against the Real Property pending in the parties' divorce proceeding. The Trustee indicated that he had no opposition to the stay being lifted so that the Superior Court of Cobb County could determine Ms. Thompson's claim or interest in the Real Property, but the Trustee was concerned that Debtor's lack of incentive to defend any rights he might have in the Real Property could negatively impact the estate's interest in the Real Property. Accordingly, the Trustee indicated that he would have no opposition to the automatic stay being modified to enable the Superior Court of Cobb County to proceed with an equitable division of the marital property as long as he was allowed to intervene and participate in those proceedings to protect the bankruptcy estate.

It was undisputed at the January 21, 2009 hearing in Bankruptcy Court that the Real Property is titled solely in the name of the Debtor. Thus, the Real Property is property of the bankruptcy estate pursuant to 11 U.S.C. § 541. Nonetheless, it is appropriate to have the Superior Court of Cobb County determine and whether Ms. Thompson has a claim or equitable interest in the Real Property. After such determination is made, then Ms. Thompson can file a claim in the bankruptcy proceeding and the distributions to creditors including Ms. Thompson will be made in accordance with applicable state and federal bankruptcy law. Since the Trustee is the lawful representative of the bankruptcy estate and is charged with the statutory responsibility for all property of the bankruptcy estate, the

Trustee should be informed of and be able to participate in the Superior Court proceedings only to the extent necessary to protect the interest of Mr. Thompson's creditors. 11 U.S.C. § 323(a) and § 704(a)(1).

Accordingly, the Objection to Sale is moot and the January 15, 2009 Order is supplemented with respect to the ruling on the Motion for Relief as follows: the automatic stay of 11 U.S.C. § 362 is lifted to permit the Debtor and Ms. Thompson to litigate any issues in their divorce case pending in the Superior Court of Cobb County and so that the Superior Court can determine whether Ms. Thompson has a claim or interest in the Real Property. Trustee should be kept informed by counsel of the status of the divorce proceedings and should be allowed to intervene in the determination of Ms. Thompson's interest in the Real Property solely to protect the interests of creditors. If this cannot be accomplished, then the Trustee may seek to reimpose the automatic stay.

IT IS SO ORDERED, this 17th day of March, 2009.


JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

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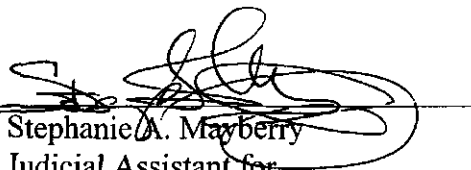
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