

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 00-07110-DHW  
Chapter 7

JIMMIE RAY GOLDEN,

Debtor.

**ORDER ON MOTION TO CLEAR TITLE**

Lisa Golden filed a motion for clear title to certain realty awarded to her in a divorce proceeding from the debtor, Jimmie Ray Golden. The chapter 7 trustee, Susan S. DePaola, objected to the motion claiming an interest in the property for the debtor's bankruptcy estate. Upon consideration of the motion, the trustee's objection, and the respective briefs of counsel, the court concludes that Lisa Golden's motion for clear title must be denied.

**Jurisdiction**

This court's jurisdiction in this matter emanates from 28 U.S.C. § 1334 and from the general order of reference by the United States District Court for this district of title 11 matters to this court. Further, this particular matter, one to determine whether property is property of the bankruptcy estate, is a core proceeding under 28 U.S.C. § 157, extending this court's jurisdiction to the entry of final orders and judgments.

**Factual Background**

Jimmie Ray Golden filed a chapter 11 petition for relief on December 19, 2000, and the case was converted to one under chapter 7 on January 11, 2001.

Before the chapter 11 petition was filed, Lisa Golden filed a petition for divorce from the debtor in the Circuit Court of Pike County, Alabama on November 9, 2000. On June 5, 2003, Lisa Golden filed a motion to modify the automatic stay to permit *inter alia* the state court to determine a division of marital property (Docket entry #157). The trustee objected (Docket entry # 162). Following a hearing on the motion, this court granted the motion but reserved final approval of the property division in this court (Docket entry

#165).

The Circuit Court of Pike County, Alabama entered a final decree in the divorce proceeding on November 3, 2003. Therein, Lisa Golden was awarded the two 10-acre tracts of realty known collectively as Crow Hill.

The parties dispute how title in Crow Hill is held, but this difference is not crucial to the resolution of the question at hand. The trustee contends that one of the 10-acre tracts was deeded to Jimmie and Lisa Golden on April 17, 1996, and said deed was recorded on April 24, 1996. The second 10-acre parcel, according to the trustee, was deeded to Jimmie Ray Golden in January 1997, but the deed was never recorded.<sup>1</sup>

Lisa Golden, on the other hand, contends that the parties owned the 20-acre parcel as joint tenants with right of survivorship, which was converted by operation of law to a tenancy in common when the property was subsequently mortgaged by only one of the joint tenants. Jimmie Ray Golden mortgaged both tracts to the Troy Bank & Trust Company on June 30, 1997.

### **Conclusions of Law**

The intersection of domestic and bankruptcy law is fraught with difficulties. This case involves one of the tensions between the two bodies of law.

On the one hand, the division of marital assets in a divorce proceeding falls within the exclusive province of state courts. *Ala. Code* § 30-2-51 *et. seq.* (1975). The goal of the state court in a divorce proceeding is to make an equitable, if not equal, distribution of the marital assets between the parties. *Montgomery v. Montgomery*, 519 So. 2d 525 (Ala. Civ. App. 1987); *Parrish v. Parrish*, 617 So. 2d 1036 (Ala. Civ. App. 1993), *Golden v. Golden*, 681 So. 2d 605 (Ala. Civ. App. 1996); *Brewer v. Brewer*, 695 So. 2d 1 (Ala. Civ. App. 1996).

On the other hand, the determination of what property constitutes the bankruptcy estate is a federal question and within the exclusive province of the bankruptcy court. 11 U.S.C. § 541. Further, the goal in a bankruptcy

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<sup>1</sup> Lisa Golden was not named in the deed to the second 10-acre parcel.

proceeding is not only to provide the debtor with the opportunity for a fresh start but to make an equitable distribution of the debtor's assets to creditors.

In short, the tension between the two bodies of law is created by the state court's goal of equitable distribution of marital assets between the spouses and the bankruptcy court's goal of equitable distribution of the debtor's assets to creditors.

In the case *sub judice*, the parties filed for divorce prior to Jimmie Golden's petition for bankruptcy relief. The state court, however, had neither granted the divorce nor made any order affecting the distribution of marital assets by the time the bankruptcy petition was filed. Had it done so, this court would not, absent a showing of collusion or other fraud, upset that distribution. The debtor, as of the date of the filing, would no longer have had an interest in the property.

Under 11 U.S.C. § 541, the bankruptcy estate is broadly defined and comprises all legal and equitable interests of the debtor in property.<sup>2</sup> Because Jimmie Golden owned an interest in the Crow Hill property as of December 19, 2000, the date the bankruptcy case was commenced, that interest, whatever it was, passed into his bankruptcy estate.

Therefore, the bankruptcy estate's interest in the property is superior to any interest of Lisa Golden acquired through the state court divorce decree.<sup>3</sup>

The state court's order, however, is not without utility. The decree is

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<sup>2</sup> The statute expressly provides:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. §541(a)(1).

<sup>3</sup> Lisa Golden has provided no evidence of any perfected lien on the property preceding the date of the bankruptcy.

effective as between Jimmie Ray Golden and Lisa Golden. The order, in effect, liquidates Lisa Golden's claim against Jimmie Golden's bankruptcy estate. In short, Lisa Golden's claim against the bankruptcy estate arising from the Crow Hill property is equal to the bankruptcy estate's interest in that property.<sup>4</sup> *In re Palmer*, 78 B.R. 402, 406 (Bankr. E.D.N.Y. 1987). Accordingly, it is

ORDERED that Lisa Golden's motion to clear title to the 20 acres known as Crow Hill is DENIED.

Done this June 18, 2004.



Dwight H. Williams, Jr.  
United States Bankruptcy Judge

c: Von G. Memory, Attorney for Trustee  
Susan S. DePaola, Trustee  
Jon M. Folmar, Attorney for Lisa Golden

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<sup>4</sup> The bankruptcy estate's interest in the property may be uncertain at this time and may be the subject of future litigation.