

U. S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
FILED

MAY 25 1994

BY MOLLIE C. JONES- CLERK DEPUTY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

IN RE:

REX DOLAN D/B/A
DIXIE MACHINE AND SUPPLY COMPANY

CASE NO. 9002092JC

MEMORANDUM OPINION

Before the Court for consideration is the motion of Sandra Killen Dolan for approval of a proposed decree to be entered in the Chancery Court of Scott County, Mississippi, regarding, among other matters, the distribution of marital property owned by Movant and the Debtor. After considering the motion, the Trustee's response thereto, and the arguments of counsel, this Court holds that the proposed decree should be disapproved, and therefore, Mrs. Dolan's motion should be denied. In so holding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Rex Dolan is a chapter 7 debtor whose case is presently pending before this Court. His former wife, Sandra Killen Dolan, filed a motion in his chapter 7 case for approval of a proposed decree, relating to the divorce proceedings of the Dolans, to be entered in the Chancery Court of Scott County, Mississippi. Among

other matters, the decree attempts to adjudicate the rights of the parties to a parcel of real property in Scott County, Mississippi, and directs Rex Dolan to convey his undivided one-half interest in the property to Mrs. Dolan. The Chapter 7 Trustee objects to the proposed decree on the basis that Rex Dolan's interest in the property is property of the bankruptcy estate, and the Chancery Court may not order the transfer of the estate's interest in the property.

Sandra Killen Dolan and Rex Dolan were married in 1974. In 1979 they acquired, as tenants by the entirety, the real property in issue which is located in Scott County, Mississippi. A house and a machine shop are located on the property.

The Dolans were divorced on October 26, 1989. The divorce decree provides as follows:

IT IS FURTHER ORDERED AND ADJUDGED that the Defendant [Mrs. Dolan] had made cash and in kind contributions to the business activities of the parties, and she is hereby entitled to a [sic] equitable distribution of the marital property in accord with Jones v. Jones, 532 So. 2d (Miss. 1988). Such distribution will be provided for in the final judgment.

(Judgment of Divorce entered October 26, 1989). The divorce decree awarded possession of the real property to Mr. Dolan so that he could continue to operate the machine shop. In March of 1990, Mrs. Dolan filed a motion in the Chancery Court to settle all property rights.

On June 28, 1990, before the motion in Chancery Court was heard, Rex Dolan filed his petition for relief under Chapter 7 of the Bankruptcy Code. In July of 1990, an agreed judgment regarding

the property rights of the parties was entered in the divorce action. The Chancery Court states in its memorandum opinion dated April 27, 1993, that the order was entered in violation of the stay and is void.

In February of 1991, the stay was lifted to allow Sandra Dolan to seek a judgment from the Chancery Court regarding alimony, child custody, and equitable interests in the marital property. A hearing was held before the Chancery Court in June of 1991 regarding the same. Briefing was not completed until April, 1993. On April 27, 1993, the Chancery Court issued an opinion regarding the rights of the parties, stating as follows:

The parties purchased a parcel of land in ... 1979 The deed conveyed the property to, "Rex Dolan and wife, Sandra D. Dolan, as an estate by the entirety with rights of survivorship ..." The Dolans lived in the home on the property and it was their homestead.

The Court awards Mrs. Dolan the real property referred to in the preceding paragraph as her equitable interest in the property of the parties, and Mr. Dolan is directed to convey it to her in fee simple.

(Opinion On Defendant's Motion To Finalize Divorce, dated April 27, 1993).

In accordance with the Chancellor's opinion, the parties prepared the proposed decree which is before this Court for approval prior to its entry in the Chancery Court. The Trustee is opposed only to the provisions of paragraph 7 of the proposed decree which provide as follows:

7. As an award of equitable interest in the marital domicile, Sandra Dolan is awarded Rex Dolan's interest in said property and he

is ordered to so convey his interest. The interest in the marital domicile, coupled with the money distributed from the Bankruptcy Court constitute an adequate award in equitable interest in the marital property.

(Final Order).

CONCLUSIONS OF LAW

Pursuant to Bankruptcy Code § 541(a)(1), the commencement of a case in bankruptcy creates an estate that is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." Although § 541 does contain certain exceptions, none of the exceptions are in issue. Therefore, Rex Dolan's interest in the property at the time he filed his petition for relief, whatever that interest may be, is property of the bankruptcy estate.

In determining the nature of the Debtor's interest in the property, which was originally acquired as a tenancy by the entirety, the Court must look to state law. "In Mississippi, which does not follow the majority view, upon dissolution of a marriage by divorce, the owners become joint tenants with rights of survivorship, and not tenants in common." Estate of Childress, 588 So.2d 192, 198 (Miss. 1991) (citing Shepherd v. Shepherd, 336 So.2d 497, 499 (Miss. 1976)).

The judgment of divorce was entered before the Debtor filed his petition for relief. Therefore, under Mississippi law, at the time the Debtor filed his petition for relief, his interest in the property in question was a joint tenancy, or an undivided

one-half interest with a right of survivorship. Pursuant to § 541 of the Bankruptcy Code, Rex Dolan's undivided one-half interest with a right of survivorship in the property became an asset of the bankruptcy estate upon the filing of his petition for relief. Under § 323 of the Bankruptcy Code, the Trustee is the representative of the estate and is the proper party to distribute property of the estate in accordance with the provisions of the Bankruptcy Code.

Although not presently before this Court for a decision, the Trustee has pled in adversary proceeding No. 920267 that he wishes to sell both the Debtor's and Mrs. Dolan's interest in the real property pursuant to § 363(h) of the Bankruptcy Code. In his complaint, the Trustee recommends that the property be put on the market for \$ 90,000. As a practical matter, the Trustee's ability to sell the property may be hampered because of Mississippi homestead law. See Joe T. Dehmer Distributors, Inc. v. Temple, 826 F.2d 1463 (5th Cir. 1987).

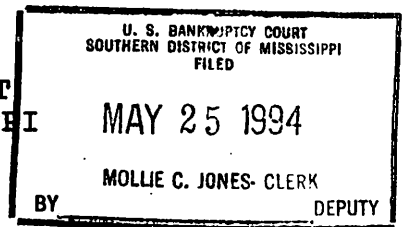
However, the issue of the Trustee's ability to sell the property is not relevant to the motion before the Court for approval of the Scott County Chancery Court order. Regardless of whether the Trustee will be able to justify sale of the property in the pending adversary proceeding, the Chancery Court does not have the authority to order its disposition because Rex Dolan's interest in the property is an asset of the bankruptcy estate. Therefore, Mrs. Dolan's motion for approval of the proposed decree will be denied.

A separate judgment consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 25 day of May, 1994.


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN RE:

REX DOLAN D/B/A
DIXIE MACHINE AND SUPPLY COMPANY

CASE NO. 9002092JC

ORDER DISAPPROVING PROPOSED DECREE
OF SCOTT COUNTY, MISSISSIPPI CHANCERY COURT

CAME ON for consideration before this Court on the motion of Sandra Killen Dolan for approval of a proposed decree to be entered in the Chancery Court of Scott County, Mississippi, regarding, among other matters, the distribution of marital property owned by Movant and the Debtor. After considering the motion, the Trustee's response thereto, and the arguments of counsel, this Court finds that paragraph 7 of the decree orders the Debtor to convey property of the bankruptcy estate of Rex Dolan in contravention of the provisions of the Bankruptcy Code, and therefore, the proposed decree should be and hereby is disapproved.

SO ORDERED this the 25 day of May, 1994.


UNITED STATES BANKRUPTCY JUDGE