EOD
07/23/2007

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE:	§	
	§	
WILLIAM A. TAYLOR,	§	Case No. 05-41327
	§	(Chapter 7)
Debtor.	§	

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

This matter is before the Court on the Amended Motion to Modify Stay (the "Motion") filed by C. Kent Adams ("Mr. Adams") and Lone Star Partners ("Lone Star") (collectively, "Movants"). In the Motion, the Movants seek relief from the automatic stay imposed by 11 U.S.C. §362(a) to the extent necessary to evict William A. Taylor (the "Debtor") from the 145 acres described by the Debtor in his bankruptcy schedules as his rural homestead. The Debtor and his wife, Laura K. Taylor ("Mrs. Taylor"), oppose the Motion. After considering the arguments and evidence presented at a hearing on the Motion on February 22, 2007, the Court finds and concludes that the Motion should be granted for the reasons stated at the conclusion of the hearing and set forth in this Order.

I. Relevant Factual and Procedural History

A. Debtor's Initiation and Conversion of the Bankruptcy Case

1. On April 25, 1995, Mr. Adams and the Debtor executed a Partnership Agreement pursuant to which Lone Star, a Texas general partnership, was created to purchase and own a tract of land called "Lone Star Ranch." Lone Star purchased Lone Star Ranch from F.O. Birmingham Memorial Land Trust in April 1995. The Debtor subsequently moved into a house on the property and married Mrs. Taylor.

2. In 1999, the Debtor filed a lawsuit in Texas state court against Mr. Adams and Lone Star (the "Partnership Lawsuit"). The Debtor was represented by Bill C. Hunter, among others, in connection with the Partnership Lawsuit. In addition, in December 2002, Mrs. Taylor initiated a lawsuit in Texas state court against Mr. Adams and Lone Star (the "Specific Performance Lawsuit"). Mrs. Taylor was represented by Mr. Hunter in connection with the Specific Performance Lawsuit.

3. The Partnership Lawsuit was scheduled for trial on March 21, 2005. On the day before trial, the Debtor filed a petition for relief in this Court under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Mrs. Taylor did not join in her husband's bankruptcy petition.

4. The Debtor, who was a defendant in the Specific Performance Lawsuit, removed the Specific Performance Lawsuit to this Court. Mr. Hunter continues to represent Mrs. Taylor in the Specific Performance Lawsuit wherein Mrs. Taylor seeks to establish a homestead interest in a parcel of land that includes the 145 acres described in the Debtor's bankruptcy schedules.[1] Mr. Hunter also has represented Mrs. Taylor in connection with her husband's bankruptcy case.[2]

---

[1] In her Specific Performance Lawsuit, Mrs. Taylor describes 377 acres of Lone Star Ranch, which includes the 145 acres, as her family's home. She seeks to establish, among other things, that:

> At all material times, it was the agreement and plan of [Mr. Taylor] and [Mr. Adams] that … [Mr. Taylor] and [Mrs. Taylor] had the right to acquire certain desired portions of the Lonestar® Ranch for the private ownership, use and enjoyment by them and their family.

See Plaintiffs' First Amended Petition, Adv. No. 05-4205, at ¶12.

[2] At the hearing on the Motion on February 22, 2007, Mr. Hunter stated that, with respect to the bankruptcy case, "I participated only in the proceedings on behalf of myself as a creditor of William A. Taylor. Every document, every entry, every statement into the record will show that's who I participated for – not Laura Taylor." This statement by Mr. Hunter was false and grossly misrepresented the record.

Mr. Hunter represents Mrs. Taylor in the Specific Performance Lawsuit. Mr. Hunter has appeared in this case for Mrs. Taylor in connection with a global settlement proposed by the Chapter 7 trustee. *See* Hrg. Tr. (May 31, 2006) at p. 6 (Mr. Yaquinto appearing as counsel for Bill C. Hunter, P.C., and Mr.

5. On the eve of the trial of the Partnership Lawsuit by this Court, the Debtor converted his case from Chapter 11 to Chapter 7. The trial was cancelled and a Chapter 7 trustee was appointed to administer the Debtor's bankruptcy estate. The Court entered an Order discharging the Debtor on February 4, 2006.

B. Debtor's Bankruptcy Schedules

6. In addition to his bankruptcy petition, the Debtor filed a list of creditors, schedules of assets and liabilities, schedules of current income and current expenditures, and a statement of his financial affairs as required by §521(1) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 1007. The Debtor's schedules listed claims by and against the Movants. Additionally, the Debtor's Schedule F (Creditors Holding Unsecured Nonpriority Claims) included an undisputed claim for legal fees and expenses in the Amount of $160,000 owed to Mr. Hunter.

7. The Debtor asserted the following interest in real property in his Schedule A (Real Property):

> Claim to rural homestead in 145 acres or more in and around 4360 County 177, Celina, Colin County, Texas and part of 377 acres out of the James Hefflefinger Survey Abstract 366, the Joesph [sic] Mitcm Survey, Abstract 590, and the John L White Survey Abstract 1014. See attached schedule notes.

Hunter appearing as counsel for Mrs. Taylor). Mr. Hunter signed and caused to be filed the following motions on behalf of Mrs. Taylor relating to the global settlement: (1) Response of Laura K. Taylor, a Party in Interest, to Trustee's Motion to Approve Compromise and Settlement Agreement [Dkt. No. 178]; and (2) Laura K. Taylor's Supplement No. 1 to Response to Trustee's Motion to Approve Compromise and Settlement Agreement [Dkt. No. 186]. Additionally, after the Court entered its Memorandum Opinion and Order sustaining the Exemption Objection, Mr. Hunter signed and caused to be filed the following motions on behalf of Mrs. Taylor: (1) Laura K. Taylor's Request to Amend Findings with Respect to Memorandum Opinion and Order as to Homestead Exemption [Dkt. No. 203]; (2) Laura K. Taylor's Motion for New Trial as to Memorandum Opinion and Order Relating to a Global Settlement of Disputes [Dkt. No. 205]; and (3) Objections to Forms of Orders Proposed by Counsel for Adams and Lone Star Partners Pertaining to Laura K. Taylor's Motions for New Trial, Requests to Amend Findings of Fact and Requests for Additional Findings of Fact as to Memorandum Opinion and Orders Relating to Homestead Exemption and Global Settlement [Dkt. No. 213].

The Debtor described the nature of his interest in the 145 acres as community property. The notes attached to the Debtor's schedules explained the Debtor's legal arguments for his claimed interest in the 145 acres in his Schedule A, as follows:

> There are two creditors whose encumbrances affect the principal residence: F.O. Birmingham Memorial Land Trust, which holds a first mortgage and vendor's lien against the acreage incident to its purchase by Lone Star Partners, G.P. of the Property in April 1995 (which is subject to a partial release agreement at the general rate of $2200 per acre); and Lone Star Partners, G.P., which granted WAT an option to purchase the residential acreage at the rate of $2200 per acre which is to be conveyed free and clear upon payment. Under the provisions of the disputed Settlement Agreement, the property involved is 145 acres, the purchase price for which is $319,000 plus interest in accordance with such agreement. An alterative claim to acreage constituting the principal residence exists incident to a lawsuit filed by WAT's wife against Lone Star Partners, G.P. (in which WAT was joined *pro forma*), asserting a claim to 377 acres at the price of $2200 per acre, less credits and offsets claimed as applicable thereto, including amounts received by Lone Star Partners, G.P. resulting from its sale of portions of the property covered by the suit. The balance arguably owed under the claim to 377 acres is subject to certain pending and vigorously disputed litigation to enforce the agreement to acquire such property and determine the balance due therefore, if any, as material issues in the case. WAT is liable for the balance of the debt, if any, owed for such property.

8. In his Schedule C (Property Claimed as Exempt) the Debtor listed his claim to the above-described 145 acres as his exempt property, as follows:

> Claim to rural homestead in 145 acres or more in and around 4360 County 177, Celina, Collin County, Texas, and part of 377 acres out of the James Hefflefinger Survey Abstract 366, the Joseph Mitcum Survey, Abstract

> 590, and the John L. White Survey, Abstract 1014. See attached Schedule Notes.[3]

The Debtor specified that his claim to the 145 acres was his exempt homestead under the Texas Constitution and the Texas Property Code.

9. Mr. Adams and Lone Star filed a timely Objection to Homestead Exemption (the "Exemption Objection"). In the Exemption Objection, Mr. Adams and Lone Star objected to the Debtor's attempt to elevate a disputed claim to 145 acres owned by Lone Star to an exempt ownership interest in the property. The Court sustained the Exemption Objection for the reasons stated in its Memorandum Opinion and Order entered on September 29, 2006.

10. As discussed in the Court's Memorandum Opinion and Order sustaining the Exemption Objection, the 145 acres described in the Debtor's schedules are part of the much larger parcel of property known as Lone Star Ranch. The Debtor's claim to the 145 acres arises out of a purported settlement agreement executed in connection with Partnership Lawsuit. The settlement agreement provided, among other things, that Lone Star would sell 145 acres to the Debtor under certain terms and conditions. The validity and enforceability of the settlement agreement was a subject of dispute among the parties both prior to and during the Debtor's bankruptcy case.

---

[3] At the hearing on February 22, 2007, Mrs. Taylor argued that the Debtor's Schedule C lists an alternative claim to 377 acres as the Debtor's exempt property by virtue of the reference to the attached schedule notes. However, none of the attached schedule notes relate to the Debtor's Schedule C. Furthermore, at a hearing on August 30, 2006, the Debtor testified on cross-examination that he was claiming an exempt homestead interest only in 145 acres:

> Q. Is there any other place besides this 145 acres we've been talking about ad nauseum today, that you assert a homestead interest on? Any piece of property someplace else?
>
> A. This 145 acres is what we've claimed as a homestead in the bankruptcy filing and it's what referred to in the agreement and I stand by that.

Hrg. Tr. (Aug. 30, 2006) at p. 68.

11. The Debtor and his family continue to reside in a house on the 145 acres described in the Debtor's bankruptcy schedules. The Movants assert in their Motion that they have revoked any consent they may have granted to the Debtor to reside on Lone Star's property. The Movants seek relief from the automatic stay to allow them to evict the Debtor from the property.

12. The Debtor opposes the Motion. In his objection, the Debtor asserts that "Movants are adequately protected by the value of the Property and Taylor's interests." *See* Debtor's Answer to Motion at ¶10.

13. Mrs. Taylor also objects to the Motion. In her objection, Mrs. Taylor argues that the Motion should be denied because Court lacks jurisdiction to determine her interest, if any, in the 145 acres described in her husband's bankruptcy schedules. Mrs. Taylor alternatively asserts that the Motion should be denied because she claims a homestead interest in the 145 acres that is enforceable against the Movants. Mrs. Taylor also argues, *inter alia*, that the 145 acres is, at least arguably, property of the estate and protected by the automatic stay.[4]

Analysis

A. Mrs. Taylor's Objections to the Court's Jurisdiction

14. The filing of a voluntary petition creates what is referred to as a "bankruptcy estate." Section 541(a)(1) of the Bankruptcy Code generally defines the term "bankruptcy estate" as including all property of the debtor. The bankruptcy estate also includes "all interests of the debtor *and the debtor's spouse* in community property

[4] In her objection to the Motion, Mrs. Taylor asserts various rights under §363 of the Bankruptcy Code. Section 363 of the Bankruptcy Code addresses the use, sale or lease of estate property. Mrs. Taylor's references to this provision appear to be based on the mistaken belief that this Court is approving or has approved a sale of the property in which she claims an interest.

that is … under the sole, equal, or joint management and control of the debtor. . . ." 11 U.S.C. §541(a)(2)(A) (emphasis added).

15. A debtor is permitted to "exempt" certain property from the bankruptcy estate by filing a list of property claimed as exempt. *See* 11 U.S.C. §522. If a debtor fails to file a list of property claimed as exempt, then a dependent of the debtor may do so. *See* 11 U.S.C. §522(l). The U.S. Supreme Court has described an exemption as "an interest withdrawn from the estate (and hence from creditors) for the benefit of the debtor." *Owen v. Owen*, 500 U.S. 305, 308 (1991).

16. Federal Rule of Bankruptcy Procedure 4003(b) provides that any party in interest may file an objection to a claim of exemption. The objection must be served in the manner set forth in paragraph (b)(3). Objections to exemptions initiate a contested matter under Federal Rule of Bankruptcy Procedure 9014.

17. The administration of the bankruptcy estate is a core proceeding over which this Court has exclusive jurisdiction pursuant to 28 U.S.C. §§1334(a) and 157(a) and the United States District Court for the Eastern District of Texas' Order of Reference of Bankruptcy Cases and Proceedings *Nunc Pro Tunc*. The Court's jurisdiction permits it to "determin[e] all claims that anyone, whether named in the action or not, has to the property or thing in question. The proceeding is 'one against the world.'" *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 448 (2004) (citations omitted). More specifically, with respect to property claimed as exempt, "the court [has] jurisdiction to determine what property may be exempted and what remains as property of the estate." S. Rep. No. 95-989 (1977), *reprinted in* 1978 U.S.C.C.A.N. at 5861-5862.

18. Here, the claim to the 145 acres listed by the Debtor as his exempt rural

homestead was described as community property in the Debtor's bankruptcy schedules. Mrs. Taylor did not seek to establish the 145 acres or any portion of the Debtor's clam to the 145 acres as her separate property over which this Court would lack jurisdiction, and her failure to object to the Debtor's claimed exemption may have had the effect of waiving any argument that the 145 acres is her separate property. Moreover, Mrs. Taylor's attorney, Mr. Hunter, appeared at the hearings on the Movants' Exemption Objection in support of the Debtor's claimed exemption.

19. Nonetheless, Mrs. Taylor argues in her objection to the Motion that this Court has no jurisdiction to determine her interest in and to the 145 acres that she and the Debtor claim as their rural homestead. She suggests, for the first time, that some portion of the property interests listed in her husband's bankruptcy schedules may be her separate property. She also argues that an adversary proceeding is required to adjudicate her rights in and to the 145 acres. Since no such proceeding has been brought against her, she asserts that --

> there is an absence of jurisdiction of the subject matter of the Court of the Amended Motion to Modify, to the extent the Amended Motion to Modify has or may have some affect [sic] upon or an adjudication of the rights and interests of LKT and her minor children in or affecting the 145 acre tract[.]

See Mrs. Taylor's Objection and Response to the Motion at ¶1.17.

20. At the hearing on the Motion, Mrs. Taylor failed to introduce any evidence in the record that would support a finding that any portion of the 145 acres is her separate property. *See* 11 U.S.C. §362(g). Her interest in this property appears to be a community property interest based on the record before this Court. Mrs. Taylor's community property interest, if any, in the 145 acres, or in the Debtor's claim to the 145 acres,

became part of the bankruptcy estate upon her husband's filing of a bankruptcy petition. *See* 11 U.S.C. §541(a)(2)(A).

21. This Court had exclusive jurisdiction to determine the extent of Mrs. Taylor's right, if any, in and to the 145 acres in connection with the Exemption Objection. *See* 28 U.S.C. §1334(e)(1); *Kane Enterprises v. MacGregor (USA) Inc.*, 22 F.3d 371, 374 (5th Cir. 2003) (bankruptcy court has exclusive jurisdiction over property of the estate); *In re Chesnut*, 422 F.3d 298, 303 (5th Cir. 2005) (bankruptcy court has jurisdiction to determine disputes regarding whether a property interest is property of the bankruptcy estate). Despite Mrs. Taylor's argument to the contrary, objections to exemptions are not among the types of proceedings that must be filed as adversary proceedings and served as an adversary complaint. *See* FED. R. BANKR. P. 7001; Alan N. Resnick and Henry J. Sommer, 9 COLLIER ON BANKRUPTCY ¶ 4003.03[2] (15th ed. rev. 2006). Accordingly, the Court finds and concludes that Mrs. Taylor's jurisdictional objection to the Motion should be denied.

B. The Automatic Stay

22. Subject to limited exceptions, the filing of a petition for relief automatically stays all acts against a debtor and against property of the estate. *See* 11 U.S.C. §362(a).[5] With respect to acts against estate property, §362(c)(1) provides that the automatic stay terminates when the property is no longer property of the estate (*i.e.*, when the property is sold, abandoned, or returned to the debtor as exempt, or when a plan of reorganization is confirmed). With respect to acts against a debtor, §362(c)(2)(C) states

[5] In Chapter 13 cases, a co-debtor stay also is imposed. *See* 11 U.S.C. §1301(a).

that the automatic stay terminates when a case is closed or dismissed or when a discharge is granted in or denied.

1. Acts against Property

23. Mrs. Taylor argues that any action by the Movants against the 145 acres is prohibited by the automatic stay because the realty is "property of the estate" as a result of the Fifth Circuit's decision in *Chesnut*. In *Chesnut*, the Fifth Circuit considered whether a creditor had violated the automatic stay by unilaterally foreclosing on realty in which the debtor asserted a community interest. The Fifth Circuit held that, even when the interest held by the estate was limited to an arguable interest, the automatic stay protects that limited interest such that a "creditor violates the stay if, without permission of the bankruptcy court, he forecloses on an asset to which the debtor has only an arguable claim of right." *In re Chesnut*, 422 F.3d at 300.

24. In this case, the issue is whether the stay should lift in light of the alleged interest of the Debtor and Mrs. Taylor in the 145 acres described in the Debtor's bankruptcy schedules. The Court made extensive findings regarding the nature of the Debtor's interest (and, by extension, Mrs. Taylor's interest) in the 145 acres in its Memorandum Opinion and Order sustaining the Exemption Objection. Mrs. Taylor filed a motion in this Court seeking a new trial, which was denied. Mrs. Taylor then appealed the Court's decision, but subsequently dismissed her appeal. The Court's Memorandum Opinion and Order sustaining the Exemption Objection is now final and may not be collaterally attacked by the Debtor or Mrs. Taylor.

25. Mrs. Taylor's argument that the Motion should be denied because she has a homestead right to the 145 acres appears to confuse a possessory interest in property

with an ownership interest. As the Court discussed in its ruling on the Exemption Objection, there is some authority that mere possession of real property may be sufficient to sustain a claim of homestead under Texas law. *See* 43 TEX. JUR. 3d, *Homesteads*, § 45 (collecting cases). However, a homestead claimant, "having naked possession without any title . . . may maintain [his] claim of homestead against all creditors *save the true owner or one having better title.*" *Shepler v. Kubena***,** 563 S.W.2d 382, 386 (Tex. Civ. App. – Austin, 1978.) (emphasis added). With respect to the holder of a possessory interest in the land, a homestead claim does not confer any ownership interest, but merely protects the holder's possessory interest from certain creditors of the holder. *See, e.g., Sayers v. Pyland*, 161 S.W. 769, 773 (Tex. 1942).

26. The Court has previously determined that neither the Debtor nor his wife owns the property at issue. The Debtor and his wife merely assert disputed claims to the 145 acres and have possession of the property. The Movants filed the Motion seeking relief from the automatic stay to the extent necessary to evict the Debtor from the 145 acres, and the Court held a hearing on the Motion. The Court concludes, based on the arguments, the evidence presented at the hearing on the Motion, and the record of this case, that cause exists to grant the Movants relief from the automatic stay of acts against property of the estate under §362(d)(1) of the Bankruptcy Code. *See In re Fowler***,** 259 B.R. 856 (Bankr. E.D. Tex., 2001) (discussing the burden of proof on a motion seeking relief from the automatic stay).

2. Acts against the Debtor

27. The Movants seek to bring an eviction action against the Debtor under Texas law. The Debtor is an individual, and the Court has entered the discharge order.

The Court, therefore, concludes that the automatic stay no longer applies to protect the Debtor from an eviction proceeding by the Movants. *See* 11 U.S.C. §362(c)(2)(C).

28. Although the automatic stay of acts against the Debtor has terminated, the stay has been replaced by a permanent injunction under §524(a) of the Bankruptcy Code. The injunction prohibits acts or legal proceedings to collect a discharged debt as a personal liability of a debtor. However, the Movants in this case are not seeking to collect a pre-petition debt. *See* 11 U.S.C. §523(a)(2). Rather, the Movants are seeking to evict the Debtor from property they own. The Court, therefore, concludes that the discharge injunction also does not protect the Debtor from an eviction proceeding by the Movants. Accordingly,

IT IS ORDERED that the Motion shall be, and it is hereby, **GRANTED.**

IT IS FURTHER ORDERED that, to the extent the automatic stay applies, the Movants are hereby granted relief from the stay pursuant to 11 U.S.C. §362(d)(1) and (d)(2) so that they may exercise their rights and remedies with respect to the 145 acres under relevant law.

IT IS FURTHER ORDERED that the Requested Findings By Laura K. Taylor, A Party In Interest, Regarding Ruling On Amended Motion To Modify The Automatic Stay Filed By C. Kent Adams & Lone Star Partners, G.P**.** [Dkt. No. 263], which was filed by Mrs. Taylor after the hearing on the Motion and in which Mrs. Taylor requests that the Court deny the Motion, shall be, and it is hereby, **DENIED.**

Signed on 7/23/2007

Brenda T. Rhoades MD

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE