Property Division
Dissolution of Marriage

Wayne S. Rivera, Case No. 04-61370-fra7
Appellate No. OR-04-1596-MoRK

9/14/05 BAP rev'd FRA Unpublished

Debtor filed a Chapter 13 petition and, approximately three months later, the case was converted to Chapter 7. During this time, Debtor's wife filed a petition in state court to dissolve their marriage without first seeking relief from the automatic stay. When the bankruptcy court learned of the divorce proceedings, it issued an order sua sponte to show cause why it should not lift the automatic stay.

At the hearing on the bankruptcy court's order to show cause, the court proposed an order be entered granting relief from stay to allow the state court to enter a decree of dissolution, and to determine an allocation of marital property according to state law. The relief was conditioned on the trustee being served with all pleadings and any proposed settlement or decree, and being given leave to intervene in the divorce proceedings in order to protect the estate's interest in marital assets. The bankruptcy court noted that the state court is required in dissolution proceedings to balance issues of custody, child support, spousal support, and property division. While the bankruptcy court has jurisdiction over the Debtor's property, it has no authority over other issues of the parties' marriage. If the bankruptcy court were to determine relative property rights of the parties, it would put the state court in a position in which it could not effect the balance it is required to make.

The bankruptcy court, after allowing the parties additional time to brief the issues and an additional hearing on the matter, entered an order granting relief from stay. The Chapter 7 trustee appealed the order as it related to property division to the Bankruptcy Appellate Panel.

The BAP reversed the order granting relief from stay, holding that the bankruptcy court did not articulate sufficient cause to warrant the relief it granted. It stated that the state court can proceed with the divorce proceedings without prejudice to the bankruptcy court's determination of matters involving creditors and decisions as to what constitutes property of the estate.

The underlying Memorandum Opinion is at E04-14.

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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re: WAYNE S. RIVERA, Debtor. _____ RONALD R. STICKA, Chapter 7 Trustee, Appellant, v. KATHLEEN A. RIVERA; WAYNE S. RIVERA, Appellees. _____	BAP No. OR-04-1596-MoRK Bk. No. 04-61370-fra7 **M E M O R A N D U M**[1]

Argued and Submitted on May 20, 2005
at Eugene, Oregon

Filed - September 14, 2005

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Frank R. Alley, III, Bankruptcy Judge, Presiding.

Before: MONTALI, RIEGLE[2] and KLEIN, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, claim preclusion, or issue preclusion. See 9th Cir. BAP Rule 8013-1.

[2] Hon. Linda B. Riegle, Bankruptcy Judge for the District of Nevada, sitting by designation.

Chapter 7 trustee Ronald R. Sticka ("Trustee") appeals from the bankruptcy court's order granting relief from the automatic stay to permit a state divorce court to determine "any legal issue" concerning the respective property rights of Trustee, debtor Wayne S. Rivera ("Debtor"), and his wife Kathleen A. Rivera ("Wife") and enter a decree distributing the marital assets. The bankruptcy court conditioned its relief on Trustee receiving notice of property division matters and being permitted to intervene to protect the interests of creditors. Trustee contends that these conditions are inadequate and that the estate's interests in property should be resolved by the bankruptcy court, leaving custody and support issues for the state court.

We hold that the bankruptcy court, which acted sua sponte, did not articulate sufficient cause to warrant the relief it granted from the automatic stay. Accordingly, we REVERSE and REMAND for further proceedings.

I. FACTS

Debtor filed a Chapter 13 petition on February 27, 2004 (the "Petition Date").[3] The case was converted to Chapter 7 on May 26, 2004. Meanwhile, on April 20, 2004, without seeking relief from the automatic stay, Wife filed a petition to dissolve her marriage to Debtor in the Circuit Court for Marion County, Oregon (Case No. 04C-31098) (the "Divorce Proceedings"). After the bankruptcy court learned of the Divorce Proceedings it sua sponte issued an order to show cause ("OSC") why it should not lift the automatic

[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

stay to let those proceedings proceed. At a hearing on July 29, 2004, the bankruptcy court stated:

> My view . . . is that state and federal law don't match up particularly well here. . . . [T]his court has jurisdiction over all the property, and has no authority to dissolve the parties' marriage, to decide issues of support or custody. The circuit court is admonished or required, really, by state law to dissolve the marriage, determine custody issues . . . of minor children, child support, spousal support, property division. And <u>Oregon case law says that the Court has to balance all these factors, and it can't isolate them</u>. So, if a federal court says you can dissolve and provide for custody but you can't do the property, then we're telling the state court that you can't carry out the duties that state law mandates.

Transcript 7/29/04 pp. 7:23 - 8:15 (emphasis added).

The bankruptcy court proposed to issue an order (the "R/S Order") that would modify the automatic stay "with respect to all property of the [D]ebtor, for the purpose of allowing determination by the [state] Court of the distribution of marital assets required by state law." It would authorize the state court to enter a decree of dissolution of marriage "distributing the assets of the parties," and in so doing to "determine any legal issue arising between the parties, or either party and the Trustee, concerning the parties' respective property rights." That relief would be conditioned on Trustee being served with all pleadings and any proposed settlement or stipulated decree in the Divorce Proceedings, and being given leave to intervene in the Divorce Proceedings "to the extent necessary to protect the estate's interest in marital assets."

Trustee objected that "no one has asked for that relief," that he probably would have to pay a fee to intervene in the Divorce Proceedings, and that "many cases" involve divorce

proceedings -- "sometimes in jurisdictions that are far from here" -- and he was concerned about the "precedent." Transcript 7/29/04 pp. 9:21 - 10:9. According to Trustee, the common solution in Oregon is for the divorce proceedings go forward on matters of custody, support, and dissolving the marriage itself, whereas on "matters related to creditors" the Chapter 7 trustee typically will agree that the parties to the divorce proceedings can "resolve those issues among themselves, but it's not binding on the creditors." Id. pp. 10:18 - 11:5.

Debtor's attorney appeared ambivalent about which court would decide property rights issues, provided that this was without prejudice to remedies for past or ongoing violations of the automatic stay. He alleged that Wife was "still exercising dominion and control" over "almost all assets of [Debtor], even those acquired prior to marriage." Id. p. 5:20-23.

The bankruptcy court acknowledged "it's a tough question" because "what we're used to here" is thinking "in terms of creditors' interest" whereas the circuit court "is going to be thinking of the minor child first." Id. p. 10:10-15. It expressed two concerns with Trustee's approach. First, if custody, support, and property division are interdependent under Oregon law, then resolving property rights in bankruptcy court would mean that the divorce "just stops until the bankruptcy is completed," which might prejudice someone "trying to get out of a bad marriage" quickly. Id. pp. 10:16-17, 13:8-12. Second, "under Oregon law, which I'm bound by, all the property is a species of joint property" until it is divided in divorce proceedings, and given the interdependence of such property division with custody

and support issues, "what criteria would [the bankruptcy court] follow?" Id. p. 12:19-24.

The bankruptcy court decided to issue a second OSC to give all interested parties an opportunity to brief the matter. The bankruptcy court invited Trustee to retain counsel, and Wife to have her state court attorney appear.

Trustee retained counsel, who filed a response to the second OSC arguing that the state court has no jurisdiction over property of the estate, no party in interest has requested the relief proposed by the bankruptcy court, and Trustee has the rights of a lien creditor under 11 U.S.C. § 544(a)(1). The matter came on for hearing on August 26, 2004, and counsel for Trustee, Debtor, and Wife all confirmed that they were not seeking the remedy suggested by the court. Transcript 8/26/04 p. 6:4-5 (Trustee's attorney: "there's no party here that is seeking the remedy that the Court is suggesting imposing here"), p. 5:7 (Debtor's attorney: "That's correct, your Honor."), p. 8:23-24 (Wife's attorney: "I don't see the bankruptcy court giving up jurisdiction over the physical assets").

The bankruptcy court asked, "What law do I apply if I'm the one who divides the property up?" and "If the law is the same" in either forum then "why shouldn't it be done by the same state court judge who's got to determine all the other issues attendant to a divorce such as custody and support?" Transcript 8/26/04 pp. 12:6-8, 13:5-8. Debtor's attorney responded that he thought property division would be faster in the bankruptcy court than in state court (id. p. 13:9-15) and that Oregon cases in which property division issues were interdependent with support issues

would not be applicable because Wife is not seeking spousal support, just child support, and there is a statutory formula for child support. Id. p. 13:16-22. Wife's attorney confirmed that Wife, who earns more than Debtor, has not requested spousal support and that the statutory formula for child support is entirely "income and expense driven," although the state court could depart from the formula based on unusual circumstances such as a medical expense or maybe college education. Id. pp. 15:21-22, 16:9-19.

On October 4, 2004, the bankruptcy court entered its R/S Order. A supporting Memorandum Opinion states that although the Oregon court's "entry of a judgment which actually purports to distribute property of the estate" would violate the stay, nevertheless commencement of the Divorce Proceedings did not by itself violate the automatic stay. The bankruptcy court reasoned that O.R.S. § 107.105, governing the Divorce Proceedings,

> does not actually alter any pre-existing rights; what it does is establish an analytical framework for implementing rights that existed from the outset of the marriage. . . . In other words, commencement of the dissolution proceeding does not modify the property rights of either party, or create new ones: it simply puts into play the right of a spouse to an equitable distribution in the event the marriage fails.

The Memorandum Opinion quotes from O.R.S. § 107.105, including the following:

> (1) Whenever the court renders a judgment of marital annulment, dissolution or separation, the court may provide in the judgment:
>
> * * *
>
> (f) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and

> proper in all the circumstances. . . . Subsequent to the filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties in the marital assets shall be considered a species of coownership, and a transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property. . . .

O.R.S. § 107.105(1)(f) (emphasis added by bankruptcy court).

The bankruptcy court rejected Trustee's proposed solution of proceeding simultaneously in the Oregon court and the bankruptcy court for two reasons:

> First, [the Oregon divorce court] must take property distribution into account, and therefore necessarily would have to wait until the Bankruptcy Court effects a distribution of the marital property. This in turn means that the Bankruptcy Court will have an undue influence on issues of custody and support. Moreover, the Bankruptcy Court may be hard pressed to distribute the property if it is required by state law to consider the custody of children in determining the fate of a marital residence.
>
> Second, there is a well settled doctrine that federal courts should not involve themselves in domestic relations cases. . . .
>
> . . . There is no reason to believe that the Circuit Court would not give creditors whatever consideration the law requires, as would this court. The point is that the law governing such determinations is the same in either forum.
>
> . . . Oregon law requires that the debtor's and his spouse's property be equitably divided, and the Trustee takes subject to that law. . . .

Trustee timely appealed. There is no appellee.

II. ISSUE

Did the bankruptcy court articulate sufficient cause to lift the automatic stay sua sponte as provided in the R/S Order?

III. STANDARDS OF REVIEW

We review the decision whether to grant relief from the automatic stay, on a given set of facts, for an abuse of discretion. Moldo v. Matsco, Inc. (In re Cybernetic Servs., Inc.), 252 F.3d 1039, 1045 (9th Cir. 2001), cert. denied, 534 U.S. 1130 (2002). A bankruptcy court necessarily abuses its discretion if it bases its ruling upon an erroneous view of the law or a clearly erroneous assessment of the evidence. The panel also finds an abuse of discretion if it has a definite and firm conviction that the bankruptcy court committed a clear error of judgment in the conclusion it reached. Beatty v. Traub (In re Beatty), 162 B.R. 853, 855 (9th Cir. BAP 1994).

The nature of a debtor's interest in property, although largely a question of fact, is based on the interpretation of legal principles. Keller v. Keller (In re Keller), 185 B.R. 796, 798 (9th Cir. BAP 1995). Mixed questions of law and fact are generally reviewed de novo. Id. Whether a particular interest in property is included in the estate is a question of law which we review de novo. Moldo v. Clark (In re Clark), 266 B.R. 163, 168 (9th Cir. BAP 2001).

IV. DISCUSSION

Section 362(d) provides that the bankruptcy court may grant relief from the automatic stay for "cause," such as by terminating, annulling, modifying, or conditioning such stay. 11 U.S.C. § 362(d). Cause is not defined. What constitutes sufficient cause and what specific type of relief to grant is left to the bankruptcy court's sound discretion. Cybernetic Servs., 252 F.3d at 1045; Schwartz v. United States (In re Schwartz), 954

F.2d 569, 572 (9th Cir. 1992).

The R/S Order grants broad relief: it lifts the automatic stay for the state court to (a) "determine any legal issue" arising between Trustee, Wife and Debtor concerning "the parties' respective property rights" (emphasis added) and then (b) enter a decree of dissolution of marriage "distributing" the assets (emphasis added). The bankruptcy court's reasons for issuing the R/S Order can be summarized as likely prejudice to the children, and implicitly Wife and Debtor as well, if the stay is not lifted; and lack of prejudice to creditors if it is lifted because, according to the bankruptcy court, the law is the same in either forum.

1. Prejudice to the children, Wife, and Debtor

The Memorandum Opinion speaks of property "division" between the spouses, "distribut[ion]" of that property, and an "undue influence" on issues of child custody and support. The bankruptcy court was concerned that it would need to "consider the custody of children in determining the fate of a marital residence." We are not persuaded that the bankruptcy court will have to consider any of these things.

Before awarding property to one or another spouse the first step analytically is to determine who owns it prior to division and distribution. Such property interests are determined from historical facts that are independent of issues such as child custody, support, or how to divide and distribute property in a divorce.

Debtor's amended bankruptcy schedules state that he is the sole owner of some personal property, that the marital residence

was "surrendered post-petition," and that Wife is the sole owner of a different residence under the laws of Oregon, which is not a community property state. These and other property interests are determinable facts, or perhaps mixed questions of fact and law if there is any dispute over ownership.

After property interests are determined they might be subject to alteration by the Bankruptcy Code. If Wife obtained her residence through an avoidable transfer then Trustee might be able to recover an interest in that residence. See, e.g., 11 U.S.C. §§ 548 and 550. That would alter the parties' property interests. However, neither child custody and support payments nor property divisions in divorce proceedings are factors in determining whether a transfer is avoidable.

Outside of bankruptcy the Divorce Proceedings could also alter property rights by distributing one spouse's interest in marital property to the other spouse. We agree with the bankruptcy court that in practice the financial aspects of the Divorce Proceedings are interrelated and, moreover, property division and distribution between the spouses could affect child custody or vice versa. Marriage of Vanderzanden, 51 Or. App. 757, 761-62; 627 P.2d 18, 21 (1981) (because husband received all retirement benefits and because wife needed to retain the family home to raise and care for five children, home was properly awarded to her subject to judgment in favor of husband payable only after children reached majority or house was sold); Marriage of Grove, 280 Or. 341, 344; 571 P.2d 477, 481 (1977). The question is whether the same is true of the Divorce Proceedings, which were commenced after the Petition Date.

The Memorandum Opinion can be read to mean that Wife has pre-existing interests dating from the start of the marriage in whatever property ultimately would be distributed to her in the Divorce Proceedings, and therefore her interests could be said to arise prior to the Petition Date and be superior to Trustee's strongarm powers. First, we question whether this is so. Second, even if that were the ultimate conclusion, it is a complex matter involving the intersection of bankruptcy law and Oregon law that the bankruptcy court is uniquely empowered and qualified to address. These topics are treated separately below. For now we simply note that the state court would have to face these issues even if the bankruptcy court did not, it cannot divide and distribute any property interests that the parties do not have, and Debtor's counsel suggested without opposition that property rights might be determined more quickly in the bankruptcy court than in state court. Therefore, the existence of these complex issues is not a basis to defer to the state court.

If there are urgent matters in the Divorce Proceedings, such as child custody or support, and if those matters depend on property interests, then perhaps the state court will have to make its best determinations based on the available information. That would be so regardless of which court is determining the property interests.

We are aware of no reason why the common solution, proposed by Trustee, would not work in this case. The state court can proceed with the Divorce Proceedings without prejudice to the bankruptcy court's determination of matters involving creditors, including decisions on what is property of the estate. There is

authority for such bifurcated proceedings in other jurisdictions. See, e.g., Willard v. Willard (In re Willard), 15 B.R. 898 (9th Cir. BAP 1981); In re Howell, 311 B.R. 173, 176-180 (Bankr. D.N.J. 2004).

This case might be particularly amenable to a bifurcated approach because spousal support is not at issue and child support may be entirely formulaic. Finally, as Trustee noted, nobody (including Wife's attorney) asked for the relief that the bankruptcy court granted.

For these reasons the excerpts of record do not support the bankruptcy court's determination that the Divorce Proceedings will "just stop[]" until the bankruptcy case is finished, or other prejudice to the children, Wife, and Debtor. The R/S Order cannot be sustained on these grounds.

2. Prejudice to creditors

The most obvious form of prejudice to creditors would be a collusive marital settlement or decree of dissolution that distributed marital property to Wife at the expense of Debtor's creditors. The Memorandum Opinion states that there is no evidence of any such collusion and that under the R/S Order Trustee can protect the interests of creditors. Trustee's ability to appear in state court ameliorates but does not eliminate the problem because collusion can be hard to detect. Cf. Thomas v. Namba (In re Thomas), 287 B.R. 782, 785 (9th Cir. BAP 2002) (good faith finding not required at time of sale because "interesting facts" may not emerge until later); T.C. Investors v. Joseph (In re M Capital Corp.), 290 B.R. 743, 748-49 (9th Cir. BAP 2003)

(same).[4]

Creditors' interests also could be prejudiced if the state court were to make distributions without according Trustee whatever rights and interests he may have under bankruptcy law. Trustee objected that the R/S Order would do just that, by contravening his strongarm powers.

a. Trustee's strongarm powers

Trustee's strongarm powers are set forth in Section 544(a):

> § 544. Trustee as lien creditor and as successor to certain creditors and purchasers
>
> (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by --
>
> (1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;
>
> (2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or
>
> (3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide

[4] The Memorandum Opinion does not address Trustee's concern that he might have to pay a fee to intervene in the Divorce Proceedings, or how Trustee would pay this fee if the estate has no liquid assets, or the added costs if the Divorce Proceedings are conducted in a distant location. Trustee did not produce any evidence that such concerns are actually present in this case so the bankruptcy court was not required to address them.

> purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

11 U.S.C. § 544(a) (emphasis added).

The issue is what rights such a judicial lien creditor, execution creditor, or bona fide purchaser would have under Oregon law as against Wife's rights or interests in any property under the post-petition Divorce Proceeding. See Butner v. United States, 440 U.S. 48, 55 (1979) (property rights generally defined by state law). That issue is determined as of the Petition Date. See 11 U.S.C. § 544(a). See also Dumas v. Mantle (In re Mantle), 153 F.3d 1082, 1081-85 (9th Cir. 1998).

Both real and personal property appear to be at issue,[5] but most of the reported cases concern real property. Debtor's schedule A lists a timeshare as "joint" property, without describing the precise form of ownership. For purposes of discussion we will suppose that the timeshare is held as a tenancy by the entirety, which is one typical form of ownership in Oregon. See Sanderson v. Heffington, 92 Or. App. 145, 147 n.2; 757 P.2d 866, 867 n.2 (1988) (land conveyed to husband and wife by one instrument presumed to be tenancy by entirety). Oregon's form of

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[5] At oral argument we asked Trustee's counsel what assets might be available to be administered. He wrote to us that there may be personal property with a value of more than $60,000.00 above Debtor's claimed exemptions. Debtor's bankruptcy schedule A lists six real property interests including a "[p]ossible marital interest" in Wife's residence which is listed with a current market value of $140,000 encumbered by secured claims of $112,000. Debtor's bankruptcy schedule C claims both real and personal property exemptions. We confirmed at oral argument that the Divorce Proceedings have not concluded and Trustee's counsel stated that his investigation is ongoing and that Wife may have converted or taken control of property of the estate. In sum, it appears that Debtor, Wife, and Trustee each have potential interests in both real and personal property.

tenancy by the entirety has been described as a tenancy in common with an indestructible right of survivorship. Brownley v. Lincoln County, 218 Or. 7, 10; 343 P.2d 529, 531 (1959).

Under Oregon law it has been held that one spouse can convey or encumber his own interest in a tenancy by the entirety prior to divorce. Sanderson, 92 Or.App. at 147; 757 P.2d at 867. Each spouse is "regarded as the separate owner of one half the rents and profits and each spouse has the power to convey or encumber the whole title subject to the right of survivorship in the other spouse" but "if one spouse conveys or encumbers his interest in the estate the grantee or encumbrancer has a right during coverture only to the grantor's share of the rents and profits." Brownley, 218 Or. at 11; 343 P.2d at 531 (citations omitted). A later divorce destroys the tenancy by the entirety but not the conveyance or encumbrance, even if the spouse who did not join in the conveyance or encumbrance is later awarded the entire interest in the property. Id., 218 Or. 7; 343 P.2d 529 (involuntary encumbrance); Sanderson, 92 Or. App. at 148; 757 P.2d at 868 (voluntary encumbrance). See also Akins v. Vermast, 150 Or. App. 236, 242; 945 P.2d 640, 643 (1997) (holders of voluntary encumbrances treated as purchasers for purposes of the statutory priority determination); Michael A. Grassmueck, Inc. v. Clearwater-Thompson (In re Clearwater), 1997 WL 101975 (Bankr. D. Or. 1997) (husband's bankruptcy trustee as hypothetical bona fide purchaser had interest in receivable arising from land sale contract superior to interest of wife, even though wife's interest had been conveyed to her in dissolution judgment prior to bankruptcy petition, because that judgment was unrecorded).

In Brownley, the Supreme Court of Oregon specifically rejected the argument that the nondebtor spouse's interest in marital property should be viewed as pre-dating the judgment creditor's lien and therefore should be entitled to priority over that lien. Id., 218 Or. at 12-18, 343 P.2d at 531-34 ("sole question" was whether wife's or judgment creditor's interest was "prior in time").

Oregon law was amended in 1981 to state that the rights of the parties to a divorce proceeding "shall be considered a species of co-ownership," but by the statute's terms that language applies only "[s]ubsequent to the filing of a petition for annulment or dissolution of marriage or separation." O.R.S. § 107.105(1)(f) (emphasis added). See Sanderson, 92 Or. App. at 148; 757 P.2d at 867-68 (decided after amendment to statute, but still describing Brownley as controlling). The Divorce Petition was not filed until after the Petition Date, so Trustee's strongarm powers appear to be prior in time. Based on the above cases it may be that the estate's interest in the timeshare is superior to Wife's interest.

We express no opinion whether that is actually true in this case because we do not know the actual state of title to the timeshare, or any other marital property, and the issue has not been fully briefed as there is no appellee to defend the bankruptcy court's sua sponte decision. Our point is only that the Memorandum Opinion does not analyze these issues, so if it and the R/S Order are read as permitting property distribution by the state court without regard to Trustee's strongarm powers then they have not articulated sufficient cause for that relief.

b. Prejudice from the choice of forum

The R/S Order and Memorandum Opinion could be read in another way. Rather than implying any substantive outcome, they might contemplate that the state court will address the above issues and then make a property division and distribution consistent with whatever rights and interests Trustee has. In theory the state court forum might not prejudice creditors because if Trustee's strongarm powers are actually superior to Wife's then the first "distribution" would be to the bankruptcy estate, with Debtor and Wife only receiving distributions from non-estate property. Conversely, if Trustee's strongarm powers are not superior to Wife's then in theory the estate is not prejudiced because it is only entitled to whatever distributions of non-exempt property would be made to Debtor in the Divorce Proceedings.

In practice, there are several problems with this approach. Congress has given the bankruptcy court exclusive jurisdiction to determine what is property of the estate. 11 U.S.C. § 1334(e); Tennessee Student Assistance Corp. v. Hood, 541 U.S. 440, 447-451 (2004) (bankruptcy courts' exclusive jurisdiction makes discharge order binding on states, whether or not they choose to participate in case). Trustee's strongarm powers are not simply matters of state law but involve the intersection of federal and state law in ways that draw on the bankruptcy court's unique expertise. See In re Becker, 136 B.R. 113, 116 (Bankr. D.N.J. 1992) (property of estate is federal question, partly because Bankruptcy Code gives trustee rights that do not exist outside of bankruptcy).

As Trustee points out, the bankruptcy court has special powers to force a sale of property and division of proceeds where

there are co-owners, notwithstanding other law that might otherwise prevent partition. See 11 U.S.C. § 363(h) - (j). What constitutes property of the estate often involves issues of avoidable transfers, constructive trusts, and other questions of bankruptcy law or mixed state law and bankruptcy law. See In re Lawrence, 237 B.R. 61, 86-87 (Bankr. D.N.J. 1999) (analyzing constructive trust and other theories). The state court would be hard pressed to resolve these bankruptcy-related issues in the Divorce Proceedings, assuming without deciding that it would have jurisdiction to make binding rulings on relevant aspects of bankruptcy law. Cf. Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1083-88 (9th Cir. 2000) (state court rulings regarding automatic stay not binding on bankruptcy courts).

The choice of forum affects not only substantive rights but also who may be heard. Unsecured creditors have standing to appear before the bankruptcy court and oppose positions taken by Trustee, but might not have such standing in the Divorce Proceedings.

For all of these reasons creditors may be prejudiced by the relief granted in the R/S Order. As stated by a leading bankruptcy treatise, "the divorce or dissolution court is a wholly inadequate forum for resolving creditor claims." 5 Collier ¶ 541.13[4] at p. 541-84.1 (citations omitted). Therefore, even if the R/S Order only determines the forum, and not the relative priority of rights and interests as between Trustee and Wife, the Memorandum Opinion does not articulate sufficient cause for such relief from the automatic stay.

3. Narrowness of the issue on appeal

We emphasize that our holding is very limited. We do not have all the facts before us, the issues are complex, and courts in other jurisdictions have struggled with the interaction of divorce proceedings and bankruptcy. Compare, e.g., Howell, 311 B.R. 173 ("trustee as a lien judgment creditor has a superior right to property of the debtor's estate over a spouse's equitable distribution claim where bankruptcy precedes the divorce judgment"); Spirtos v. Moreno (In re Spirtos), 56 F.3d 1007, 1009 (9th Cir. 1994) ("Under California law, a divorce decree transfers property only subject to the parties' existing liabilities to creditors"); and In re Roberge, 188 B.R. 366, 372 (E.D. Va. 1995) (ruling, based in part on husband's "inequitable actions," that his bankruptcy case should not "prejudice the vesting of [wife's] right to an equitable distribution," even though she did not file her petition for equitable distribution in the divorce proceeding until after the bankruptcy case commenced).

We do not mean to imply that no form of relief from the automatic stay is appropriate. The automatic stay is often modified to enable the state court to determine matters like child custody, support, and even aspects of property division, provided that the estate's interests are adequately protected. See Robbins v. Robbins (In re Robbins), 964 F.2d 342, 344 (4th Cir. 1992) (relief from automatic stay to proceed with property distribution, but wife required to "get in line with the other unsecured creditors in the bankruptcy court for determination of the amount of her claim to which she is entitled"); White v. White (In re White), 851 F.2d 170, 174 (6th Cir. 1988) (husband filed

bankruptcy petition after divorce court had ordered temporary alimony payments and wife had moved for appointment of receiver, and bankruptcy court acted within its discretion to permit property division while retaining "exclusive jurisdiction over property of the Debtor"); Willard, 15 B.R. 898 (9th Cir. BAP 1981) (state court dissolution of marriage not void by reason of automatic stay, but as to property it was only valid as between spouses and not against bankruptcy estate); Howell, 311 B.R. 173, 176-180 & n.6 (automatic stay did not preclude nondebtor spouse from seeking equitable distribution of non-estate property such as exempt property and postpetition earnings, but property of estate was protected by stay and subject to superior rights of trustee as hypothetical judgment lien creditor).

Nor do we express any opinion whether the bankruptcy court should decline to lift the automatic stay in every instance where creditors may be prejudiced. At least one bankruptcy court appears to have taken this view, and as a result has involved itself in matters of equitable distribution between the spouses. Lawrence, 237 B.R. 61.

Finally, we recognize that the line between awarding property in divorce proceedings and determining property interests may be blurred in some instances. For example, Trustee's strongarm powers may give the estate no rights in Wife's separate property, but if Debtor contributed to the value of Wife's property then he might be entitled to compensation from Wife and perhaps that compensation will go to the estate. See Marriage of Smith, 168 Or. App. 349, 356; 7 P.3d 559, 563 (2000) ("wife received credit in the property division for her contribution to the value of the

[husband's] business"). On the other hand, Debtor might be awarded a judgment against Wife payable only after the children reach majority, or property that turns out to be exempt and not reachable by creditors, or no property at all because of some misconduct or other consideration, all of which could prejudice creditors. See Marriage of Vanderzanden, 51 Or. App. at 761-62; 627 P.2d at 21 (home awarded to wife subject to judgment in favor of husband payable only after children reached majority or house was sold); Marriage of Grove, 280 Or. at 344; 571 P.2d at 481 ("[i]n practice, the financial portions of a dissolution decree are worked out together, and none can be considered in isolation"). We express no opinion what effect, if any, such prejudice would have on the decision whether and how to grant relief from the automatic stay.

V. CONCLUSION

The bankruptcy court was understandably reluctant to become embroiled in divorce matters, but we are not persuaded that it would have to do so. Property interests will have to be determined regardless of the forum. As we interpret the bankruptcy court's statements, it was concerned that determining property interests might involve issues of property division and distribution and thereby have an undue influence on custody and support. The bankruptcy court also suggested that creditors would not be prejudiced by deferring to the state court. These conclusions are not adequately supported.

Congress gave the bankruptcy court exclusive jurisdiction over property of the estate, and the bankruptcy court has unique expertise on debtor-creditor matters. The bankruptcy court did

not articulate sufficient cause to grant a form of relief no party had requested, viz. deferring to the state court to determine any legal issue concerning property rights and to distribute property in the Divorce Proceedings. Accordingly, the R/S Order is REVERSED and REMANDED.