

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re RALPH NORMAND SWEET,)
)
 Debtor.) Case No. 6:12-bk-03271-KSJ
) Chapter 13
)

**ORDER DENYING DEBTOR'S MOTION TO VACATE
ORDER GRANTING RELIEF FROM AUTOMATIC STAY**

Debtor and his wife Donna Sweet are in the process of getting divorced in Sumter County, Florida.¹ The parties have been litigating their property rights of their marital assets for over two years.² According to debtor, the state divorce court awarded Ms. Sweet temporary use of certain residential investment property, the Crate-Mills Evans Road Development Project (the "Property"), but required Ms. Sweet to pay rent to debtor for use of the Property.³ Debtor claims Ms. Sweet is residing in his investment property without paying rent as required.⁴

On March 14, 2012, debtor filed a pro se voluntary Chapter 13 petition,⁵ listing multiple assets of real and personal property, some of which debtor's ex-wife claims joint ownership.⁶ The state court has not determined yet whether the Property is marital property subject to equitable distribution in the divorce, but a trial is scheduled for December 6, 2012 in the state court to determine the parties' ownership interest in the Property.⁷ After debtor filed bankruptcy, Ms. Sweet filed a Motion for Relief from the Automatic Stay so that she could continue the

¹ Doc. No. 31.

² Doc. No. 31. Ms. Sweet filed a petition for dissolution of marriage on August 16, 2010.

³ Doc. No. 1 at 2.

⁴ Doc. No. 51 at 2.

⁵ Doc. No. 1.

⁶ Doc. No. 10 Schedules A – J. Doc. No. 31 at 2.

⁷ Doc. No. 44 Exhibit. 1

divorce proceedings and adjudicate the parties' interest in the Property.⁸ Along with her Motion, which was filed on 14-day negative notice, Ms. Sweet filed a Certificate of Service certifying that a copy of the Motion was sent to all interested parties, including debtor at the address he listed with the Court in Coventry, Rhode Island. No party objected to the relief requested within the negative notice period, and on September 4, 2012, the Court granted Ms. Sweet relief from the automatic stay to continue the divorce proceedings in state court.⁹

On September 20, 2012 debtor filed a Motion to Vacate the Court's order granting Ms. Sweet relief from the automatic stay, arguing he did not receive timely notice of Ms. Sweet's motion to lift the stay and therefore did not have an opportunity to respond to it. Debtor claims he received notice of the pleadings late because they first were sent to the Rhode Island address on file with the bankruptcy court instead of his home located in Coleman, Florida.¹⁰ He claims he discussed his Florida address in his 341 meeting. Notably he did not file a change of address with the Court until September 20, 2012, after the Court granted Ms. Sweet's motion for relief from stay.¹¹ Ms. Sweet objects to debtor's request to vacate the order granting relief from stay¹² because it would further delay the pending divorce action scheduled for trial on December 6, 2012.¹³

The Court denies debtor's motion to vacate its order granting relief from stay. Rule 60(b) of the Federal Rules of Civil Procedure, as made applicable to this case by Rule 9024 of the Federal Rules of Bankruptcy Procedure controls a motion to vacate.¹⁴ A court may vacate an order for the following reasons:

⁸ Doc. No. 31 at 2.

⁹ Doc. No. 34.

¹⁰ Doc. No. 41.

¹¹ Doc. No. 38.

¹² Doc. No. 44.

¹³ *Id.* Exhibit 1.

¹⁴ *In re Snyder*, 285 B.R. 400, 404 (B.A.P. 8th Cir. 2002) aff'd, 83 F. App'x 847 (8th Cir. 2003).

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.¹⁵

Debtor argues the Court should vacate the order for due process reasons because debtor did not have an opportunity to respond to Ms. Sweet's motion to lift the automatic stay before the Court granted her motion. This argument does not raise newly discovered evidence, excusable neglect, or any other reason that would justify the relief debtor seeks. No fraud was committed. Debtor received notice of Ms. Sweet's motion, albeit late and at the address provided to the Court at the time the motion was filed. Furthermore, given the Supreme Court's prohibition against deciding family law or probate issues,¹⁶ the state court's expertise in property law, and the interrelated nature of the Property dispute and the pending divorce action, the Court finds no purpose would be served by vacating its previous order. The state court, not the bankruptcy court, is the proper forum to determine each party's interest in the Property. Therefore, the automatic stay remains in effect for the same reasons noted in the Court's Order Granting Defendant's Motion to Dismiss.¹⁷ Section 1334(c)(1) of Title 28 of the United States Code allows a district court to abstain from hearing state law matters in the interest of justice, or

¹⁵ Fed. R. Civ. P. 60.

¹⁶ *Carver v. Carver*, 954 F.2d 1573, 1578 (11th Cir. 1992) (stating "alimony, maintenance, or support are not standard debtor/creditor situations, but involve important issues of family law. Traditionally, the federal courts have been wary of becoming embroiled in family law matters. For that reason, federal courts generally abstain from deciding diversity 'cases involving divorce and alimony, child custody, visitations rights, establishment of paternity, child support, and enforcement of separation or divorce decrees still subject to state court modification.'" (citing *Ingram v. Hayes*, 866 F.2d 368, 369 (11th Cir.1988), and referencing *Simms v. Simms*, 175 U.S. 162, 20 S. Ct. 58, 44 L. Ed. 115 (1899) and *Crouch v. Crouch*, 566 F.2d 486, 487 (5th Cir. 1978)). See also *Ex parte Burrus*, 136 U.S. 586, 593-94, 10 S. Ct. 850, 853, 34 L. Ed. 500 (1890) (holding "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States.").

¹⁷ Doc. No. 19 in Adversary Proceeding No. 12-ap-00110-KSJ.

in the interest of comity with State courts or respect for State law¹⁸ In fact, with respect to divorce matters, the Supreme Court requires it. The Court also may abstain on its own motion, or upon request of a party in interest.¹⁹ Debtor's motion to vacate the Court's order granting Ms. Sweet relief from stay is denied. Accordingly, it is

ORDERED:

1. Debtor's Motion to Vacate Order Granting Relief from Automatic Stay (Doc. No. 41) is denied.
2. The Order Granting Motion for Relief from Stay (Doc. No. 34) allowing the parties to resolve their property dispute and divorce action remains valid and enforceable.

DONE AND ORDERED in Orlando, Florida, on November 15, 2012.

A handwritten signature in black ink, appearing to read "Karen S. Jennemann", with the initials "R.O." written in the upper right corner of the signature.

KAREN S. JENNEMANN
United States Bankruptcy Judge

¹⁸ Two other provisions relate to a bankruptcy court's abstention. First, 28 U.S.C. § 1334(c)(2) requires mandatory abstention of "a State law claim or State law cause of action, related to a case under Title 11 but not arising under Title 11 or arising in a case under Title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section," provided the claim can be timely adjudicated in the appropriate state court. Section 305 of the Bankruptcy Code also permits a Bankruptcy Court to abstain from hearing an entire bankruptcy case if it is in the interests of both the debtor and the creditors or if a foreign proceeding is involved.

¹⁹ *Carver v. Carver*, 954 F.2d at 1579.