In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

FILED
at 3 O'clock & 55 min P M
Date 9-16-03

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia

In the matter of:	)	
	)	
CAMDEN MILLS, INC.	)	Chapter 7 Case
	)	Number 03-20846
Debtor	)	
	)	
BRIAN LEVERETTE	)	Chapter 13 Case
ANNETTE LEVERETTE	)	Number 03-20654
	)	
Debtors	)	
	)	
DENNIS M. LEVERETTE	)	Chapter 13 Case
	)	Number 03-20772
Debtor	)	
	)	
	)	
	)	
THE COASTAL BANK OF GEORGIA	)	
	)	
Movant	)	
	)	
	)	
v.	)	
	)	
CAMDEN MILLS, INC.	)	
BRIAN LEVERETTE,	)	
ANNETTE LEVERETTE,	)	
DENNIS M. LEVERETTE, SR.,	)	
and R. MICHAEL SOUTHER, Trustee	)	
	)	
Respondents	)	

CONSOLIDATED ORDER ON MOTIONS FOR RELIEF FROM STAY

Camden Mills, Inc., is a corporation which filed a voluntary Chapter 7

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bankruptcy on May 30, 2003. Brian and Annette Leverette filed a Chapter 13 case on May 5, 2003, and Dennis M. Leverette, Sr., filed his Chapter 13 case on May 19, 2003. The Coastal Bank of Georgia ("Coastal Bank") filed a Motion for Relief from Stay in all three cases seeking authority to pursue its state law remedies to enforce a deed to secure debt on real estate located in Camden County, Georgia, which is titled in Camden Mills, Inc., the corporate debtor.

The Court has jurisdiction over this core proceeding under 28 U.S.C. § 157(b). Having considered the arguments and examined authority, I make the following Findings of Fact and Conclusions of Law in accordance with the directives of Bankruptcy Rule 7052.

FINDINGS OF FACT

The Leverettes are the sole shareholders in Camden Mills, Inc. When they filed their Chapter 13 cases, they scheduled the debt owed to Coastal Bank as a personal obligation because they are guarantors of the corporate note from Camden Mills to Coastal Bank which is secured by this property. However, the Leverettes have no record title to the underlying real estate.

Camden Mills and the Leverettes resist the Motion for Relief from Stay on the ground that the subject property is surrounded by other tracts of land which the Leverettes do own and which are the subject of a comprehensive development plan. The Leverettes and Camden Mills believe that if stay relief is denied and their development is allowed to go forward, the value of the entire tract, and indeed the value of this portion of the tract, will be substantially higher than if the parcels are liquidated or developed separately. Accordingly, they argue that it is in the interest of

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all creditors to deny the Motion and permit an orderly development plan to proceed. They further contend that Coastal Bank is provided adequate protection by virtue of its retention of its lien on the property pending development.

The Chapter 7 Trustee conducted a creditors' meeting pursuant to 11 U.S.C. § 341 in the corporate case. In addition, Trustee has had an opportunity to review the appraisal information presented by the corporate debtor and has filed a notice of abandonment of the property as burdensome to the estate because he does not see any feasible way to pursue a long term development plan in the context of the Chapter 7 case he is administering.

Debtors presented expert testimony of Paul Sanders who testified that, based on the proposed development plan, a total of twelve lots of approximately three acres each would yield gross revenues reduced to a present day value of approximately $1.3 million less development costs of $249,000.00 yielding $961,000.00 in potential value. However, for the subdivision to be feasible, all of the separate tracts of land need to be included, and the elimination of the tract over which Coastal Bank holds a mortgage and seeks authority to foreclose would render the development plan worthless.

Indeed, another witness, who has an interest in developing the property at his cost in return for an equity position in the development, was called to testify and estimated that the tract of land is worth less than $500,000.00 if the tracts are split up rather than developed jointly. With outstanding debt of over $400,000.00, there clearly would be marginal equity if the tracts are

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divided and possibly greater equity if they are developed, subject to the uncertainties of development and sale.

CONCLUSIONS OF LAW

Given the fact that the Trustee plans to abandon any interest the estate might have in the property, there is no bankruptcy interest to be served by denying relief to Movant. A trustee, after notice and a hearing, may abandon any asset of the estate that is burdensome or "of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Abandonment divests the trustee of any interest in the property, and the property will revert back to its pre-bankruptcy status. In re Bray, 288 B.R. 305, 307 (Bankr. S.D. Ga. 2001). Therefore, the abandoned property will no longer be an asset of the bankruptcy estate. When an asset is no longer part of the bankruptcy estate, it is no longer within the jurisdiction of the Court, nor is it subject to the protections of the automatic stay. Id. (citing DeVore v. Marshack (In re DeVore), 223 B.R. 193, 200 (9th Cir. BAP 1998)); *see also* Cooper v. Walker (In re Walker), 151 B.R. 1006, 1008 (E.D.Ark. 1993) ("Accordingly, the property, having been abandoned, the automatic stay is no longer in effect . . . . Since the automatic stay is no longer in effect as to the property . . . the motion for relief from stay does not present a justiciable issue for the Court.").

As to the Leverettes, the Motion is granted. Although the Leverettes have a contingent liability as guarantors of the note in favor of Coastal Bank, they do not hold record title to the real estate; it is titled in the name of Camden Mills, Inc., a separate entity. It is well-established in Georgia that a corporation and its shareholders are separate and distinct entities

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unless the corporate veil is pierced. *See* Bruce v. CIT Group, Inc. (In re Larry Anthony Bruce), Adv. No. 02-2032, Ch. 13 Case No. 02-20691 (Bankr. S.D. Ga. July 26, 2002)(citing Hogan v. Mayor & Aldermen of Savannah, 320 S.E.2d 555, 558, 171 Ga. App. 671, 673 (1984)). The corporate veil will not be pierced unless it is to "remedy injustices which arise where a party has over extended his privilege in the use of a corporate entity in order to defeat justice, perpetrate fraud or to evade contractual or tort responsibility." Acree v. McMahan, 574 S.E. 2d 567, 570, 258 Ga. App. 433, 435 (2002), *rev'd on other grounds*, 2003 WL 21709627 (Ga. 2003). Thus the fact that the Leverettes are the sole shareholders in the corporation does not entitle corporate creditors to pierce the corporate veil in order to reach the Leverettes' personal assets. Likewise, personal creditors would not be entitled to reach corporate assets. *See* Acree v. McMahan, 2003 WL 21709627 (Ga. 2003) (rejecting reverse piercing "at least to the extent that it would allow an 'outsider,' such as a third-party creditor, to pierce the veil in order to reach a corporation's assets to satisfy claims against an individual corporate insider.").

Since the Leverettes have no legal or equitable interest in the property other than their stock in the corporation and there is no cause to pierce the corporate veil, the property is not and never was property of their bankruptcy estate. 11 U.S.C. § 541. If the property is not property of the estate then the provisions of the automatic stay are inapplicable. I therefore hold that in the Leverettes' cases, the provisions of 11 U.S.C. § 362 do not stay any action by Coastal Bank to enforce its state law remedies against the real estate which it holds as security for the debt owed by Camden Mills, Inc.

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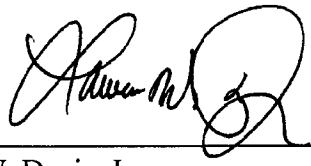
ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Motion of The Coastal Bank of Georgia in the case of Camden Mills, Inc., is granted.

FURTHER ORDERED that no automatic stay as to this property exists in the Leverettes' Chapter 13 cases.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 16th day of September, 2003.

cc: Debtor Camden Mills Inc
Debtor's Atty. Brian, Annette Leverette
Creditor Dennis Leverette
Creditor's Atty. - Baer
Trustee Cabaness, Welch, Guy
U. S. Trustee - Southern, Brown
- Berry

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