

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

In the matter of:

LARRY ALLEN DENNIS
(Chapter 7 Case 93-40713)

Debtor

JAMES L. DRAKE, JR.,
TRUSTEE

Plaintiff

v.

LARRY DENNIS II
TAMMY ANN DENNIS

Defendants

Adversary Proceeding

Number 93-4147

FILED

at 4 O'clock & 19 min. P.M

Date 9-20-95

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

**ORDER ON PLAINTIFF'S MOTION TO COMPEL
SURRENDER OF PROPERTY**

James L. Drake, Jr. (hereinafter "Trustee"), instituted this adversary proceeding to void the transfers of real estate from Larry Allen Dennis (hereinafter "Debtor"), to his son, Larry Dennis, II, and then from the son to Debtor's wife, Tammy Ann Dennis. On October 4, 1994, this Court voided the previously mentioned

transfers of real estate, vested title in Trustee, and ordered the Defendants to surrender possession of the property. Because Defendants, Larry Dennis, II, and Tammy Ann Dennis have exhausted their appeals, Trustee now moves this Court to enforce its order of October 4, 1994, to compel Debtor, and the Defendants in this case, to surrender possession. For the following reasons, this Court believes that it should abstain from exercising its authority under §105 to compel surrender because the state court provides an alternate and more convenient forum.

A bankruptcy court has jurisdiction over proceedings "arising under," "arising in," or "related to" a Chapter 7 case. 28 U.S.C. §§ 1334(b) and 157(a). "The test to determine if a proceeding is 'related to' a case under title 11 is if the outcome of the proceeding could conceivably have an effect on the administration of the bankruptcy estate."¹ "The proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate."² However, once property of the estate is sold there is substantial question as to the Court's remaining subject-matter jurisdiction to enforce that sale,

¹ In re James Edward Cady, Jr., (Rentrak Corp. v. James Edward Cady, Jr. v. Willie Eugene Sapp, et al.), Adv. Pro. No. 93-05024, Ch. 7 No. 93-50258, slip op. at 5 (Bankr.S.D.Ga. March 11, 1994) (Walker, B.J.) (citing Matter of Wood, 825 F.2d 90, 92 (5th Cir. 1987)).

² In re Lemco Gypsum, Inc., 910 F.2d 784, 788 (11th Cir. 1990).

which I would construe to include dispossessory proceedings. See Lemco, 910 F.2d at 788.

When interpreting 1334(b), policy considerations require the weighing of the burden of piecemeal litigation against the usurpation of matters into federal courts that normally are decided by the state courts.³

Although this Court may have the authority to adjudicate this motion notwithstanding Lemco, I recognize that state court provides an acceptable and convenient forum for the Trustee to enforce his rights against all three parties collectively and, therefore, I will abstain from using the authority of Section 105 to compel surrender.⁴ The decision is based on the following factors.

1) Larry Allen Dennis was not a party in the adversary proceeding. His wife and son are also not "parties" in the underlying case. Therefore, since all of these parties must be dispossessed collectively, this Court may lack complete *in personam* jurisdiction in either proceeding without formal consolidation of the cases;

³ See Id at 787-8.

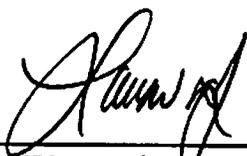
⁴ "Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. 1334(c)(1). Because the property has now been approved for sale to a third party by the Trustee, there is a question about this Court's continuing subject matter jurisdiction. See Lemco, supra.

2) Dispossessory proceedings are normally administered by state courts and sale of the property in issue already has been authorized by previous order; and

3) Section 323 of the Bankruptcy Code empowers the trustee, as the representative of the estate, with the authority to institute dispossessory proceedings in state court.

ORDER

Pursuant to the above mentioned reasons, IT IS THE ORDER OF THIS COURT that the motion to compel surrender is denied. The Trustee is free to pursue his state court remedies.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 19th day of September, 1995.