

SO ORDERED.

SIGNED this 12th day of November, 2021.



Benjamin A. Kahn

BENJAMIN A. KAHN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:)	Case No. 20-50617
)	
Christopher Lee Gifford,)	Chapter 7
)	
Debtor.)	
)	

**Findings of Fact and Conclusions of
Law Denying Motion to Compel Abandonment**

This case is before the Court on the Debtor's Motion to Deem Property not Property of the Estate under 11 U.S.C. § 541, or in the alternative, Abandon Property under § 544(b). ECF No. 125 ("Motion"). For the reasons stated below, the Court will deny the Motion.

I. Findings of Fact

On December 31, 2006, Debtor Christopher Lee Gifford and Shana Gifford ("S. Gifford") married. ECF No. 125 at ¶ 2. Prepetition, they owned a residence located at 4568 Frye Bridge Road, Clemmons, North Carolina (the "Property") as tenants by the entirety. Id. at ¶ 3. On April 1, 2019, Debtor and S. Gifford separated, and Debtor filed a complaint for equitable distribution action in

Forsyth County District Court (the "Equitable Distribution Action") on January 31, 2020. Id. at ¶ 4 and Exhibit A. The state court has not entered a judgment in that action. Id. at ¶ 4.

Debtor filed a chapter 7 petition on August 7, 2020. In his schedules, Debtor claimed the Property exempt under 11 U.S.C. § 522(b)(3)(B)¹ and North Carolina law as property held by Debtor and his spouse as tenants by the entirety. Debtor did not assert any other exemption with respect to the Property and did not assert any exemption in the pending equitable distribution claim.

The original deadline to object to exemptions under Rule 4003(b)² was October 18, 2020. ECF No. 131. On October 15, 2020, Brian Anderson, the chapter 7 trustee ("Trustee"), requested an additional sixty days through December 17, 2020 to object to Debtor's exemptions, which the Court granted. ECF Nos. 32 and 36. On December 1, 2020, S. Gifford filed a motion for relief from the automatic stay to continue with the Equitable Distribution Action. ECF No. 46. On December 17, 2020, Trustee filed a second motion to extend time to object to exemptions for an additional sixty

¹ Section 522(b)(3)(B) permits a debtor to exempt "any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety . . . to the extent that such interest as a tenant by the entirety . . . is exempt from process under applicable nonbankruptcy law."

² References to "Rule" refers to the Federal Rules of Bankruptcy Procedure, unless specifically indicated otherwise.

days through February 15, 2021, which the Court granted. ECF Nos. 53 and 64.

On December 23, 2020, the Court entered an order granting in part and denying in part S. Gifford's motion for relief from stay. ECF No. 58. The Court lifted the automatic stay solely for the purpose of allowing S. Gifford to liquidate any equitable distribution in the Equitable Distribution Action, with the automatic stay to remain in place with respect to the enforcement of any judgment or the transfer of any property of the estate. That same day, S. Gifford filed a proof of claim. See Claim No. 29. In the proof of claim, S. Gifford asserts a "claim against [Debtor] for equitable distribution of marital property in an unliquidated amount arising from and in connection with her marriage to Gifford which will also be determined in the State Court Litigation." Id. at 29-1 Part 2.

On February 15, 2021, Trustee filed the third and final motion to extend time to object to exemptions for an additional sixty days through April 16, 2021. ECF No. 78. After Debtor objected to Trustee's third motion to extend time, [ECF No. 84], the Court held a hearing on March 9, 2021. ECF No. 100. At the hearing, the Court partially granted Trustee's motion and extended the time to object to Debtor's exemptions one last time through April 7, 2021. ECF No. 101. Trustee did not file an objection to Debtor's exemptions.

On April 14, 2021, the Court granted the motion to approve the settlement in adversary proceeding 20-6191 between Trustee and S. Gifford. ECF No. 26. With respect to the Property, the motion to approve the settlement agreement provided as follows:

(f) S. Gifford consents to the sale of real property located at 4568 Frye Bridge Road, Clemmons, NC (the "Frye Property") by the Trustee, pursuant to 11 U.S.C. § 363(h), by any reasonable means, with the approval of such sale pursuant to further order of the Bankruptcy Court. S. Gifford and the Trustee agree that after payment of costs of sale, including, but not limited to, closing costs, outstanding ad valorem taxes, and broker commissions, the proceeds of sale shall be applied to joint debts of the Debtor and S. Gifford.

ECF No. 11. The order granting the motion to approve the settlement agreement provided the following:

1. The Motion hereby is GRANTED.

2. This Order does not affect, reserves, and is without prejudice to any rights the Debtor and Trustee have or may have concerning or regarding the real property located at 4568 Frye Bridge Road, Clemmons, North Carolina ("the Property"), including but not limited to any potential future sale of the Property and proceeds of the same. To the extent the Trustee desires that the Property be sold, the Trustee shall file the appropriate motions with this Court.

3. The Settlement Agreement, attached as Exhibit A to the Motion, is otherwise approved.

ECF No. 26.

S. Gifford sought an absolute divorce on April 1, 2021. ECF No. 125 at ¶ 5. On June 28, 2021, 325 days after the petition date, the state court granted S. Gifford a judgment of absolute divorce. Id. at n. 1.

On June 29, 2021, Debtor filed the Motion. ECF No. 125. Debtor requests that the Court find the Property is not part of the estate, or in the alternative, order Trustee to abandon the Property. First, Debtor argues that by not objecting to Debtor's exemption, Trustee waived any argument that the Property is not exempt and constitutes property of the estate. Second, Debtor contends that his interest in the Property is currently only a contingent, unliquidated, unsecured claim or right to ask for the Property in the Equitable Distribution Action. Therefore, the bankruptcy estate has no interest in the Property itself. Last, because the Debtor received an absolute divorce more than 180 days after the filing of the petition, thereby severing the tenancy by the entirety into a tenancy in common, Debtor's interest in the Property as a tenant in common did not become estate property under § 541(a)(5)(B).

Trustee filed an objection to the Motion. ECF No. 129 ("Objection"). Trustee contends that on the petition date, Debtor possessed a vested right to equitable distribution of the Property because he and S. Gifford were separated prior to the petition date. As a result of the absolute divorce decree, Debtor's interest in the Property converted to a tenancy in common and the entirety exemption lapsed, bringing the Property into the estate. Regardless whether Debtor's interest as a tenant in common became estate property upon Debtor's divorce, Trustee argues that

the 180-day deadline is wholly inapplicable to the estate's interest in any equitable distribution of an interest in the Property to Debtor. Trustee argues that any interest in the Property awarded to Debtor by the state court will be property of the estate under either § 541(a)(1), (6), and (7) as proceeds or products of the estate's interest in Debtor's equitable distribution.³

On July 26, 2021, Debtor filed a response. ECF No. 131 ("Response"). Debtor reiterates that Trustee is time-barred from objecting to Debtor's claimed exemptions, and that, even if the Court were to consider the Trustee's Objection, Debtor does not have a substantive right to marital property in the Equitable Distribution Action.

On July 27, 2021, the Court held a hearing on the Motion, heard oral argument from both parties, and took the matter under advisement. ECF No. 133.

II. Conclusions of Law

A. As of the petition date, Debtor's entireties interest in the Property became property of the estate.

Under § 541,⁴ the bankruptcy estate is comprised of "all legal or equitable interests of the debtor in property as of the

³ Trustee asserts that the Property has significant equity to be sold for the benefit of creditors. According to the schedules, there is \$419,172.00 in equity over and above liens.

⁴ Any reference to "section(s)" or "§" refers to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., unless specifically indicated otherwise.

commencement of the case.” 11 U.S.C. § 541(a)(1); see Schwab v. Reilly, 560 U.S. 770, 785 (2010). “This definition is meant to be very broad and includes practically every conceivable interest that a debtor may have in property.” In re Greer, 242 B.R. 389, 393 (Bankr. N.D. Ohio 1999) (citing United States v. Whiting Pools, Inc., 462 U.S. 198, 203-04 (1983); In re Labrum & Doak, LLP, 227 B.R. 391, 410 (Bankr. E.D. Pa. 1998)).

“Even though section 541 provides the framework for determining the scope of the debtor’s estate and what property will be included in the estate, it does not provide any rules for determining whether the debtor has an interest in property in the first place.” 5 Collier on Bankruptcy ¶ 541.03 (16th ed. 2021). State law fills that gap and defines the nature and scope of the debtor’s property interest. Barnhill v. Johnson, 503 U.S. 393, 398 (1992) (“In the absence of any controlling federal law, ‘property’ and ‘interest[s] in property’ are creatures of state law.”) (citing McKenzie v. Irving Tr. Co., 323 U.S. 365, 369-70 (1945) and Butner v. United States, 440 U.S. 48, 54 (1979) (“Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law”)).

North Carolina recognizes the common law doctrine of tenancy by the entirety. In re Banks, 22 B.R. 891, 892 (Bankr. W.D.N.C. 1982). Tenancy by the entirety is a form of ownership available between a husband and wife. In re Knapp, 285 B.R. 176, 179 (Bankr.

M.D.N.C. 2002) (citing Combs v. Combs, 273 N.C. 462 (1968)). “[T]he individual creditors of the husband or wife cannot reach entirety property in order to satisfy a judgment against only one of the spouses.” In re Glover, Case No. 08-10505C-7G, 2010 WL 3603470, at *1 (Bankr. M.D.N.C. Aug. 30, 2010) (J. Stocks) (citing In re Crouch, 33 B.R. 271, 273 (Bankr. E.D.N.C. 1983)); Banks, 22 B.R. at 892; In re Woolard, 13 B.R. 105, 107 (Bankr. E.D.N.C. 1981); N.C. Nat'l Bank v. Corbett, 271 N.C. 444 (1967); Winchester-Simmons Co. v. Cutler, 199 N.C. 709 (1930); Johnson v. Leavitt, 188 N.C. 682 (1924). The converse, however, is true for creditors to whom both spouses are obligated. Such creditors may reach entirety property to satisfy joint obligations. See In re Staples, Case No. 00-10147C-7G, 2000 WL 33673800, *2 (Bankr. M.D.N.C. June 13, 2000); cf. Sumy v. Schlossberg, 777 F.2d 921, 925 (4th Cir. 1985) (same, applying Maryland law). After divorce, individual creditor’s claims immediately attach to the one-half interest of each spouse. Crouch, 33 B.R. at 273. “Tenancy by the entirety property in North Carolina is subject to claims of creditors having a joint judgment against both husband and wife.” Id. at 274 (citing Martin v. Lewis, 187 N.C. 473, 122 S.E. 180 (1924)); Ragsdale v. Genesco, Inc., 674 F.2d 277 (4th Cir. 1982); In re Mikles, Case No. 03-52865, 2004 WL 212992, at *2 (Bankr. M.D.N.C. Jan. 13, 2004) (“In the Fourth Circuit, a debtor's right to exempt entirety property pursuant to § 522(b)(2)(B) is

subject to the right of the bankruptcy trustee to liquidate entireties property for the benefit of joint creditors.”).

“In North Carolina, a tenancy by the entirety may be destroyed only in specific ways.” Martin v. Roberts, 177 N.C. App. 415, 419 (2006); see also In re Grimes, Case No. 15-06465-5-DMW, 2016 WL 3356288, at *3 n. 1 (Bankr. E.D.N.C. 2016) (“There are generally three ways by which a tenancy by the entirety can be severed or terminated: absolute divorce of the marriage; death of one of the spouses; and voluntary conversion.”). One of those ways is an absolute divorce, which converts a tenancy by the entirety into a tenancy in common, each former spouse holding an undivided one-half interest. Kirstein v. Kirstein, 64 N.C. App. 191, 193 (1983); Smith v. Smith, 249 N.C. 669, 674-75 (1959); Davis v. Bass, 188 N.C. 200 (1924).

Debtor was separated at the Petition Date, but the state court had not issued a divorce decree. On the filing of the petition, Debtor’s interest in entireties property became property of the bankruptcy estate under § 541(a). In re Payne, Case No. 04-52124C-7W, 2004 WL 2757907, *2 (Bankr. M.D.N.C. Nov. 15, 2004) (citing In re Cordova, 73 F.3d 38, 40 (4th Cir. 1996)); see also Schlossberg, 777 F.2d at 925 (observing that the Bankruptcy Code overruled the prior holding in Lockwood v. Exch. Bank, 190 U.S. 294 (1903), “and § 541 now includes the debtor’s interest in entireties property as part of the estate”). The fact that

Debtor's entireties interest became property of the estate as of the filing of the petition, however, does not end the inquiry.

1. Debtor's interest in the Property may be administered by Trustee for joint creditors despite Debtor's claimed exemption.

Debtor claimed his entireties interest in the Property as exempt under § 522(b)(3)(B). Under § 522, a debtor may exempt property from the bankruptcy estate. Section 522 provides that "[n]otwithstanding section 541 of this title, an individual debtor may exempt from property of the estate" certain property specified under federal or state law. Under § 522(1) and Bankruptcy Rule 4003,⁵ a debtor must file a list of assets the debtor claims exempt under § 522. Section 522(1) states:

⁵ Bankruptcy Rule 4003 provides, in part, as follows:

(a) Claim of exemptions

A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a claim of exemptions

(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section.... Unless a party in interest objects, the property claimed as exempt on such list is exempt.

11 U.S.C. § 522(1). Although most assets become property of the estate after the filing of a bankruptcy case, "exemptions represent the debtor's attempt to reclaim those assets or, more often, certain interests in those assets, to the creditors' detriment." Schwab v. Reilly, 560 U.S. 770, 785 (2010). In general, "[e]xempted property is not available to satisfy the debtor's obligations." In re Bunker, 312 F.3d 145, 150-51 (4th Cir. 2002) (citing § 522(b) and (c)).

Under § 522(b), "an individual debtor may exempt from property of the estate" property that is exempt under federal law pursuant to § 522(d) or under applicable state law, unless applicable state law only authorizes the debtor to claim the state law exemptions. 11 U.S.C. § 522(b)(1), (2), and (3). North Carolina has opted out of the federal exemptions. In re Gregory, 487 B.R. 444, 449 (Bankr. E.D.N.C. 2013) (citing N.C. Gen. Stat. § 1C-1601(f) ("(f) Federal Bankruptcy Code.--The exemptions provided in The Bankruptcy Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy Code, 11 U.S.C. § 522(b).")). Even in states that opt out of the federal exemptions, Debtor's may elect

to exempt entirety property under § 522(b)(3)(B), but only to the extent that such property is exempt under the applicable non-bankruptcy law. In re Williams, 104 F.3d 688, 690 (4th Cir. 1997) (“[S]uch exemption may be taken only ‘to the extent that such interest as a tenant by the entirety . . . is exempt from process under applicable nonbankruptcy law.’” (quoting 11 U.S.C. § 522(b)(2)(B))). Debtor exempted his entirety interest in the Property solely under § 522(b)(3)(B). As in Williams, Debtor never claimed that his interest in the Property was exempt from the claims of his joint creditors.

Under Bankruptcy Rule 4003, interested parties must affirmatively object to exemptions within 30 days of the first meeting of creditors. “If an interested party fails to object within the time allowed, a claimed exemption will exclude the subject property from the estate” Id. at 775; see 11 U.S.C. § 522(1); Taylor v. Freeland & Kronz, 503 U.S. 638, 642-43 (1992). Bankruptcy Rule 4003 is strictly enforced and an absolute bar to challenging the validity of an exemption. In re Man, 428 B.R. 644, 651 (Bankr. M.D.N.C. 2010); see also Taylor, 503 U.S. 638 (even if debtor had no colorable basis for claiming an exemption, the trustee could not challenge the validity of an exemption after the expiration of the 30-day objection period). In the instant case, no party disputes that the time to object to exemptions has run and no party filed an objection.

Regardless of the exemption, Trustee contends that at least one claim in this case is owed jointly by Debtor and his spouse. Therefore, he contends, the entirety exemption does not apply to this claim. Specifically, he asserts that Debtors have a joint obligation for North Carolina income taxes for 2016. ECF No. 129 at 11 (citing Claim No. 9);⁶ see Crouch, 33 B.R. 274 (“In the present case, the tenancy by the entirety property would be subject to any claim based on a joint judgment whether the joint judgment is presently in effect or whether it arises prior to the debtor's discharge in the future.”). Trustee argues that the Property should be sold to satisfy this joint obligation. Id.

Movant did not offer any evidence tending to demonstrate that the liability for the income taxes is not joint. “The party seeking abandonment of property pursuant to 11 U.S.C. § 554 carries the burden of setting forth a prima facie case that the property is of inconsequential value and benefit to the estate.” In re Stancil, 473 B.R. 478, 485 (Bankr. D. D.C. 2012); see also, In re Gill, 574 B.R. 709, 714 (B.A.P. 9th Cir. 2017) (“The moving party has the burden of establishing that the property at issue is burdensome or of inconsequential value and benefit to the

⁶ Trustee states that “according to the claims register, the North Carolina Department of Revenue filed a claim for income taxes due for the 2016 tax year [Claim No. 9]. The Debtor and S. Gifford were married at that time and, based upon representations of S. Gifford, through counsel, they filed a joint tax return for the 2016 tax year. As a result, such claim represents a joint obligation of the Debtor and S. Gifford and the Property can be sold to satisfy this joint obligation.” Id. at 11.

estate."). To the extent that the taxes are owed jointly, Debtor's "right to exempt entirety property pursuant to § 522(b)(2)(B) is subject to the right of the bankruptcy trustee to liquidate entirety property for the benefit of joint creditors." Mikles, 2004 WL at *2 (citing Schlossberg, 777 F.2d 921). Because he has not demonstrated that there is no joint debt, Debtor has failed to carry his burden to establish that the Property is of inconsequential value to the estate.⁷ Therefore, the Court will deny the motion to abandon unless and until it is established that there are no joint obligations to be administered in this case, and subject to the resolution of the Equitable Distribution Action, as discussed below.

2. With the exception of Trustee's right to administer the Property for joint debts, Debtor properly exempted his entirety interest in the Property.

Even though Trustee may administer the Property for the benefit of joint creditors, "[a] debtor does not lose all benefit of § 522(b)(2)(B) when joint creditors are present" Schlossberg, 777 F.2d at 928. When Debtor exempted the Property under § 522(b)(2)(B), he exempted his entire interest, including any right of survivorship. Bellinger v. Buckley, 577 B.R. 193, 198 (D. Md. 2017) (citing, inter alia, In re Ford, 3 B.R. 559, 570-75 (Bankr. D. Md. 1980), aff'd sub nom, Greenblatt v. Ford,

⁷ Debtor does not dispute that there is substantial equity in the Property.

638 F.2d 14 (4th Cir. 1981), for the proposition that, when a debtor exempts entirety property under § 522(b)(2)(B), the debtor's *entire* undivided interest in the entirety property—including the right of survivorship—exits the bankruptcy estate and reverts in the debtor)).

Trustee argues that the Property always remained property of the bankruptcy estate and the interest merely transformed from Debtor's interest as a tenant in the entirety upon divorce by operation of law under § 541(a). Debtor and S. Gifford received an absolute divorce on June 28, 2021. ECF No. 125 at ¶ 5 n. 1. On that day, the tenancy by the entirety was severed into a tenancy in common. Therefore, Trustee contends that Debtor's interest as a tenant in common came into the estate upon his divorce by operation of North Carolina law and § 541(a)(1).

The Trustee is correct that Debtor's divorce terminated the exemption under § 522(b)(2)(B) by operation of law. In re Birney, 200 F.3d 225, 228 (4th Cir. 1999) (citing Cordova, 73 F.3d at 38). But Trustee's argument conflates the estate's interest in the Property with the Property itself. The termination of the exemption post-petition does not, by itself, bring the new interest in the underlying property into the bankruptcy estate. Id. at 228 (citing Cordova, 73 F.3d at 41). "There must also be some applicable statutory mechanism by which the estate 'captures' the post-petition [interest in] property." Id. The re-capture does

not occur by operation of state law and § 541(a)(1) because the interest as a tenant in common is a new interest in property that “did not exist ‘as of the commencement of the case.’” Bellinger, 577 B.R. at 196-99. In order to come into the bankruptcy estate, this new interest must be captured under a separate statutory mechanism and does not enter the estate by operation of state law and § 541(a)(1). Id. at 199.

Section 541(a)(5)(B) is one statutory mechanism by which certain types of after-acquired interests in property may be brought into the estate. That section provides in relevant part that an interest in property acquired “as a result of . . . an interlocutory or final divorce decree” becomes estate property only if the debtor acquires or becomes entitled to acquire an interest in the property within 180 days of filing bankruptcy. 11 U.S.C. § 541(a)(5)(B). Here, the divorce decree was entered more than 180 days after Debtor filed bankruptcy. Therefore, Debtor’s new interest in the Property as a tenant in common did not come into the estate under § 541(a)(5)(B). See In re Earls, Case No. 05-53870C-7W, 2006 WL 3150923, *1 n. 2 (Bankr. M.D.N.C. 2006) (citing Cordova, 73 F.3d at 39). For that interest to come into the estate, it must come by some other mechanism.

3. Debtor's interest in the equitable distribution claim is property of the estate, and Debtor did not purport to exempt it.

Alternatively, Trustee contends that the Property remains property of the estate because it constitutes proceeds of Debtor's equitable distribution claim. Since Debtor's claim for equitable distribution was vested at the time of the petition, Trustee asserts the Property is proceeds of the equitable distribution claim and is property of the estate under § 541(a)(6) or (a)(7)⁸ to the extent that the Property constitutes proceeds of that claim.

Again, Trustee is only partially correct. The estate currently holds merely a contingent interest in the Property to the extent, if any, that it is awarded to Debtor in the Equitable Distribution Action. Contingent interests in property are property of the bankruptcy estate under § 541(a). In re DeWeese, 47 B.R. 251, 254 (Bankr. W.D.N.C. 1985) ("The legislative history indicates that § 541(a) is to be broadly construed to include all

⁸ These sections provide:

(a)(1): Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(a)(6): Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(a)(7): Any interest in property that the estate acquires after the commencement of the case.

property interests, whether reachable by state-law creditors or not, and whether vested or contingent."). "[T]he estate's rights are limited to those had by the debtor, i.e., whatsoever rights a debtor had at the commencement of the case continue in bankruptcy—no more, no less." In re Quality Health Care, 215 B.R. 543, 561 (Bankr. N.D. Ind. 1997) (quotations omitted) (citing Matter of Jones, 768 F.2d 923, 927 (7th Cir. 1985)). "Because neither spouse is guaranteed to receive any given item of marital property when the equitable division is ultimately made, the interest each spouse acquires in marital property may be described as 'strictly contingent.'" In re Kooi, 547 B.R. 244, 248 (Bankr. W.D. Mich. 2016) (under Michigan law).

As with other property interests, the scope of a debtor's property interest is determined under non-bankruptcy law. Therefore, the Court must consider the extent of the estate's interest in the equitable distribution claim. Debtor and S. Gifford separated and requested an equitable distribution of marital property prior to the bankruptcy case. There is no dispute that the Property is marital property as defined under North

Carolina law. See N.C. Gen. Stat. § 50-20(b)(1).⁹ "Equitable distribution is a property right." Tucker v. Miller, 113 N.C. App. 785, 788 (1994) (citing Hagler v. Hagler, 319 N.C. 287, 290 (1987) and N.C. Gen. Stat. § 50-20(k)). Section 50-20 further provides that "[t]he rights of the parties to an equitable distribution of marital property and divisible property are a species of common ownership, the rights of the respective parties vesting at the time of the parties' separation." N.C. Gen. Stat. § 50-20(k) (emphasis added). Said another way, equitable distribution rights vest on the date of separation. However, this vested right does not create a property right in specific marital property. Kroh v. Kroh, 154 N.C. App. 198, 201 (2002); Hearndon v. Hearndon, 132 N.C. App. 98 (1999); Perlow v. Perlow, 128 B.R. 412, 415 (E.D.N.C. 1991); Wilson v. Wilson, 73 N.C. App. 96, 99, cert. denied, 314 N.C. 121 (1985). Instead, parties have a right

⁹ N.C. Gen. Stat. § 50-20(b)(1) provides as follows:

(1) "Marital property" means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. **It is presumed that all real property creating a tenancy by the entirety acquired after the date of marriage and before the date of separation is marital property.** Either presumption may be rebutted by the greater weight of the evidence.

(emphasis added).

to equitable distribution of marital property, whatever the state court should determine that property is. Perlow, 128 B.R. at 415. The estate does not yet have a specific legal interest in the Property as marital property under any distributive award. Instead, the estate holds "an equitable distribution claim to a martial estate that might include" the Property. Kroh, 154 N.C. App. at 201.

After the date of separation, both spouses possessed a vested, but contingent, right to marital property. Neither party can be assured of receiving any specific item of marital property until the state court makes a formal distribution. Nevertheless, as of the filing of the petition, the bankruptcy estate held a contingent interest in the Property because the Debtor and S. Gifford's rights vested "at the time of the parties' separation," and therefore, Debtor's claim to an equitable distribution award constitutes property of the estate that has not been exempted or otherwise removed from the bankruptcy estate.

To the extent, if any, that the state court awards an interest in the Property to Debtor, that interest will constitute proceeds of the estate's property interest in the equitable distribution claim under § 541(a)(6). In re Radinick, 419 B.R. 291, 295-96 (Bankr. W.D. Pa. 2009) (stating that "anything that the Debtor might derive from her right to equitable distribution vis-a-vis the Estranged Spouse's Retirement Plan will (a) constitute

proceeds or product of or from property of the Debtor's bankruptcy estate (such bankruptcy estate property being the Debtor's marital interest in the Estranged Spouse's Retirement Plan), and (b) thus also constitute bankruptcy estate property, pursuant to 11 U.S.C. § 541(a)(6), regardless of whether it is distributed to the Debtor within 180 days after the date of the commencement of her bankruptcy case."). See also In re Kooi, 547 B.R. 244 (Bankr. W.D. Mich. 2016) (finding that chapter 7 debtor's interest in \$2,700 in cash and hockey inventory of former wife's sporting goods company awarded to debtor in divorce judgment was property of the bankruptcy estate, even though the judgment was entered over 180-days after debtor filed the bankruptcy petition).

As of this date, the state court has not determined any equitable distribution between the parties. Therefore, it is premature to order the Trustee to abandon any interest that the state court might ultimately award in the Property.

III. Conclusion

For the reasons set forth above, the Court will deny the motion to abandon without prejudice to the extent that it is established that there are no joint debts in this case, or the state court enters an equitable distribution award that does not include any interest in the Property.

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