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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
KENNETH WILLIAM THOMPSON,
Debtors.

Case No. 92-5-2160-MM
Chapter 7

MEMORANDUM OPINION

INTRODUCTION

Before the Court is the Motion to Compel Distribution of Property filed by Sharon Thompson, the former wife of the debtor, to compel the trustee to disburse to Ms. Thompson her share of the proceeds of a \$140,000 promissory note. For the reasons that follow, the motion is denied.

FACTS

Sharon Thompson and Kenneth Thompson, the debtor, were divorced on August 7, 1991 by a judgment of the Superior Court of California, County of Santa Clara, in which the parties stipulated to the division of the community property. Pursuant to the judgment, the Superior Court ordered in paragraphs 6 and 7 that each spouse is to receive as his or her sole and separate property one-half of a promissory note from Douglas Heater in the face amount of \$140,000 secured by a deed of trust on the real property located at 21950 Summit Road, Los Gatos, CA. Paragraphs 16 and 17 of the judgment also provide that upon receipt of the principal balance of the note, the proceeds shall be applied first to the payment of a community property loan from the pension plan and then to any unpaid community tax debts. Paragraph 16.D. provides that any balance remaining shall be split between the parties.

1 The debtor filed a chapter 7 petition on March 27, 1992. The note became due and payable on
2 May 4, 1992. The sum of the community debts designated in paragraph 16 of the Superior Court
3 judgment exceeds the gross amount of the note proceeds. The trustee is holding the note proceeds
4 pending resolution of the parties' entitlement to them.

5
6 **DISCUSSION**

7 Each spouse's respective interest in the note was created by the judgment dividing the parties'
8 community property. Farrey v. Sanderfoot, 111 S. Ct. 1825, 1830-31 (1991). The stipulated judgment
9 must be construed as a whole so as to give effect to each part if reasonably practicable. Cal. Civ. Code
10 § 1641; Bank of the West v. Superior Court (Industrial Indemnity Co.), 2 Cal. 4th 1254 (1992). The
11 Superior Court judgment plainly provides that the proceeds of the note shall be disbursed first to repay
12 the community property loan from the debtor's pension plan and then to pay any outstanding community
13 tax debts incurred prior to September 1989 before any balance remaining is to be divided between the
14 parties as their sole and separate property. This Court cannot change the rights of the parties as
15 adjudicated in divorce. In re Comer, 27 B.R. 1018 (Bankr. C.D. Cal. 1983), aff'd, 723 F.2d 737 (9th Cir.
16 1984).

17 Pursuant to the judgment, only the net balance of the note proceeds constitutes each spouse's
18 separate property after the community liabilities are paid. Section 541(a)(2)(B) defines property of the
19 estate to include all interests of the debtor and the debtor's spouse in community property as of the
20 commencement of the case that is liable for an allowable claim against the debtor and an allowable claim
21 against the debtor's spouse, to the extent that such interest is so liable. The gross note proceeds
22 constitute property of the estate over which this Court has jurisdiction. Because the Superior Court
23 judgment provides for the application of the note proceeds to community debts first, and the sum of those
24 debts exceeds the note proceeds, no balance remains for disbursement to each spouse.

25
26 **CONCLUSION**

27 The motion is denied.
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