

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE**

IN RE:

**RICHARD SCOTT SNYDER and
DEBRA LOUISE SNYDER;
MARK E. SNYDER and CHARLOTTE
CLARK SNYDER; SNYDER HOME BUILDERS, LLC;;
Debtors.**

**Case Nos. 01-30071; 30072;
01-25643 whb**

Chapter 11

**MEMORANDUM OPINION AND ORDER GRANTING BANK OF MADISON
COUNTY'S MOTION FOR ORDER STRIKING "SNYDER SPRINGS PHASE I JOINT
VENTURE" FROM DEBTORS' PETITIONS AND DECLARING AUTOMATIC STAY
NOT APPLICABLE; AND SUA SPONTE ORDER DECLARING ENTITIES NOT
FULLY OWNED BY BANKRUPTCY DEBTORS TO BE OUTSIDE THIS COURT'S
SUBJECT MATTER JURISDICTION**

Bank of Madison County ("Bank"), a creditor holding claims against these bankruptcy estates, moves this Court to strike Snyder Springs Phase I Joint Venture ("Snyder Springs") from the Debtors' petitions and declare the automatic stay inapplicable to Snyder Springs, or in the alternative to lift the automatic stay. Both Mark and Charlotte Snyder and Richard and Debra Snyder ("Snyders") filed petitions under Chapter 11 on July 9, 2001; and their company Snyder Home Builders, LLC filed prior to that. Each of the individuals' petitions included an attachment titled "Snyder Companies" as companies in which the Snyders were conducting business, and in the Snyder Home Builders case it has been the Debtor's effort to include these "Snyder Companies" in that bankruptcy through a pending motion for substantive consolidation of all entities, including those that have not filed for bankruptcy protection. Among those companies listed as "Snyder Companies" was Snyder Springs. Counsel for Bank of Madison County and for the Snyders do not

dispute that Snyder Springs is not fully owned by the Snyders. The Debtors' connection to Snyder Springs is through Snyder Development, which is one of Snyder Springs' joint venturers, while Mark and Richard Snyder are the partners of Snyder Development. According to the Bank's motion, which is supported by copies of relevant documents, which are not disputed, the joint venturers of Snyder Springs have interests in and share in the profits and losses of Snyder Springs as follows:

Snyder Development, a general partnership	33%
Robnic Investment, Inc.	15%
Larry T. Davis & Judith M. Davis	22%
Cordova Group, L.L.C.	20%
Ed Miller	10%

Each joint venturer joined in signing a \$1,008,000.00 promissory note on behalf of Snyder Springs and in favor of Bank of Madison County on April 25, 2000. The note was secured by a first lien deed of trust on 97.108 acres of real estate in the Springbrook area of Madison County, Tennessee. Counsel for Bank of Madison County asserts, again without dispute, that the Snyder brothers and their wives gave the Bank limited personal guaranties for the note and that the guarantors and their respective percentages of obligations are as follows:

	<u>% of Obligations Guaranteed</u>
Robert Ed Miller	15%
Larry D. Malone and wife, Lisa A Malone	30%
Larry T. Davis and wife, Judith M. Davis	33%
Nick C. Liberatore and wife, Robin K. Liberatore	22.5%
Mark E. Snyder and wife, Charlotte C. Snyder	24.75%
Richard S. Snyder and wife, Debra L. Snyder	24.75%

The Bank has declared the note in default for nonpayment, having matured on May 1, 2001. The Bank attests that on June 27, 2001, it commenced publication of a notice of Substitute Trustee's Sale, to sell the real property owned by Snyder Springs which secures the Bank's note. According to the Bank, as of July 15, 2001, the balance due was \$878, 774.10 with interest accruing at \$182.67

per day.

ISSUE

Under both the Bank's motion and the Debtors' efforts to include nonfiling entities in their bankruptcies, the limited issue before the Court is whether the bankruptcy court's subject matter jurisdiction, and the automatic stay resulting from those petitions that have been filed, extends to entities in which the Debtors have some but not 100% ownership/partnership interests. The Court sua sponte extends the relief granted to other entities that are not owned wholly by the Snyders, but the Court does not address in this Order whether the same result would attach to those nonfiling entities that are owned 100% by the Snyders, either individually or through other Snyder-owned entities.

DISCUSSION

Under applicable Tennessee law, “[a] joint venture is governed by the rules applicable to a partnership.” *Federated Stores Realty, Inc. v. Huddleston*, 852 S.W.2d 206, 212 (Tenn. 1992) (citing *Garland v. Seaboard Coastline R. Co.*, 658 S.W.2d 528, 534 (Tenn. 1983) and *Garner v. Maxwell*, 360 S.W.2d 64 (Tenn. Ct. App. 1962)). A partner's property rights consist of the right to participate in the management of the partnership; a co-ownership in specific partnership property; and an interest in the partnership, which is defined as the partner's share in the profits and surplus of the partnership and is personal property. *See* TENN. CODE ANN. §§ 61-1-123, 61-1-124, 61-1-125 (1989). A partner's individual bankruptcy filing causes the dissolution of the partnership, *see id.* §§ 61-1-130(5), 61-1-128, 61-1-129, and the equity of a bankrupt partner's interest in partnership property is to be distributed in accordance with TENN. CODE ANN. § 61-1-139(2). *See Holcomb v. Fulton (In re Fulton)*, 43 B.R. 273, 276 (Bankr. M.D. Tenn. 1984).

Generally, a bankrupt partner's interest does not include partnership property or property of other partners. *See id.*; *Beaty v. United States*, 937 F.2d 288, 291 (6th Cir. 1991) ("Under the governing Tennessee rule of law, partnership property cannot be used to satisfy the debts of the individual partners.") (citing *United States v. Worley*, 213 F.2d 509, 512 (6th Cir. 1954) ("Partnership property is not . . . subject, during the life of the partnership, to the debts of the individual partners.")); *Dickenson v. Am. Gen. Fin. (In re Capps)*, 135 B.R. 821, 825 (Bankr. E.D. Tenn. 1992) (holding partnership property was not part of the bankrupt general partner's estate and therefore the trustee had no standing to maintain an action for violation of the automatic stay against the party taking the partnership property); *In re Fairfield Group Partnership*, 69 B.R. 318, 320 (Bankr. E.D. Tenn. 1987) (holding that even if the debtor partnership was a limited partner in the nondebtor limited partnership to which debtor had transferred real estate by absolute warranty deed prior to bankruptcy, the automatic stay did not apply to the nondebtor partnership); *Shepherd v. Griffin*, 929 S.W.2d 336, 346 (Tenn. Ct. App. 1996) ("Partnership property cannot be used in satisfaction of debts of an individual partner. Also, as a general rule, when a partner files bankruptcy, the partner's estate obtains whatever interest the partner had in the partnership.") (citations omitted); *see also In re Timber Creek, Inc.*, 187 B.R. 240, 245 n.4 (Bankr. W.D. Tenn. 1995) ("A partner is a separate entity from the partnership.") (collecting cases).

Under 11 U.S.C. § 541 . . . the estate consists of "... all legal or equitable interests of the debtor in property as of the commencement of the case." Since a partnership is a legal entity separate from its partners, a partner cannot claim title in partnership property. The partner may only claim the rights in specific partnership property as bestowed upon the partner under partnership law. When a partner files for bankruptcy, the partner's estate obtains whatever partnership interest was held by the filing partner.

Holcomb v. Fulton (In re Fulton), 43 B.R. 273, 276 (Bankr. M.D. Tenn. 1984).¹

The Sixth Circuit in *United States v. Worley*, 213 F.2d 509, 512 (6th Cir. 1954), explained that under Tennessee law a partner “has an equal right with his partners to possess specific partnership property for partnership purposes, but he has no right to possess such property for any other purpose, without the consent of his partners,” Tenn. Code Ann. § 61-1-124(b)(1) (1989); and a “partner’s right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property.” *Id.* § 61-1-124(b)(2).

Assuming for purposes of this Order that the automatic stay of those Snyder entities that have filed for bankruptcy protection may extend to other entities owned entirely by the Snyders, the Court of Appeals for the Sixth Circuit clarified that the automatic stay could not be extended from a debtor partnership to the nondebtor partners. *See Patton v. Bearden*, 8 F.3d 343, 349 (6th Cir. 1993). “Clearly, section 362(a)(1) stays any actions against the debtor. The [partners] argue the stay should be extended to protect non-debtor partners, merely because of their partner status.” *Patton*, 8 F.3d at 349. Declaring that the stay is broad, the court continued: “[The stay] does not extend, however, to separate legal entities such as corporate affiliates, partners in debtor partnerships or to codefendants in pending litigation.” *Id.* (quoting 2 Collier on Bankruptcy ¶ 362.04 (15th ed. 1993)).

Some courts have held that the debtor’s stay may be extended to non-bankrupt parties in ‘unusual circumstances.’ *See A.H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir.), *cert. denied*, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed.2d 177 (1986); *In re Kanawha Trace Dev. Partners*, 87 B.R. 892 (Bankr. E.D. Va. 1988). Such circumstances usually include when the debtor and the non-bankrupt party are closely related or the stay contributes to the debtor’s reorganization. It should be noted that such extensions, although referred to as extensions of the automatic stay,

¹In contrast, when a partnership is in bankruptcy and has insufficient property to pay in full all allowed claims, the trustee has a claim against each general partner who is liable on those allowed claims. *See* 11 U.S.C. § 723.

were in fact injunctions issued by the bankruptcy court after hearing and the establishment of unusual need to take this action to protect the administration of the bankruptcy estate.

Id.

Under this controlling Sixth Circuit law, the Court concludes that entities only partially owned by the Snyders and otherwise owned by third party who are not currently debtors in bankruptcy are outside this Court's subject matter jurisdiction. The Snyders do not hold a 100% ownership of the property of Snyder Springs or of that joint venture, and the fact that Mark and Richard Snyder are partners in Snyder Development, a joint venturer of Snyder Springs, does not bring Snyder Springs or its property into the reach of the automatic stay imposed by the Snyders' bankruptcy cases.

CONCLUSION

This Court grants Bank of Madison County's motion and **ORDERS** that "Snyder Springs Phase I Joint Venture" be stricken from the Snyders' petitions. The Court further declares that the automatic stay does not apply to Snyder Springs or to other entities that are not 100% owned by the Snyders or by Snyder-owned entities. The Court reserves for future determination, upon hearing the Debtors' motion for substantive consolidation, whether the automatic stay applies to entities that have not filed for bankruptcy relief but are nevertheless owned 100% by the Snyders or their wholly owned entities.

SO ORDERED this ____ day of August, 2001.

WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE

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