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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

Anthony Hendon, **Case No. 01-12926**

Debtor. **Chapter 11**

MEMORANDUM OPINION AND ORDER RE
(1) MOTION BY UNION PLANTERS BANK TO DETERMINE IF PARTNERSHIP REALTY IS PROPERTY OF THE ESTATE and (2) THE DEBTOR'S OBJECTION THERETO

The Court conducted a hearing on Union Planters Bank's "Motion to Determine if Partnership Realty is Property of the Estate" on January 9, 2002. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

At issue in this matter is whether certain real property and improvements are property of the estate as contemplated by 11 U.S.C. § 541 and whether such property is therefore entitled to the automatic stay protection of 11 U.S.C. § 362. The facts are relatively simple. On or about July 17, 1991, Roger Dean Hendon executed a deed conveying certain real property located in Henry County to "Anthony Don Hendon, Rachel Hendon, Roger Dean Hendon, Sonia Hendon, and David P. Varner, d/b/a HENDON PROPERTIES." The real property and improvements have been used by the Debtor, Anthony Hendon, and his partners as a truck maintenance shop

which services over-the-road trucks and tractors owned and operated by the Debtor and his partners as individuals. The trucks and tractors are not owned by the partnership.

Hendon Properties has been operated by the Debtor and his partners as a Tennessee general partnership and has been assigned an employer identification number. For the years 1998, 1999 and 2000, the Debtor and his partners have caused the filing of U.S. Partnership Income Tax Returns which have reflected income from rental real estate activities. On or about May 5, 1996, Hendon Properties executed a promissory note which was secured by the real property and improvements described above. Said promissory note was executed in the name of "Hendon Properties" and was signed by David Varner, Sonia Hendon, Roger Hendon, Rachel Hendon, and Anthony Hendon, each being designated as a general partner. The mortgage agreement securing this note was entered into by "Hendon Properties" by general partners David Varner, Sonia Hendon, Roger Hendon, Rachel Hendon and Anthony Hendon.

II. CONCLUSIONS OF LAW

The debtor in this case admits that the real property at issue is titled in the partnership's name; however, the debtor alleges that because the real property was used to service the trucks and tractors that the debtors owned as individuals, the real property is owned by the partners as individuals. Section 541 of the Bankruptcy Code defines "property of the estate" as "all legal or equitable interests of the debtor in property." 11 U.S.C. § 541(a)(1). "All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property" and "[u]nless the contrary intention appears, property

acquired with partnership funds is partnership property." T.C.A. § 61-1-107(a) and (b). "In determining whether property is partnership property or property owned by an individual, the court must focus primarily on the intentions of the partners at the time the property was acquired." *Holcomb v. Fulton (In re Fulton)*, 43 B.R. 273, 275 (Bankr. M.D. Tenn. 1984). "Tennessee courts have held that when property is titled in the name of the partnership, the party asserting that the property is not partnership property has the burden of proof." *Id.* (citations omitted).

In the case at bar, the debtor alleged that the subject real estate was used by the debtor and his partners to service the trucks and tractors they owned as individuals. The debtor further alleged that this use evinces that the property is not property of the partnership. Despite these allegations, there was no proof presented to the Court that the debtor and his partners ever intended for the real property to not be partnership property. It was conveyed to and titled in the name of the partnership, Hendon Properties. The partnership executed a promissory note for which it pledged the real property as collateral. All of the individual partners signed this note. The partners may have used the real property to service their individual property, but the plain fact is that it was treated by the partnership and the individual partners at all times as partnership property. As a result, the Court finds that it is not property of the debtor's estate.

Because Union Planters' motion is styled in such a way as to make it impossible for the Court to either grant or deny it, the Court will amend the motion to be a "Motion for a Declaratory Judgment that the Partnership Property is not Property of the Estate."

III. ORDER

It is therefore **ORDERED** that:

(1) Union Planters Bank's " Motion to Determine if Partnership Realty is Property of the Estate" is **AMENDED** to be a "Motion for a Declaratory Judgment that the Partnership Property is not Property of the Estate;"

(2) Union Planters Bank's "Motion for a Declaratory Judgment that Partnership Property is not Property of the Estate" is **GRANTED;**

(3) The Debtor's Objection to Union Planters Bank's motion is **OVERRULED**.

It is so ordered.

By the Court,

G. Harvey Boswell
United States Bankruptcy Judge

Date: January 31, 2002