

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

June 17, 1994

James E. Carlon, Esq.
Counsel for Debtors
Post Office Box 249
Pierre, South Dakota 57501

John S. Lovald, Esq.
Chapter 7 Trustee
Post Office Box 66
Pierre, South Dakota 57501

Subjects: ***In re Glen J. Brinkman,***
Chapter 7; Bankr. No. 94-30004

In re Susan M. Brinkman,
Chapter 7; Bankr. No. 93-30040

Dear Counsel and Trustee:

Trustee Lovald filed an objection to Debtor Glen J. Brinkman's claimed exempt property on May 25, 1994. The grounds for the objection were that Debtor Glen Brinkman should be limited to a personal property exemption of \$2,500.00 under S.D.C.L. § 43-45-4 since his wife, in a separate Chapter 7 case, had already claimed \$1,500.00 exempt. A hearing was held June 14, 1994. The parties presented the issue to the Court as essentially a question of law. The Court discussed with counsel whether the two cases should be jointly administered or consolidated.

Federal Rule of Bankruptcy Procedure 1015(b) provides:

If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife . . . the court may order joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. . . .

Under joint administration, the estates are not combined but matters are handled under one docket for convenience and efficiency. Separate accounts are kept and a separate distribution is made to creditors. F.R.Bankr.P. 2009(e).

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Cases also may be substantively consolidated. When cases are substantively consolidated, the estates are combined and only one distribution to all creditors is made from joint assets. Although no Bankruptcy Code section or rule specifically governs substantive consolidation of cases involving different debtors, most courts rely on 11 U.S.C. § 105(a) for authority.

Substantive consolidation is not hastily or arbitrarily granted. *In re Steury*, 94 B.R. 553, 554 (Bankr. N.D. Ind. 1988). A careful review of several factors is necessary before the Court makes an equitable decision. *First National Bank of El Dorado v. Giller (In re Giller)*, 962 F.2d 796, 799 (8th Cir. 1992). These factors include: (1) the necessity of the consolidation due to the interrelationship among the debtors; (2) whether the benefits of consolidation outweigh the harm to creditors; and (3) the prejudice resulting from not consolidating the debtors. *Id.* (cite therein).

In these two Chapter 7 cases, the separate Debtors are spouses. The cases were filed within one year of each other. Both are still pending. While the Debtors have divided their real and personal property between themselves (except for a cat that both claim exempt), they have the same priority creditor. Further, several unsecured creditors, including some of their larger unsecured claims, also are common. The one exception is that Debtor Susan Brinkman has a disputed, unsecured claim against her for \$150,000.00. Debtors' counsel, however, indicated that creditors from whom Susan sought protection in bankruptcy are now seeking recourse against Debtor Glen Brinkman.

Based on these facts, the Court concludes that the cases should be substantively consolidated into Bankr. No. 93-30040. Debtors share a close personal, legal, and financial relationship. Creditors will not be prejudiced because they can now consolidate their efforts to realize on the Debtors' assets in one case. With a substantively consolidated case, Debtors will be limited to one exemption schedule, with a maximum household allowance of \$4,000.00 under S.D.C.L. § 43-45-4, as if they originally had filed a joint case. That prejudice, however, does not outweigh the benefits to the Trustee and creditors if the cases are consolidated.

This letter memorandum and accompanying orders will constitute findings and conclusions under F.R.Bankr.P. 7052. Debtors will be given fifteen days to file and notice to all creditors a joint amended schedule of property claimed exempt. Trustee Lovald's objection to Debtor Glen Brinkman's claim of exemptions will be rendered moot.

Sincerely,

Re: Glen J. Brinkman
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Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk
United States Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:

)

GLENN J. BRINKMAN

) Bankr. Case No. 94-30004

)

Social Security No. [REDACTED]-6328

)

Chapter 7

)

Debtor.

)

ORDER SUBSTANTIVELY

)

CONSOLIDATING CASE AND

)

DECLARING OBJECTION TO

)

EXEMPTIONS MOOT

In compliance with and recognition of the letter memorandum of decision entered today regarding Trustee John S. Lovald's objections to exemptions in Bankr. No. 94-30004,

IT IS HEREBY ORDERED that the above-captioned case is substantively consolidated into Bankr. No. 93-30040. The substantively consolidated case shall continue as Bankr. No. 93-30040; and

IT IS FURTHER ORDERED that Trustee Lovald's objection to Debtor's claimed exemptions is declared moot; and

IT IS FURTHER ORDERED that within fifteen days of entry of this Order Debtors shall file in the consolidated case and notice to all creditors and other parties in interest an amended schedule of property claimed exempt.

So ordered this ____ day of June, 1994.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)