



SO ORDERED.

SIGNED this 12 day of October, 2006.

ROBERT E. NUGENT
UNITED STATES CHIEF BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE:)	
)	
CRAIG GABEL,)	Case No. 05-11125
)	Chapter 11
Debtor.)	
_____)	
CRAIG GABEL,)	
)	
Plaintiff,)	
v.)	Adv. No. 06-5139
)	
DEBORAH SPICER,)	
)	
Defendant.)	
_____)	

JUDGMENT ON DECISION

Debtor-in-possession Craig Gabel filed a complaint under 11 U.S.C. § 363(h) to sell eighteen residential rental properties and oil and gas interests in which he and his estranged common law wife, Deborah Spicer, are tenants in common. Gabel and Spicer are parties to a pending divorce

proceeding in state court.

After carefully considering the evidence presented at trial and the controlling law, the Court finds that the partition of the residential rental properties is impracticable, that a sale of the estate's undivided interest would realize significantly less than a sale free of Spicer's interest, and that the benefit to the estate of a sale of the rental properties free and clear of Spicer's interest outweighs any detriment to Spicer. With respect to the oil and gas interests, the Court finds that partition of the oil and gas interests is practicable and therefore, not entitled to be sold under § 363(h).

Judgment is therefore entered for the debtor in possession, Craig Gabel on his complaint, GRANTING him the right under 11 U.S.C. § 363(b), (f) and (h), and upon filing the appropriate motion and notices, to sell the rental properties free and clear of Deborah Spicer's undivided interest in them, with all of the net proceeds to be retained in a special debtor in possession account and not expended for any purpose absent the further order of this Court. This Court defers to the District Court of Sedgwick County, Kansas, Domestic Division, as to the determination of Gabel's and Spicer's respective interest in the proceeds of the sales. To the extent the domestic court determines Gabel's interest in the cash proceeds, said proceeds shall be deemed property of his estate. The balance of the proceeds shall be deemed Deborah Spicer's sole and separate property and shall be distributed to her accordingly.

Judgment is DENIED with respect to the oil and gas interests because they may easily be apportioned among the parties in kind. The Court defers to the domestic court to divide the oil and gas interests under KAN. STAT. ANN. § 60-1610(b)(1) (2005).

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