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3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5 SACRAMENTO DIVISION  
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8 In re: )  
9 Stephen Barnett ) Case No. 05-28648-B-13J  
10 Debtor. )  
11 )  
12 Heidi Barnett )  
13 Plaintiff ) Adv. No. 06-2329-B  
14 vs. )  
15 Stephen Barnett ) Docket Control No. CFH-10  
16 Defendant. ) Date: January 9, 2007  
17 ) Time: 9:30 a.m.

18 On or after the calendar set forth above, the court issued  
19 the following ruling. The official record of the ruling is  
appended to the minutes of the hearing.

20 Because the ruling constitutes a "reasoned explanation" of  
21 the court's decision under the E-Government Act of 2002 (the  
"Act"), a copy of the ruling is hereby posted on the court's  
22 Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable  
23 format, as required by the Act. However, this posting does not  
constitute the official record, which is always the ruling  
appended to the minutes of the hearing.

24 **DISPOSITION AFTER ORAL ARGUMENT**

25 Neither the respondent within the time for opposition nor  
26 the movant within the time for reply has filed a separate  
27 statement identifying each disputed material factual issue  
28 relating to the motion. Accordingly, both movant and respondent

1 have consented to the resolution of the motion and all disputed  
2 material factual issues pursuant to FRCivP 43(e). LBR 9014-  
3 1(f)(1)(ii) and (iii).

4 The motion is granted in part and denied in part to the  
5 extent set forth herein. In light of the relief granted in  
6 Docket Control Number GJH-1, the court abstains permissively from  
7 this adversary proceeding pursuant to 11 U.S.C. § 1334(c)(1).

8 Movant's request to dismiss under Fed. R. Bankr. P. 7012  
9 incorporating Fed. R. Civ. P. 12(b)(1) is denied. Movant's  
10 argument that this court lacks subject matter jurisdiction over  
11 this adversary proceeding is without merit. This court's  
12 jurisdiction over the community property residence is solidly  
13 grounded in 28 U.S.C. § 1334(b) and (e). This proceeding clearly  
14 arises under a case under Title 11 because it seeks a  
15 determination of rights in property of the bankruptcy estate. It  
16 is a core proceeding under 28 U.S.C. § 157(O). See In re Becker,  
17 136 B.R. 113 (Bankr. D. N.J. 1992); In re French, 139 B.R. 476  
18 (Bankr. D. S.D. 1992). The fact that the parties seek a  
19 determination of rights in the real property under non-bankruptcy  
20 law is not determinative. All rights in property are determined  
21 under non-bankruptcy law. See Butner v. United States, 440 U.S.  
22 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979); Abell v Phoenix Suns  
23 Limited Partnership (In re Harrell), 73 F.3d 218, 219 (9<sup>th</sup> Cir.  
24 1996). Because this is a core proceeding, mandatory abstention  
25 is inappropriate. In re Emerald Acquisition Corp., 170 B.R. 632,  
26 646 (Bankr. N.D. Ill. 1994).

27 However, the court finds that permissive abstention is  
28

1 appropriate in this instance. Pursuant to 28 U.S.C. §  
2 1334(c)(1), this court may abstain from hearing a matter "in the  
3 interest of justice, or in the interest of comity with State  
4 courts or respect for State law." (West 2006). A necessary  
5 prerequisite is that a parallel state court proceeding exist.  
6 Security Farms v. International Broth. of Teamsters, Chauffers,  
7 Warehousemen & Helpers, 124 F.3d 999, 1009-10 (9th Cir. 1997)  
8 ("Abstention can exist only where there is a parallel proceeding  
9 in state court. That is, inherent in the concept of abstention  
10 is the presence of a pendent state action in favor of which the  
11 federal court must, or may, abstain."). Here, the state court  
12 dissolution action is pending. This adversary proceeding seeks a  
13 determination of rights in the community property residence.  
14 That same issue is currently pending in the state court action  
15 which was stayed by the filing of this bankruptcy case but for  
16 which relief from the stay is granted elsewhere on this calendar.  
17 "It is appropriate for bankruptcy courts to avoid incursions into  
18 family law matters out of consideration of court economy,  
19 judicial restraint, and deference to our state court brethren and  
20 their established expertise in such matters." In re MacDonald,  
21 755 F.2d 715, 717 (9<sup>th</sup> Cir. 1985) (citations and internal quotes  
22 omitted).

23 For these reasons, the court in its discretion abstains from  
24 hearing adversary proceeding 06-2329.

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