

SIGNED.



Dated: September 29, 2005

*Randolph J. Haines*

RANDOLPH J. HAINES  
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

In re

Chapter 7

DENNIE DEWAINE MEADOR aka  
RED MEADOR; RED'S PLACE,

CASE NO. 04-00929-RJH

Debtor.

WILLIAM E. PIERCE, Chapter 7 Trustee,

Plaintiff,

ADVERSARY NO. 05-00151

v.

LOLA MEADOR,

MEMORANDUM DECISION RE  
CROSS MOTIONS FOR SUMMARY  
JUDGMENT

Defendant.

The Chapter 7 Trustee, William E. Pierce ("Trustee") for the Debtor Dennie Dewaine Meador ("Debtor") filed this adversary proceeding against the Debtor's ex-wife, Lola Meador, seeking authority to sell jointly owned property pursuant to Bankruptcy Code § 363(h). The complaint alleges that the 1985 decree of divorce dissolving the marriage between the Debtor and Lola effectively gave them joint ownership of a house and real property in Kearns, Utah by virtue of the following language:

That the house and real property located at 4666 West 5415 South, Kearns, Utah, is awarded to the Plaintiff [Lola Meador] as her sole and separate property, and that the Defendant [Debtor] is solely liable to keep current all mortgage payments thereon in the approximate amount of \$350; further, that Defendant [Debtor] shall have the right to approve any offer of sale of the house and real property, and that in the event of the sale of the house and real property, each party is awarded one-half of any equity existing therein.

1           Lola Meador has moved for summary judgment, primarily based upon a January  
2   2000 Quit Claim Deed that the Debtor executed in favor of Lola Meador purporting to “remitse,  
3   release and quitclaim” to her “all of the right, title, interest and claim” that the Debtor had “in  
4   and to the following described parcel of land, and improvements and appurtenances thereon.”  
5   In addition, Lola Meador’s motion relied upon an affidavit executed by the Debtor stating that it  
6   was his intent that the Quit Claim Deed conveyed all interest in the property that he had been  
7   awarded pursuant to the divorce decree, and that as of the time he filed the bankruptcy petition  
8   he did not intend to claim any interest in the property.

9           To counter the Debtor’s affidavit, the Trustee relies on testimony given by the  
10   Debtor in a 2004 examination, which suggests that the only purpose of the Quit Claim Deed was  
11   to permit Lola Meador to use the entire ownership interest in the house as collateral for loans.  
12   In addition, the Trustee relies on subsequent subordination agreements signed by the Debtor,  
13   which recite that the Debtor had an equitable lien on the property created by the divorce decree  
14   to the extent of one-half of the equity interest in the home.

15           The Court finds and concludes that there is a fact dispute as to whether the intent  
16   and effect of the Debtor’s Quit Claim Deed was to waive any claim he may have had against  
17   Lola Meador arising out of the divorce decree with respect to the home or any equity in it.  
18   Consequently it is possible, when those facts are resolved, that the Trustee may have a  
19   contingent claim against Lola Meador, but it is contingent upon her sale of the house. Because  
20   the house has not been sold, the Trustee has no presently enforceable claim against Lola Meador  
21   personally.

22           There is no fact dispute, however, that (1) the divorce decree did not grant the  
23   Debtor any legal or equitable interest in the property itself, as distinguished from an interest in  
24   the proceeds upon its sale, and (2) the Quit Claim Deed effectively divested the Debtor of any  
25   legal or equitable interest in the real property that he might have had. Moreover, the divorce  
26   decree never gave the Debtor a right to compel a sale of the residence, and certainly his Quit  
27   Claim Deed to Lola Meador could not have given him any greater rights than he originally had  
28   under the divorce decree, even if those rights had not been waived by the giving of the Quit

1 Claim Deed.

2 IT IS THEREFORE ORDERED that Lola Meador is entitled to partial summary  
3 judgment as against the Trustee to the extent this adversary proceeding seeks an order  
4 authorizing or compelling the sale of the home.

5 IT IS FURTHER ORDERED denying Lola Meador's motion for partial summary  
6 judgment to the extent that she sought an order to the effect that the Trustee has no claim against  
7 her on account of the Quit Claim Deed.

8 IT IS FURTHER ORDERED denying the Trustee's motion for summary  
9 judgment.

10 IT IS FURTHER ORDERED that because the Trustee's contingent claim against  
11 Lola Meador, if any, has not been resolved by this decision, this is not a final, appealable order.

12 DATED AND SIGNED ABOVE

13  
14 Copy of the foregoing faxed  
15 this 29th day of September, 2005, to:

16 Allison M. Lauritson, Esq.  
17 Lane & Nach  
18 2025 North Third Street, Suite 157  
19 Phoenix, AZ 85004  
20 Attorneys for Plaintiff  
21 Fax: (602) 258-6003

22 Dean A. Stuart, Esq.  
23 Gust Rosenfeld  
24 201 East Washington, Suite 800  
25 Phoenix, AZ 85004-2327  
26 Fax: (602) 254-4878

27 /s/ Pat Denk  
28 Judicial Assistant