

Planas v. Feltman (In re Planas)

United States District Court, S.D. Florida

No. 98-0506-CIV-NESBITT

August 21, 1998

1998 WL 757988

Barbara Lynn Phillips, Phillips & Phillips, Miami, for Juan E. Planas.

David C. Profilet, Profilet Vazquez & Hess, Miami, for James S. Feltman.

ORDER AFFIRMING IN PART AND REVERSING AND REMANDING IN PART BANKRUPTCY COURT'S ORDER

NESBITT, District J.

***1** THIS CAUSE came before the Court upon an appeal of the bankruptcy court's Memorandum Decision and Order on the Trustee's Renewed Objection to Debtor's Claimed Exemptions, entered on July 22, 1996. The issues presented are as follows: (1) whether the bankruptcy court erred in determining that assets held by the Debtor and his non-debtor spouse as tenants by the entireties could be liquidated to satisfy the Debtor's individual debts; and (2) whether the bankruptcy court erred in concluding that the Debtor and his non-debtor spouse failed to demonstrate their intent to own their money-market account as tenants by the entireties.

I. Factual and Procedural Background

Juan E. Planas (the "Debtor") filed an individual Chapter 7 bankruptcy petition on December 30, 1994. His wife Sylvia Planas ("Mrs. Planas"), did not file for bankruptcy protection. In his bankruptcy schedules, the Debtor listed secured debt of \$260,093.80, consisting of two mortgages on real property owned by the Debtor and Mrs. Planas. The Debtor and Mrs. Planas are co-obligors on the mortgages. One of the joint secured debts is their home mortgage.¹ The other joint secured debt is a non-residential mortgage on a commercial warehouse (the "Warehouse"). The Warehouse mortgage (the "Mortgage") is the only joint debt of the Debtor and Mrs. Planas at issue.² At all relevant times the Mortgage was current and in good standing.

The non-secured scheduled assets which the Debtor sought to exempt as tenancy by the entireties property are as follows:

- 1) Warehouse—\$110,000.00 (approximately \$23,000 in equity);
- 2) Merrill Lynch Cash Management Account—\$67,051.00 (the "Merrill Account");
- 3) Stock in two Florida corporations (Eastern Contracts Co. and Eastern Drywall Co.)—\$30,000.00 (the "Stock Certificates");
- 4) SunBank Checking Account—\$500.00 (the "SunBank Account");
- 5) Household goods and furnishings—\$3,000.00 (the "Furnishings"); and
- 6) Art—\$1,000.00 (the "Art").

James S. Feltman (the “Trustee”), objected to the Debtor's claimed tenancy by the entireties exemptions and demanded turnover of all entireties property. Mrs. Planas responded to the turnover demand by claiming that the assets were immune from levy or sale because they were owned as tenants by the entireties.

Trial on the Trustee's objection to exemptions was conducted on August 24, 1995. The trial consisted of the testimony of the Debtor and Mrs. Planas, and documentary evidence admitted without objection. On July 22, 1996 the bankruptcy court entered its Memorandum Decision and Order on Trustee's Renewed Objection to Debtor's Claimed Exemptions (the “Order on Exemptions”). The bankruptcy court concluded that the existence of the joint debt of husband and wife on the Warehouse mandates liquidation of all of the Debtor and non-debtor spouse's entireties property. Accordingly, the bankruptcy court ordered that one-half of the proceeds of the sale of the entireties property was to be distributed to the Debtor's individual creditors. Finally, the court determined that the Debtor and Mrs. Planas had not intended to own the Merrill Account by the entireties.³ The Debtor now appeals the Order on Exemptions.

II. The Warehouse: Joint Creditor–Joint Debt Issue

*2 Initially, it is important to examine whether the bankruptcy court correctly determined that the Warehouse was held by the Debtor and Mrs. Planas as entireties property. The evidence reflected that the Warehouse and the Mortgage encumbering it were both in the name of the Debtor and Mrs. Planas, as husband and wife. Florida law provides that where real property is acquired “specifically in the name of husband and wife, ... a tenancy by the entireties is created.” *First Nat'l Bank of Leesburg v. Hector Supply Co.*, 254 So.2d 777, 780 (Fla.1971). Because the Warehouse is realty, the Florida presumption of the creation of entireties property is applicable to the Warehouse. Accordingly, the bankruptcy court correctly concluded that the Warehouse was held by the Debtor and Mrs. Planas as tenants by the entireties.

Section 541(a)(1) of the Bankruptcy Code provides that a debtor's bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). Section 522(b)(2)(B) of the Code, however, allows the debtor to exempt entireties property under certain conditions:

Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate ... any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

11 U.S.C. § 522(b)(2)(B). In the case at hand, Florida law is the “applicable nonbankruptcy law” referred to in section 522(b)(2)(B). Longstanding Florida case law does, in fact, provide an exemption for entireties property. See, e.g., *Stanley v. Powers*, 123 Fla. 359, 166 So. 843, 845 (Fla.1936) (holding that “[i]t is well settled that an estate by the entireties exists in Florida”).

While Florida law provides that entireties property is exempt from process to satisfy debts of individual creditors of a spouse, it is not exempt to satisfy joint debts of both spouses. *Balding v. Fleisher*, 279 So.2d 883, 884 (Fla. 3rd DCA 1973). Clearly, bankruptcy courts have required administration of entireties property if joint creditors exist. See, e.g., *In re Pepenella*, 103 B.R. 299, 301–02 (M.D.Fla.1988). Bankruptcy courts in Florida, however, have reached different results in determining whether entireties property can be sold by the trustee for distribution to all creditors when a joint creditor of the debtor and non-debtor spouse exists.

In the instant case, the bankruptcy court determined that the joint debt, the Mortgage on the Warehouse, could be used as a lever to overturn the exempt status of all of the entireties property. To reach this result the court concluded that the holder of the Mortgage was a joint creditor who was entitled to levy on the Warehouse under Florida law. Due to the existence of a single joint creditor, the bankruptcy court determined that the entireties exemption claimed by the Debtor was completely destroyed. Under the principle that there must be equality of distribution among creditors, the court held that the Debtor's entireties property must be liquidated and distributed to all of the Debtor's creditors, whether joint or individual. Thus, the court ordered that the Warehouse could be sold, with the Debtor's half of the equity to be distributed to both joint and individual creditors of the estate.

***3** This result is contrary to that reached by the majority of bankruptcy courts in Florida. Most courts have held that only debts to joint creditors can be satisfied from entireties property. See, e.g., *In re Monzon*, 214 B.R. 38, 48 (Bankr.S.D.Fla.1997) (holding that “entireties property which is non-exempt under § 522(b)(2)(B) may be distributed only to those creditors who had rights against the property under Florida law—the joint creditors of both spouses”); *In re Geoghegan*, 101 B.R. 329, 332 (Bankr.M.D.Fla.1989) (concluding that “the sale proceeds [of the non-exempt entireties property] shall be distributed only to those creditors with allowed joint claims against the Debtor and his non-debtor spouse”); and *In re Pepenella*, 103 B.R. 299, (M.D.Fla.1988) (stating that “a sole creditor cannot benefit from the equity in property held by tenancy by the entireties”).⁴ The courts in these cases did not consider the entireties exemption destroyed by the presence of a joint creditor, they simply considered the exemption not applicable to the joint creditor. See, e.g., *In re Pepenella*, 103 B.R. at 302 (determining that the most appropriate rule is to apply the equity in tenancy by the entireties property solely to joint creditors, rather than to “eliminate[] the exemption entirely”). These courts applied the proceeds of the sale of the debtor's entireties property solely to satisfy the joint creditor, while the individual creditors of the Debtor did not share in the proceeds.

This Court chooses to follow the holding of the majority of cases and disagrees with the bankruptcy court below for the following reasons. First, if the existence of a joint creditor enables individual creditors to gain access to the proceeds of liquidated entireties property new substantive rights would be created for such creditors under the state law. It is clear that under Florida law only joint creditors can attack entireties property. The effect of the bankruptcy court's decision is to expand those state created rights under the premise that paying only joint, and not individual creditors, conflicts with the distribution scheme of section 726 of the Code⁵ and the general bankruptcy policy of “equality of distribution among creditors.”⁶

In *In re Monzon*, 214 B.R. at 45–48, the bankruptcy court determined that section 726's distribution scheme does not require that entireties property be distributed to individual creditors. The court examined the Supreme Court's holding in *Butner v. U.S.*, 440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979), that:

Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.

Id. at 55. Thus, the *Monzon* court applied the “Butner principle” as follows:

[T]he issue under *Butner* becomes whether the Code, and more specifically § 726, embodies an overriding federal interest justifying this curtailment of state property rights. The Court finds that the Code does not preclude the application of Florida law. In fact, § 522(b)(2)(B) mandates strict adherence to it.

*4 Id. at 47. The lack of a statutory basis for the administration of a separate estate for joint and individual creditors under section 726, does not mandate changing Florida tenancy by the entirety law so that individual creditors can reach entireties property owned by a husband and wife. Accordingly, this Court concurs with Monzon 's analysis of why neither the distribution scheme of 11 U.S.C. § 726 nor the general bankruptcy policy of “equality of distribution,” is violated by providing the proceeds of entireties property solely for the benefit of joint creditors. Id. at 45–48.

Second, the purpose underlying the Florida entireties exemption is to protect entireties property held by husband and wife from attack by creditors of one spouse individually. The rule of entireties property is that “[n]either spouse can sell, forfeit, or encumber any part of the estate without consent of the other.” *Stanley v. Powers*, 123 Fla. 359, 166 So. 843, 845 (Fla.1936). The rationale behind the entireties exemption would be sacrificed if the individual creditors of a debtor spouse could reach the entireties property of the debtor and his/her non-debtor spouse. The bankruptcy court below examined the facts of the case at hand from the perspective of the Debtor's ability to discharge his individual debts despite the preservation of his entireties property. The appropriate way to view the entireties property, however, is through the non-debtor's spouse's ability to protect the family's entireties property, notwithstanding the large debt incurred by her debtor spouse. The Florida entireties exemption provides every spouse with the security that the family's entireties property cannot be reached by a creditor unless both spouses agree to become obligated to that specific creditor. This security should not evaporate simply because one spouse incurred large amounts of individual debt and then filed for bankruptcy protection.

For these reasons, the Court concludes that the bankruptcy court erred in its legal conclusion that the single joint debt could be used by the Trustee to destroy the exemption as to all of the entireties property held by the Debtor. Thus, the Warehouse, as entireties property should not be liquidated to satisfy the claims of individual creditors.

III. The Lack of Intent to Hold the Merrill Account as TBE

The Debtor claims that the bankruptcy court erred in finding that he did not have the intent to hold the Merrill Account with Mrs. Planas as tenants by the entirety. The court concluded that the Merrill Account was not entireties property, and thus, was subject to liquidation, with half of the proceeds to be distributed to the Debtor's creditors.

As more fully discussed in this Court's opinion in *Dzikowski v. Blais (In re Blais)*, 220 B.R. 485, 490–91 (S.D.Fla.1997), “there is a presumption against the creation of an estate by the entirety in personalty.” Id. at 491. Obviously, the Merrill Account is personalty. Therefore, in order for the Debtor to successfully establish that the Merrill Account is entireties property, he “must establish an intent to own the personalty as entireties property sufficient to rebut the presumption against such a tenancy in personalty.” Id. In the instant case, the Debtor and Mrs. Planas had the opportunity to designate the Merrill Account as a tenancy by the entirety, but they failed to do so. Instead, the Merrill Account was designated as a joint tenancy with right of survivorship. The evidence presented by the Debtor was not sufficient to establish the requisite intent to rebut the presumption against the creation of a tenancy by the entirety in the Merrill Account. Thus, the bankruptcy court did not err in ordering the distribution of half of the proceeds of the Merrill Account to creditors of the Debtor.

IV. The Stock Certificates, Furnishings, and Art

***5** As for the Stock Certificates, Furnishings, and Art, the bankruptcy court assumed they were entireties property and, thus, concluded that they were subject to liquidation, division and distribution in the same manner as the Warehouse. As the Court has determined that the bankruptcy court's legal analysis with respect to the Warehouse was erroneous, we are left solely with the bankruptcy court's assumption that the Stock Certificates, Furnishings, and Art are entireties property. Because such assumption was utilized for the purposes of an erroneous legal conclusion, it will be disregarded now. Therefore, it is appropriate to remand to the bankruptcy court the issue of whether the Stock Certificates, Furnishings, and Art are entireties property. The bankruptcy court should conduct an evidentiary hearing to determine whether the Debtor and Mrs. Planas intended to hold the Stock Certificates, Furnishings, and Art as tenants by the entireties consistent with this Court's decision in *Dzikowski v. Blais* (In re Blais), 220 B.R. 485, 490–91 (S.D.Fla.1997).

V. The SunBank Account

The Debtor claims that the bankruptcy court erred in failing to declare the funds in the SunBank Account exempt as the Debtor and Mrs. Planas' wages. In his bankruptcy petition, however, the Debtor claimed the SunBank Account exempt as a tenancy by the entireties. It is undisputed that the bankruptcy court correctly determined that the SunBank Account failed to meet the requirements of a tenancy by the entireties. Nevertheless, the Debtor claims that the funds are exempt as wages pursuant to Florida Statute § 222.11. A review of the record in this appeal clearly indicates that the Debtor failed to meet his burden of proving entitlement to the Florida wage exemption. See, *In re Parker*, 147 B.R. 810, 812 (Bankr.M.D.Fla.1992).

Accordingly, it is

ORDERED and ADJUDGED that the bankruptcy court's Memorandum Decision and Order on Trustee's Renewed Objection to Debtor's Claimed Exemptions, entered on July 22, 1996, is AFFIRMED in part, REVERSED in part, and REMANDED as follows:

1. The bankruptcy court's holding that the Warehouse can be liquidated, with half of the proceeds used to satisfy the claims of individual creditors of the Debtor is REVERSED.
2. The bankruptcy court's holding that the Merrill Account is not tenancy by the entireties property, and the subsequent apportionment of the Merrill Account between the Debtor's estate and Mrs. Planas is AFFIRMED.
3. The bankruptcy court's holding that the Stock Certificates, Furnishings, and Art can be liquidated, with half of the proceeds used to satisfy the claims of individual creditors of the Debtor is REVERSED. The issue with respect to the Stock Certificates, Furnishings, and Art is REMANDED to the bankruptcy court to hold an evidentiary hearing consistent with this opinion to determine whether the Debtor and Mrs. Planas intended to hold the Stock Certificates, Furnishings, and Art as tenants by the entireties.

***6** 4. The bankruptcy court's holding that the SunBank Account is not tenancy by the entireties property, and the subsequent apportionment of the SunBank Account between the Debtor's estate and Mrs. Planas is AFFIRMED.

Footnotes

- 1 The bankruptcy court did not examine the legal effect of a joint debt on a homestead; therefore, exemption of this asset has not been challenged and is not the subject of this appeal.
- 2 The Debtor scheduled \$1,972,489.68 of individual unsecured debt in his bankruptcy petition.
- 3 On rehearing, the bankruptcy court corrected one erroneous factual finding which is not pertinent to the resolution of the instant appeal.
- 4 Some courts have held that all creditors, whether joint or individual, must share in entireties property which has been liquidated due to the existence of a joint creditor. Such courts, however, have also held that entireties property will be available to satisfy the claims of all creditors only up to the amount of the claims of the joint creditors. See, e.g., *In re Boyd*, 121 B.R. 622, 624–25 (Bankr.N.D.Fla.1989) (determining that “administration [of entireties property] is limited to the extent of the claims held by joint creditors of both the debtor and his non-filing wife” and any equity above the amount of the joint obligations is exempt).
- 5 This is the general distribution section for liquidation cases. It dictates the order in which distribution of property of the estate is made.
- 6 “Equality of distribution among creditors is a central policy of the Bankruptcy Code. According to that policy, creditors of equal priority should receive pro rata shares of the debtor's property.” *Bequier v. I.R.S.*, 496 U.S. 53, 58, 110 S.Ct. 2258, 110 L.Ed.2d 46 (1990).