

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:

HOBART LEE PAYNE and
JUANITA YATES PAYNE,

Debtors.

Case No. 04-52124C-7W

ENTERED

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U.S. BANKRUPTCY COURT
MIDDLE DISTRICT

ORDER OVERRULING OBJECTION TO PROPERTY EXEMPTIONS

THIS MATTER came before the Court for hearing on October 20, 2004 upon an Objection by the Trustee to the Debtors' Claim for Property Exemptions (the "Objection") filed on September 17, 2004. At the hearing, Stephen D. Ling appeared on behalf of the Debtors and Edwin H. Ferguson, Jr. appeared as the attorney for the Chapter 7 Trustee.

Based upon the arguments presented at the hearing and a review of the entire official file, the Court makes the following findings of fact and conclusions of law.

FACTS

The Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on July 22, 2004. Edwin H. Ferguson, Jr. is duly appointed as the Chapter 7 Trustee (the "Trustee"). The Debtors each exempted their residence, which they own as tenants by the entirety, pursuant to 11 U.S.C. § 522(b)(2)(B) and the laws of the State of North Carolina pertaining to property held as tenants by the entirety. The Debtors listed the value of the home at \$120,000.00 and listed a lien against the property totaling \$83,178.00. The Debtors did not exempt this property under the residential exemption of N.C. Gen. Stat. § 1C-1601(a)(1). As the Debtors did not exempt their home under the residential exemption, the male Debtor elected to exempt personal property under the so-

called "wild card" exemption¹ consisting of \$3,300.00 in equity in a 1992 Toyota pickup truck.

The Trustee contended that since the Debtors were in a joint Chapter 7 proceeding, the Debtors owed the bankruptcy estate their excess equity in the real property of \$16,822.00.² The Trustee argued that, since the Debtors filed a joint petition, each Debtor should have claimed a \$10,000.00 exemption in their home and could not claim the property as exempt as a tenancy by the entirety. Further, the Trustee alleged that the male Debtor did not have a wildcard exemption available and should therefore remit the sum of \$1,800.00.³

TENANCY BY THE ENTIRETIES PROPERTY

The filing of a Chapter 7 petition creates a bankruptcy estate to be administered by the bankruptcy trustee. 11 U.S.C. § 541(a). The "estate is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the case. Thus, a debtor's interest in entireties property becomes part of the bankruptcy estate." In re Bunker, 312 F.3d 145, 150 (4th Cir. 2002), citing Sumy v. Schlossberg, 777 F.2d 921 (4th Cir. 1985); Greenblatt v. Ford, 638 F.2d 14 (4th Cir. 1981). When spouses file a joint Chapter 7 petition, separate bankruptcy estates are created. See id. After an estate is created, the debtor may exempt eligible property, which is not available to satisfy the debtor's obligations. See id. at 151.

Under Section 522(b)(2)(B) of the Bankruptcy Code, a debtor may exempt any interest in property that the debtor held as a tenant by the entirety as of the petition date to the extent that such

¹N.C. Gen. Stat. § 1C-1601(a)(2).

²This figure is obtained by taking the value of the property (\$120,000.00), deducting the mortgage balance of \$83,178.00, and deducting the \$20,000.00 residential property exemption.

³This figure is obtained by taking the value of the Toyota pickup truck and deducting the automobile exemption (\$1,500.00).

interest as a tenant by the entirety is exempt under applicable non-bankruptcy law.⁴ The exemption is *unlimited* as to amount or value. In the Fourth Circuit, a debtor's right to exempt entireties property pursuant to Section 522(b)(2)(B) is subject to the right of the bankruptcy trustee to liquidate entireties property for the benefit of joint creditors. See In re Mikles, No. 03-52865, slip op. at 3 (Carruthers, J. January 13, 2004), citing Sumy v. Schlossberg, 777 F.2d 921 (4th Cir. 1985). In this case, there is a mortgage claim that constitutes a joint debt. However, there are no other joint creditors.

North Carolina has opted out of the federal exemption scheme. See N.C. Gen. Stat. § 1C-1601(f). Thus, a debtor in North Carolina has the following exemptions available to him: (1) North Carolina's list of exemptions, (2) federal non-bankruptcy exemptions, and (3) Section 522(b)(2)(B)'s entireties and joint tenancy exemption. In re Bunker, 312 F.3d at 151. North Carolina law on tenancies by the entirety is the "applicable non-bankruptcy law" at issue.

In North Carolina, a tenancy by the entirety is comprised of five essential characteristics: unity of time, unity of title, unity of interest, unity of possession, and unity of person. See Combs v. Combs, 273 N.C. 462, 465, 160 S.E.2d 308, 311 (1968). "The estate rests upon the doctrine of the unity of the person, and upon the death of one the whole belongs to the other, not solely by right

⁴ [A]n individual debtor may exempt from property of the estate . . .

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of the such 180-day period than in any other place; and

(B) 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 non-bankruptcy law.

11 U.S.C. § 522(b)(2)(A),(B).

of survivorship, but also by virtue of the grant which vested the entire estate in each grantee." Davis v. Bass, 188 N.C. 200, 201, 124 S.E.2d 566, 567 (1924). Neither spouse can convey his or her interest in the estate without the other spouse. See id. Further, when real property is conveyed to a husband and wife jointly, they automatically receive a tenancy by the entirety in such real property unless a contrary intention is expressed in the conveyance. See N.C. Gen. Stat § 39-13.6(b).

Thus, under North Carolina law, neither spouse holds an individual or separate interest in property held as tenants by the entirety, rather, "each is deemed to be seized of the whole, and not of a moiety or any undivided portion thereof." Carter v. Continental Insurance Co., 242 N.C. 578, 579, 89 S.E.2d 122, 123 (1955). Real property owned as tenants by the entirety is not subject to a claim by a creditor against only one spouse. See Grabenhofer v. Garrett, 260 N.C. 118, 120, 131 S.E.2d 675, 677 (1963).

A debtor's interest in entireties property is property of the bankruptcy estate pursuant to Section 541(a) of the Bankruptcy Code. See In re Cordova, 73 F.3d 38, 40 (4th Cir. 1996). However, the filing of a bankruptcy petition by one spouse does not sever the tenancy by the entirety or otherwise change the nature of either spouse's interest in the property. See Greenblatt v. Ford, 638 F.2d 14, 15 (4th Cir. 1981). Pursuant to Section 522(b)(2)(B), any interest the debtor had immediately before the commencement of the case in property held as tenants by the entireties "is exempt from process under applicable non-bankruptcy law." 11 U.S.C. § 522(b)(2)(B). Thus, if one spouse files for bankruptcy in North Carolina, a trustee may sell property held as tenants by the entirety only if there are creditors in the case to whom both spouses are indebted. See In re Williams, 104 F.3d 688, 689 (4th Cir. 1997); Sumy v. Schlossberg, 777 F.2d 921, 922 (4th Cir. 1985).

The Trustee's principal argument is that when both debtor spouses are in a joint case, neither is allowed to take the entireties exemption. This contention "ignores the design of the Bankruptcy Code, and, if adopted, would render the entireties exemption meaningless when husbands and wives file joint petitions." In re Bunker, 312 F.3d at 152. A trustee cannot unite the entireties interests of spouses in a joint case and dispose of the property if the spouses assert valid claims of exemption under Section 522(b)(2)(B). See id. North Carolina law protects entireties property by prohibiting an individual creditor of one spouse from reaching property held as a tenancy by the entirety. This protection is not limited in amount or value. Thus, the presence of individual claims against either or both of the spouses in a joint case does not prevent the debtor spouses from exempting their interests in entireties property under Section 522(b)(2)(B) and applicable North Carolina law. See id. at 153, citing Cordova v. Mayer, 73 F.3d 38, 40 (4th Cir. 1996).

Turning to the facts of the case at hand, each Debtor is entitled to claim the tenancy by entirety exemption for their home. Under joint administration, the estate of each debtor remains separate and distinct. See id., citing In re Reider, 31 F.3d 1102, 1109 (11th Cir. 1994). "Joint administration does not affect the substantive rights of either the debtor or his or her creditors." Id. The joint administration of the Debtors' estates does not affect their claims to the entireties property.

In this case, no creditor other than the mortgage creditor holds a joint claim against the Debtors.⁵ Section 522(b)(2)(B) points to North Carolina law, which shields entireties property from the claims of individual creditors of either spouse. Thus, both Debtors may exempt their entireties property under Section 522(b)(2)(B) to the extent of their equity.

⁵The obligations of the Debtors to their mortgage creditor are current, so that creditor has no basis for moving for relief from stay to foreclosure, and the Trustee has no basis to move for authority to sell the property under Section 363 or otherwise administer the asset.

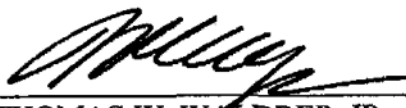
THE WILDCARD EXEMPTION

N.C. Gen. Stat. § 1C-1601(a)(2) provides that any individual resident of the state may exempt an interest in any property, not to exceed \$3,500 in value less any amount of the exemption used under the homestead exemption. This exemption is commonly known as the "wildcard" exemption.

The Trustee alleges that if the Debtors were required to exempt their real property under the homestead exemption, neither Debtor would be entitled to a wildcard exemption. However, as discussed above, each Debtor is entitled to exempt the real property held as tenants by the entirety pursuant to Section 522(b)(2)(B) and is not required to exempt the real property under the homestead exemption provided by N.C. Gen. Stat. § 1C-1601(a)(1). Hence, neither Debtor has used the homestead exemption, and each Debtor is entitled to take advantage of a wildcard exemption. See In re Mikles, No. 03-52865, slip op. at 4 (Carruthers, J. January 13, 2004), citing In re Banks, 22 B.R. 891, 893 (Bankr. W.D.N.C. 1982).

It is hereby ORDERED that the Trustee's objection to the Debtors' property exemptions are overruled.

This the 10 day of November, 2004.



THOMAS W. WALDREP, JR.
U.S. Bankruptcy Judge