Volume 64 | Issue 3 Article 7

April 1962

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D entered a petition in bankruptcy which included in the list of assets certain property held with his wife as tenants by the entirety. There were two creditors among the unsecured creditors, none of whom were paid in full, who were joint creditors of *D* and his wife. A trustee was appointed and *D's* assets, other than the tenancy by the entirety property, were fully administered. *D* obtained a discharge and the estate was closed. More than two months later, *D's* wife filed a petition in bankruptcy also listing the tenancy by the entirety as an asset. Shortly thereafter the two joint creditors of *D* and his wife moved that *D's* estate in bankruptcy be reopened and consolidated with the wife's so that the property held as tenants by the entirety could be reached. The referee declined to reopen the case and an appeal was taken. *Held,* the fact that property held by the entirety could be reached by joint creditors of the husband and wife if the husband's estate in bankruptcy was reopend and consolidated with the wife's estate was cause for reopening the estate. *In re Reid,* 198 F. Supp. 689 (W.D. Va. 1961).

In many states, including Virginia, property held in a tenancy by the entirety cannot be reached by judicial process by the creditors of one of the tenants, although it may be reached when subjected to joint or joint and several debts of the tenants. *Vasilion v. Vasilion,* 192 Va. 735, 66 S.E.2d 599 (1951). The Bankruptcy Act § 70 a (5), 11 U.S.C. § 11 (1952), vests title in the trustee to all property of the bankrupt which might have been levied on and sold by judicial process. Therefore when one of the tenants goes into bankruptcy, his interest in the tenancy by the entirety is not part of the assets that pass to the trustee in bankruptcy.

In states where tenancies by the entirety are not subject to judicial process by the creditors of one of the tenants, but are only subject to the joint or joint and several debts of the tenants, the joint creditors are the only ones who can hope to reach the property after a petition in bankruptcy has been filed by or against one of the tenants. In the principal case it was held that the bankruptcy estate of one of the tenants could be reopened when the other tenant went into bankruptcy and the property held by the entirety could be used to satisfy the claims of joint creditors. In *Phillips v. Krakower,*

46 F.2d 764 (4th Cir. 1931), the court held up the discharge of one of the tenants who was in bankruptcy until the joint creditors could get a judgment against the other tenant and subject the property to judicial process. The reasoning in both cases was that to allow a debtor to obtain a discharge of all his debts and still hold property was against the policy of the Bankruptcy Act, and should be prevented whenever possible.

The court in the principal case recognizes *Phillips v. Krakower, supra,* but indicates that because that method was used in one case does not mean that it is the only method to reach the property in such a situation, or that it is negligence not to use that method.

Consider, however, the dicta in *Phillips v. Krakower, supra.* "If the liability of one spouse on a joint note is discharged in bankruptcy, judgment on the note against the other spouse cannot during the lifetime of the bankrupt be collected out of the property held by the entirety." It would seem in light of this statement that the only safe thing for the joint creditors to do would be to follow the method used in the *Phillips* case. For unless the court is willing to go further than they did in the principal case, and hold that the mere fact that there are joint creditors of the tenants who could have satisfied their claims but did not is cause for reopening a discharged bankrupt's estate, then it would appear that the creditors would be left waiting for the other spouse to go into bankruptcy or survive the bankrupt.

This problem probably will not arise in West Virginia since tenancies by the entirety have been abolished. *Wartenburg v. Wartenburg,* 143 W. Va. 141, 100 S.E.2d 562 (1957); *McNeely v. South Penn Oil Co.,* 52 W. Va. 616, 44 S.E. 508 (1903); see generally Brown, *Some Aspects of Joint Ownership of Real Property in West Virginia,* 63 W. VA. L. REV. 207, 215 (1961). However, the rule that bankruptcy estates may be reopened for cause shown is still authority. Bankruptcy Act § 2 a (8); 11 U.S.C. § 11 (1952).

The factual situation which gave rise to this case is a rare one, but it appears the decision is correct in light of the present bankruptcy law. To hold otherwise would be to permit a fraud on the law, which would not be justifiable in light of the spirit in which the bankruptcy law was developed.

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