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Bankruptcy - Title to Unscheduled Assets After Discharge

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RECENT DECISIONS

Bankruptcy — Title To Unscheduled Assets After Discharge— Plaintiff, claiming under the bankrupt, brought this action against the defendant for an accounting and royalty interest provided for in an oil lease. The defendant claimed that title had been divested from plaintiff's predecessor by bankruptcy and that it had never reinvested in him or his heirs. The bankrupt was so adjudged in 1927 and a trustee was appointed, but the property was not scheduled in the bankruptcy proceeding and was never administered by the trustee. The trustee was discharged and the proceedings were closed in 1928. *Held:* Judgment for the plaintiff. Sufficient title remained in the bankrupt and his heirs to preserve the property, if not for their own use at least for the use of the bankrupt's creditors. *Smith v. Arkansas Fuel Oil Co., 54 So. 2d 421 (La., 1951).*

When a trustee is appointed in bankruptcy, title to the bankrupt's property passes to the trustee, as of the date of the filing of the petition, if it is the type described in Sec. 70 of the Bankruptcy Act,[1] i.e., property which the bankrupt could prior to the filing of the petition have transferred by any means, or which might have been levied upon and sold under judicial process against him.[2] Clearly the real property in the instant case was of the type that would vest in the trustee since it is the general rule that, upon the appointment of a trustee, title is divested from the bankrupt notwithstanding that the property is not scheduled as an asset.[3] The court in the principal case rendered a decision unique in bankruptcy law by intimating that title to the unscheduled asset never left the bankrupt. The court said, "It would appear to us that sufficient title remained in Smith and his heirs to preserve the property, . . ."[4] The court did not take the position that after discharge title to the unscheduled asset reverted to the bankrupt but rather that title never left the bankrupt prior to his discharge.

The courts are in accord that the bankrupt would not be divested of title to assets if no trustee is appointed.[5] These situations usually arise in so called "no-asset" estates, i.e., those in which the bankrupt possesses no assets to administer. A bankrupt may also retain title if the trustee refuses to accept the property, which is usually the case

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[1] 11 U.S.C. Sec. 110 *"Title to Property.* a. The Trustee of the estate of a bankrupt . . . shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition in bankruptcy . . . to all (5) property, including rights of action, which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized, impounded, or sequestered."

[2] In re Seifert, 18 F.2d 444 (D. Mont., 1926).

[3] Garrett v. Garrett, 78 S.W. 2d 157 (Tex. Civ. App., 1935).

[4] Smith v. Arkansas Fuel Oil Co., 54 So. 2d 421 (La., 1951).

[5] Danciger v. Smith, 276 U.S. 542, 48 S.Ct. 344, 72 L.Ed. 691 (1928).

when the property is of an unprofitable or onerous nature.[6] However such refusal on the part of the trustee to accept cannot be presumed when the asset is not scheduled, since the trustee did not have the opportunity to make an election.[7] A fraudulent failure to schedule an asset does not allow the bankrupt to retain title, for no man can benefit from his own wrong.[8] An innocent omission to schedule an asset does not prevent title from passing to the trustee upon his appointment but upon discharge the courts are not in accord as to the location of title.

The problem of special interest concerns the location of title to assets innocently omitted from the schedules, after the trustee has been discharged. The leading case, emanating from the United States Supreme Court in 1905,[9] concluded that title did not reinvest in the bankrupt. The case involved an unscheduled cause of action of the bankrupt for usury. Two months after discharge the bankrupt asserted his claim, but the court quashed the attempt, stating:

> "It cannot be that a bankrupt, by omitting to schedule and withholding from his trustee all knowledge of certain property, can, after his estate in bankruptcy has been finally closed up, immediately thereafter assert title to the property on the ground that the trustee had never taken any action in respect to it."[10]

This view appears to be the prevailing rule in a majority of the state and lower federal courts.[11]

The Minnesota court[12] decided the identical question to the contrary, asserting that title must go somewhere upon the discharge of the trustee, and that the logical person is the owner from whom the trustee took title. The court draws an analogy between the bankrupt and a judgment debtor because the bankruptcy act at the time of this decision vested the trustee with the title of a creditor holding a lien by legal or equitable proceedings. Once the lien is discharged the bankrupt is reinvested with title. The court finds this similar to the case of levy of execution on real estate by a judgment creditor of the bankrupt where before the execution sale, the levy is released and the judgment satisfied. The owner of the property is reinvested with his former title, free of the lien created by the judgment and levy. The court said:

> "The title of the trustee comes to him by operation of law and by virtue of his office. When he ceases to be trustee, the title must

[6] Stockwell v. McAlvory, 10 Cal. 2d 368, 74 P. 2d 504 (1937).
[7] Stephan v. Merchants' Collateral Corp., 256 N.Y. 418, 176 N.E. 824 (1931).
[8] Suetter v. A. E. Kern & Co., 146 Or. 96, 29 P. 2d 534 (1934).
[9] First National Bank of Jacksboro v. Lasater, 196 U.S. 115, 25 S.Ct. 206, 49 L.Ed. 408 (1905).
[10] *Ibid.*
[11] In re Lighthall, 221 Fed. 791 (D. N.Y., 1915). See also Raley v. D. Sullivan & Co., 207 S.W. 906 (Tex. Civ. App., 1919).
[12] Stipe v. Jefferson, 192 Minn. 504, 257 N.W. 99 (1934).

> pass from him because he no longer has the legal capacity to retain it. So, if it is not otherwise disposed of, it must necessarily revert to the bankrupt as the original owner from whom in the first instance the trustee got title. Clearly one person cannot lose title without another getting it."[13]

Title should revert to the bankrupt subject to reopening proceedings, which should be instituted when it appears that the bankrupt estate was closed before being fully administered. Other state courts conclude that title should revest in the bankrupt subject to the liens which were valid at the beginning of the bankruptcy proceeding.[14]

The most expedient rule and one followed by all decisions, except the principal case, is that title to assets passes to the trustee whether they be scheduled or unscheduled, since it must be deemed that once the bankruptcy court assumes jurisdiction all the bankrupt's assets come within its power. Once the trustee is discharged title must go somewhere for it cannot repose in a nonexistent trustee. Title to the assets should reinvest in the bankrupt subject to reopening proceedings by which creditors can successfully reach any assets which may subsequently appear. Any other approach seems to totally disregard the rules applicable to trustees and also to unnecessarily burden bankruptcy court procedure.

JOHN J. WITTAK

Insurance — Construction of Airplane Life and Accident Policy — An airplane life and accident insurance policy of the type sold in vending machines at airports in the amount of $20,000 was issued to one Smith by defendant to cover a round trip from Albuquerque, New Mexico, to Washington, D. C., via TWA. The policy also provided coverage if the original transportation ticket was exchanged for another ticket issued by a scheduled airline covering all or any portion of the trip specified in the original ticket. Smith was required by his employer to go to Dallas, Texas, from Washington before returning to Albuquerque. A new ticket on another airline was purchased for the Dallas trip, the old one not being exchanged. Smith purchased a $10,000 policy covering that flight. The plane crashed and Smith was killed. Defendant paid the $10,000 but denied liability on the $20,000 policy. Judgment was entered for the plaintiff, Smith's beneficiary, and the defendant appealed. *Held:* Affirmed. The accident in which insured was killed was covered by the policy even though the original ticket was not exchanged. *Fidelity & Casualty Co. of New York v. Smith, 189 F. 2d 315, (10th Cir., 1951).*

The court decided the case on the ground that an insurance policy

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[13] *Ibid.*
[14] Normal State Bank v. Killian, 318 Ill. App. 637, 48 N.E. 2d 212 (1943).