

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Case No. 6:08-bk-00007-ABB  
Chapter 7

DAVID ALLEN GORNY,  
  
Debtor.

\_\_\_\_\_ /

**ORDER**

This matter came before the Court on the Amended Objection to Property Claimed as Exempt (Doc. No. 17) (“Objection”) filed by Leigh R. Meininger, the Chapter 7 Trustee herein (“Trustee”), objecting, pursuant to 11 U.S.C. Section 522(1), to various exemptions claimed by the Debtor David Allen Gorny (“Debtor”). An evidentiary hearing was held on April 28, 2008 at which the Debtor, counsel for the Debtor, and counsel for the Trustee appeared. The parties filed post-hearing briefs pursuant to the Court’s directive (Doc. Nos. 47, 49).

The parties presented insufficient evidence for a final determination of this matter and an Order was entered (Doc. No. 60) setting a supplemental evidentiary hearing at which the Trustee was to clarify which objections to exemptions he was pursuing and the parties were to present additional evidence. The supplemental evidentiary hearing was held on August 18, 2008 at which the Debtor, Debtor’s counsel, and the Trustee appeared.

The information submitted is still insufficient in several respects. The Court makes the following Findings of Fact and Conclusions of Law after reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises.

**FINDINGS OF FACT**

The Debtor filed this individual Chapter 7 case on January 2, 2008 (“Petition Date”). He is married to Debra S. Gorny, f/k/a Debra Sue Kroeplin (“Mrs. Gorny”), who is not a debtor in bankruptcy. They apparently have been married

for several years, but the Debtor did not provide the date of their marriage. The Debtor designated 144 Deerpath Road, Debary, Florida (“Real Property”) as his address of record.

The Debtor listed as assets in Schedules A and B (Doc. No. 1):

- (i) “Marital interest in [the Real Property] (deed in name of nonfiling spouse; valued at \$300,000, with equity line of \$130,000 in name of nonfiling spouse)” valued at \$0.00 with a secured claim of \$97,465.00.
- (ii) SunTrust checking account ending in 0792 “jointly held with nonfiling spouse” valued at \$1,244.92.
- (iii) Household goods and furnishings “jointly held with nonfiling spouse” valued at \$6,575.00.
- (iv) Fishing equipment “jointly held with nonfiling spouse” valued at \$900.00.
- (v) “Anticipated 2007 income tax refund, jointly held with nonfiling spouse” with an “unknown” value.
- (vi) 2003 Lincoln Aviator “jointly held with nonfiling spouse” valued at \$15,000.00.
- (vii) 2001 Sentry boat “jointly held with non-filing spouse” valued at \$62,000.00.

- (viii) 2000 Angler 24' boat  
"jointly held with  
nonfiling spouse"  
valued at \$50,000.00.

Schedule D (Doc. No. 1) reflects some of the assets are encumbered by security interests. The Real Property is encumbered by a home equity mortgage held by Countrywide. The Lincoln Aviator is encumbered by a security interest held by Ford Motor Credit. The 2001 Sentry boat is encumbered by a security interest held by SunTrust Bank and Wachovia Bank holds a security interest in the 2004 Angler boat.

The Debtor claimed these assets as exempt in Schedule C (Doc. No. 1) pursuant to "tenants by the entirety 11 U.S.C. Sec. 522(b)(2)(B)." The Real Property was claimed as exempt in the amount of \$0.00. The tax refund was claimed as exempt in an "unknown" amount. The remaining assets were claimed as exempt in the full amount of their values. The Debtor's Schedules have not been amended.

The Trustee objects to the tenancy by the entirety exemption claims on two grounds. He asserts the value of the property claimed as exempt exceeds the \$1,000.00 allowable personal property exemption of Article X, Section 4(a)(2) of the Florida Constitution and the property does not constitute tenants by the entirety property.

The Debtor was entitled to a personal property exemption of \$1,000.00 pursuant to Article X, Section 4(a)(2) of the Florida Constitution. He fully expended the \$1,000.00 exemption through his exemption of clothing (\$100.00) and jewelry (\$900.00). He did not claim an Article X, Section 4(a)(2) exemption for any of the assets at issue. No basis exists for objecting to the exemption claims of the assets at issue pursuant to Article X, Section (4)(2).

Florida statutory, case, and common law define tenancy by the entirety property ownership and is the applicable nonbankruptcy law for an exemption analysis. The seminal case addressing tenants by the entirety property is Beal Bank, SSB v. Almand & Assoc., 780 So. 2d 45 (Fla. 2001), in which the Florida Supreme Court held both real and personal property may be owned as tenants by the entirety and sets forth the six required unities. Property jointly owned by married couples is presumptively held

as tenants by the entirety property where the six unities exist. A party objecting to tenants by the entirety status must establish by a preponderance of the evidence the property is not held as tenants by the entirety. A statute specifically delineating how to create an ownership interest in a particular type of property, account statement, or express agreement trump the presumption.

### ***Real Property***

The Real Property is titled in the name of Mrs. Gorny individually pursuant to the Quit-Claim Deed executed on March 2, 1994 transferring the property from "Randy D. Kroeplin and Debra Sue Kroeplin" to Mrs. Gorny (Debtor's Exh. No. 6). The Debtor testified Mrs. Gorny is the owner of the Real Property. The Debtor, pursuant to the Quit-Claim Deed, does not hold an ownership interest in the Real Property. He did not explain the basis for his assertion in Schedule A he holds a "marital interest" in the Real Property.

There are no unities of possession and title between the Debtor and Mrs. Gorny. The Debtor failed to establish the six unities required for tenancy by the entirety ownership of the Real Property pursuant to Florida case law. The Debtor has failed to establish any interest he may hold in the Real Property constitutes a tenancy by the entirety interest. To the extent the Debtor holds an interest in the Real Property, such interest constitutes non-exempt property of the estate and is subject to turnover and administration by the Chapter 7 Trustee for the benefit of the creditors of the Debtor's estate.

The Trustee's objection to the exemption claim is due to be sustained and the exemption claim is due to be disallowed. The Debtor claimed an exemption of \$0.00 in the Real Property. The Debtor is limited to an exemption claim of \$0.00 in the Real Property.

### ***SunTrust Checking Account***

The Debtor presented a SunTrust account statement for the period December 19, 2007 through January 18, 2008 (Debtor's Exh. No. 11) setting forth the account is titled in the names of "Debra S Gorny Or Erika S Kroeplin Or Tammie L Kreuter." The account is jointly owned by Mrs. Gorny, Erika S. Kroeplin, and Tammie L. Kreuter, pursuant to the account

statement. The Debtor, pursuant to the account statement, does not hold an ownership interest in the account. He did not explain the basis for listing the account as an asset in Schedule B.

There are no unities of possession and title between the Debtor and Mrs. Gorny in the account. The Debtor failed to establish any interest he may hold in the account constitutes a tenancy by the entirety interest. To the extent the Debtor holds an interest in the account, such interest constitutes non-exempt property of the estate and is subject to turnover and administration by the Chapter 7 Trustee for the benefit of the creditors of the Debtor's estate. The Trustee's objection to the exemption claim of \$1,244.92 is due to be sustained and the exemption claim is due to be disallowed.

### ***Household Goods and Furnishings***

The Debtor listed in his exhibit to Schedule B household goods and furnishings valued at \$6,575.00, which include furniture and televisions. The exhibit is titled "Household Goods and Furnishings, Including Audio, Video, and Computer Equipment," but does not list any audio, video, or computer equipment. It would appear the exhibit is incomplete based upon its title. The Debtor failed to provide adequate, complete descriptions of the items claimed as exempt.

The Debtor was required to establish the six unities set forth by Beal Bank for the presumption of tenants by the entirety ownership of the household goods to arise. The Debtor did not provide the acquisition dates for the goods, the date of his marriage to Mrs. Gorny, where the goods are located or who has possession of the goods. Without such information the unities of possession, interest, title, time, survivorship, and marriage cannot be established. The Debtor did not establish any of the unities required for tenancy by the entirety ownership of the household goods.

The Debtor's interest in the household goods is not exempt and is subject to turnover and administration by the Chapter 7 Trustee for the benefit of the creditors of the Debtor's estate. The Trustee's objection to the exemption claim of \$6,575.00 is due to be sustained and the exemption claim is due to be disallowed.

### ***Fishing Equipment***

The Debtor did not establish when the equipment was acquired and whether the acquisition was during his marriage to Mrs. Gorny. He did not establish the unities of time and marriage required for tenancy by the entirety ownership. The equipment does not constitute tenants by the entirety property. The Debtor's interest in the fishing equipment is not exempt and is subject to turnover and administration by the Chapter 7 Trustee for the benefit of the creditors of the Debtor's estate. The Trustee's objection to the exemption claim of \$900.00 is due to be sustained and the exemption claim is due to be disallowed.

### ***2003 Lincoln Aviator***

Florida statutory law governs nature of the Debtor's interest in the Lincoln Aviator. The Debtor did not present the certificate of title for the Lincoln Aviator or any other documentation establishing his ownership interest in the vehicle. He did not establish his interest in the vehicle constitutes a tenancy by the entirety interest pursuant to Florida statutory law governing vehicle ownership. The Debtor's interest in the Lincoln Aviator is not exempt and is subject to turnover and administration by the Chapter 7 Trustee for the benefit of the creditors of the Debtor's estate. The Trustee's objection to the exemption claim of \$15,000.00 is due to be sustained and the exemption claim is due to be disallowed.

### ***Boats***

Florida statutory law governs the ownership of vessels titled by the State of Florida and specifically delineates how ownership interests are to be created in vessels. The Debtor asserts the 2000 Angler 24' boat is tenants by the entirety property, but provided no documentation, particularly the vessel's certificate of title, establishing such ownership. The vessel's certificate of title is controlling in determining ownership of the vessel. The Debtor failed to establish his interest in the 2000 Angler boat constitutes a tenancy by the entirety interest pursuant to Florida statutory law.

The Debtor's interest in the Angler boat is not exempt and is subject to turnover and administration by the Chapter 7 Trustee for the

benefit of the creditors of the Debtor's estate. The Trustee's objection to the exemption claim of \$50,000.00 is due to be sustained and the exemption claim is due to be disallowed.

The Debtor provided a copy of a Florida Vessel Registration for Vessel No. FL6522LU (Debtor's Exh. No. 8) for a "2001 CEB" with an open length of thirty-two feet five inches listing the names "David Alan Gorny, Debra A Gorny" and the Real Property address. The Registration, presumably, is for the 2001 Sentry boat. It expired prepetition on December 26, 2007. It does not designate the owners of the vessel. The vessel's certificate of title, not the Registration, is controlling in determining ownership of the vessel pursuant to Florida statutory law. The Debtor failed to establish his interest in the 2001 Sentry boat constitutes a tenancy by the entireties interest pursuant to Florida statutory law.

The Debtor's interest in the Sentry boat is not exempt and is subject to turnover and administration by the Chapter 7 Trustee for the benefit of the creditors of the Debtor's estate. The Trustee's objection to the exemption claim of \$62,000.00 is due to be sustained and the exemption claim is due to be disallowed.

### ***Tax Refund***

The Debtor and Mrs. Gorny jointly filed with the IRS a Form 1040 federal income tax return for tax year 2007 (Debtor's Exh. No. 12). The tax return presented is undated and unsigned. The return sets forth at lines 73 and 74a they are entitled to a refund of \$6,397.00, which they indicated was to be refunded to them via a checking account ending in 4187. The tax year 2007 refund is the refund listed in Schedules B and C (hereinafter, "Refund").

The Trustee objects to the Debtor's Refund claim of exemption:

to the extent that the value of the Refund, individually and when added to the debtor's other claims of personal property exemptions, exceeds the \$1,000.00 per debtor for personal property exemption allowance prescribed in Article X, Section 4(a)(2) of the Constitution of the State of Florida.

Objection at ¶ 4. Article X, Section 4(a)(2) of the Florida Constitution is irrelevant to the Refund in that the Debtor did not claim the Refund as exempt pursuant to that provision. The Trustee asserts regarding the tenants by the entireties exemption claim:

- (a) there is not statutory authority for such a claim of exemption;
- (b) the debtor has joint debt with the non-filing spouse;
- (c) the existence of joint unsecured debt nullifies any claim of exemption under the common law doctrine of tenants by the entireties;
- (d) the State of Florida opted out of the Federal Exemptions prescribed in 11 U.S.C. Section 522 with the exception of 11 U.S.C. Section 522(b)(10); and
- (e) the tax refund lacks the unities required for tenants by the entireties.

Objection at ¶ 8.

The Trustee's assertions in (a) and (d) are incorrect. Florida opted out of the federal exemptions contained in Section 522 of the Bankruptcy Code, but such opt-out does not prohibit a debtor from claiming property as exempt as tenants by the entireties property. Sections 522(b)(1) and (b)(3)(B) of the Bankruptcy Code specifically allow for the exemption of tenants by the entireties property to the extent allowed by state law. Section 522(b) of the Bankruptcy Code provides the statutory basis for the Debtor's tenants by the entireties exemption claims. The Beal Bank case and its progeny, Florida statutory law, and Florida common law allow the Debtor to claim various items of personal property as exempt tenants by the entireties property.

The issues for determination are whether the Debtor has established the Refund is held as tenants by the entireties property with Mrs. Gorny and, if the Refund is tenants by the entireties property, whether joint debt exists allowing the Trustee to reach such property.

### ***Refund Ownership***

The Refund is a joint asset of the Debtor and Mrs. Gorny by virtue of the filing of the 2007 joint tax return. The Refund is an asset in which the Debtor had an interest prior to the Petition Date. The Debtor and Mrs. Gorny have not revoked the joint filing election. The six unities set forth in the Beal Bank case required for tenants by the entireties ownership of the Refund are present. The Refund qualifies for ownership between the Debtor and Mrs. Gorny as tenants by the entireties property.

The Trustee has not rebutted the presumption the Refund constitutes tenants by the entireties property. Two previous decisions were issued holding married couples can own joint income tax refunds as tenants by the entireties. The Trustee has established no basis for departure from these rulings. The Refund constitutes tenants by the entireties property.

### ***Existence of Joint Debt***

Tenants by the entireties property is protected from the claims of the joint owners' individual creditors, but not their joint creditors. The Debtor and Mrs. Gorny are co-debtors of various asserted secured debts as set forth in Schedules D and H: (i) the Countrywide mortgage of \$97,465.00; (ii) the Ford Motor Credit Corporation loan of \$12,906.00 secured by the Aviator; (iii) the SunTrust loan of \$62,572.00 secured by the 2001 Sentry boat; and (iv) the Wachovia Bank loan of \$50,526.00 secured by the Angler boat. It is unknown whether such debts constitute secured, partially secured, or unsecured debts since asset valuations and payoff balances were not provided for each debt.

Schedules F and H are erroneous in that Mrs. Gorny is not listed as a co-debtor of any general unsecured debts. She and the Debtor are co-guarantors of two SunTrust Bank loans made to the Debtor's company David A. Gorny, Inc. ("DGI"). SunTrust, pursuant to Commercial Loans dated October 19, 2005 and October 2, 2006 and executed by the Debtor as President of DGI, made loans of \$25,000.00 and \$100,000.00 to DGI.<sup>1</sup>

SunTrust, as a prerequisite to making the loans to DGI, required the Debtor and Mrs. Gorny to execute personal guarantees, which they executed on December 26, 2003.<sup>2</sup> SunTrust also required the execution of a Security Agreement granting SunTrust a security interest in essentially all of the assets of DGI. The Debtor, as President of DGI, executed the Security Agreement on December 26, 2003.<sup>3</sup>

DGI filed a voluntary Chapter 7 bankruptcy petition on January 2, 2008 captioned In re David A. Gorny, Inc., Case No. 6:08-bk-00006-ABB. SunTrust was granted relief from the automatic stay in the DGI case on April 23, 2008 to pursue its rights against the loan collateral.<sup>4</sup> SunTrust is attempting to locate the assets DGI pledged as collateral. The recovered assets are insufficient to satisfy the SunTrust debt.<sup>5</sup>

SunTrust filed an Amended Proof of Claim (Claim No. 4-2) in the Debtor's case for the unsecured amount of \$109,458.20 based upon the Debtor's guaranty of the two DGI loans. The claim reflects collateral valued at \$1,000.00 was recovered from DGI. No objections to the claim have been filed. The Debtor and Mrs. Gorny are jointly liable for the SunTrust general unsecured debt of \$109,458.20 pursuant to their guarantees of the DGI loans.

The Refund is not protected from the claims of the Debtor's and Mrs. Gorny's joint creditors due to the existence of joint debt. The Refund is not exempt and the Trustee may administer the Refund for the benefit of the Debtor's and Mrs. Gorny's joint creditors. The Trustee's objection to the Debtor's Refund exemption claim is due to be sustained and the exemption is due to be disallowed.

### **CONCLUSIONS OF LAW**

All of the Debtor's legal and equitable interests in real and personal property became property of the bankruptcy estate on the Petition Date pursuant to Section 541(a) of the Bankruptcy Code, except for those items specifically excluded by Sections 541(b), (c), and (d). Property interests are created and defined by state law, unless a particular federal

---

<sup>1</sup> See attachments to Claim No. 4-2.

<sup>2</sup> Trustee's Exh. No. 2 from Aug. 18, 2008 hearing.

<sup>3</sup> See Claim No. 6-2 filed in the DGI case.

<sup>4</sup> See Doc. No. 15 in the DGI case.

<sup>5</sup> Claim No. 402; Doc. No. 49 (Trustee's Exhibit B).

interest requires a different result. Butner v. United States, 440 U.S. 48, 55 (1979). Florida statutory, case, and common law govern the determination of the Debtor's interest in the assets at issue. Id.

Section 522(b) of the Bankruptcy Code allows a debtor to claim as exempt property interests constituting property of the estate. Exemptions may be claimed either pursuant to the federal exemptions provided for in Section 522(d), or by state law exemptions where a state has opted out of the federal exemption scheme.<sup>6</sup> Debtors filing for bankruptcy protection in Florida are entitled to the Florida state law exemptions. FLA. STAT. § 222.20 (1998).

Section 522(b)(3)(B) of the Bankruptcy Code, which is applicable to all bankruptcy cases pursuant to Section 522(b)(1), regardless of which exemption scheme controls, allows for the exemption of an interest in tenancy by the entirety property:

(b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection.

...

(b)(3)(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 nonbankruptcy law.

11 U.S.C. §§ 522(b)(1), (b)(3)(B) (2008). Nonbankruptcy law, pursuant to the plain and unambiguous language of Section 522(b),

<sup>6</sup> 11 U.S.C. Section 522(b) provides that states can prohibit their citizens from using the federal exemptions and limit them to applicable state law exemptions.

controls whether a claim of exemption based on tenancy by the entirety ownership is proper.

Florida statutory, case, and common law define tenancy by the entirety property ownership and is the applicable nonbankruptcy law for a tenancy by the entirety exemption analysis. The Beal Bank decision rendered by the Florida Supreme Court addresses tenancy by the entirety ownership of assets in Florida, focusing on the ownership of personal property, particularly financial accounts. Subsequent decisions have held virtually any type of personal property may be held as tenants by the entirety property. *See, e.g., In re Daniels*, 309 B.R. 54, 59 (Bankr. M.D. Fla. 2004) (extending the presumption created in Beal Bank regarding marital bank accounts "to include all marital personal property, not just financial accounts.").

Tenants by the entirety is a unique form of ownership of property only married couples may enjoy. Beal Bank, 780 So.2d at 52. Entireties property belongs to neither individual spouse, but each spouse holds "the whole or the entirety, and not a share, moiety, or divisible part." Bailey v. Smith, 103 So. 833, 834 (Fla. 1925). Both real and personal property can be owned as entirety property in Florida. Id. Six unities must exist simultaneously for property to be owned as tenants by the entirety in Florida:

- (1) unity of possession (joint ownership and control);
- (2) unity of interest (the interests must be identical);
- (3) unity of title (the interest must have originated in the same instrument);
- (4) unity of time (the interests must have commenced simultaneously);
- (5) survivorship; and
- (6) unity of marriage (the parties must be married at the time the property became titled in their joint names).

Beal Bank, 780 So.2d at 52. "Should one of these unities never have existed or be destroyed, there is no entirety estate." U.S. v. One Single Family Residence With Out Buildings Located at

15621 S.W. 209th Ave., Miami, Fla., 894 F.2d 1511, 1514 (11th Cir. 1990).

A presumption that marital personal property is held as tenants by the entirety arises when all six unities are present. *In re Daniels*, 309 B.R. at 59. A party contending marital property is held in another form of ownership carries the burden of proof by a preponderance of evidence to establish a tenancy by the entirety was not created. *Beal Bank*, 780 So.2d at 58.

The presumption marital property is held as tenants by entirety “must yield to any statute specifically delineating how to create an ownership interest in any particular type of property, such as Section 319.22 [vehicle titling] of the Florida Statutes.” *Daniels*, 309 B.R. at 59. The presumption is inapplicable where there exists “any controlling statute, express agreement, account statement, or other governing indicia that explicitly establishes a form of ownership other than tenancy by the entirety.” *Id.*

#### ***Debtor’s Tax Refund***

It was held in *In re Freeman*, 387 B.R. 871, 875 (Bankr. M.D. Fla. 2008) and *In re Hinton*, 378 B.R. 371, 378-79 (Bankr. M.D. Fla. 2007) married couples can own tax refunds as tenants by the entirety. The Court is following these decisions.

The six unities set forth in the *Beal Bank* case required for tenants by the entirety ownership of the Refund are present. The Debtor and Mrs. Gorny have been married for several years. The Refund is a joint asset of the Debtor and the Non-Filing spouse by virtue of the filing of the 2007 joint tax return. The Refund is an asset in which the Debtor had an interest prior to the Petition Date. They have not revoked the joint filing election. The Refund qualifies for ownership between the Debtor and Mrs. Gorny as tenants by the entirety property. *In re Freeman*, 387 B.R. at 875; *In re Hinton*, 378 B.R. at 378-79.

The Trustee has not rebutted the presumption. The Refund constitutes tenants by the entirety property. *Id.*

Tenancy by the entirety property is exempt from the claims of a couple’s individual

creditors, but not the claims of their joint creditors, pursuant to Florida common law. *Havoco of Am., Ltd. v. Hill*, 197 F.3d 1135, 1139 (11th Cir. 1999). A bankruptcy trustee may reach tenancy by the entirety property to the extent of the spouses’ joint debts. *Id.*

The Debtor and Mrs. Gorny have joint creditors which include Countrywide, Ford Motor Credit Corporation, SunTrust, and Wachovia Bank. SunTrust, pursuant to the Debtor’s and Mrs. Gorny’s personal guarantees, holds a general unsecured claim of \$109,458.20 for which they are jointly liable. The Refund is not exempt due to the existence of the joint debt and constitutes property of the estate. *Havoco*, 197 F.3d at 1139; *In re Freeman*, 387 B.R. at 875. The Trustee may administer the Refund for the benefit of the Debtor’s and Mrs. Gorny’s joint creditors. *In re Hinton*, 378 B.R. at 377-78; *In re Daniels*, 309 B.R. at 56; *In re Droumtsekas*, 269 B.R. 463, 467 (Bankr. M.D. Fla. 2000) (holding, based on Florida case law, “only debts owed to joint creditors should be satisfied from the proceeds of entirety property.”).

The Trustee’s objection to the Debtor’s claim of exemption in the Refund is due to be sustained and the exemption is due to be disallowed.

#### ***The Remaining Disputed Exemption Claims***

***Real Property:*** The Real Property does not constitute tenants by the entirety property due to it being titled solely in Mrs. Gorny’s name pursuant to the Quit-Claim Deed. The unities of possession and title as required by *Beal Bank* do not exist. To the extent the Debtor holds an ownership interest in the Real Property, such interest constitutes non-exempt property of the estate pursuant to 11 U.S.C. Section 541(a). A debtor claiming an exemption valued at \$0.00 in property is limited to such exemption valuation. *See, Holloway v. John Hancock Mutual Life Ins. Co. (In re Holloway)*, 81 F.3d 1062, 1069 (11th Cir. 1996) (holding a homestead exemption valued at \$0.00 cannot be impaired because the value of the exemption is zero). The Debtor is limited to an exemption claim of \$0.00 in the Real Property. The Trustee’s objection to the exemption is due to be sustained.

***SunTrust Checking Account:*** The SunTrust checking account is owned jointly by Debra S. Gorny, Erika S. Kroepelin, and Tammie

L. Kreuter pursuant to the account statement. The unities of possession and title between the Debtor and Mrs. Gorny as required by Beal Bank do not exist. The SunTrust account does not constitute tenants by the entireties property. To the extent the Debtor holds an ownership interest in the account, such interest constitutes non-exempt property of the estate pursuant to 11 U.S.C. Section 541(a). The Trustee's objection to the exemption claim of \$1,244.92 is due to be sustained and the exemption claim is due to be disallowed.

**Household goods and furnishings:** A debtor has the initial burden of stating the exemptions with sufficient particularity so that all parties are able to ascertain the assets the debtor believes are exempt from distribution to creditors. In re Kleinman, 172 B.R. 764, 770 (Bankr. S.D.N.Y. 1994). The Debtor did not list the household goods with sufficient particularity to allow the parties to ascertain what items he believes are exempt.

The Debtor presented no evidence relating to the household goods to establish the six unities as required for the presumption of tenants by the entireties ownership to arise pursuant to Beal Bank. He did not establish the unities of possession, interest, title, time, survivorship, and marriage. There is no entireties estate in the household goods. The Trustee's objection to the exemption claim of \$6,575.00 is due to be sustained and the exemption is due to be denied.

**Fishing Equipment:** The Debtor did not establish the unities of time and marriage as required by Beal Bank regarding the fishing equipment. The equipment does not constitute tenants by the entireties property. The Trustee's objection to the exemption claim of \$900.00 is due to be sustained and the exemption claim is due to be disallowed.

**Lincoln Aviator:** Florida Statute Section 319.22 controls the titling of vehicles and governs what ownership interest the Debtor has in the Lincoln Aviator. Florida Statute Section 319.22(2)(a)(1) provides the usage of the disjunctive term "or" in a vehicle's title creates a joint tenancy:

When a motor vehicle or mobile home is registered in the names of two or more

persons as coowners in the alternative by the word 'or,' such vehicle shall be hold in joint tenancy.

FLA. STAT. § 319.22(2)(a)(1) (2005). The usage of the conjunctive "and" in a vehicle's title creates a tenancy by the entireties:

When a vehicle or mobile home is registered in the names of two or more persons as coowners in the conjunctive by the use of the "and," the signature of each coowner or his or her personal representative shall be required to transfer title to the vehicle or mobile home.

FLA. STAT. § 319.22(2)(a)(2) (2005).

The Debtor presented no documentation, particularly a certificate of title, regarding the ownership of the Lincoln Aviator. He failed to establish the Lincoln Aviator constitutes tenancy by the entireties property pursuant to Florida Statute Section 319.22(2)(a)(2). The Trustee's objection to the exemption claim of \$15,000.00 is due to be sustained and the exemption claim is due to be disallowed.

**Boats:** Florida statutory law governs the ownership of vessels titled by the State of Florida. *See*, FLA. STAT. §§ 328.01–328.80 (2001). Sections 328.01(3)(d)(2)(a) and (b) of the Florida Statutes set forth how joint ownership of a vessel is to be created and govern what interest the Debtor holds in the Angler and Sentry boats. A vessel must be titled jointly in the names of the husband and wife with the conjunctive "and" to create a tenancy by the entireties. FLA. STAT. §§ 328.01(3)(d)(2)(a), 328.01(3)(d)(2)(b); In re Wingate, 332 B.R. 649, 654 (Bankr. M.D. Fla. 2005) ("The fact that title was held to the vehicles and boat as 'husband or wife' instead of 'husband and wife' creates a joint tenancy and not a tenancy by the entireties.").

The Registration for the Sentry boat does not set forth or establish the Debtor's and Mrs. Gorny's ownership interests in the vessel. The Debtor presented no documentation regarding the titling of either vessel. He has

failed to establish he and Mrs. Gorny own the Angler and Sentry boats as tenants by the entirety pursuant to Sections 328.01(3)(d)(2)(a) and (b) of the Florida Statutes.<sup>7</sup> The Trustee's objections to the exemption claims of \$50,000.00 in the Angler boat and \$62,000.00 in the Sentry boat are due to be sustained and the exemption claims are due to be disallowed.

Dated this 29<sup>th</sup> day of August, 2008.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge

### ***Conclusion***

The Debtor's interest in the Refund is not exempt due to the existence of the Debtor's and Mrs. Gorny's joint debt and the Trustee may administer the Refund for the benefit of their joint creditors pursuant to 11 U.S.C. Section 704(a).

The Debtor's interests in the household goods, fishing equipment, Lincoln Aviator, Sentry boat, and Angler boat constitute non-exempt property of the estate and are subject to turnover and administration by the Trustee for the benefit of the creditors of the Debtor's estate pursuant to 11 U.S.C. Section 704(a). To the extent the Debtor holds interests in the Real Property and the SunTrust account, such interests constitute non-exempt property of the estate and are subject to turnover and administration by the Trustee for the benefit of the creditors of the Debtor's estate pursuant to 11 U.S.C. Section 704(a).

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Trustee's Objection (Doc. No. 17) to the Debtor's claims of exemption in the Refund, Real Property, SunTrust checking account, household goods, fishing equipment, Lincoln Aviator, Sentry boat, and Angler boat is hereby **SUSTAINED** and such assets constitute non-exempt property of the estate; and it is further

**ORDERED, ADJUDGED and DECREED** that the Debtor's claims of exemption in the Refund, Real Property, SunTrust checking account, household goods, fishing equipment, Lincoln Aviator, Sentry boat, and Angler boat are hereby **DISALLOWED**.

---

<sup>7</sup> The statutory provisions relating to the titling of vessels are virtually identical to the provisions of Section 319.22 governing the titling of vehicles and mobile homes.