

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

WILLIAM M. GURLEY,

Case No. 6:95-bk-03833-ABB

Chapter 7

Debtor.

CHERYL JANE FOLLOWELL, as
EXECUTRIX OF THE ESTATE
OF BETTY JEAN GURLEY, *et al.*,

Plaintiffs,

Adv. Pro. No. 6:06-ap-00121-ABB

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER

This matter came before the Court on remand pursuant to the Order entered on September 10, 2009 by the United States District Court for the Middle District of Florida, Orlando Division (“District Court”).¹ Cheryl Jane Followell, as Executrix of the Estate of Betty Jean Gurley, and the Debtor William M. Gurley (“Mr. Gurley”) (collectively, “Plaintiffs”) appealed this Court’s November 22, 2006 Order (Doc. No. 16) dismissing this adversary proceeding. The District Court remanded the matter directing this Court “to rule on whether 11 U.S.C. § 725 applies to this case and, if so, to make specific findings on the extent of that statute’s applicability.”²

¹ The District Court case is captioned Cheryl Jane Followell, as Executrix of the Estate of Better Jean Gurley, and William M. Gurley v. United States of America, Case No. 5:06-cv-458.

² September 10, 2009 Order at p. 4.

Background

Plaintiffs have been involved in litigation with the Defendant Environmental Protection Agency since 1987. Mr. Gurley's bankruptcy case has been pending in this Court since 1995. Betty Jean Gurley ("Mrs. Gurley"), Mr. Gurley's wife and Cheryl Jane Followell's mother who is deceased, filed a bankruptcy case in Tennessee in 1997. The parties have litigated matters in numerous Federal Courts.

This Court did not immediately address the remand matter because it understood the parties may have reached a global settlement resolving all of their issues and pending litigation. It appears the parties have not reached a settlement. No settlement notices or motions have been filed in this Court or the District Court.

11 U.S.C. Section 725

This Court entered a Memorandum Opinion, Judgment, and Amended Judgment in 1997 (collectively, "Trustee Judgment") in which it held numerous transfers of real and personal property from Mr. Gurley to Mrs. Gurley constituted fraudulent transfers and were recoverable by the Chapter 7 Trustee of Mr. Gurley's estate pursuant to the Trustee's strong-arm powers.³ This Court held the property transferred by Mr. Gurley to Mrs. Gurley prior to April 25, 1990 constituted property of Mr. Gurley's bankruptcy estate pursuant to 11 U.S.C. Section 541(a)(1).⁴

³ Doc. Nos. 109 and 122 in Adv. Pro. No. 6:95-ap-00293-ABB. The adversary proceeding instituted by the Trustee on April 25, 1996 is captioned George E. Mills, Jr. v. Betty Jean Gurley, Adv. Pro. No. 6:96-ap-00159-ABB. It was consolidated with the adversary proceeding captioned United States of America v. William M. Gurley, Adv. Pro. No. 6:95-ap-00293-ABB (in which the United States sought denial of Mr. Gurley's discharge pursuant to 11 U.S.C. § 727) for discovery and trial purposes.

⁴ Doc. No. 109 in AP No. 6:95-ap-00293-ABB, p. 25.

The Chapter 7 Trustee of Mr. Gurley's estate was poised to commence distribution of property of the estate when Plaintiffs filed their Complaint (Doc. No. 1) instituting this adversary proceeding. The funds held by the Trustee are largely the proceeds of the avoided transfers of assets from Mr. Gurley to Mrs. Gurley.

Plaintiffs assert the EPA is not entitled to distribution of the proceeds of the recovered pre-April 25, 1990 transfers and seek entry of an order precluding the EPA from receiving any distribution from the proceeds of these transfers. Plaintiffs' Complaint consists of three counts, which are untitled. They cited no Bankruptcy Code provision in support of their request for relief, nor did they raise Sections 726 or 725 of the Bankruptcy Code in their Complaint.

Plaintiffs raised 11 U.S.C. Section 725 for the first and only time in their seventeen-page Corrected Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss (Doc. No. 9) in which they asserted Mrs. Gurley "is a co-owner of the property of the William Gurley estate" and "such assets must be distributed to the estate of Betty Gurley" pursuant to 11 U.S.C. Section 725.⁵ Plaintiffs' Section 725 discussion is contained in the concluding pages of the Corrected Memorandum and is brief, consisting of three paragraphs.

Analysis

Section 725 of the Bankruptcy Code provides:

After the commencement of a case under this chapter, but before final distribution of property of the estate under section 726 of this title, the trustee, after notice and a hearing, shall dispose of any property in which an entity *other than the estate has an interest*, such as a lien, and that has not been disposed of under another section of this title.⁶

⁵ Doc. No. 9, p. 16.

⁶ 11 U.S.C. § 725 (*emphasis added*).

The Court did not explicitly address Section 725 in its November 22, 2006 Order because Section 725 is inapplicable.

The Trustee is not holding any property in which an entity other than the estate of Mr. Gurley has an interest. All property held by the Trustee constitutes property of the estate pursuant to 11 U.S.C. Section 541, including any and all proceeds resulting from the Trustee's recovery of the pre-April 25, 1990 transfers. This Court held such transferred property constitutes property of Mr. Gurley's bankruptcy estate in the Trustee Judgment. The Trustee Judgment was affirmed by the District Court and the United States Court of Appeals for the Eleventh Circuit. The United States Supreme Court denied Mrs. Gurley's petition for writ of certiorari on April 30, 2001.

Mrs. Gurley's attempts to assert an ownership interest in the proceeds of the recovered fraudulent transfers through the claim process in Mr. Gurley's case were unsuccessful. The claims she filed in Mr. Gurley's case were disallowed by the Order entered by this Court on December 27, 2001. The District Court and the United States Court of Appeals for the Eleventh Circuit affirmed the December 27, 2001 Order and the Supreme Court denied Mrs. Gurley's petition for writ of certiorari.

It has been adjudicated the proceeds held by the Trustee, including the proceeds of the pre-April 25, 1990 transfers, constitute property of Mr. Gurley's bankruptcy estate. Plaintiffs are barred from challenging such adjudication by res judicata, collateral estoppel, and the law of the case. The Trustee is not holding any funds in which Plaintiffs or any other persons or entities have an interest. Section 725 is inapplicable pursuant to the statute's plain and unambiguous language. All proceeds held by the Trustee are subject to distribution pursuant to 11 U.S.C. Section 726.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that no person or entity other than the bankruptcy estate of Mr. Gurley has an interest in the proceeds held by the Chapter 7 Trustee and 11 U.S.C. Section 725 is inapplicable to Mr. Gurley's bankruptcy case; and it is further

ORDERED, ADJUDGED and DECREED that all proceeds held by the Chapter 7 Trustee of Mr. Gurley's bankruptcy constitute property of Mr. Gurley's bankruptcy estate and the Chapter 7 Trustee may commence distribution of the property of the estate pursuant to 11 U.S.C. Section 726.

Dated this 25th day of March, 2010.

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