

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

In re:

JAMES W. TAYLOR,

Case No. 6:10-bk-11111-ABB

Chapter 7

Debtor.

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ORDER

This matter came before the Court on the Objection to Debtor's Claim of Exemptions (Doc. No. 19) filed by the Chapter 7 Trustee Robert E. Thomas ("Trustee") and the Response thereto filed by the Debtor James W. Taylor (Doc. Nos. 20, 30). A hearing was held on November 15, 2010 at which the parties' respective counsel appeared. The parties filed post-hearing briefs pursuant to the Court's directive (Doc. Nos. 33, 35, 36). The Trustee's objections are due to be sustained in part and overruled in part for the reasons set forth herein.

Event Chronology

The Debtor is seventy-seven years old and is unemployed. His sole sources of income are Social Security and residual commissions. He filed this case individually on June 24, 2010 ("Petition Date"). He was married to Alice Taylor, his wife of fifty-two years, when she passed away six weeks after the Petition Date on August 2, 2010. She died intestate and had no life insurance. The Debtor continues to reside in the marital home located in Palm Coast, Florida. The home has no equity and the Debtor is attempting to obtain a mortgage modification with the secured lender.

The Debtor listed various assets in Schedule B (Doc. No. 7) including: (i) SunTrust account ending in 9740 valued at \$34,830.00 ("SunTrust Account"); (ii)

certificate of deposit valued at \$6,011.94 (“Certificate of Deposit”); and (iii) household goods and furnishings valued at \$6,335.00 (“Household Goods”). He claimed these assets as fully exempt in Schedule C: (i) \$33,830.00 of the SunTrust Account pursuant to the tenants by the entirety (“TBE”) exemption of 11 U.S.C. Section 522(b)(3)(B) and \$1,000.00 pursuant to Section 4(a)(2) of Article X of the Florida Constitution; (ii) the Certificate of Deposit as TBE property; and (iii) the Household Good as TBE property.

The Trustee objected to several claims of exemption on various grounds. He has withdrawn all of his objections except the objections regarding the SunTrust Account, the Certificate of Deposit, and Household Goods (collectively, “Subject Assets”). The Trustee conceded the Subject Assets were owned by the Debtor and his wife TBE on the Petition Date and would ordinarily constitute exempt property pursuant to 11 U.S.C. Section 522(b)(3)(B).

The Trustee’s remaining objection is in the nature of a turnover demand. He asserts the Subject Assets are subject to turnover pursuant to 11 U.S.C. Section 541(a)(5)(A) because the death of Mrs. Taylor eliminated the Debtor’s ability to exempt the property as TBE. Section 541(a)(5)(A) provides:

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date---

(A) by bequest, devise, or inheritance.

11 U.S.C. § 541(a)(5)(A). The Debtor contends Section 541(a)(5)(A) is inapplicable because the Debtor did not obtain any ownership interest in the Subject Assets by bequest, devise, or inheritance.

Analysis

The Trustee, whether this matter constitutes an exemption objection or a motion for turnover of property of the estate, bears the burden of proof and the standard is preponderance of the evidence. Maggio v. Zeitz, 333 U.S. 56, 64 (1948); In re Rogove, No. 09-24622, 2010 WL 3748151, at *2 (Bankr. S.D. Fla. Sept. 17, 2010); In re Mohammed, 376 B.R. 38, 41 (Bankr. S.D. Fla. 2007).

The Subject Assets, as the Trustee has conceded, constituted TBE property on the Petition Date. They were property of the estate on the Petition Date pursuant to 11 U.S.C. Section 541(a), but were exempt pursuant to 11 U.S.C. Section 522(b)(3)(B). In re Tharp, 237 B.R. 213, 215 (Bankr. M.D. Fla. 1999).

TBE is a unique form of ownership of property only married couples may enjoy. Beal Bank, SSB v. Almand and Associates, 780 So.2d 45, 52 (Fla. 2001). 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 (1925). Both real and personal property can be owned as entireties property in Florida. Id.

The Debtor, on the Petition Date, held the whole or the entirety of the Subject Property, not a share or divisible part. Id. The ownership of the Subject Assets vested entirely in the Debtor as the surviving spouse upon his wife’s death. Wilson v. Fla. Nat. Bank & Trust Co. at Miami, 64 So.2d 309, 312 (Fla. 1953). The Debtor did not acquire any ownership rights in the Subject Property upon his wife’s death that he did not already hold. Id. The interest of his wife in the Subject Assets simply extinguished. Id.

The Bankruptcy Courts uniformly hold the death of a debtor's spouse post-petition terminates TBE ownership and gives the bankruptcy estate a fee simple interest in the property. In re Tharp, 237 B.R. at 216-17. Such property is subject to administration by the Chapter 7 Trustee. Id. at 217.

The death of the Debtor's wife post-petition terminated their TBE ownership of the Subject Assets and gave the bankruptcy estate a fee simple interest in the Subject Assets. The Trustee is entitled to administer the Subject Property. The Debtor is entitled to exempt up to \$1,000.00 of the SunTrust Account pursuant to Section 4(a)(2) of Article X of the Florida Constitution.

The Court has authority to dismiss a Chapter 7 case, after notice and a hearing, "for cause" pursuant to 11 U.S.C. Section 707(a). The Court has substantial discretion in adjudicating a dismissal motion and equitable considerations are germane, including whether the debtor will receive a fresh start. Peterson v. Atlas Supply Corp. (In re Atlas Supply Corp.), 857 F.2d 1061, 1063 (5th Cir. 1988); U.S. v. McDaniel (In re McDaniel), 363 B.R. 239, 244 (M.D. Fla. 2007).

This case is unique and the equities must be considered. The Debtor and his wife owned their real and personal property TBE for more than fifty-two years. He filed the bankruptcy case expecting their TBE assets would be exempt from administration and did not expect his wife to pass away shortly after this case was filed. Those assets would have given the Debtor and his wife a fresh start. Proceeding with this case may not result in a fresh start for the Debtor. The Debtor is due to be provided an opportunity to seek dismissal of this case.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Trustee's objections (Doc. No. 19) to the tenancy by the entireties exemptions in the Subject Assets are hereby **SUSTAINED** and his objection to the \$1,000.00 personal property exemption is **OVERRULED**; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's claim of exemption of \$1,000.00 in the SunTrust Account pursuant to Section 4(a)(2) of Article X of the Florida Constitution is hereby **ALLOWED**; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's claims exemptions in the following assets are hereby **DISALLOWED** and the assets constitute non-exempt property of the estate subject to turnover to the Trustee: (i) SunTrust account ending in 9740 in the amount of \$33,830.00; (ii) the Certificate of Deposit in the amount of \$6,011.94; and (iii) household goods and furnishings in the amount of \$6,335.00; and it is further

ORDERED, ADJUDGED and DECREED that all other objections made by the Trustee are hereby **OVERRULED** and all other claims of exemption made by the Debtor in Schedule C that have not been specifically disallowed herein are hereby **ALLOWED**; and it is further

ORDERED, ADJUDGED and DECREED that the effective date of this Order is delayed fourteen (14) days to allow the Debtor to file a motion seeking dismissal of this case pursuant to 11 U.S.C. Section 707(a).

Dated this 3rd day of January, 2011.

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