

Business Law Section

Insolvency Law Committee

June 20, 2019

Dear constituency list members of the Insolvency Law Committee, the following is a case update.

Summary

The United States Bankruptcy Appellate Panel for the Ninth Circuit held that in a case converted from chapter 13 to chapter 7, the relevant date for determining a debtor's homestead exemption was fixed on the date of the chapter 13 filing. *Klein v. Good (In re Good)* BAP No. WW-18-1125-KuTaB, 2018 Bankr. LEXIS 3609 (9th Cir. BAP 2018). The BAP affirmed the bankruptcy court's ruling denying the chapter 7 trustee's objection to the Debtors' homestead exemption as untimely, and found no abuse of discretion in its ruling that equitable estoppel was not applicable. A copy of the decision is available [here](#).

Facts

The Debtors filed a chapter 13 case in October 2016. They claimed a schedule C homestead exemption of \$125,000 in their residence ("Property") and no party objected. Their chapter 13 Plan was confirmed February 17, 2017. The Debtors subsequently moved to convert their case to a chapter 7, and the bankruptcy court granted their motion on June 15, 2017. On the same day the clerk of the court issued an order to file post-conversion schedules ("Order") which required the Debtors to file amended statements, schedules and documents, or execute a declaration under penalty of perjury that there had been no change therein. However, the Order did not include a deadline for compliance with that requirement.

Appellant ("Trustee") was appointed Chapter 7 Trustee of the Debtors' estate. The Debtors filed amended schedules in early July 2017, but did not include an amended schedule C or a declaration of no change.

The Trustee concluded a meeting of creditors on July 12, 2017. The Debtors testified at the creditor meeting that they had not lived in the Property since April 2017; the Trustee responded that the Debtors were not entitled to a homestead exemption. Debtors' counsel then stated that if the Property was sold, the Debtors could not exempt any of the proceeds. Debtor, Mr. Good, replied "it is what it is". The Debtors then informed the Trustee they were surrendering the Property and would not be claiming a homestead exemption. They also promised to file an amended schedule C.

The Trustee marketed and sought approval for the sale of the Property. Through new counsel, the Debtors filed an objection to the sale alleging, among other things, that they were entitled to a homestead exemption as indicated on the schedule C filed in the chapter 13 case. The Trustee responded with an objection to the Debtors' homestead exemption and moved for sanctions. The Trustee argued that the Debtors' claim to a homestead exemption after the sale was contrary to their testimony under oath, and that doctrines of equitable and judicial estoppel were applicable. The bankruptcy court approved the sale, subject to further order regarding the objection to the homestead exemption. At a subsequent hearing, the bankruptcy court overruled the Trustee's objection to the Debtors' homestead exemption, finding that the Trustee's objection was untimely and that, whether or not Debtors filed an amended Schedule C, the relevant date for determining the Debtors' eligibility for the homestead exemption was fixed on the date of the chapter 13 filing pursuant to the federal "snap shot" rule (providing that Debtors did not lose their right to an otherwise valid exemption post-petition if they no longer qualified for an exemption after conversion). The bankruptcy court also decided that neither judicial nor equitable estoppel applied. The Trustee filed a timely appeal, and the BAP affirmed.

Reasoning

The BAP applied a de novo standard of review to the Debtors' right to claim an exemption (a question of law), and an abuse of discretion standard to the ruling finding no equitable estoppel, holding that: (a) the bankruptcy court did not err in finding the Trustee's objection to the Debtors' homestead exemption was untimely; and (b) the bankruptcy court did not abuse its discretion in finding that equitable estoppel was not applicable.

As noted by the BAP, FRBP 4003(b)(1) provides that a party may file an objection to exemptions “within 30 days after the meeting of creditors... is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.” The Court found that, because the Debtors’ case was converted less than one year after entry of the first order confirming their chapter 13 plan, pursuant to FRBP 1019(2)(B) a new time period to object to the claim of exemptions commenced after the conversion.

The Trustee did not file his objection to the Debtors’ exemption until January 29, 2018—well past the 30 days after the creditor meeting was concluded on July 12, 2017. The Trustee nevertheless contended his objection was timely, asserting that the new thirty day time period did not commence since the Debtors failed to obey the Order with regard to amended filings.

The BAP disagreed. The Court found that nothing in the Order or FRBP 1007-1(b) set a deadline for the Debtors to file amended schedules or declaration of no change, therefore nothing kept the Debtors from complying with the Order as long as the case remained open. The BAP also held that, in the absence of an amendment, the Debtors’ original schedule C filed in the chapter 13 case was deemed filed in the converted case under FRBP 1007(c). Consequently, pursuant to FRBP 4003(b), a new time period began running upon conversion of the case, and the Trustee was required to object to the homestead exemption within 30 days of concluding the creditor meeting. The Trustee failed to do so, and the BAP found the objection to be untimely.

The BAP further upheld the bankruptcy court’s ruling that the Debtors were not equitably estopped from asserting the homestead exemption. At the outset, the BAP held that even though the bankruptcy court erroneously applied federal law rather than the elements of equitable estoppel under Washington state law, the elements were substantially the same, therefore the error was harmless.

The BAP went on to consider whether the bankruptcy court had abused its discretion in finding that equitable estoppel did not apply, noting that such an order may be reversed only if the BAP has a “definite and firm conviction that the court committed a clear error of judgment in the conclusion it reached.” The BAP held that the bankruptcy court did not abuse its discretion, referencing the record that the bankruptcy court had found the Debtors’ statements at the creditor meeting “equivocal at most;” that Debtors’ counsel’s statements regarding surrender did not clearly express an intent to amend Schedule C to delete the homestead exemption; that the Trustee had never forced the issue and should have performed further investigation and inquiry; that the bankruptcy court was not convinced that testimony and statements at the creditors meeting were “sufficiently definite to reasonably and foreseeably induce” the Trustee’s reliance; and that the Trustee’s reliance on those statements was unreasonable. Based thereon, the BAP held that the bankruptcy court’s holding was “plausible and supported by inferences drawn from the record.”

The BAP stated that it was “sympathetic” to the Trustee’s position, but that it had discerned no abuse of discretion. The ruling in the Debtors’ favor was affirmed.

Author's Commentary

The BAP’s order was not published. Therefore, while it may be cited for any persuasive value it may have, see Fed. R. App. P. 32.1, it has no precedential value. See 9th Cir. BAP Rule 8024-1. The case may be best read as a word to the wise about relying on informal statements, but also as a subtle rebuke for wasting the Trustee’s time with idle promises; although the bankruptcy court had denied the Trustee’s motion for sanctions without prejudice (and thus the BAP expressed “no opinion” as to whether such a motion should be granted or denied), the BAP’s comment seemed to be an invitation to the bankruptcy court to consider compensating the Trustee for his trouble “should he renew his request.”

These materials were prepared by ILC member Gary Rudolph of Sullivan Hill Rez & Engel, APLC in San Diego (rudolph@sullivanhill.com) with editorial contributions from ILC member Diane C. Stanfield of Alston & Bird LLP in Los Angeles (diane.stanfield@alston.com).

Best regards,
Insolvency Law Committee

Co-Chair

Marcus O. Colabianchi
Duane Morris LLP
mcolabianchi@duanemorris.com

Co-Chair

Rebecca J. Winthrop
Norton Rose Fulbright US LLP
rebecca.winthrop@nortonrosefulbright.com

Co-Vice Chair

Kyra E. Andrassy
Smiley Wang-Ekval, LLP
kandrassy@swelawfirm.com

Co-Vice Chair

Gary B. Rudolph
Sullivan Hill Rez & Engel, APLC
rudolph@sullivanhill.com