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Bellingham Raises Questions, Answers Less

by Edmund S. Whitson III

More with a whimper than the much-anticipated 'roar,' the U.S. Supreme Court issued its opinion in Executive Benefits Insurance Agency v. Arkinson (In re Bellingham), U.S., 134 S. Ct. 2165 (2014). While the Court had the opportunity to clarify and expand its controversial 5-4 decision in Stern v. Marshall, it chose to sidestep the more significant issues confronted in Bellingham and instead set forth a unanimous decision that reaffirms Stern's effect on bankruptcy court jurisdiction and quells concerns raised by Stern about non-Article III counts. Stern held that only district courts had the Constitutional jurisdiction to enter final judgments on fraudulent transfer claims, even though Congress included such claims as one of the enumerated types of 'core' proceedings. (For more information on Stern, please see the October 2012 issue of our newsletter on the firm website).

In Bellingham, the Supreme Court clarified 'Stern claims' to be state law claims that were defined under 28 U.S.C. § 157(b)(1) as having core jurisdiction, but which did not satisfy the Constitutional jurisdiction requirements of Article III. In essence, Stern held that Congress had exceeded the scope of Article III by conferring core jurisdiction on so-called Stern claims. Significantly, while the Supreme Court clarified that Stern claims include state law fraudulent transfer claims brought in federal courts, the Court did not address whether or not Federal fraudulent transfer claims, such as those brought under section 548 of the Bankruptcy Code, also came within the scope of Stern claims.

The most significant issue that the US Supreme Court could have addressed was whether or not parties can impliedly or expressly consent to bankruptcy court jurisdiction involving settlement of a Stern claim.

Instead, the Supreme Court avoided that issue entirely and decided the case instead on the procedural posture of Bellingham whereby, because the district court had in fact conducted a de novo review of the bankruptcy court's decision, the requirements of Article III had been satisfied. While the issue of 'implied or expressed consent' to bankruptcy court jurisdiction over Stern claims may appear to be open question, the Ninth Circuit recently opined that because the Supreme Court had the opportunity to overrule that aspect of Bellingham, and chose not to, Bellingham remains good law at least in that circuit. See Mastro v.Rigby, 2014 WL 4115946 (9th Cir. August 22, 2014).

In Mastro, the trustee for the husband's estate brought an action against the debtor's wife to recover alleged fraudulent transfers of two large diamond rings, gold bars and money worth approximately $1.4 million. After conducting a trial in the bankruptcy court, and a subsequent

appeal by the wife to the district court, the wife and the husband fled to France and refused to return to avoid prosecution and forced turnover of assets. The district court dismissed the appeal under the fugitives-from-justice doctrine, which the wife also appealed to the Ninth Circuit, along with her challenge to the bankruptcy court's jurisdiction. The Ninth Circuit held that because she had consented to the jurisdiction of the bankruptcy court, the wife could no longer challenge the vitality of the judgment based upon Bellingham and Stern.

Bellingham does address, however, a secondary issued raised by Stern as to the so-called 'gap' issue concerning whether or not the bankruptcy court had jurisdiction under Section 157 to enter proposed findings of fact and conclusions of law in core proceedings. Several Courts had held that it did not because that language appears only in the section addressing the bankruptcy court's jurisdiction with respect to 'non-core' proceedings. The Bellingham court clarified that because their holding did not limit the entire scope of Section 157, the bankruptcy court retains jurisdiction to treat core proceedings as 'related to' matters and enter proposed findings of fact and conclusions of law.

While the legal community remained braced for further limitations or restrictions on non-Article III courts, Bellingham offers little more than perhaps a signal that the Court is satisfied that it has addressed its Constitutional concerns—at least for now. The issue of implied or express consent, however, is one that will likely return to the Court after a majority of the Circuits have opined on the issue.

CASE NOTES

Whose Law Applies to Out-of-State Business Entities?

Many Florida businesses are operated through out-of-state business entities such as Delaware corporations or Nevada LLCs, even though the company's business operations may all be in Florida. Whose law, Florida's or the foreign state's, applies when a dispute arises over management of the company? One Florida court has held that with regard to appointment of receivers (or referees) to manage the disputed business, Florida law applies and using Florida law in this circumstance does not violate the business laws of the foreign state. *See Romay v. Caribevision Holdings, Inc., So.3d (2014), WL 4212739 (Fla. 3d DCA 2014).*

Take Caution with Homestead-Related Transactions

In a recent case, a former home of a divorced couple was still homesteaded and owned as tenants in common, even though the former husband no longer lived there and had remarried. The former wife occupied the home under the Marital Settlement Agreement, albeit only until the youngest child of the dissolved marriage graduated from high school. The provisions of the Marital Settlement Agreement requiring sale of the homestead upon graduation of youngest child did not operate as a waiver, but the former husband died intestate with minor children. This gave his present wife a life estate in the property. This case demonstrates that homestead status is a complicated area of Florida law. Care should be taken in lending and conveyance transactions that all proper parties have executed the necessary documentation. *See Friscia v. Friscia, So.3d (2014), WL 4212689 (Fla. 2d DCA 2014).*

Who Is Entitled to Foreclosure Proceeds?

A secondary party who does not file a claim for surplus foreclosure proceedings as required by Florida Statute § 45.031(7)(b) is not entitled to the surplus proceeds even if it filed an answer requesting surplus proceeds be distributed to it. In a recent case, the second mortgage holder filed an answer and the first mortgagee foreclosed. The sale price was enough to pay off the first mortgage and there were excess proceeds. But because the second mortgage holder did not file a proper claim, the excess reverted to the owner. *See Dever v. Wells Fargo Bank Nat. Ass'n, So.3d (2014) WL 4212760 (Fla. 2d DCA 2014).*

A Reflection in Time

by Stephenie Biernacki Anthony, Esquire

Now that my term as President of the Tampa Bay Bankruptcy Bar Association has come to an end, I find myself reflecting on my career to date as a bankruptcy practitioner, beginning with my position as a Law Clerk for the Honorable Alexander L. Paskay, Chief Judge Emeritus.

STEPHENIE BIERNACKI ANTHONY

In May 1997, Judge Paskay took me under his wing and helped to make me the bankruptcy practitioner I am today. Following my two-year clerkship with Judge Paskay, I began my career in private practice with my partner, and now husband, John A. Anthony. If you had asked me 17 years ago where I thought I would be today, I would not have predicted that I would have had the privilege of serving the Tampa Bay Bankruptcy Bar Association and its members as the 2013-2014 Tampa Bay Bankruptcy Bar Association President. And, I certainly would not have predicted that I would be married to John with two children and three stepchildren.

Much was accomplished by the Association during the past year. I hope the 2013-2014 Board will be remembered for its contribution of hundreds of volunteer hours in connection with the startup and staffing of the Tampa Bay Bankruptcy Bar Association's Pro Bono Clinic during its kickoff year, as well as for financial contributions raised at the Tampa Bay Bankruptcy Bar Association's Annual Installation Dinner to benefit of the Bankruptcy Law Educational Series Foundation, Inc. (BLES). This not-for-profit organization promotes bankruptcy legal education and funds pro-bono and other public service projects relating to the practice of bankruptcy in the Middle District of Florida. It was a privilege to serve the Tampa Bay Bankruptcy Bar Association as President, and I couldn't have done it without the support of my wonderful friends and partners at Anthony & Partners. I look forward to continuing this journey together, wherever it may lead.

ANTHONY & PARTNERS NEWS

Attorney John Landkammer is now the President of The Rotary Club of Tampa Bay, which is part of Rotary International, a worldwide organization comprised of more than 1.2 million people from business and professional communities. Rotary International is a century-old service organization founded in the United States. The organization supports charity projects locally and internationally, with a focus on disease eradication. Membership is open to male and female occupational and professional leaders, with the goal of encouraging fellowship, increasing educational opportunities and giving back to the global community. The Rotary Club of Tampa Bay conducts weekly meetings at The Centre Club on South Westshore Blvd. in Tampa.

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