Bank Defeated by Late Filing

Bank refinanced a mortgage. The loan closed on August 26, 2016. Bank recorded its mortgage on October 17, 2016 – 52 days later. Borrowers filed a Chapter 7 bankruptcy case on January 13, 2017 – 88 days after recording. The Chapter 7 trustee sued Bank to strip its mortgage from the property as a preferential transfer.

In order to succeed, the trustee had to show that the mortgage was a transfer, less than 90 days before commencement of the bankruptcy case, of property of the borrower on account of a pre-existing debt. Bank tried to argue that the transfer represented by its mortgage lien took place on August 26 (more than 90 days prior to the bankruptcy) when the borrower signed the mortgage; but, the bankruptcy statute states that such a transfer is deemed to take place when the parties sign only if it is properly recorded within 30 days after signing. If the recording is more than 30 days from signing, the transfer is deemed to take place on the date of recording.

Bank lost its mortgage lien.

USAA Federal Sav. v. Hope, 589 B.R. 914 (M.D. Ga. 2018).

Tax Claim Trumps Entireties Exemption

Property held jointly by a married couple is held in "tenancy by the entireties". The bankruptcy statute exempts property held in tenancy by the entireties from claims of a creditor, unless nonbankruptcy law permits the creditor to satisfy a judgment from such property. Under Maryland law, a creditor of only one spouse may not recover at all from entireties property.

However, under federal law, the IRS may recover a claim against only one spouse from that spouse's one half interest in the entireties property. Where such a tax claim exists against one spouse, the delinquent taxpayer cannot claim the entireties exemption in bankruptcy. The bankruptcy trustee may sell the property in order to pay the IRS claim.

In re Browne, 2018 Bankr. LEXIS 3892 (Bankr. D. Md. 2018).

Claim Follows Embezzled Funds

Bruce Cole was CEO of Mamtek. He embezzled $904,167 from the company, $240,000 of which he used to cure a mortgage default on his Beverly Hills home. Subsequently, creditors of Mamtek commenced an involuntary Chapter 7 case against the company.

The Chapter 7 trustee sought to recover a portion of the embezzled funds from the proceeds of the sale of the Coles' home. The Coles defended by claiming a California homestead exemption, which protects the owner's equity in the home from claims of creditors. The bankruptcy court responded by imposing an equitable lien on the proceeds of the sale in the amount of the funds used to pay the mortgage. This lien was superior to the homestead exemption and allowed the trustee to recover from the sale proceeds.

Strauss v. Cole (In re Mamtek US), 588 B.R. 72 (Bankr. W.D. Mo. 2018).

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