

The Cram-Down

VOL. 4 NO. 3

Tampa Bay Bankruptcy Bar Association Newsletter

April 1, 1994

BAYNES TO LITIGANTS: CHILL OUT

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In the Matter of:

Case No. 94-99941-8B7

A.T.S. ZORK

Debtor(s)

ORDER ON MCGILICUDDY MOTION TO LIFT STAY

THIS CAUSE comes on to be heard upon McGillicuddy's Motion to Lift the Stay on the homestead of the Debtor. McGillicuddy obtained a judgment against the Debtor after a jury awarded him \$1,215.36 for injuries caused by Debtor's dog, Friday, biting the movant.¹ Debtor has filed a motion to avoid the judgment lien because it impairs his homestead exemption. McGillicuddy and the Trustee filed objections to exemption of homestead in that prior to the bankruptcy but subsequent to Debtor's purchase, the City of Bowling Green incorporated the homestead into the city limits thereby converting the 15 acre exemption into a half-acre exemption.

To make matters worse, the morning before filing the petition, the Debtor's non-debtor (wealthy) spouse was tragically run over by a pie wagon on State Road 60. Debtor has sought to bury his spouse in the mausoleum on the homestead. The Trustee and McGillicuddy object to this interment on property which may not be exempt and on which there is a lien which may not be avoided.

Debtor argues his property is homestead but if he is incorrect his wife's body is at least property of the estate and should be placed in the mausoleum which Trustee argues is property of the estate. Trustee states Mrs. Zork is no longer a benefit to the estate and will abandon her. McGillicuddy does not object and states that if the deceased is allowed to be placed in the mausoleum it will reduce the value of the nonexempt property. Debtor objects to the Trustee abandoning his deceased spouse but argues there is sufficient money in the estate to preserve her until a final evidentiary hearing on the objection to exemption is held.

The Florida Supreme Court in Dunahoo v. Best, 200 So. 541 (Fla 1941) held a surviving spouse had a property right in his wife's body. Later, that Court modified this position for a possessory one sufficient to maintain a cause of action for in-

terference with that right. Kirksey v. Jernigan 45 So.2d 188 (Fla 1950); see also, Restatement (Second) of Torts Sec. 868 (1979). Section 541 of the Bankruptcy Code clearly provides that any cause of action of the Debtor against the pie wagon driver or rights in Mrs. Zork's estate at the time of the filing of the case is property of the estate. To allow the remains of Mrs. Zork to become res derelicta when she has provided the bankruptcy estate with the assets of her demise and her probate estate would be unequitable. Corpus humanum non recipit estimationem. We will keep everyone on ice (at the estate's expense) until the Court hears the Objections to Exemptions. Motion denied.

DONE AND ORDERED in Tampa, Fla. this First Day of April, 1994.

¹Dog survives, but he is exempt.

THOMAS E. BAYNES, JR.
U.S. Bankruptcy Judge



MOTIONS BY FAX - NEW LOCAL RULE

The Deputy Clerk of the Bankruptcy Court announces the promulgation of new Local Rule 14.4:

MOTIONS FOR RECONSIDERATION VIA FACSIMILE

(a) Motions for Reconsideration may be filed with the Court via facsimile transmission at (813) 555-1212.

(b) A standard Order Denying the Motion will be faxed to Counsel for Movant within twenty-four hours of the filing of said Motion.

INSIDE

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PRESIDENT'S MESSAGE

This is my last opportunity to have a President's Message published in The Cram-Down. Accordingly, I do not want to miss this chance to advise you of some of the things which are going on in your bankruptcy bar association.

First of all, I personally want to thank all of you for so generously authorizing the use of your dues to send all of your officers and the entire board to Budapest next September for Judge Paskay's international bankruptcy seminar. Thanks to your remarkable generosity, the Tampa Bay Bankruptcy Bar Association will undoubtedly be the bar association with the most representatives attending the seminar. Believe me, from the moment we board the chartered Concorde to the very last hour of the two-week trip, we will be thinking of you.

Second, I want to alert you to our great good fortune in landing two very special speakers for our annual banquet this year. We believe this will be the first time they have appeared together on the same program. The speakers are Rush Limbaugh and Lorena Bobbitt. His topic will be "The Use of the 1111(b) Election in Bringing Democracy to Third World Countries." Ms. Bobbitt will speak on "The Benefits of Mediation in Resolving Disputes." As you can tell, this year's banquet is not to be missed.

Finally, I would like to report on a special project which our community service committee is undertaking. With the able leadership of Jay Passer and Harley Riedel, this committee has really outdone itself. Believing that education can never come too early, the committee is working with the Hillsborough County school system in developing a program to teach

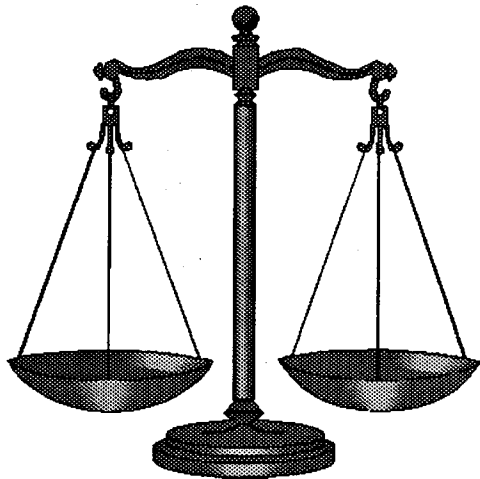
preschoolers about bankruptcy. Among other things, principles of hide-and-seek will be used to teach would-be trustees how to find concealed assets. Musical chairs will be used to demonstrate the intricacies of the bankruptcy claims process. Other games and toys will also be used as the program regresses.

Reading this report, you undoubtedly are wondering how you, too, can become a member of your association's board of directors. All you need to do is contact Tom Mimms, who is the chair of the nominating committee this year. He will explain the process which includes, as a condition precedent, prior service as a board member on our board.

While there is no more free space available on the Concorde for this year's trip to Budapest, Judge Baynes is planning a similar excursion in 1995. As you probably have heard, he has been a pioneer in bringing a real innovation to dispute resolution in bankruptcy. He frequently gives national seminars and presentations at judicial conferences on his idea and, of course, he has been primarily responsible for creating a program locally to implement his new approach. Because of his commitment to this concept, he is planning a two-week seminar next year at Bok Tower to teach the necessary skills and to engage in practice exercises. The title of the seminar, not surprisingly, is "The Advantages and Techniques of Bankruptcy Meditation."

Thank you for allowing me to serve as your president this year.

Edward M. Waller, Jr.
President



THANKS TO YOU: The T.B.B.A. Board of Directors wishes to thank its dues-paying members for sponsoring its special exchange program with the Norwegian Bankruptcy Bar Association. The event occurred in Lillehammer during February. Harley Riedel and Jay Passer said they learned a lot at the program. Roberta Colton was last seen by our reporters cross-country skiing due east from inside Lillehammer; however, rumor has it that she was recently spotted somewhere in the Mongolian highlands continuing the same brisk pace.

NEWS BULLETIN: Judge Glenn abruptly held 38 lawyers in his courtroom in contempt, and ordered them jailed for a week. In a published opinion, Judge Glenn noted, "Every once in a while, its fun to shake 'em up." Speaking from his jail cell, Sanford Solomon opined that non-Article III judges lack contempt power. Cram-Down correspondent Mike Horan reports that Judge Glenn will continue to treat fellow Duke alumni with his usual decorum.

NEW YEARS RESOLUTIONS OF THE JUDGES

The Cram-Down obtained from a source known only as "Deep Gavel" a secret draft of the 1995 New Year's Resolutions for each of our local bankruptcy Judges.

Judge Paskay: to address out-of-town attorneys in a thicker accent.

Judge Baynes: to hear non-Celotex motions before they are moot.

Judge Corcoran: to give attorneys the option of introducing themselves from right to left.

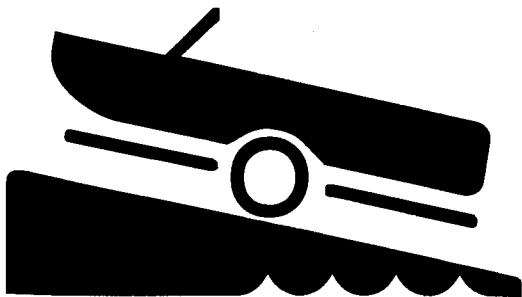
Judge Glenn: to develop at least two indosyncracies for local attorneys to complain about.

BANKRUPTCY COURT RELOCATION ANNOUNCED

The inadequacy of the Tampa Division's present facilities recently led to the formation of a blue ribbon commission to select a suitable relocation site. Highway expansion and nearby construction has rendered the Memorial Highway facilities inaccessible and has reduced parking availability. The opulent and spacious courtrooms recently furnished for Judges Corcoran and Glenn have exhausted all available square footage. As chair of the relocation committee, Judge Baynes was directed to locate a new site that would respond to present inadequacies. And at a surprise news conference yesterday morning, Judge Baynes announced that the Tampa Division would be relocating to Lake Wales, Florida. The new facility will be located on the banks of the Peace River, approximately seventy miles from downtown Tampa. Residents of the Happy Trails Mobile Home Park will be moving out as of April 11 to make room for the influx of bankruptcy personnel.

Most were surprised but pleased with the news of the Bankruptcy Court's relocation to Lake Wales. Mrs. Baynes, a relocation commission member and citizen of Lake Wales, noted, "There's virtually no traffic on State Route 60 once you get past Bartow." The TBBBA's endorsement resolution also noted that parking spaces are in abundance in eastern Polk County, and that Lake Wales rents are much more reasonable than those offered in Tampa. Pinellas County lawyers generally expressed relief at the news. Willie Ruiz commented, "We're very pleased with the news. It would have been very inequitable to relocate Bankruptcy Court in downtown Tampa." John Anthony, who has taken a brief sabbatical to work as an advertising consultant for the Lakeland-based Florida Citrus Commission, predicted that the move would be greeted with a "rush" of enthusiasm.

Judicial commentary on the move was mixed but generally favorable. Judge Glenn noted that eastern Polk County would provide a peaceful atmosphere for him to read the thousands of legal memoranda that will undoubtedly clog his files in the coming months. Signaling some concern Judge Corcoran asked, "Is Lake Wales closer to Tampa or Orlando?" Upon returning from the Annual United Nations Bankruptcy Conference in Geneva, Judge Paskay commented, "Move the Tampa Division to Wales! Terrific! I have tennis buddies all over Great Britain." Judge Baynes, long-time resident and favorite son of Lake Wales, has commuted to Bankruptcy Court daily since 1987. Judge Baynes could not be reached this afternoon for comment. However, Baynes' fishing buddies said that his experience as a commuter had no influence on the site selection.



CORE IS DEAD

Washington, DC - April 1, 1994:

Today, the Supreme Court, in its Easter recess, made little of the notice of the death of Core, a major contributor to the jurisdiction of the United States Bankruptcy Courts throughout the nation. It appears it died late yesterday during major surgery undertaken to correct a massive diminishment of influence due to the complete apathy of the legal community. Its exact age is not known but close friends have estimated it was conceived sometime in 1984. While it did not, in recent years, maintain any fixed abode, it is estimated that it was housed, from time to time, inconspicuously, in various courtrooms throughout the United States of America. The cause of death cannot be determined at this time, pending an autopsy, but it appears various authorities have indicated the possibility of legal enervation.

The word of the death, sometimes rumored in various legal opinions, was officially disclosed to a few reporters several minutes after a full day of no known anxiety and general anonymity by various judges of the land. At the end, there was no one at the bedside. The Assistant to Assistant Deputy Assistant Attorney General of the United States and others representing various judicial forums throughout the world had no comment at this time. Various senior executives at the White House, The Congress, and the Administrative Office of the U.S. Courts could not be found for comment as to the passing.

Final rites will be set forth in the next advance sheet of West Bankruptcy Reporter.

MOVERS AND SHAKERS

Movers

Scott Stichter will soon take his hilarious impersonation routine to Bay Area comedy clubs. Scott is best known for his impersonation of Don.

Harvey Muslin has petitioned the Bankruptcy Court to hold hearings and Section 341 meetings on July 4, 1994. Harvey has already purchased two pair of red, white and blue boots for the occasion.

Shakers

In an effort to increase the audience for TBBBA seminars, the Association has commenced negotiations with the world wrestling alliance to sponsor a joint program. Tentatively scheduled for the National Guard Armory, the program will be titled: "Rambo Bankruptcy Litigation for the '90's - A Tension Release Mechanism." Faculty will include Don "The Sadist" Stichter and "Evil" Ed Waller versus Roberta "Rockem Sockem" Colton and Tom "The Terminator" Mimms.

Letter

Those of us in the legal profession may assume that the extremes of political correctness are limited to the halls of academia. Nothing could be further from the truth, as shown by this letter recently purloined from a file maintained by the Deputy Clerk of the Bankruptcy Court.

Dear Kilcoyne Person:

On behalf of the Pinellas Park Paralegals for Political Correctness (P⁴C), I respectfully request that you change your name. While we heartily applaud your good efforts as Deputy Clerk of the Bankruptcy Court, you cannot deny that your name conjures images of all that is wrong in post-modern America. Indeed your name itself - Chuck Kilcoyne - implies that the Bankruptcy Court is nothing but an insensitive and oppressive patriarchy.

Can you honestly disagree? Just break down your name into its constituent parts:

(1) "Chuck" - implies chuck roast, chuck steak, and clogged arteries. Can one avoid images of animals led to slaughter, agricultural run-off, and tubby bodies at Bally's? And is not the name overtly masculine? Why not "Brutus"!

(2) "Kil" - military industrial complex, cruel and unusual punishment, laboratory animals. Must I shame you with more? Or would that be "overkill"?

(3) "Coyne" - phonetically, of course, "coin". Coins are money. Can a more oppressive word staring a bankruptcy debtor in the face be imagined! Must we remind our debtors (and for that matter creditors who are not going to get a nickel) of the capitalist rat race? Of greed and avarice in post-industrial North America?

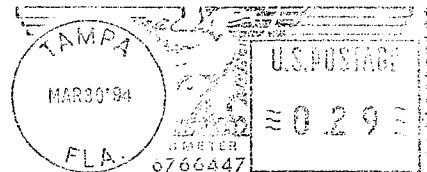
I say we should fire your ass - unless you change your name to Robin Lovebarter.

Very Truly Yours,
Pat Persnickety
P⁴C

TBBBA DOCKET: FUTURE PROGRAMS

DATE	TITLE	SPEAKERS	LOCATION
April 12, 1994 (TBA)	State & Federal Legislation Update	Judge Paskay Member of Legislature	Hyatt Regency Downtown Tampa
May, 1994 (TBA)	Strict Constructionism & the Constitutional Right to Bankruptcy: A Mandate For Unconditional Cram-Down In The Single Asset Case	David Epstein	TBA
June 17, 1994 (Friday)	Annual Dinner	Rush Limbaugh Lorena Bobbitt	University Club
November, 1999	Expeditious Handling of Bankruptcy Appeals	Robin LoveBarter	New Federal Courthouse

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