



The Cram-Down

Vol. 6 No. 3

Tampa Bay Bankruptcy Bar Newsletter

December, 1996

PRE-SEMINAR WORKSHOP:

“PRIMER ON BANKRUPTCY- HOW NOT TO GET LOST IN A BANKRUPTCY COURT”

For the second year in a row, the Stetson University College of Law will proudly hold a Pre-Seminar Workshop entitled “Primer on Bankruptcy-How Not to Get Lost in a Bankruptcy Court.” The Pre-Seminar Workshop will be held on December 5, 1996, with registration beginning at 12:30 p.m. and the Workshop commencing at 1:30 p.m. The one-day Workshop is held on the afternoon prior to the Twenty-First Annual Bankruptcy Seminar chaired and moderated by The Honorable Alexander L. Paskay, Chief Bankruptcy Judge for the Middle District of Florida, at the Sheraton Sand Key Resort Hotel in Clearwater Beach, Florida.

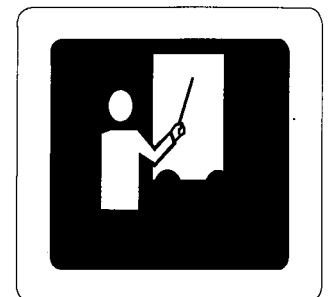
Last year, the Pre-Seminar Workshop enjoyed remarkable success, with over 100 attorneys, paralegals and legal assistants in attendance. This year, Jan Majewski, CLE Director of the Stetson Office for CLE, expects an even higher number of attendees. “The number of people that have already registered for the Workshop is running ahead of last year’s figures at this time.” Mr. Majewski attributes the popularity and success of the Workshop to the fact that there is an obvious need for this type of education in the legal community.

Judge Paskay initiated the Pre-Seminar Workshop to assist attorneys, paralegals, and legal assistants with limited experience in the field of bankruptcy. “With the ever growing participation of paralegals and legal assistants in the bankruptcy process, it became evident that it would be helpful not only to them, but also to the Courts, to present an educational program dealing with the fundamental basic concepts of bankruptcy. In addition, the program is designed to assist attorneys who have no or limited experience with the bankruptcy process. The program is basically designed to give practical guidelines and, as the title indicates, how not to get lost in the bankruptcy process. To that end, we have included Mr. Kilcoyne, whose

presentation will deal with the mechanical aspects of the process, such as filing requirements, proper form and service of motions and orders, and the payment of filing fees.”

The Workshop will be conducted by Judge Paskay, Charles G. Kilcoyne, Deputy-In-Charge of the Tampa Division of the United States Bankruptcy Court for the Middle District of Florida, and The Honorable Paul M. Glenn, Bankruptcy Judge. Judge Paskay will commence the Workshop with an introduction to bankruptcy terminology, the historical developments of the Bankruptcy Code and the Bankruptcy Courts, the office of the U.S. Trustee, the Federal Rules of Bankruptcy Procedure, the Local Rules and Chapter 7 liquidation cases. Mr. Kilcoyne will follow Judge Paskay with comments on the nuances of practicing bankruptcy law in the Tampa Division and Judge Glenn will conclude the Workshop with a discussion of basic bankruptcy concepts, including exemptions, discharge, objections to discharge, exceptions to discharge and Chapter 13 cases.

The tuition is either \$415 for the Seminar and the Workshop or \$90 for the Workshop only. Registration forms and payment should be submitted to the office for CLE, Stetson University College of Law, 1401 61st Street So., St. Petersburg, Florida 33707. Any inquiries should be directed to the same office at (813) 560-7830.



**TAMPA BAY BANKRUPTCY
BAR ASSOCIATION
MEMBERSHIP SURVEY**

RESULTS

Year admitted to Florida Bar?

73,74,76,76,82,83,83,84,84,85,85,87,88,90,91,91

Size of law firm:

7 Solo practitioner 2 2-4 attorneys 2 5-15 attorneys
2 16-25 attorneys 0 26-50 attorneys 3 50+attorneys

Membership dues paid by:

5 Self 8 Firm for all attorneys 2 Firm for partners
Other (specify): 1 - Firm for Bankruptcy Attorneys

**To what extent are you satisfied with the services
and activities provided by the TBBBA?**

4 Very well 8 Well 4 Moderately Well
0 Somewhat 0 Not at all

**I am a member of the following number of TBBBA
committees/sections:**

11 None 4 One 1 Two 0 Three 0 Four or more

**If you do not participate on a TBBBA committee,
please indicate the following:**

0 Lack of interest 4 Lack of time 1 Meeting location
0 Meeting time 4 Lack of information
Other (specify): 3: Uninformed, in Ft. Myers; just
joined; politics

**Have you attended the membership luncheons, and
if yes, with frequency?**

7 Yes 4 Regularly 1 Sporadically 0 No
4 Once a year

**How important is each of these in your decision to
attend the membership luncheons. Rate as to
importance, with (1) having the highest degree of
importance to you. NUMBER OF RESPONSES
INDICATED 1/2/3/4**

9/4/1/0 Program topics 2/8/4/0 Program speaker

1/0/0/11 Approval of direction of

2/2/8/0 Networking employer

**If you have not attended a membership luncheon,
please complete: (check more than one if appropri-
ate)**

0 Lack of interest 3 schedule conflict

1 Time required out of office

1 Too little education value

0 Poor schedule of events

2 Location

Other (specify): 2- No CLE; just joined

**I am a member of the TBBBA for the following
reasons:**

Yes No

15 1 An opportunity to serve and promote
the legal profession

13 3 An opportunity to become better
known among lawyers

15 1 Access to activities and
communications

13 3 Continuing Legal Education

1 15 Requirement, policy or
encouragement of law firm

Other (specify):

Do you regularly read the TBBBA Newsletter?

15 Yes 1 No

**Which of the following would you suggest for
future issues of the TBBBA Newsletter?**

3 No changes 2 Editorials

6 Article from other professionals

3 Equipment & technology update 2 Lawyer
profiles

1 Humorous articles

7 In depth analysis of legal issues

Other (specify) 3 - more opinions like on pages
4-5; letters from judges - what they like and what
they don't like; summary/digest of recent decisions of
local judges

**The TBBBA currently offers a wide variety of
programs and services. Please indicate the impor-
tance to you. Also indicate in the left column the four
most important services to you with (1) being the
most important.**

	Very Important		Not Important	
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
A. Committees	2	6	4	1
B. Cont. Legal Ed.	11	6	1	1
C. General Information to lawyers	7	7	1	0
D. Newsletter	7	7	1	0
E. Membership Lunch	6	6	2	0
F. Membership Directory	7	5	2	0
G. Public Service Opportunity	0	4	7	3
H. Support Staff Training	0	5	6	1

Check the following services you feel the TBBBA should offer:

- 1 Car rental discounts 2 Dental Insurance
- 2 Group retirement/pension
- 5 Law office management resources
- 1 Life insurance
- 4 Increased public service opportunities
- 3 Computer training for Lawyers
- 7 Computerized legal research capabilities

If the availability of legal research, provided by one of the popular providers, was available through contact with the TBBBA, would you use it?

10 Yes 5 No

What services does the TBBBA provide (if any) that should be discontinued?

- 0 Committee 0 Continuing Legal Education
- 0 General Information to lawyers 0 Newsletter
- 1 Membership Luncheon 2 Membership Director
- 0 Public Service Opportunity 1 Support Staff Training
- 10 None of the above

The successive number of years a member serves as a TBBBA board member is __ years. Should this be limited?

6 Yes 7 No

Should the limit be:

- 0 one, two year terms 7 two, two year terms
- 2 three, two year terms

Other comments you may have on the TBBBA including but not limited to expansion of services:

- . Jurom Junkins - Pro Bono - Work to match volunteers with petitions for relief filed Pro Se.
- . Monthly meetings/luncheons should be held close to court/downtown Tampa - too inconvenient for St. Pete/Clearwater.
- . Please send my newsletter prior to deadline.
- . Judicial liaison program should be improved, better organized to filter problems back and forth between bench and bar.

Debtor's Attorney Sanctioned by 10th Circuit
By Dennis LeVine

The 10th Circuit recently upheld a sanction of a debtor's attorney for filing a Chapter 11 case which was eventually dismissed on bad faith grounds. In Nursery Land Development, Inc., 91 F.3d 1414 (10th Circuit 1996), the FDIC held a foreclosure judgment on a parcel of real property. The day before the foreclosure sale, the debtor acquired the property by quit claim deed and filed Chapter 11, using a handwritten petition prepared by its attorney. The FDIC moved for relief from the stay and the imposition of sanctions. At the hearing, the debtor consented to the stay of relief.

The Court found that debtor had only one asset, no employees, no income, and no unsecured creditors. The debtor had not filed schedules, had not taken any steps to comply with the Court's orders concerning the debtor in possession. The Bankruptcy Court assessed sanctions of \$9,526.00 against the debtor's principal and the debtor's attorney. The 10th Circuit found that the Bankruptcy Court had sufficient evidence to determine that the specific purpose of the filing was to frustrate the FDIC's efforts to foreclose on property and, therefore, upheld the sanction. The 10th Circuit also found that the sanction was not clearly excessive.

**THE TAMPA BAY
BANKRUPTCY BAR ASSOCIATION**

Chair Roberta A. Colton
President..... Jeffrey W. Warren
Vice President Michael P. Horan
Secretary Dennis J. LeVine
Treasurer Kathleen S. McLeroy

DIRECTORS:
Russell M. Blain
John D. Emmanuel
Zala L. Forizs
Ginnie Van Kesteren
Sara L. Kistler
Lynn V.H. Ramey
Allan C. Watkins
Donald A. Workman

POST CONFIRMATION QUARTERLY FEES

By Ben Lambers
Office of the U.S. Trustee

Chief Bankruptcy Judge Alexander L. Paskay recently reversed his position on the accrual of quarterly fees post-confirmation. In Today's Woman of Florida, Inc., case number 95-4145-8P1 (docketed November 15, 1996), Judge Paskay held that, "By reason of the recent amendment to Public Law 104-91, the fees under 28 U.S.C. § 1930(a)(6) continue to accrue post-confirmation until entry of the final decree, or dismissal or conversion, whichever occurs earlier."

On January 26, 1996, Congress amended 28 U.S.C. § 1930(a)(6) to read, "... a quarterly fee shall be paid to the United States trustee... in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first." Judge Paskay initially held in In re C n' B of Fla., Inc., 198 B.R. 836, 840 (July 17, 1996), that, "the 1996 Amendment of § 1930(a)(6) requires payment of quarterly fees only in aborted Chapter 11 cases, when the case is either dismissed or converted, and does not apply in successful and substantially consummated Chapter 11 cases...."

However, on September 30, 1996, Congress passed Public Law 104-208 which provided, "Section 101(a) of Public 104-91, as amended by section 211 of Public Law 104-99, is further amended by inserting: Provided further, That notwithstanding any other provision of law, the fees under 28 U.S.C. 1930(a)(6) shall accrue and be payable from and after January 27, 1996, in all cases (including, without limitation, any cases pending as of that date), regardless of confirmation status of their plans' after 'enacted into law'." (Emphasis added.) It was in reliance on this clarifying amendment, that Judge Paskay reversed his position.



ANNOUNCEMENTS

Due to the recent increase in Chapter 7 case filings, The Office of the United States Trustee has determined that it is appropriate to expand the chapter 7 trustee panels in all divisions of the Middle District of Florida. Accordingly, the following Public Notice has been widely published throughout the Middle District. Although the number of available positions has not been determined, any trustee appointments made in the Tampa and Fort Myers Divisions will be on a part-time basis. The deadline to submit applications is December 10, 1996, and interviews of selected candidates will be conducted in January 1997.



PUBLIC NOTICE APPOINTMENT TO PANEL OF CHAPTER 7 TRUSTEES

The Office of the United States Trustee is seeking resumes from persons wishing to be considered for appointment to the panel of trustees who administer cases under chapter 7 of the Bankruptcy Code. The appointment will be for cases filed in the United States Bankruptcy Court for the Middle District of Florida. Chapter 7 trustees receive compensation and reimbursement for expenses pursuant to 11 U.S.C. Section 330, in each case in which they serve.

The minimum qualifications for appointment are set forth in Title 28 of the Code of Federal Regulations at part 58. To be eligible for appointment, an applicant must possess strong administrative, financial, and interpersonal skills. Fiduciary experience or familiarity with the bankruptcy area is desirable but not mandatory. A successful applicant will be required to undergo a background check, and must qualify to be bonded. Although chapter 7 trustees are not federal employees, appointments are made consistent with Federal Equal Opportunity policies which prohibit discrimination in employment.

Persons interested in serving in the Ft. Myers or Tampa Divisions should forward their resume to the Office of the United States Trustee, Attn: Sara L. Kistler, 4919 Memorial Highway, Suite 110, Tampa, Florida 33634. Persons interested in serving in the Jacksonville or Orlando Divisions should forward their resume to the Office of the United States Trustee, Attn: Kenneth C. Meeker, 135 W. Central Boulevard, Suite 620, Orlando, Florida 32801. All resumes will be kept confidential and should be received on or before December 10, 1996.

DID YOU KNOW —

DENNIS J. LeVINE, P.A., is seeking an associate with 2-5 years experience. Resumes in confidence to P.O. Box 707, Tampa, FL 33601.

About 60% of the U.S. Trustee program's budget is generated by quarterly fees paid by debtors in Chapter 11 cases.

The Welfare reform bill recently signed contains a further exception to discharge under new 11 USC §523(a)(18) for child support obligations owed or assigned to a state or municipality effective as to new cases filed on or after Aug. 22, 1996.

Your association is working on developing a home page on the world wide web.

- Lynn Ramey, Editor

THE TWENTY-FIRST ANNUAL
SEMINAR
ON
BANKRUPTCY

LAW AND PRACTICE
December 6-7, 1996

*Sheraton Sand Key Resort Hotel
Clearwater Beach, Florida*

Seminar Chair:

Hon. Alexander L. Paskay
Chief Bankruptcy Judge, Middle District of Florida

Stetson University College of Law, founded in 1900, is Florida's oldest law school. It is an integral part of Stetson University, founded in Deland in 1883 as Florida's first private university. The College of Law was moved to St. Petersburg, Florida in 1954. It is fully accredited and offers a full-time, three-year graduate program leading to the Juris Doctor degree. The College of Law provides continuing legal education programs for regional, state, and nationwide audiences. Annual programs are offered in bankruptcy law, higher education, police administrative issues, labor law, school law and other areas of interest. Please contact the Stetson Office for Continuing Legal Education for a complete schedule.

LECTURERS AND PANEL MEMBERS

BONNIE KAY DONAHUE - Womble, Carlyle, Sandridge & Rice, Winston-Salem, NC

WILLARD D. HORWICH - Adjunct Professor of Tax Law, Golden Gate University Masters in Tax Program, Los Angeles, CA

LILLIAN E. KRAEMER - Simpson, Thacher & Bartlett, New York, NY

HON. WILLIAM H. GINDIN, Chief U.S. Bankruptcy Judge, Trenton, NJ

HON. RAY R. GRAVES, U.S. Bankruptcy Judge, E.D. MI

GEORGE M. TREISTER, Of Counsel, Stutman, Treister & Glatt, Los Angeles, CA

BARRY L. ZARETSKY, Professor, Brooklyn Law School; Of Counsel, Arnold & Porter, New York, NY

**REGISTRATION AND LOCATION
INFORMATION**

SEMINAR TUITION covers admission to all sessions, a set of program materials, luncheons, refreshment breaks and a reception. Materials include an up-to-date edition of the Bankruptcy Code and Bankruptcy Rules, a loose-leaf binder with detailed lecturer outlines, and other appropriate information. "Early Bird" tuition through November 4, 1996 is: \$325 Seminar Only; \$390 Seminar & Workshop. After that date, tuition is: \$350 Seminar Only; \$415 Seminar & Workshop.

WORKSHOP TUITION: If you wish to attend the workshop only, the tuition is \$90. The workshop tuition includes admission to the session, a set of workshop materials and refreshment break.

GUEST MEAL TICKETS: If you wish to bring a guest to the luncheons or the reception, tickets are available at \$18 for each event. (These fees admit the guest to meal functions only; guests cannot attend the seminar lectures.) Reserve your guest meal(s) on the registration form and include payment with your registration.

TO REGISTER: Phone/fax registrations will be accepted with credit card payment. Please ask for Barbara Holcomb, Conference Registrar. **Phone: (813) 562-7830; Fax: (813) 347-4183.**

CANCELLATIONS: Registrations canceled by 5:00 p.m. on Nov. 29, 1996, will be refunded less a \$75 service charge (\$20 for Workshop only registrations). There will be no refunds made after that date. However, substitutions may be made at any time.

LOCATION: The Sheraton Sand Key Resort Hotel, 1160 Gulf Blvd., Clearwater Beach, Florida. **Phone: (813) 595-1611.** Special Stetson Seminar rate is **\$85 per night, Single/Double. Cutoff date: November 4, 1996.** After that date, room reservations will be on a space available basis. We strongly urge you to make your reservations directly with the hotel as soon as possible. Inform the hotel that you are attending the Stetson Bankruptcy Seminar to receive the special rate.

CLE CREDIT: Application has been made to the Florida Bar for CLER credit. CLE accreditation for some other states may require an additional fee. For further information, please contact the Stetson CLE Office at (813) 562-7830.

SPECIAL NEEDS: If you require any aids or services, as addressed in the Americans with Disabilities Act, to attend this program, please contact Barbara Holcomb, Conference Registrar, (813) 562-7830, at least two weeks prior to the conference.

PROGRAM CANCELLATION: In the unlikely event this program is canceled, registration fees will be completely refunded. The sponsor will not be responsible for other costs incurred by registrants, including travel and hotel accommodations.

INTRODUCTION

SEMINAR: Stetson University College of Law, St. Petersburg, Florida, is proud to announce its Twenty-first Annual Bankruptcy Seminar to be held at the Sheraton Sand Key Resort Hotel, Clearwater Beach, Florida, on December 6-7, 1996. The Seminar is designed for all practitioners who desire to maintain bankruptcy as their field of expertise as well as general practitioners who encounter bankruptcy issues in their practice. The Seminar faculty includes nationally known experts in the field of bankruptcy who will give an in-depth analysis of the changes brought about by Congressional action and the most recent case law.

PRE-SEMINAR WORKSHOP: A one-day Pre-Seminar Workshop entitled "Primer on Bankruptcy-How Not to Get Lost in a Bankruptcy Court" will be held on December 5, 1996. The workshop is designed for those with limited experience in bankruptcy practice, and will be conducted by the Hon. Alexander Paskay, Chief Bankruptcy Judge, and Bankruptcy Judge Paul M. Glenn.

SEMINAR SCHEDULE

THURSDAY, December 5, 1996

12:30 Registration

1:30 - 5:00 **Primer on Bankruptcy: How Not to Get Lost in a Bankruptcy Court** — *Hon. Alexander Paskay; Hon. Paul Glenn*

PRE-SEMINAR WORKSHOP

FRIDAY, DECEMBER 6, 1996

8:00 REGISTRATION

9:00 **Recent Developments in Bankruptcy**
George M. Treister

9:45 **Highlights of Consumer Bankruptcy Trends and Current Issues**
Bonnie Kay Donahue

10:30 BREAK

10:45 **Matrimonial Issues §523 (a) (5) and (15): Jurisdiction, Burden of Proof, Custody Disputes**
Hon. William H. Gindin

11:30 **Ethical Issues Involving Case Professionals and Other Court Appointed Parties in Chapter 11; Who is Disinterested; Are Real Estate or Business Brokers Professionals?**
Lillian E. Kraemer

12:15 LUNCH

1:30 **Issues of Dischargeability; §523 (a) (2) (4) (6) (7) (8) and (9)**
Hon. Ray R. Graves

2:15 **Internal Revenue Code and the Bankruptcy Code; Procedures to Solve Tax Problems Pre-Bankruptcy; Determination of Tax Liability of the Debtor §505; Impact of *Seminole Tribe v. Florida* on the Court's Jurisdiction; Sovereign Immunity §106; Dischargeability of Federal Taxes §523 (a) (1)**
Willard D. Horwich

3:00 BREAK

3:15 **Preferential and Fraudulent Transfers §547; Operating Elements of a Voidable Preference §547 (b); Insider Preferences—What Happened to *DePrizio*? Defenses §547 (c); Contemporaneous Exchange; Transfers in the Ordinary Course of Business; New Value Exception; Payment of Domestic Obligations §547 (7)**
Prof. Barry Zaretsky

4:00 **Questions and Answers: Entire Panel**

4:45 ADJOURN

5:00 - 7:00 RECEPTION

SATURDAY, DECEMBER 7, 1996

8:00 REGISTRATION

9:00 **Recent Developments (continued)**
George M. Treister

9:45 **Use of Cash Collateral; What Adequate Protection is Adequate; How Do You Deal with a Hostile Secured Creditor; Significance of the Absolute Priority Rule; New Value Exception**
Hon. Ray R. Graves

10:30 BREAK

10:45 **Single Asset Real Estate Chapter 11; Is Two Party Dispute Attack on the Initial Filing Dead? Impact of the 1994 Amendment §362 (d) (3)**
Hon. William H. Gindin

11:30 **Executory Contracts §365; Commercial Leases Shopping Center Leases; When Is a Lease No Longer Property of the Estate §541 (b) (2); Conditions for Assumption §365 (b) (1) (A) (B) (C); May a Commercial Lease Be Assumed as Part of the Plan (see §1122 (b) (2)); Debtor's Duties Prior to Assumption §365 (d) (3); Non-Assumable Executory Contracts**
Prof. Barry Zaretsky

12:15 LUNCH

1:30 **Treatment of Tax Liens; Secured v. Tax Priorities §507 (a) (8); Tax Penalties Interest on Delayed Payment Under the Plan; Treatment of Postpetition Taxes §503**
Willard D. Horwich

2:15 **DIP Financing—Defensive v. Offensive Strategies**
Lillian E. Kraemer

3:00 BREAK

3:15 **Bankruptcy Crimes and Ethics: Exposure for Professionals Under Aiding, Abetting and Conspiracy Charges**
Bonnie Kay Donahue

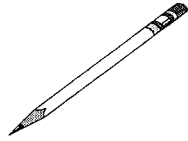
4:00 **Questions and Answers: Entire Panel**

4:45 ADJOURN

CASE NOTES

Eleventh Circuit Approves Sale of Non-Divisible Homestead Property that Exceeds Constitutional Acreage Limitations

By Alfred A. Colby
Ketchey Horan, P.A.

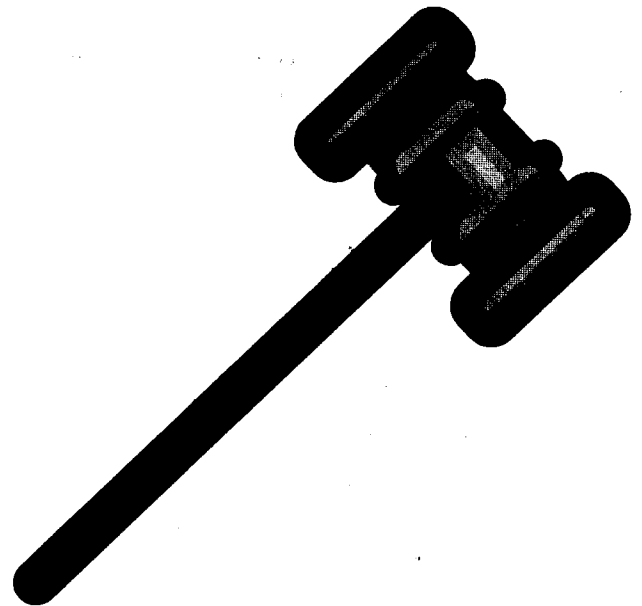


The Eleventh Circuit recently ruled that a Chapter 7 trustee could sell homestead property and allocate the proceeds between the Debtor and Creditors where the area of otherwise non-divisible property exceeds the acreage limitation set forth in Article X, Section 4, of the Florida Constitution. Englander v. Mills (In re Englander), 95 F.3d 1028 (11th Cir. 1996). Englander involved Debtors that owned a lake front home on 1.05 acres of land within the municipality of Winter Park, Florida (the "Property"). Id. at 1029. Because the area of the Property exceeded the one half acre limitation contained in the Florida Constitution, the Debtors, pursuant to Section 222.02, Florida Statutes, designated a portion of the Property as non-exempt and subject to sale for the benefit of creditors. Id. The area designated by the Debtors had no access to roads, utilities or the lake and was completely surrounded by the portion of to the Property claimed as exempt. Id. at 1030. Moreover, local zoning regulations prohibited any subdivision of the Property. Id. at 1029. Accordingly, the tract designated by Debtors as non-exempt was worthless.

In the Bankruptcy Court, the Debtors argued that Florida law allowed them to designate any contiguous tract as homestead. In re Englander, 156 B.R. 862, 867 (Bankr. M.D. Fla. 1992) (Dickinson, B.J.). The Bankruptcy Court rejected this argument, and instead held that Debtors had failed to exercise their homestead rights reasonably. Id. at 868 ("[B]y their designation of the exempt portion of their residents [Debtors] have not protected their castle with the moat of their homestead exemption but instead are attempting to illegally deprive their credits of the value of the non-exempt tract by constructing siege lines around it."). The Bankruptcy Court then held that due to the local zoning regulations, no partition of the Property was possible, and ordered the Property sold with proceeds of the sale to be allocated between Debtors and the Chapter 7 Trustee. Id. At 868-870. The District Court affirmed the Bankruptcy Court's decision.

On appeal to the Eleventh Circuit, Debtors challenged the portion of the Bankruptcy Court's decision that ordered the sale of the Property. Englander, 95 F.3d at 1030. They argued that because the Property could not be divided into individually salable tracts, the homestead exemption extended to the entire Property, citing In re Kuver, 70 B.R. 190, 192-193 (Bankr. S.D. Fla. 1986) (Cristol, B.J.) and In re Makarewicz, 126 B.R. 127, 128 (Bankr. S.D. Fla. 1991) (Cristol, B.J.). The Circuit Court rejected this argument and affirmed the Bankruptcy Court's ruling. Id. at 1032.

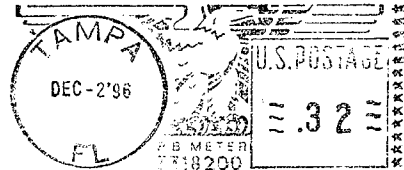
Although the Eleventh Circuit affirmed the result reached by the Bankruptcy Court, it did not adopt the Bankruptcy Court's rationale. In ordering the sale of the Property, the Bankruptcy Court ruled that Kuver and Makarewicz were inapplicable because they involved the residency requirement of Article X, Section 4, and not the acreage requirement. Englander, 156 B.R. at 869. The Eleventh Circuit, on the other hand, appears to have ruled broadly that homestead property is subject to sale when any aspect of the property exceeds the parameters of homestead protection and is not otherwise divisible. Id. at 1032. This ruling, while consistent with prior case law regarding the homestead acreage requirement, may weaken the precedential value of the Kuver and Makarewicz decisions, which already stated a minority view among Florida Bankruptcy Courts with respect to the homestead residency requirement. See, e.g., In re Wierschem, 152 B.R. 345 (Bankr. M.D. Fla. 1993) (Corcoran, B.J.); In re Aliotta, 68 B.R. 281 (Bankr. M.D. Fla. 1986) (Paskay, C.B.J.); In re Rodriguez, 55 B.R. 519 (Bankr. S.D. Fla. 1985) (Britton, B.J.).



The Cram-Down

P.O. Box 2405

Tampa, Florida 33601-2405



RECEIVED
DEC 03 1996
AS & LPA

Catherine Peek McEwen
Akerman, Senterfitt, et al.
P.O. Box 3273
Tampa, FL 33601-3273