

In re: Titus

Fraudulent Conveyance Law Defeats Exemption Rights

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Many states, including Maryland and Pennsylvania, recognize the common law form of ownership of property as “tenants by the entirety” for both real and personal property, including bank accounts. Under that form of ownership, a husband and wife are a “marital unit” that is a different legal entity than the husband or the wife individually. Neither the husband nor the wife alone can transfer property held as tenants by the entirety voluntarily and a creditor of only one spouse cannot compel an involuntary transfer of property held by the marital unit by attaching it to enforce a judgment.

In Pennsylvania, “wages, salaries, and commissions of individuals” are exempt from execution to enforce a judgment “while in the hands of the employer.” Consequently, judgment creditors cannot collect what they are owed by serving a writ of garnishment on the judgment debtor’s employer.

The combination of the common law tenancy by the entirety and the Pennsylvania exemption for wages, salaries, and commissions can make it very difficult for a creditor of a married person to collect what it is owed when the debtor’s spouse is not responsible for the debt. Wages, salaries, and commissions are often the only asset that the debtor cannot claim to own jointly with his or her spouse. A judgment creditor may not intercept that asset by garnishing the debtor’s employer. The judgment creditor also cannot execute on jointly owned assets because it has no judgment against the marital unit.

The judgment debtor in *In re Titus* tried to combine the common law tenancy by the entirety and the Pennsylvania exemption for wages, salaries, and commissions to thwart his judgment creditor. The debtor was a lawyer who had guaranteed his law firm’s obligations under a lease. When the firm failed and defaulted under the lease, the landlord sued him and obtained a judgment against him. When the lawyer got a job with a new law firm, he had the new firm deposit his earnings directly into a joint account of the lawyer and his wife.

The landlord did not simply resign itself to writing off what it was owed because it could not garnish the debtor’s earnings or attach a joint bank account. It sued the lawyer and his wife under the Pennsylvania Uniform Fraudulent Transfer Act (“PUFTA”), alleging that the transfer of the lawyer’s solely-owned earnings into the joint bank account was a fraudulent conveyance by the lawyer to the marital unit so that the landlord was entitled to recover the earnings from both the lawyer and his wife.

The landlord’s efforts to collect resulted in the debtor lawyer filing for bankruptcy. The bankruptcy trustee then pursued the PUFTA claim against the debtor and his wife.

The debtor lawyer argued that his earnings had gone directly from the employer's hands where they were exempt from garnishment into the joint bank account where they could not be reached either without ever coming into his hands. Consequently, he never transferred anything and therefore could not have made a fraudulent transfer. The bankruptcy court disagreed with him. In a February 20, 2019 opinion, so did the United States Court of Appeals for the Third Circuit.

The Third Circuit said that the debtor lawyer, Mr. Titus, "exercised control over where his employer deposited his wages." When his new employer "initiated the direct deposit" the wages left [the new law firm's] "hands and became, temporarily, an asset of Mr. Titus." Once the wages were in the joint account, they were no longer his since they were held by the marital unit against which the landlord had no claim. The Third Circuit concluded:

Putting these points together, Mr. Titus started with an "asset" and later relinquished it to the entirety account. This maneuver meets the PUFTA's definition of "transfer" as an "indirect ... disposing of or parting with an asset or an interest in an asset."

The end result was that Mrs. Titus, who was otherwise not responsible for her husband's debts, became responsible for them to the extent that his earning had been deposited to the joint bank account, minus only amounts that the court determined had been used to pay "reasonable and necessary household expenses."

The Third Circuit's opinion is silent as to whether the trustee only pursued the PUFTA claim against Mr. Titus and his wife or whether the trustee also objected to Mr. Titus being granted a discharge. A debtor's discharge can be denied if the debtor transferred or concealed an asset with intent to hinder, delay, or defraud a creditor within the one year period preceding the bankruptcy filing. Mr. Titus's efforts to avoid paying his former firm's landlord may not only have dragged his wife into litigation, but may also have resulted in Mr. Titus not being able to discharge his obligations to any of his creditors.

In re *Titus* serves as a reminder that viewing isolated provisions of law in a vacuum without taking into consideration the effect of other provisions that might not seem relevant upon cursory review can produce unexpected consequences. Mr. Titus's earnings were exempt. His creditors could not attach joint bank accounts. Yet his creditors reached his earnings anyway because of PUFTA. Mrs. Titus probably was not amused.