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JUDGE: M. A. Mahoney

PARTIES: Donald George Bahouth, Schlumberger Technologies, Inc.

CHAPTER: 7

ATTORNEYS:

DATE: 4/29/99

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE

DONALD GEORGE BAHOUTH

Case No. 98-02109-PNS3

Debtor.

SCHLUMBERGER TECHNOLOGIES, INC.

Plaintiff,

v.

Adv. No. 99-80002

DONALD GEORGE BAHOUTH,

Defendant.

ORDER DENYING MOTION OF DONALD BAHOUTH
FOR RECONSIDERATION OF ORDER DENYING
HIS MOTION TO DISMISS

This matter is before the Court on the motion of Donald George Bahouth (Bahouth) for reconsideration of the order of the Court denying Bahouth's motion to dismiss the adversary proceeding brought by Schlumberger Technologies, Inc. (Schlumberger). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order. For the reasons indicated below, the motion of Bahouth is denied.

FACTS

1. On October 2, 1998, Bahouth filed for relief pursuant to chapter 7 of the Bankruptcy Code.

2. On January 8, 1999, Schlumberger filed this adversary proceeding, along with another complaint requesting that its claim be declared a nondischargeable debt.

3. In the complaint in this case, Schlumberger set forth two counts. Count One alleges that Bahouth's purchase of his Florida home was a fraudulent transfer. Count Two alleges that the purchase was a Fraudulent Asset Conversion pursuant to FLA. STAT. ANN. § 222.29 *et seq.* (West 1998). Schlumberger requests a judgment that the Florida home owned by Bahouth be considered an asset of Bahouth's bankruptcy estate from which Schlumberger can recover.

4. Bahouth filed a motion to dismiss this complaint. On April 1, 1999, Bahouth's motion to dismiss was denied by this Court.

5. On April 12, 1999, Bahouth filed this motion for reconsideration of the Court's order denying the motion of Bahouth to dismiss.

LAW

Essentially, Bahouth contends that his claimed Florida homestead exemption cannot be challenged even if the home was purchased with nonexempt assets with the intent to hinder, delay, or defraud his creditors. Below, the Court will attempt to separate and briefly discuss each argument Bahouth presented in his motion for reconsideration.

A.

First, Bahouth questioned the Court's reliance on *In re Levine*, 134 F.3d 1046 (11th Cir. 1998) in its order denying his motion to dismiss. The Court recognizes that *In re Levine* involved an exempt annuity, rather than a homestead. Nonetheless, the case was on point for the purpose of determining what statute of limitations governs Schlumberger's adversary proceeding. This determination was crucial because the weight of Bahouth's motion to dismiss

concentrated on his contention that Schlumberger's complaint was time barred pursuant to Fed. R. Bankr. P. 4003. Contrarily, *In re Levine* holds that Rule 4003 does not control adversary proceedings to avoid a transfer like this one brought by Schlumberger. *In re Levine*, 134 F.3d at 1053. Schlumberger's claims are not time barred by Rule 4003.

B.

Bahouth also contended that Schlumberger does not have a claim against his homestead. In support, he cited *In re Lee*, 223 B.R. 594 (Bankr. M.D. Fla. 1998) and *Butterworth v. Caggiano*, 605 So.2d 56 (Fla. 1992) (criminal defendant's homestead exempt from forfeiture). Neither of these cases involved FLA. STAT. § 222.29 *et seq.* which was the basis of Count Two of Schlumberger's complaint. Therefore, even assuming these cases are correct, they do not require a dismissal of Schlumberger's complaint. *See, In re Lee*, 223 B.R. at n.7 (creditor conceded that FLA. STAT. § 222.30 was not implicated); *Butterworth* (case decided prior to the effective date of FLA. STAT. § 222.30).

C.

The most convincing argument Bahouth presented rests on the *Bank Leumi Trust Co. of New York v. Lang*, 898 F. Supp. 883 (S.D. Fla. 1995) opinion which involved facts similar to this case, albeit in a nonbankruptcy forum. The Langs had purchased a home in Florida with nonexempt assets. Bank of Leumi brought an action to execute against the home based on a judgment the Bank had obtained against the Langs. The Court found that the debtors' sole purpose in purchasing the home was to hinder and avoid the claims of their creditors. Nevertheless, the Langs' Florida home was found to be exempt from the Bank's claims. *See also, In re Clements*, 194 B.R. 923 (Bankr. M.D. Fla. 1996) (objection to claim of homestead

exemption overruled regardless of whether homestead was purchased with nonexempt assets and/or with the intent to hinder, delay or defraud creditor).

Notwithstanding the *Bank of Leumi* decision, this Court finds that Schlumberger has set forth a viable cause of action. Cases decided before and after the *Bank of Leumi* decision challenge its correctness. *See, In re Kravitz*, 225 B.R. 515 (Bankr. D. Mass. 1998) (claim of Florida homestead exemption denied); *In re Thomas*, 172 B.R. 673 (Bankr. M.D. Fla. 1994) (homestead exemption denied to extent debtors fraudulently paid down their mortgage to increase their equity). The Eleventh Circuit has also called into doubt the legitimacy of the *Bank of Leumi* decision in *In re Jost*, 136 F.3d 1455 (11th Cir. 1998). The Eleventh Circuit stated that the Florida precedent regarding the *Bank of Leumi* issue is unclear and if this issue were presented, the court would certify it to the Florida Supreme Court. *Id.* at 1459. This Court does not have the authority to certify issues to the Florida Supreme Court. FLA. STAT. § 25.031 (West 1998).

The Court agrees with the Eleventh Circuit in *Jost* that the *Bank of Leumi* case does not settle whether a claim of homestead exemption in Florida can be denied based on fraud. Moreover, this Court adopts the reasoning of *In re Kravitz* and those cases that recognize a cause of action based on the fraudulent conversion of nonexempt assets to a Florida homestead. *See, Peterson, Higgins, and Beal, Is the Homestead Subject to the Statute on Fraudulent Asset Conversions?*, 68 FLA. B.J. 12 (December 1994). Therefore, Schlumberger has set forth a cause of action in Counts One and Two of its complaint and it is permitted to proceed with its case. The motion of Bahouth for reconsideration of this Court's order denying its motion to dismiss is denied.

THEREFORE IT IS ORDERED that the motion of Donald George Bahouth for reconsideration is DENIED.

Dated: April 29, 1999

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE