

2019 WL 6208660

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United States Bankruptcy Court, S.D. Alabama.

IN RE: RAYMOND & ASSOCIATES, Debtor.

CASE NO. 15-1883-JCO

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Signed November 20, 2019

Attorneys and Law Firms

Raymond & Associates, LLC, Irvington, AL, pro se.

Jennifer S. Holifield, Terrie S. Owens, Jerome E. Speegle,
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Trustee.

MEMORANDUM OPINION AND ORDER
SUSTAINING OBJECTIONS AND
DISALLOWING PROOF OF CLAIM
NUMBER 32 FILED BY CANDACE LAFORCE

JERRY C. OLDSHUE, JR., U.S. BANKRUPTCY JUDGE

*1 This matter came before the Court on the Objections of the Chapter 7 Trustee (Doc. 1009), the IRS (Doc. 1010) and PNC (Doc.1048) to Proof of Claim number 32-2 (the "Claim") filed by Candace LaForce ("Ms. LaForce") and joinders thereto by SCF Barge Line LLC, SCF Boats, LLC (Doc. 1052) and Wells Fargo (Doc. 1054) as well as Ms. LaForce's Response (Doc. 1026) and the Trustee's Reply (Doc. 1047). Proper notice of hearing was given and appearances were noted on the record. Having considered the pleadings, exhibits, briefs, stipulation of facts and arguments of counsel, the Court finds that the Objections are due to be SUSTAINED and the Claim is hereby DISALLOWED for the following reasons:

JURISDICTION

This 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 dated August 25, 2015. This is a core proceeding pursuant to  28 U.S.C. § 157(b)(2) (A) and (B).

PROCEDURAL HISTORY AND FACTS

The instant bankruptcy case was filed June 16, 2015 as a Chapter 11 corporate reorganization (the "Corporate Case"). Prior to the Corporate Case, Raymond H. LaForce filed an individual Chapter 11 bankruptcy case in this District on September 11, 2014, Case No. 14-02967 (the "Individual Case"). The Corporate Case converted to Chapter 7 on December 14, 2016 and Terrie S. Owens (the "Trustee") was appointed Chapter 7 Trustee. (Doc. 488). Raymond & Associates, LLC (the "Corporate Debtor"), was wholly owned and operated by Raymond LaForce prior to the Corporate Case.

Raymond and Candace LaForce began divorce proceedings in September 2011 in the Circuit Court of Mobile County, Alabama (the "Divorce Court"), Case Number DR-2011-500882 (the "Divorce Case"). Ms. Laforce sought and received relief from the automatic stay in the Individual Case to proceed with the Divorce Case; she did not seek or obtain relief in the Corporate Case. The Divorce Court entered a judgment of divorce on January 20, 2016 which was subsequently amended on April 7, 2016 (collectively, the "Divorce Decree"). The Divorce Decree, as amended, included the following language:

With respect to the BP claim:

If this claim is a corporate asset, which has been listed in the Bankruptcy proceeding, then the Court does note that the husband shall be awarded 60% of the net BP claim, after the bankruptcy claims have been adjudicated by the Bankruptcy Court, which might have priority towards these BP claims. The wife shall be awarded the remaining 40%.

On May 15, 2017, Ms. LaForce filed her initial Claim in the Corporate Case for \$10,000. (Proof of Claim No. 32-1). On September 6, 2017, the Bankruptcy Court entered an order in the Individual Case, holding that Ms. LaForce's equitable interest in marital estate property did not come into the

Individual Case (“Authority Order”). *In re LaForce*, 577 BR 908 (Bankr. S.D. Ala. 2016).

The Trustee pursued and obtained a settlement (“BP Proceeds”) of the Corporate Debtor's claim (“BP Claim”) in the Deepwater Horizon Economic and Property Damages Program which was approved by this Court on June 22, 2018. (Doc. 792). The Trustee filed a motion to pay certain creditors from the BP proceeds (Doc. 904) to which Ms. LaForce did not object and an order approving the same was entered May 9, 2019. (Doc. 923). On June 27, 2019, Ms. LaForce amended her proof of claim in the Corporate Case to \$1,417,360.00. In support of the Objection to Ms. LaForce's claim, the Trustee filed an affidavit indicating that the funds collected and anticipated to be collected, including the BP funds, will not be enough to satisfy all the claims of the creditors of the Corporate Debtor, Raymond and Associates, LLC. (Doc. 1009, Ex. B).

CONCLUSIONS OF LAW

*2 The issue presented is whether the Divorce Decree entitles the former spouse of a member of a limited liability company to a priority claim in the Corporate Debtor's bankruptcy. The Bankruptcy Code provision regarding allowance of claims, provides in pertinent part that if, “objection to a claim is made, the court after notice and hearing, ... shall allow such claim ... except to the extent that – (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law ...” 11 U.S.C. § 502 (b)(1). Claims based upon debts that are not enforceable against the debtor and property of the debtor under applicable law are due to be disallowed. *Id.*

Interpretation of the Divorce Decree

This Court does not interpret the plain language of the Divorce Decree to entitle Ms. LaForce to a priority claim ahead of the Corporate Debtor's Creditors. Specifically, the language in the Divorce Decree provides for a division “... of the net BP claim, after bankruptcy claims have been adjudicated by the bankruptcy court ...” (Doc. 1009, Ex. A). The Divorce Decree language is not ambiguous and evidences recognition by the Divorce Court of the jurisdiction of this Court to adjudicate the claims of the Corporate Debtor's

creditors, and acknowledges those claims take precedence over any domestic court award.

The language in the Divorce Decree also provides that Ms. LaForce shall receive 40% of the “net” BP claim after superior bankruptcy creditors. *Id.* The term “net” is generally defined to require a calculation by “subtracting the liabilities from the value of the tangible assets” *Black's Law Dictionary*, 1747 (9th Ed. 2009). The plain language and terminology used in the Divorce Decree acknowledges the superiority of the Corporate Debtor's bankruptcy creditors. Hence, this Court does not interpret the Divorce Decree to carve out corporate assets for the benefit of Ms. LaForce (the former spouse of a member of the LLC) in contravention of the orderly disposition of the Corporate Debtor's assets in accordance with the Bankruptcy Code.

Domestic Support Obligations 101

In the event that the Divorce Court *did* intend the Divorce Decree to carve out corporate assets and provide priority treatment benefiting the former spouse of a member of the Corporate Debtor, such provision is not enforceable. A domestic support obligation (“DSO”) is a debt owed to or recoverable by a spouse, former spouse or child of the debtor. 11 U.S.C. § 101(14A) (A)(i). Principles of statutory construction require courts to interpret a statute in accordance with the normal meanings of its words and only look beyond the plain language if it is unclear, ambiguous or results in an absurd result. *Consumer Prod. Safety Comm'n v. GTE Sylvania*, 447 U.S. 102, 108, 100 S.Ct. 2051, 2056, 64 L.Ed.2d 766 (1980); *Gonzalez v. McNary*, 980 F.2d 1418, 1420 (11th Cir.1993); *Davis Bros., Inc. v. Donovan*, 700 F.2d 1368, 1370 (11th Cir.1983). When the language of the statute is clear, the function of the courts is to enforce it according to its terms. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989). The plain language of 11 U.S.C. § 101(14A) (A)(i) dictates that a corporate entity cannot have a domestic support obligation.

Ms. LaForce's claim, designated as ECF Claim 32-2, fails to meet the statutory requirements for treatment as a DSO in the Corporate Case. Ms. LaForce is the former spouse of Raymond LaForce, an individual. Although Ms. LaForce may be a DSO Creditor of Raymond LaForce, she is not a

DSO creditor of the Debtor, an Alabama Limited Liability Company. Ms. LaForce's claim does not fall within the plain language of the definition of a domestic support obligation in this case as described in [11 U.S.C. § 101\(14A\) \(A\)\(i\)](#). Ms. LaForce is not a spouse, former spouse or child of the Corporate Debtor. Hence, the Divorce Decree does not entitle Ms. LaForce to a priority claim in this bankruptcy.

Jurisdiction of Domestic Court Concerning Corporate Assets

*3 Domestic courts do not have subject matter jurisdiction to order the transfer of assets that are not part of the marital estate. It is well established that a corporation is a distinct entity, to be considered separate and apart from the individuals who compose it and is not to be affected by the personal rights and obligations and transactions of its stockholders. *Moore and Handley Hardware Co. v. Towers Hardware Co.*, 87 Ala. 26 (Ala. 1889). The same is true for an Alabama Limited Liability Company. [Ala. Code § 10A-5A-1.04 \(1975\)](#). Creditors of a member of an Alabama Limited Liability Company have only the right to pursue claims to distributions which the member would otherwise be entitled to receive. [Ala. Code. § 10A-5A-5.03](#); *Whaley v. Whaley*, 261 So. 3d 386 (Ala. 2017) (divorce court's award to wife of limited liability company's real property, equipment, contractual rights, intellectual property ... went beyond awarding wife the husband's transferable interest in the LLC, i.e. his right to receive distributions, which under the LLC statute was the only interest of member that was transferable). Although a domestic support creditor may have a claim to the transferable interest of a member of a corporate entity, such creditor does not have a direct claim to the assets of the corporate entity.

Ms. LaForce's status as a domestic support creditor of Raymond LaForce does not entitle her to a direct claim against the Corporate Debtor. In accordance with Alabama law, Ms. LaForce's only recourse is against Raymond LaForce's *financial interest* in the Company. Ms. LaForce did not have relief from the automatic stay to pursue any purported claims against the Corporate Debtor and the Corporate Debtor was not a party to the domestic proceeding in state court. The Claim does not arise from any debt owed by the corporate entity, but rather it is in the nature of support sought from Raymond LaForce. There is no dispute that the BP claim at issue was held by the Corporate Debtor at the time the Corporate Case was filed. Accordingly, the BP proceeds are

property of the estate in the Raymond & Associates, LLC bankruptcy. Unfortunately for Ms. LaForce, the Trustee's Affidavit (Doc. 1009, Ex. B) evidences that the estate assets, including the BP funds, are not sufficient to satisfy all the claims of creditors of the Corporate Debtor. Hence, Raymond LaForce's interest as a member of the Corporate Debtor will not yield a distribution to him from this bankruptcy upon which Ms. LaForce could assert a claim.

Prior Authority Order

The prior "Authority Order" entered in Raymond LaForce's Individual Case does not entitle Ms. LaForce to a claim in this Corporate Case. Since Mr. and Ms. LaForce were in the midst of a divorce when the Individual Case was filed, relief from the automatic stay was granted to permit the Divorce Case to continue. Upon conclusion of the litigation, Ms. LaForce filed a motion in the Individual Case seeking authority to enforce the provisions of the Divorce Decree, including the award of periodic alimony, alimony arrearage, payment of certain debts and awards of marital property. Ms. LaForce now asserts that this Court's ruling on such motion in the Individual Case (the "Authority Order") supports her claim to assets of the Corporate Debtor. The Authority Order held that Ms. LaForce's equitable interest in the marital estate would not come into the bankruptcy estate in Raymond LaForce's Individual Case. *In re LaForce*, 577 BR 908 (Bankr. S.D. Ala. 2016). This Court did not however, make any determination as to the assets comprising the marital estate; nor did it declare that the BP claim of the corporate entity constituted marital property. As discussed above, pursuant to Alabama law, the "marital estate" includes only the member spouse's transferable interest in the corporate entity which is in effect the member spouse's right to receive distributions. Further, the Authority Order entered in Raymond LaForce's individual case has no applicability to the Corporate Case. The parties and issues are not the same and this Court did not intend its ruling to have any applicability to the Corporate Case. Therefore, the Authority Order in the Individual Case does not provide a basis for Ms. LaForce's claim in this corporate proceeding.

Public Policy

*4 Public policy supports holding that a former spouse of a member of a corporate debtor is not entitled to a priority claim in a corporate bankruptcy. Although this Court

does not attribute any improper motive to the claimant in this case, it recognizes allowing domestic court rulings to allocate corporate assets to a former spouse of a member of a corporate entity ahead of the corporate debtor's creditors, would create opportunity for collusion and abuse of the bankruptcy process. For instance, it is conceivable that unscrupulous spouses could devise a scheme resulting in a divorce decree entered by acquiescence, consent or default to thwart legitimate claims of corporate creditors by affording a priority claim to a "former" spouse. Such potential result would be prejudicial to creditors and in contravention of the purpose of the Bankruptcy Code.

CONCLUSION

Ms. LaForce does not have a viable basis to pursue a claim against the Corporate Debtor, Raymond & Associates, LLC. The plain language of the Domestic Decree does not entitle Ms. LaForce to a carve out of corporate assets from

the bankruptcy estate, and even if the Divorce Court had intended to elevate Ms. LaForce's claim above Creditors of the Corporate Debtor, such provisions would be in violation of the pertinent provisions of the Bankruptcy Code as well as state corporate law. Further, the "Authority Order" did not entitle Ms. LaForce to a priority or other claim against the Corporate Debtor.

Accordingly, this Court hereby finds that Candace LaForce's claim is not enforceable against the Corporate Debtor or property of the Corporate Debtor under the Divorce Decree or Applicable Law. Therefore, it is hereby ORDERED, ADJUDGED and DECREED that the Objections to Claim 32-2 of Candace LaForce in the amount of \$1,417,360.00 are SUSTAINED and the Claim is hereby DISALLOWED.

All Citations

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Only the Westlaw citation is currently available.
United States District Court, S.D.
Alabama, Southern Division.

IN RE: RAYMOND & ASSOCIATES LLC, Debtor.

Civil Action No. 19-01086-KD-MU

|
Signed June 10, 2020

Synopsis

Background: Chapter 7 trustee objected to proof of claim filed by debtor's former spouse. The United States Bankruptcy Court for the Southern District of Alabama, No. 15-1883-JCO, [Jerry C. Oldshue, Jr., J.](#), sustained the objections and disallowed proof of claim. Claimant appealed.

Holdings: The District Court, [Kristi K. DuBose](#), Chief Judge, held that:

[1] under Alabama law, settlement claim owed to limited liability company (LLC) wholly owned and operated by debtor-husband could not be transferred in divorce, and

[2] Bankruptcy Court's order summarizing divorce decree did not constitute a finding as to actual ownership of the claim.

Affirmed.

Procedural Posture(s): On Appeal; Objection to Proof of Claim.

West Headnotes (6)

[1] **Bankruptcy**

Although stipulated facts were provided to the Bankruptcy Court upon Chapter 7 trustee's objections to proof of claim filed by debtor's former spouse, objections to proof of claim were not converted into motion for summary judgment subject to de novo standard of review on appeal to District Court, rather, standard of review was traditional standard applied on appeal of a core proceeding.

[2] **Bankruptcy**

District court functions as appellate court in reviewing decisions of bankruptcy court, and reviews the bankruptcy court's legal conclusions de novo, but must accept the bankruptcy court's factual findings unless they are clearly erroneous.

[3] **Bankruptcy**

The factual findings of the bankruptcy court are not clearly erroneous unless, in the light of all the evidence, the reviewing court is left with the definite and firm conviction that a mistake has been made.

[4] **Bankruptcy**

The reviewing court may affirm a bankruptcy court's decision on any basis supported by the record.

[5] **Divorce**

Under Alabama law, settlement claim owed to limited liability company (LLC) wholly owned and operated by Chapter 7 debtor-husband could not be transferred in divorce. [Ala. Code § 10A-5A-5.01](#).

[6] **Bankruptcy**

Divorce decree awarding Chapter 7 debtor's former spouse 40% of net proceeds from debtor's or his wholly-owned limited liability company's (LLC's) tort claim against third party did not prevent claim from becoming property of LLC's separate bankruptcy estate, subject to claims of LLC's creditors before any distribution of net proceeds.

Attorneys and Law Firms

Jodi Cooke DuBose, Pensacola, FL, [Edward James Peterson, III](#), Tampa, FL, for Plaintiff.

[Jennifer S. Holifield](#), Ziemann, Speegle, Jackson & Hoffman, L.L.C., [Jerome E. Speegle](#), Speegle, Hoffman, Holman & Holifield, LLC, Mobile, AL, for Defendant.

ORDER

[KRISTI K. DuBOSE](#), CHIEF UNITED STATES DISTRICT JUDGE

*1 This action is before the Court on appeal from the decision of United States Bankruptcy Judge Jerry C. Oldshue, Jr. sustaining objections and disallowing proof of claim number 32-2 filed by Claimant Candace LaForce (doc. 1, doc. 2, p. 260-268), the record on appeal (doc. 2). Appellant Candace LaForce's brief and appendix (doc. 9, 9-1). Appellee Trustee Terrie S. Owens' response (doc. 11), and LaForce's reply (doc. 12). Upon consideration, and for the reasons set forth herein the Bankruptcy Court's decision is AFFIRMED.

I. Factual Background¹

In September 2011, Candace and Raymond LaForce began divorce proceedings in the Circuit Court of Mobile County, Alabama. On September 11, 2014, Mr. LaForce filed an individual Chapter 11, Debtor-in-Possession bankruptcy case, Case No. 14-02967. Ms. LaForce received relief from stay to proceed with the divorce.

On June 16, 2015, Raymond & Associates, LLC filed a Chapter 11, Debtor-in-Possession bankruptcy case, Case No. 15-01883. The LLC was wholly owned and operated by Mr. LaForce prior to filing the bankruptcy case. Ms. LaForce did not seek or obtain relief from the automatic stay in the LLC bankruptcy.

On January 20, 2016, the Divorce Court entered a Divorce Decree wherein Ms. LaForce was awarded "25% of the company stock" in the LLC (doc. 2, p. 357). The Divorce Court ruled that "[w]ith respect to the BP settlement claim owed to the company and/or parties, the Wife shall be awarded 40% of the net claim and the husband shall be awarded the remaining 60%." (doc. 2, p. 357).

On April 7, 2016, the Divorce Court amended the Divorce Decree. In relevant part, the judgment states as follows:

2. With respect to the BP claim:

If this claim is a corporate asset, which has been listed in the Bankruptcy proceeding, then the Court does note that the husband shall be awarded 60% of the net BP claim, after the bankruptcy claims have been adjudicated by the Bankruptcy Court, which might have priority towards these BP claims. The wife shall be awarded the remaining 40%.

If this is a personal individual asset which is subject to the husband's individual bankruptcy creditors, the husband shall be awarded 60% of the net asset after superior bankruptcy creditors have been adjudicated by the bankruptcy court. The wife shall be awarded the remaining 40%.

(Doc. 2, p. 359).

On December 14, 2016, the LLC bankruptcy was converted to a Chapter 7 bankruptcy case and Terrie S. Owens was appointed as Trustee. On January 26, 2017, Mr. LaForce's individual bankruptcy was converted to a Chapter 7 case and Lynn Andrews was appointed as Trustee.

On May 15, 2017, Ms. LaForce filed her initial Proof of Claim in the amount of \$10,000 in the LLC bankruptcy. (doc. 9-1, p. 4-7; doc. 2, p. 353).

On September 6, 2017, the Bankruptcy Court in Mr. LaForce's individual bankruptcy case entered a Memorandum Opinion and Order granting Ms. LaForce's Motion for Authority and Amended Application to Enforce Property Provisions of Judgment of Divorce (doc. 2, p. 360-370) (Authority Order). The Bankruptcy Court found that "[w]hen Wife filed for divorce, equity converted the Debtor from the holder of legal title to the marital assets into a trustee of the marital assets until the divorce could be finally resolved" and that "the filing of the divorce proceedings created a constructive trust in the marital estate in favor of Wife pending a final divorce decree" (doc. 2, p. 366). The Bankruptcy Court held that Ms. LaForce's "equitable interest in the marital estate would not come into Debtor's bankruptcy estate. Since marital assets are held in a constructive trust for Wife's benefit, the bankruptcy estate 'succeeds only to the title and rights in the property that the debtor possessed ... therefore ... the estate will generally hold such property subject to the outstanding interest of the beneficiaries.'" (doc. 2, p. 370) (citations omitted). The

Bankruptcy Court also found that the “Judgment of Divorce is a domestic support obligation within the meaning of the [Bankruptcy] Code and is thus entitled to the most favorable treatment and paramount consideration when it comes to determining what constitutes Debtor's estate.” (doc. 2, p. 368) (footnote omitted).

*2 The division of marital property in the original Divorce Decree was summarized in the Factual and Procedural History in the Authority Order (doc. 2, p. 362). In relevant part, the Bankruptcy Court acknowledged that the Divorce Court awarded Mr. LaForce 60% and Ms. LaForce 40%, of “Debtor/Husband's net BP settlement, after payment of creditors” (Id.). The Bankruptcy Court acknowledged that the Divorce Decree was later amended to “address the forthcoming BP claim” (Id.).

The Trustee pursued the BP Claim in the Deepwater Horizon Economic and Property Damages Program for the benefit of the LLC's bankruptcy estate and recovered \$4,600,000. In May 2019, the Trustee's motion for permission to pay certain creditors from the BP proceeds was granted (doc. 2, p. 354). Ms. LaForce did not object to the motion.

On June 27, 2019, Ms. LaForce amended her claim in the LLC bankruptcy to claim \$1,417,360.00. (doc. 9-1, p. 9-11; doc. 2, p. 354). The Trustee and other creditors objected to the amended claim. In support of the objection, the Trustee filed an affidavit indicating that the funds collected and anticipated to be collected, including the BP funds, would not satisfy the claims of the creditors of the LLC.

Ms. LaForce responded to their objections, and the matter was heard September 24, 2019 (doc. 2, p. 354-355). Ms. LaForce took the position that

In the Individual Case, the Bankruptcy Court has already determined the Marital Property, including both the corporate and the individual BP Claims, was held in a pre-petition constructive trust and did not come into that bankruptcy estate because such interest was held in trust at the time the petition was filed. See Authority Order, pp. 7-8, 11.

The logical extension of that determination is that, to the extent it was part of the Marital Property, the corporate BP Claim was also held in trust when the Corporate case was filed, such that the corporate BP Claim did not actually come into the bankruptcy estate in the Corporate Case when the petition was filed. It was still held in trust.

(Doc. 2, p. 211).

On November 20, 2019, the Bankruptcy Court sustained the Trustee's objections to Ms. LaForce's amended claim (doc. 2, p. 260-268, Memorandum Opinion and Order Sustaining Objections and Disallowing Claim). The Bankruptcy Court found this case involved a core proceeding (doc. 2, p. 260).² The Bankruptcy Court identified the issue presented as “whether the Divorce Decree entitles the former spouse of a member of a limited liability company to a priority claim in the Corporate Debtor's bankruptcy” (doc. 2, p. 262). The Bankruptcy Court first found that the Divorce Decree provided for a division of the net BP claim after adjudication of the creditors' claims in the LLC bankruptcy but did not “carve out corporate assets” for Ms. LaForce. Therefore, Ms. LaForce did not hold a priority claim in the LLC bankruptcy.

The Bankruptcy Court next found that if the Divorce Court intended to “carve out corporate assets” and give Ms. LaForce priority treatment as the former spouse of a member of the LLC, that provision in the Divorce Decree was not enforceable against the estate of the LLC. Applying principles of statutory construction, the Bankruptcy Court found that the “plain language of 11 U.S.C. § 101(14A)(A)(i)”, which defines a domestic support obligation in relevant part as an obligation “owed to or recoverable by” the debtor's spouse, “dictates that a corporate entity cannot have a domestic support obligation” (doc. 2, p. 264). The Bankruptcy Court explained that Ms. LaForce is not a former spouse of the LLC debtor and therefore, the Divorce Decree did not entitle her to a priority claim in the LLC bankruptcy.

*3 The Bankruptcy Court next found that the Divorce Court did not have “subject matter jurisdiction to transfer assets that are not part of the marital estate” (doc. 2, p. 264). The Bankruptcy Court explained that under Alabama law, a corporation is a distinct entity considered separately from “the individual who compose it and is not to be affected by the personal rights and obligations and transaction of its stockholders”, and the “same is true for an Alabama Limited Liability Company” (Id.). The Bankruptcy Court further explained that “Ms. LaForce's status as a domestic support creditor” of Mr. LaForce did not entitle her to a direct claim against the LLC, but instead under Alabama law, her only recourse was against Mr. LaForce's financial interest in the LLC (doc. 2, p. 265).

The Bankruptcy Court also found the parties did not dispute that the BP claim was held by the LLC when the LLC bankruptcy was filed, and that Ms. LaForce did not obtain relief from the automatic stay to pursue any claim against the LLC. The Bankruptcy Court found that the BP proceeds were the property of the LLC bankruptcy estate, but overall, the LLC's estate assets were not sufficient to satisfy the claims of the LLC's creditors (Id.)

The Bankruptcy Court also addressed Ms. LaForce's reliance on the Authority Order entered in Mr. LaForce's individual bankruptcy case and found that it did not entitle her to a claim in the LLC bankruptcy case (doc. 2, p. 266). The Bankruptcy Court stated as follows:

Ms. LaForce now asserts that this Court's ruling on such motion in the Individual Case (the "Authority Order") supports her claim to assets of the Corporate Debtor. The Authority Order held that Ms. LaForce's equitable interest in the marital estate would not come into the bankruptcy estate in Raymond LaForce's Individual Case. [In re LaForce](#), 577 B.R. 908 (Bankr. S.D. Ala. 2016 [2017]). This Court did not however, make any determination as to the assets comprising the marital estate; nor did it declare that the BP claim of the corporate entity constituted marital property. As discussed above, pursuant to Alabama law, the "marital estate" includes only the member spouse's transferable interest in the corporate entity which is in effect the member spouse's right to receive distributions. Further, the Authority Order entered in Raymond LaForce's individual case has no applicability to the Corporate Case. The parties and issues are not the same and this Court did not intend its ruling to have any applicability to the Corporate Case. Therefore, the Authority Order in the Individual Case does not provide a basis for

Ms. LaForce's claim in this corporate proceeding.

(Doc. 2, p. 266).

Last, the Bankruptcy Court decided that public policy concerns support the decision that Ms. LaForce is not entitled to a priority claim in the LLC bankruptcy (doc. 2, p. 267). Without attribution of improper motive in this case, the Bankruptcy Court acknowledged the potential for spousal collusion and abuse of the bankruptcy process if domestic court decisions awarding corporate assets to a former spouse were given priority over the corporate debtor's creditors.

Ms. LaForce now appeals the Bankruptcy Court's decision (doc. 2, p. 269, Notice of Appeal).

II. Standard of review

Ms. LaForce asserts that "[b]ecause the bankruptcy court engaged in no factfinding and instead decided a legal question based on stipulated facts, the order on appeal is akin to a summary judgment order, which this court reviews *de novo*." (doc. 9, p. 6). She cites [In re Optical Techs., Inc.](#), wherein the bankruptcy court entered an order on summary judgment in an adversary proceeding where the debtors "sought to recover allegedly fraudulent transfers, preference payments and damages for breaches of fiduciary duty." 246 F.3d 1332, 1333 (11th Cir. 2001). The Court of Appeals for the Eleventh Circuit explained:

*4 It is axiomatic that a bankruptcy court deciding a summary judgment motion, just like a district court, must determine whether there are any genuine issues of material fact.... Like a district court, a bankruptcy court may only grant summary judgment where there is no genuine issue of material fact. See [Fed.R.Civ.P. 56\(c\)](#). Our law is also clear that an appellate court reviews a bankruptcy court's grant of summary judgment *de novo*.

[In re Optical Techs., Inc.](#), 246 F.3d 1332, 1334 (11th Cir. 2001).

[1] [2] [3] [4] Although stipulated facts were provided to the Bankruptcy Court in this action, that does appear to convert objections to a Proof of Claim into a motion for summary judgment. The Court finds that the appropriate standard of review is the traditional standard applied on appeal of a core proceeding. In that regard, “[t]he District Court functions as an appellate court in reviewing decisions of the Bankruptcy Court.... This Court reviews the Bankruptcy Court’s legal conclusions *de novo* but must accept the Bankruptcy Court’s factual findings unless they are clearly erroneous.” [In re Nilhan Fin., LLC](#), 614 B.R. 379, 383 (M.D. Fla. 2020) (addressing an appeal from the bankruptcy court’s denial of reconsideration of an order overruling objection to proof of claim) (citing [Varsity Carpet Servs., Inc. v. Richardon \(In re Colortex Indus., Inc.\)](#), 19 F.3d 1371, 1374 (11th Cir. 1994) and [In re JLI Inc.](#), 988 F.2d 1112, 1116 (11th Cir. 1993)); [In re Piazza](#), 719 F.3d 1253, 1260 (11th Cir. 2013) (“In a bankruptcy appeal, we sit as the second court of review of the bankruptcy court’s judgment.... Like the district court, we review a bankruptcy court’s findings of fact for clear error and its conclusions of law *de novo*.”) (citations omitted); [In re Toledo](#), 170 F.3d 1340, 1342 (11th Cir. 1999) (same); [CW Capital Asset Mgmt., LLC v. Burcam Capital II, LLC](#), 2014 WL 2864678, at *2 (E.D.N.C. June 24, 2014) (“The standard of review is different when the district court reviews bankruptcy court decisions in ‘non-core proceedings.’”). “The factual findings of the bankruptcy court are not clearly erroneous unless, in the light of all the evidence, we are left with the definite and firm conviction that a mistake has been made.” [In re Whigham](#), 770 Fed. Appx. 540, 543-544 (11th Cir. 2019) (citation omitted). Overall, the reviewing court may affirm the Bankruptcy Court’s decision on any basis supported by the record. [Big Top Coolers, Inc. v Circus-Man Snacks, Inc.](#), 528 F.3d 839, 844 (11th Cir. 2008).

III. Analysis

On appeal, Ms. LaForce argues that 40% of the BP claim, awarded to her in the Divorce Decree, was a marital asset held in constructive trust for her benefit since 2011 when the divorce action was filed. She argues that under the Divorce Decree, it doesn’t matter whether her 40% of the BP claim was Mr. LaForce’s personal asset or an asset of the LLC, it never entered either bankruptcy estate because of the pre-petition constructive trust and is not available for distribution to creditors. She argues that by disallowing her claim, the

Bankruptcy Court erroneously treated her 40% interest as if it were the LLC’s bankruptcy estate property and subject to distribution to creditors. Ms. LaForce concedes that corporate debtors do not have domestic support obligations, and does not argue that she is entitled to a priority domestic support obligation from the LLC, but instead asks this Court to reverse the Bankruptcy Court order because it allows the LLC’s creditors to be paid with trust funds that are not an asset of the LLC bankruptcy. (Doc. 9)

*5 Ms. LaForce also admits she did not seek relief from the automatic stay in this Bankruptcy but argues that she obtained relief in Mr. LaForce’s personal bankruptcy to proceed with the divorce action. She asserts that the Authorization Order obtained in his bankruptcy also applies in this case. From this, she argues that the Bankruptcy Court already ruled that she has a constructive trust with regard to 40% of the LLC’s BP claim, and that it never entered either bankruptcy estate. (Doc. 9).

Ms. LaForce also argues that reversing the Bankruptcy Court’s decision would not offend public policy concerns. She argues that Congress amended the Bankruptcy Code to favor persons like her, to whom a debtor may owe a domestic-support obligation, despite the potential for collusion and abuse. She also argues that there are criminal penalties for bankruptcy fraud that would combat collusion or bankruptcy abuse, such that this is not a reason to disallow her claim. (Doc. 11).

The Trustee responds argues that the Divorce Decree is null and void as it relates to the LLC’s assets because Ms. LaForce never obtained relief from stay in the LLC bankruptcy. The Trustee also argues that the Divorce Court lacked authority to divide and distribute the LLC’s assets. The Trustee points out that the LLC was not a party in the divorce action, that the assets of the LLC were not marital property, that the Divorce Court had no authority to direct a member of an LLC to transfer assets of the LLC, and that the Alabama Limited Liability Act limits a creditor’s recovery to the LLC member’s distributive share, not LLC assets. (Doc. 11)

The Trustee also argues that if the Divorce Court intended that Ms. LaForce receive a distribution from the LLC equal to 40% of the net BP claim, the Divorce Decree still contemplates payments to LLC creditors first; however, the LLC’s assets are not sufficient, and there will be no distribution. Last, the Trustee argues that overturning the Bankruptcy Court’s order would create precedent for use of divorce decrees as a method

to avoid payment to rightful creditors of a corporate entity. (Doc. 11).

The Court has considered the parties' respective positions,³ the Authorization Order and the Order on appeal, and finds that the Bankruptcy Court's decision is due to be affirmed. The Appellant has raised several arguments why the Bankruptcy order should be reversed. The Court finds none of her arguments persuasive and that only two merit discussion.

Ms. LaForce argues that whether the BP claim belongs to Mr. LaForce personally or was an asset of the LLC does not matter, because either way her a 40% interest in the BP claim was held in constructive trust and never entered either bankruptcy estate. She points out that under Alabama law, the Divorce Court must make an equitable distribution of marital property owned by the parties when the divorce action is filed, regardless of how legal title is held. To do so, a constructive trust arises over marital property when the divorce action is filed, subject to distribution in the future by the Divorce Court. As authority for her argument, Ms. LaForce cites to the Authorization Order in Mr. LaForce's personal bankruptcy. She asserts that "[b]ased on these legal principles and the Alabama divorce court's ruling, the bankruptcy court could – and did – 'equitably label [Candace's] interest as falling within a constructive trust by operation of law,' whether the BP claim was 'a corporate asset' or a 'personal individual asset' of Raymond, who wholly owned and operated the Debtor." (doc. 9, p. 12-13).

*6 First, Ms. LaForce's argument that 40% of the BP claim never entered either bankruptcy estate is based in part on the theory that the Divorce Court had authority to treat the BP claim as a marital asset subject to equitable division even though it was an asset of the LLC. As previously stated, the parties do not dispute that the LLC owned the claim. In [Whaley v. Whaley](#), the case cited by the Bankruptcy Court in support of its decision to disallow Ms. LaForce's claim, the Alabama Court of Civil Appeals held as follows:

With regard to K2, the husband points to § 10A-5A-5.01, Ala. Code 1975, a part of the Alabama Limited Liability Company Law of 2014, § 10A-5A-1.01 et seq., Ala. Code 1975, which provides: "The only interest of a member that is transferable is the member's transferable interest." "Transferable interest" is defined as "a member's right to receive distributions from a limited liability company or a series thereof." Ala. Code 1975, § 10A-5A-1.02(s); see also Ala. Code 1975, § 10A-5A-5.02(b).

In the amended divorce judgment, the trial court specified that the following were included in the award to the wife of K2: "its real property, equipment, contractual rights, intellectual property, proprietary information, patents, patent applications, processes, licenses, leases and other property rights." Because the trial court's judgment went beyond awarding the wife the husband's "transferable interest," i.e., his right to receive distributions, we conclude that the trial court's judgment on this point was in error. See, e.g., [Whittaker v. Whittaker](#), 228 W.Va. 84, 88, 717 S.E.2d 868, 872 (2011) (recognizing that the "family court does not have jurisdiction to order a limited liability company to transfer its assets").

[Whaley v. Whaley](#), 261 So. 3d 386, 394–95 (Ala. Civ. App. 2017).

[5] Although the Divorce Court appears to have decided that the BP claim, whether owned by the LLC or Mr. LaForce personally, was marital property subject to equitable division, that decision does not supersede or amend Alabama law which governs what interests in an LLC may be transferred in a divorce.

[6] Second, Ms. LaForce's argument is based in part on the theory that the Bankruptcy Court in the Authorization Order already decided that 40% of the BP claim was a marital asset held in constructive trust for her benefit regardless of whether it was owned by Mr. LaForce personally or the LLC. The Court disagrees. The Bankruptcy Court summarized the Divorce Decree as awarding to Ms. LaForce "40% of Debtor/Husband's net BP settlement claim, after payment of creditors" (doc. 2, p. 362). The Bankruptcy Court held that

When Wife filed for divorce, equity converted the Debtor from the holder of legal title to the marital assets into a trustee of the marital assets until the divorce could be finally resolved. Accordingly, this Court finds that the filing of the divorce proceeding created a constructive trust in the marital estate in favor of Wife pending a final divorce decree.

The question remains, though, when Debtor filed for bankruptcy relief, did his entire marital estate, including the inchoate property interests equitably belonging to Wife, fall into the bankruptcy estate, or does the existence of the constructive trust prevent the Wife's equitable interests from entering the bankruptcy estate? Given the most recent amendments to the Bankruptcy Code, this Court finds the

latter to be correct – that property held by a debtor in trust for another does not enter the bankruptcy estate upon commencement of a bankruptcy case.

*7 (Doc. 2, p. 366-367).

However, the Bankruptcy Court did not mention the LLC's bankruptcy, did not identify the BP claim as owned by the LLC, and made no finding as to the actual ownership of the BP claim. Instead, to the extent that the BP Claim was considered, it was only in terms of “Debtor/Husband's net BP settlement claim, after payment of creditors[.]” (Id., p. 362) Importantly, the Bankruptcy Court did not find that the Authorization Order should apply to the LLC's bankruptcy case.

Moreover, in the Order on appeal, the Bankruptcy Court explained that the prior Authorization Order “did not however, make any determination as to the assets comprising the marital estate; nor did it declare that the BP claim of the corporate entity constituted marital property” and found

that “the Authority Order entered in Raymond LaForce's individual case has no applicability to the Corporate case” (doc. 2, p. 266). The Court finds no error with that decision.

IV. Conclusion

The Court has considered Ms. LaForce's grounds for appeal and finds no clear error in the Bankruptcy Court's findings of fact and no error in its conclusions of law. The Bankruptcy Court properly determined that the Divorce Decree did not entitle Ms. LaForce to a priority claim in the LLC's bankruptcy. Accordingly, the decision of the Bankruptcy Court is **AFFIRMED**.

DONE and ORDERED this 10th day of June 2020.

All Citations

--- B.R. ----, 2020 WL 3073005

Footnotes

- 1 The Bankruptcy Court's findings of facts are not clearly erroneous. Accordingly, the findings of fact are incorporated herein.
- 2 Citing  [28 U.S.C. § 157\(b\) \(2\)\(A\) & \(B\)](#) (“(2) Core proceedings include, but are not limited to--(A) matters concerning the administration of the estate; (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11[.]”)
- 3 The Trustee and Ms. LaForce presented substantially similar arguments in their objection to claim and response as in their appellate documents.