



ORDERED in the Southern District of Florida on January 10, 2011.

Paul G. Hyman, Chief Judge  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

In re:

CASE NO.: 08-26059-BKC-PGH

MICHAEL F. ARANDA,  
Debtor.

CHAPTER 7

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MICHAEL F. ARANDA,  
Plaintiff,  
v.

ADV. NO.: 08-01768-BKC-PGH-A

SEACOAST NATIONAL BANK, as  
Administrative and Collateral  
Agent,  
Defendant.

\_\_\_\_\_ /

MICHAEL R. BAKST, Trustee  
Third-Party Plaintiff,  
v.

TONYA ARANDA  
Third-Party Defendant.

\_\_\_\_\_ /

MEMORANDUM ORDER GRANTING IN PART AND DENYING IN PART TRUSTEE'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT

**THIS MATTER** came before the Court on October 29, 2010, upon Michael Bakst's (the "Trustee") *Motion for Partial Summary Judgment as to Count I of Plaintiff's Complaint and as to the Trustee's Objection to the Debtor's Claimed Exemption* (the "Motion"), and the Response by Michael Aranda (the "Debtor") and his wife, Tonya Aranda ("Mrs. Aranda") (collectively with the Debtor, the "Arandas"). For the reasons set forth below, the Court herewith grants the Motion in part and denies the Motion in part.

#### **BACKGROUND**<sup>1</sup>

On January 22, 2007, the Debtor opened a checking account at 1st United Bank ("United"), with an account number ending in 0210 ("Account 1"). The signature card opening Account 1 provided the following "check the box" option under the heading "Ownership of Account": (1) "Single-Party Account"; (2) "Multiple-Party Account"; (3) "Multiple-Party Account - Tenancy by the Entireties"; and (4) "Trust - Separate Agreement." The Debtor checked the box and initialed next to the line indicating "Single-Party Account." On March 22, 2007, the Arandas executed a new signature card (the "Second Signature Card"), adding Mrs. Aranda to Account 1. The Second Signature Card bears the Arandas' initials next to a checked box indicating "Multiple-Party Account." Also on March 22, 2007,

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<sup>1</sup> The Background references the parties' November 15, 2010 *Joint Stipulation of Facts*, and other documents filed in this case, of which the Court takes judicial notice.

the Arandas opened a second checking account at United with an account number ending in 0194 ("Account 2") (collectively with Account 1, the "Accounts"). Regarding the form of ownership, the information on the signature card opening Account 2 (the "Account 2 Signature Card") (collectively with the Second Signature Card, the "Signature Cards") is identical to the Second Signature Card - it bears the Arandas' initials next to a checked box indicating "Multiple-Party Account". The Arandas assert that United personnel selected the "Multi-Party Account" box before presenting the Signature Cards to the Arandas for their signature.

On May 23, 2008, Seacoast National Bank ("Seacoast") obtained a judgment against the Debtor in state court. Seacoast filed a judgment lien certificate against the Debtor on May 27, 2008, and served United with a writ of garnishment on September 2, 2008. The Debtor filed a chapter 11 bankruptcy petition on October 28, 2008. On his Amended Schedule C, the Debtor claimed the Accounts as exempt tenancy by the entirety ("TBE") property. The Debtor, as chapter 11 debtor-in-possession, filed a complaint to avoid Seacoast's judgment and garnishment liens (the "Complaint") initiating this adversary proceeding. In the Complaint, the Debtor asserted that the Accounts were exempt TBE property. Subsequently, the case was converted to chapter 7, and the Trustee intervened in this adversary proceeding. Additionally, the Trustee filed a *Second Amended Objection to Debtor's Claimed Exemptions* (the

"Objection") objecting to the Debtor's claim of exemption in the Accounts. The Trustee's Motion seeks summary judgment against the Debtor with respect to the Objection and Count I of the Complaint. At issue is whether the Accounts are exempt TBE property under Florida law.

### CONCLUSIONS OF LAW

#### **I. Jurisdiction**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

#### **II. Summary Judgment Standard**

Federal Rule of Civil Procedure 56(c), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056, provides that summary judgment is appropriate if the Court determines that the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). "An issue of fact is 'material' if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir.

1997). "In determining whether a genuine question of material fact exists, the Court must consider all evidence in the light most favorable to the non-movant." *Pilkington v. United Airlines, Inc.*, 921 F. Supp. 740, 744 (M.D. Fla. 1996). In considering a motion for summary judgment, "the court's responsibility is not to resolve disputed issues of fact but to assess whether there are any factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party." *Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 11 (2d Cir. 1986), *cert. denied*, 480 U.S. 932 (1987) (*citing Anderson*, 477 U.S. at 248). "Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. . . . If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment." *Herzog v. Castle Rock Entm't*, 193 F.3d 1241, 1246 (11th Cir. 1999).

### **III. Account 1 Is Not TBE Property Because the Arandas Did Not Acquire Their Interest in the Account at the Same Time**

"The nature of a bankrupt's interest in property is determined by state law." *In re Sinnreich*, 391 F.3d 1295, 1297 (11th Cir. 2004) (*citing Butner v. United States*, 440 U.S. 48, 55 (1979)). In Florida, a married couple may own personal property as a tenancy by the entirety. *Beal Bank, SSB v. Almand and Assocs.*, 780 So. 2d 45, 53 (Fla. 2001). The six necessary unities of TBE ownership

are: "(1) unity of possession (joint ownership and control); (2) unity of interest (the interests in the account must be identical); (3) unity of title (the interests must have originated in the same instrument); (4) unity of time (the interests must have commenced simultaneously); (5) survivorship; and (6) unity of marriage (the parties must be married at the time the property became titled in their joint names)." *Id.* at 52 (citing *First Nat'l Bank v. Hector Supply Co.*, 254 So. 2d 777, 781 (Fla. 1971)). To create TBE ownership of a bank account, the six unities must exist when a married couple opens the account. *In re Caliri*, 347 B.R. 788, 798 (Bankr. M.D. Fla. 2006) ("The operative date for establishing ownership of a financial account is the date on which the account is opened or established.") (citing *Beal Bank*, 780 So. 2d at 58). "Should one of these unities never have existed or be destroyed, there is no entirety estate." *Id.* (quoting *United States v. One Single Family Residence With Out Buildings Located at 15621 S.W. 209th Ave., Miami Fla.*, 894 F.2d 1511, 1514 (11th Cir. 1990)).

The Trustee argues that the Arandas cannot own Account 1 as a tenancy by the entirety because the unity of time is not present. The Trustee asserts that because the Debtor opened Account 1 as a "Single-Party Account" and later added Mrs. Aranda as co-owner, the Arandas' interest in Account 1 did not arise at the same time. The Arandas, on the other hand, argue that they both obtained their interest in the Account 1 on March 22, 2007, when they executed the

Second Signature Card. In other words, the Arandas assert that the unity of time is satisfied by their having contemporaneously executed the Second Signature Card. The Arandas further assert that they deposited any funds in Account 1 after they executed the Second Signature Card.

The Arandas' argument is unpersuasive. The relevant time for establishing the unities of TBE ownership is when the Debtor opened the Accounts. *Caliri*, 347 B.R. at 798. The Debtor opened Account 1 as a single-party account. The subsequent addition of Mrs. Aranda as co-owner was not sufficient to create a tenancy by the entirety. The Florida Supreme Court's decision in *Beal Bank* supports this conclusion.<sup>2</sup> In that case, the court declined to overturn the lower court's unanimous decision that a bank account "lacked the unities of time and title and thus [was] not held as tenancy by the entirety" when a husband opened the account alone, and later added his wife as co-owner. 780 So. 2d at 49 n.2; *Beal Bank, SSB v. Almand and Assocs.*, 710 So. 2d 608, 616 (Fla. 5th DCA 1998) (Harris., J., concurring in part and dissenting in part), *overruled on other grounds by* 780 So. 2d 45 (Fla. 2001).

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<sup>2</sup> In *Beal Bank*, the Florida Supreme Court recognized that commentators have called into question the continued utility of the unity of time in creating TBE ownership of bank accounts. 780 So. 2d at 52 n.6. Nevertheless, the court declined to disturb the Fifth District's unanimous decision that adding a spouse as co-owner to a bank account does not satisfy the unity of time. Furthermore, because it was undisturbed on appeal, the Fifth District's decision remains binding law with respect to this issue. See *Aurora Loan Services, LLC v. Senchuk*, 36 So.3d 716, 721 (Fla. 1st DCA 2010) ("in the absence of inter-district conflict or contrary precedent from the supreme court, the decision of a district court of appeal is binding throughout Florida" (citing *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992))).

Similarly, in this case, the Debtor opened Account 1 alone, and later added Mrs. Aranda as co-owner. As such, the unity of time is not present. Therefore, Account 1 cannot be TBE property.

As a result, the Arandas' assertion that they deposited all of the funds in Account 1 after executing the Second Signature Card is irrelevant. First, the Second Signature Card did not convert Account 1 to a TBE account. Therefore, the timing of any deposits relative to the execution of the Second Signature Card is irrelevant. Second, the Arandas have not alleged that any funds they deposited into Account 1 after executing the Second Signature Card are traceable to TBE property. *Cf. In re Hickox*, 215 B.R. 257, 260 (Bankr. M.D. Fla. 1997) ("commingled funds, that are traceable to exempt assets, retain their exempt status."). Therefore, the Court will grant the Motion as to Account 1.

#### **IV. The Court Cannot Determine the Form of Ownership of Account 2 Based Solely on the Signature Card**

The Trustee also asserts that Account 2 cannot be TBE property because the Account 2 Signature Card indicates "Multi-Party Account" as the form of ownership, rather than TBE. Generally, Florida law presumes that personal property acquired by a married couple is TBE property if the six unities of TBE ownership are present. *In re Kossow*, 325 B.R. 478, 485 (Bankr. S.D. Fla. 2005). In *Beal Bank*, the Florida Supreme Court explained that an "express disclaimer" of TBE ownership set forth in a bank account signature card defeats this presumption. 780 So. 2d at 60-61. As the

Trustee points out, an express disclaimer "arises if the financial institution affirmatively provides the depositors with the option on the signature card to select a tenancy by the entirety among other options, and the depositors expressly select another form of ownership[.]" *Id.* at 60 (citing *Hurlbert v. Shackleton*, 560 So. 2d 1276, 1279 (Fla. 1st DCA 1990)). "Absent evidence of fraud, this express disclaimer would end the inquiry as to whether a tenancy by the entirety was intended." *Id.* However, *Beal Bank* also states that if the necessary unities are present, and the Debtor establishes that the bank expressly precluded TBE as a form of ownership, then a debtor may prove by extrinsic evidence that he intended to create a tenancy by the entirety even if the signature card contains an express disclaimer of TBE ownership. *Id.* at 49, 60. "In this circumstance, no presumption arises and the debtor has the burden of establishing a tenancy by the entirety by a preponderance of the evidence." *Id.* at 61.

The Trustee asserts that the selection of "Multi-Party Account" on the Signature Cards precludes a finding that the Arandas owned the Accounts as TBE property. The Trustee argues that the Signature Cards clearly express the Arandas' intent not to hold the Accounts as TBE property, and that any evidence to the contrary is inadmissible parol evidence. As explained above, however, *Beal Bank* directly controverts this argument. Under *Beal Bank*, if the unities of TBE ownership are present and the debtor

can establish that a bank expressly disallowed TBE ownership, then a debtor may prove at trial that he intended to create a tenancy by the entirety account despite an express disclaimer in a signature card. These are precisely the circumstances the Arandas have alleged: that they intended to own the Accounts as TBE property; that United personnel informed the Arandas that TBE ownership was not an option; and that United personnel presented the Arandas with signature cards pre-marked for "Multi-Party" accounts. Moreover, the Trustee has not alleged that any of the unities of TBE ownership are lacking with respect to Account 2. As such, the Court cannot find as a matter of law that the Arandas did not intend to own Account 2 as TBE property. Therefore, the Court will deny the Motion as to Account 2.

#### **CONCLUSION**

Because the unity of time never existed, Account 1 cannot be TBE property. However, the Account 2 Signature Card is not dispositive regarding the Aranda's intended form of ownership in that account. As such, the Arandas may present evidence at trial that United expressly prohibited them from selecting TBE as a form of ownership, and that the Arandas intended for Account 2 to be a TBE account.

ORDER

The Court, having reviewed the submissions of the parties, the applicable law, and being otherwise fully advised in the premises, hereby **ORDERS AND ADJUDGES** that:

1. The Motion is **GRANTED IN PART AND DENIED IN PART**.
2. The Debtor's claim of exemption in Account 1 is **DENIED**.
3. At trial, the Debtor has the burden of proving by a preponderance of the evidence that the Arandas intended Account 2 to be a TBE bank account, but that United disallowed TBE ownership.

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Copies Furnished To:

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