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APR 26 2007

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

8	In re:)	Chapter 13
9	ANN DORIS GRUNEWALD,)	No. 4:04-bk-05063-JMM
10	_____ Debtor.)	Adversary Proceeding 4:06-ap-00089-JMM
11	ANN DORIS GRUNEWALD,)	MEMORANDUM DECISION RE: UNITED STATES OF AMERICA'S MOTION FOR SUMMARY JUDGMENT
12	Plaintiff,)	
13	vs.)	
14	CITY OF TUCSON, a political subdivision;)	
15	STATE OF ARIZONA, on behalf of and for)	
16	the Arizona Department of Economic)	
17	Security; UNITED STATES OF AMERICA,)	
	on behalf of and for the Internal Revenue)	
	Service,)	
	_____ Defendants.)	

18
19 On March 12, 2007, a motion for summary judgment came on for hearing. The parties were
20 represented as follows: for the Debtor--Eric Slocum Sparks; for Defendant United States on behalf of the
21 Internal Revenue Service ("IRS")--Goud Maragani. The court heard argument and took the matter under
22 advisement. After consideration of the facts and law, the court now rules.

23
24 **PROCEDURAL FACTS**

25
26 On August 15, 2006, the chapter 13 Debtor filed a complaint against the IRS and others, in
27 an effort to remove various statutory liens against her real property located at 4634 North Cheyenne in
28 Tucson, Arizona (the "Property").

1 In the instant case, the IRS recorded a lien of \$30,978.84 on May 19, 1992, for tax obligations
2 owed by Frederick W. Deubert, dba "Color Classics."¹ The lien was re-recorded on March 4, 2002.

3 On September 19, 2006, the IRS answered the complaint, admitted recording the tax liens,
4 and pleaded that it had no knowledge of the Debtor's other factual allegations (Dkt. #7).

5 On October 27, 2006, the IRS filed a motion for summary judgment (Dkt. #17), which the
6 Debtor opposed (Dkt. #32).

7
8 **UNDISPUTED FACTS**
9

10 From the affidavits and declarations of the parties, and from uncontested documents, the court
11 finds the following facts to be established and thereby they need no further proof in the event a trial is
12 necessary on disputed and material facts. FED. R. CIV. P. 56(d).

- 13 1. The Debtor was married to Frederick W. Deubert at all relevant times before
14 August 5, 1992, when her marriage to him was dissolved. (Ex. C. to Decl.
15 of Kelly Cap.)
- 16 2. Until August 5, 1992, the Debtor jointly owned the Property with Frederick
17 Deubert, when the Superior Court, in the Decree of Dissolution, awarded it
18 to the Debtor. (Debtor's Statement of Facts at para. 4.)
- 19 3. The IRS recorded its lien against Frederick Deubert on May 19, 1992 at 4:04
20 p.m.
- 21 4. The Debtor filed a chapter 13 bankruptcy petition on May 19, 1992, which
22 was file-stamped at 4:31 p.m. (Case No. 92-1613-TUC-LO).
- 23 5.. The Debtor's chapter 13 plan was never confirmed, and her case was
24 dismissed on July 10, 1995.
- 25 6. Pursuant to the 1991 Decree of Dissolution's requirements, Frederick Deubert
26 quit- claimed his interest in the Property to the Debtor on November 10,
27 1998, and that deed was recorded on November 17, 1998.

28

¹ Color Classics, Inc. may be an Arizona corporation formed March 24, 1989.

1 7. The IRS re-filed its tax lien against Frederick Deubert on March 4, 2002
2 (Ex. B. to IRS's motion).
3

4 **DISPUTED FACTS**

5
6 The Debtor maintains that her attorneys delivered her bankruptcy petition to the Bankruptcy
7 Court's Clerk's Office prior to 4:04 pm. on May 19, 1992.

8 However, her attorney has argued that the petition was delivered to the Clerk's Office prior
9 to 4:04 p.m., and there is an affidavit from the Debtor's attorney, which would tend to establish that fact.

10 The Debtor declares, therefore, as a matter of law, that the automatic stay of 11 U.S.C.
11 § 362(a) was invoked prior to the IRS's recording of the initial May 19, 1992, tax lien, thereby rendering it
12 "void."
13

14 **DISCUSSION**

15
16 On May 19, 1992, the Debtor jointly owned real property with Frederick Deubert, who at that
17 time was still her spouse. If her bankruptcy petition was filed before the IRS lien was recorded, the act of
18 recordation would have been void, not voidable. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992)

19 According to the substantiated facts in the case thus far, the Debtor's time-stamped
20 bankruptcy petition was 4:31 p.m., and the IRS lien, recorded at 4:04 p.m., would therefore be valid and not
21 void.

22 However, if the Debtor can prove that she or her agents actually delivered the petition to the
23 Bankruptcy Court Clerk prior to 4:04 p.m. on May 19, 1992, then the lien would be void. And, if that is the
24 case, by the next time that the IRS re-recorded it, on March 4, 2002, the IRS's debtor, Frederick Deubert,
25 no longer had an interest in the Property, and had not had an interest since November 17, 1998.

26 The dispositive case here is *In re Godfrey*, 102 B.R. 769 (9th Cir. BAP 1989). There, the
27 BAP, relying on the reasoning in the Ninth Circuit's case of *Cintron v. Union Pacific R.R. Co.*, 813 F.2d 917,
28 920 (9th Cir. 1987), held that a bankruptcy petition is deemed filed when it is placed in the possession of

1 the clerk of the court. 102 B.R. at 771. However, there is a presumption that the time-stamp is the actual
2 filing time, unless rebutted by competent evidence.

3 Because there is an allegation that the Debtor's petition was delivered to the Clerk before 4:04
4 p.m. on May 19, 1992, the court will give the Debtor an opportunity to present credible and competent
5 evidence on that issue.

6 The issue of filing time, therefore, shall be reserved for trial.

7
8 **OTHER ISSUES**

9
10 **A. Arizona Homestead**

11
12 The Debtor maintains that her Arizona homestead exemption takes precedence over a federal
13 tax lien. However, the federal tax lien is a creature of federal, not state law. Therefore, federal law takes
14 precedence over state-created rights. The Debtor has cited no federal statute which creates an exception to
15 this principle, and the court is aware of none. The Debtor's defense on this ground is therefore overruled
16 as inapplicable.

17
18 **B. Innocent Spouse**

19
20 At oral argument, the IRS noted that it was not attempting to collect the tax liability from the
21 Debtor personally and individually. It was only proceeding against a property interest which, it maintains,
22 Frederick Deubert had in the Property when the lien was recorded.

23 Thus, since the IRS is not attempting to collect from the Debtor, and is only proceeding to
24 foreclose its lien against real property, the "innocent spouse" defense is inapplicable, and is therefore
25 overruled.

1 **C. Resurrection of the Lien Upon Case Dismissal**

2
3 In its briefs, the IRS appears to contend that, even if the May 19, 1992 lien was void if
4 recorded post-petition, the lien nonetheless revived as of the 1992 case's dismissal on July 10, 1995.

5 While creative, this argument raises more issues for consideration. First, according to the
6 Ninth Circuit's holding in *Schwartz*, the post-petition recordation was void, not voidable. Therefore, if it
7 was void *ab initio*, there was nothing to revive.

8 Second, although some post-petition acts are deemed viable and are reinstated to the *status*
9 *quo ante*, after a dismissal pursuant to 11 U.S.C. § 549, an automatic stay violation is not included in the
10 list of unaffected activities.

11 Therefore, since dismissal of the first case in 1995 did not prevent the IRS, or indeed any
12 creditor, from immediately renewing and recommencing collection activity, their starting point was
13 necessarily the dismissal date, with no relation-back to the earlier void act. Since the IRS then did nothing
14 until March 4, 2002, there was a seven-year gap, post-dismissal of the first bankruptcy case.

15
16 **D. The Debtor's Interest in the Real Property**

17
18 The IRS raises another argument in its effort to gain an advantage based upon its May 19,
19 1992 lien recording. It is that the lien attached to the Debtor's husband's (Frederick W. Deubert) "interest"
20 in the real property. And, since Mr. Deubert himself did not file for bankruptcy in 1992, he did not gain the
21 § 362(a) automatic stay protections.

22 This argument requires an inquiry into property rights under Arizona law. In a bankruptcy
23 case, property rights are determined pursuant to state law. *Butner v. United States*, 440 U.S. 48 (1979). In
24 a community property state, all property acquired by a married couple is held in community property status,
25 i.e., the property is owned by the marital community. ARIZ. REV. STAT. § 25-211.

26 Likewise, any debt incurred during the marriage is deemed to be a community property
27 obligation. If, as the IRS appears to contend, the debt owned by Frederick Deubert is only his debt, it is not,
28 therefore, a community obligation. Thus, a spouse's separate debt is collectible only from separate property,

1 and not as against community property. Community property is not liable for either spouse's separate debts,
2 except in those situations involving the value of one spouse's contribution to the community property. ARIZ.
3 REV. STAT. § 25-215(B)

4 These legal and factual issues require further exploration:

- 5 1. What is the nature of the IRS debt? Was it Frederick Deubert's separate debt
6 or was it a community debt?
- 7 2. How was the Property titled and held on May 19, 1992?
- 8 3. If the Property was held as community property, and if Frederick Deubert's
9 IRS obligation was a sole and separate liability, how much of his separate
10 property was contributed toward the acquisition of the Property?
- 11 4. When was the IRS debt incurred by Frederick Deubert? Was he married to
12 the Debtor at the time?
- 13 5. Finally, if the parties were divorced on August 5, 1992, and the husband was
14 required to convey his interest in the community property to the wife
15 (Debtor), did he have an interest at all when the IRS recorded its lien on
16 May 19, 1992?

17 These issues also remain for trial.

18
19 **RULING**

20
21 A fact issue exists as to when, during the day of May 12, 1992, the bankruptcy petition was
22 filed. The court will hear evidence on this issue separately from the other issues, involving other defendants.
23 The Debtor shall have the burden of proof to rebut the presumption of the 4:31 p.m. timestamp.

24 Other fact issues remain as to the extent of Frederick Deubert's interest in the Property.
25
26
27
28

1 **FURTHER HEARINGS**

2
3 A trial on the issues set forth above shall be bifurcated from the balance of the case, and will
4 be heard on **June 19, 2007, at 9:30 p.m.**, in Courtroom 446. A joint pretrial statement shall be filed five
5 days before trial.

6
7 DATED: April 26, 2007.

8
9 
10 JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

11 COPIES served as indicated below
12 this 26th day of April, 2007, upon:

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