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Elijah Newcomb

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Quitclaim Deeds, Divorce Decrees: Homestead Exemptions for Transferred Marital Property Across “Tenancy by the Entirety” and “Community Property” Jurisdictions

Elijah Newcomb, J.D. Candidate 2023

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Introduction

The quit claim deed is an instrument that transfers a property interest from a grantor to a grantee, without making any other representations.¹ Quit claim deeds are common among spouses and divorcing couples as concerns regarding title defects are mitigated.² These transfers have resulted in bankruptcy cases where a recipient-spouse receives a property interest encumbered by a lien, and tries to evade liability.³ A debtor can attempt to avoid a lien through an exemption.⁴ Exemptions are statutory provisions which can protect qualified property in a bankruptcy action.⁵ Section 522 of Title 11 of the United States Code (the “Bankruptcy Code”) governs these exemptions.⁶ The “Homestead Exemption” provides that the debtor may avoid qualifying judicial liens against their encumbered residential property, up to a certain amount.⁷

¹ See David W. Griffin, *It's Nearly Always about the House*, 32 FAM. ADVOC. 8, 13 (2010).

² See *id.* at 13–14 (“On an arm’s length basis, a warranty deed is best. Between spouses, it is generally acceptable to tender a quit claim deed.”).

³ See, e.g., *In re Brinskele*, No. 18-30194-DM, 2021 Bankr. LEXIS 1104 (Bankr. C.D. Cal. Apr. 23, 2021); *In re LaBordé*, 231 B.R. 162 (Bankr. W.D.N.Y. 1999); *In re Hutchins*, 306 B.R. 82 (Bankr. D. Vt. 2004); *In re Garbo*, BK 21-11053 CLB, 2022 Bankr. LEXIS 338 (Bankr. W.D.N.Y. Jan. 27, 2022); *In re Scott*, 400 B.R. 257 (Bankr. C.D. Cal. 2009); *In re Ashcraft*, 415 B.R. 428 (Bankr. D. Idaho 2008).

⁴ See Gary E. Sullivan, *A Fresh Start to Bankruptcy Exemptions*, 2018 BYU L. REV. 335, 337 (2018).

⁵ See *id.*

⁶ See 11 U.S.C. § 522 (2018).

⁷ See 11 U.S.C. § 522(o)–(p); see also *In re Ashcraft*, 415 B.R. at 435.

The Bankruptcy Code permits states to “opt out” of the federal bankruptcy exemptions and develop their own exemptions by statute, including the Homestead Exemption.⁸ State statute also determines the legal rules regarding jointly owned marital property.⁹ Two common doctrines of jointly owned marital property are tenancy by the entirety and community property, recognized in twenty-five states and nine states, respectively.¹⁰ There is a popular perception that a tenancy by the entirety offers a spouse greater protection of their shared assets than joint ownership under other property doctrines, including community property.¹¹

Part I of this memorandum explains the basic legal principles underlying quit claim transfers of encumbered real property where the recipient spouse enters bankruptcy, using *In re Brinskele* as an example. Part II examines a similar line of cases, in both tenancy by the entirety and community property jurisdictions, where the debtor or trustee moved to avoid a lien through the Homestead Exemption. The memorandum concludes examining the patterns and differences, if any, between these cases by jurisdiction.

Discussion

I. Legal Principles.

A. Quit Claim Deeds, Liens, Judgments and Exemptions.

A quit claim deed results in a transfer of title of property from the grantor to the grantee, subject to whatever encumbrances exist on the property.¹² Put another way, the grantor of a quit

⁸ See Sullivan, *supra* note 4, at 337.

⁹ See John C. King, *Federal Tax Liens and Jointly Owned Property*, TAXES – THE TAX MAGAZINE, Jan. 1968, 7 (“In determining the extent of the ‘property and rights to property’ to which a tax lien attaches, the courts must look to state law.”).

¹⁰ See Amy B. Broockerd, *United States v. Craft: Pulling the Stakes Out From Under Tenancy by the Entirety*, 71 UMKC L. REV. 731, 731 (2002); see also Charles P. Rettig, *Innocent Spouse: Separating the Marital Tax Liability*, 14 J. TAX PRAC. & PROC. 17, 30 n.57 (2012).

¹¹ See e.g., Gail Liberman & Alan Lavine, *Love, Marriage, and Money: Understanding And Achieving Financial Compatibility Before And After You Say “I Do”* 84 (1998); Jay Romano, *Your Home: A Change in the Law on Co-ops*, N.Y. TIMES, Nov. 19, 1995, at 5.

¹² See Griffin, *supra* note 1, at 13.

claim deed transfer only purports to convey whatever title they have at the time the deed is executed, and the grantee receives the property "as-is."¹³ Quit claim deeds and other "as-is" transfers of property may be mandated by terms of a divorce resolution.¹⁴

A lien is a "legal right or interest that a creditor has in another's property, lasting until a debt or duty that it secures is satisfied."¹⁵ A judgment lien can generally be defined as an involuntary lien against property issued after a judgment is entered against the owner.¹⁶ Other liens come from statute. For example, federal law specifies that "any person liable to pay any tax [who] neglects or refuses to pay the same after demand, the amount. . . shall be a lien in favor of the United States upon all property and rights to property."¹⁷ These tax judgments must be released "on the filing of a satisfaction of judgment or release of lien in the same manner as the judgment is filed to obtain the lien."¹⁸ The United States may also impose a lien as a criminal penalty, pursuant to statute.¹⁹

The categorization of jointly owned property is usually determined by state law.²⁰ Tenancy by the entirety has traditionally been defined by the "five unities," those being unity between the spouses of the property's interest, possession, time, title, and marriage.²¹ Tenants by the entirety are each entitled to possess the entire property and protect it from outsiders and may not unilaterally partition or convey the property.²² This can be contrasted with the tenancy in

¹³ See John W. Witty, *Deeds - Construction as Quitclaim, Bargain-and-Sale, or Warranty Deed Note and Comment*, 35 OR. L. REV 198, 199 (1956).

¹⁴ See, e.g., *In re Scott*, 400 B.R. 257, 259 (Bankr. C.D. Cal. 2009)

¹⁵ *Lien*, *Black's Law Dictionary* (8th ed. 2004).

¹⁶ See 5 Powell on Real Property § 39.05 (2022). See e.g. *In re LaBorde*, 231 B.R. 162, 164 (Bankr. W.D.N.Y 1999) (citing N.Y. C.P.L.R. § 520).

¹⁷ 28 U.S.C. § 3201(d).

¹⁸ *Id.*

¹⁹ See *In re Hutchins*, 306 B.R. 82, 91 (Bankr. D. Vt. 2004) (interpreting 18 U.S.C § 3613).

²⁰ See 7 Powell on Real Property § 52.03 (2022).

²¹ See *id.* § 52.01.

²² See *id.*

common, a form of co-ownership where tenants are similarly entitled to possess the entire property but may convey their interest in the property unilaterally.²³ The tenant by the entirety's indivisible rights in the property often frustrate a creditor's access to their spouse's interest.²⁴ In adhering jurisdictions, community property is created when a married couple purchases property together.²⁵ Community Property is similar to tenancy by the entirety in that each spouse is deemed to have a present and undivided one-half interest in all such property, and such interest cannot be unilaterally conveyed.²⁶ Whether a creditor can reach a spouse's interest will depend on factors such as the timing of the obligation, the type of liability, and other local variations of law.²⁷

Most states have opted out of the federal exemption amounts and have created their own thresholds by statute.²⁸ For example, in New York the exemptible amount is determined from three categories based on location. Conversely, California and Vermont implement general provisions applicable to all residents in the state.²⁹ These state exemption provisions interact with Section 522(f)(1) of the Bankruptcy Code, which allows the debtor to avoid liens that would "interfere" with the exemptions delineated in that section, or by state law, so long as they are qualified judicial liens or nonpossessory, nonpurchase money security liens.³⁰

B. The Brinskele Case and the Effect of Quit-Claiming Encumbered Property

The case of *In re Brinskele* is an example of the consequence of a warranty free transfer of encumbered property. The United States recorded a Notice of Federal Tax Lien against Ms.

²³ *See id.* § 50.01.

²⁴ *See id.*

²⁵ *See id.* § 53.01.

²⁶ *Id.*

²⁷ *See id.* § 53.05.

²⁸ *See* 11 U.S.C. § 522; *see also* Sullivan, *supra* note 4, at 337.

²⁹ *Compare* N.Y. C.P.L.R. § 5206(d) *with* CA CCP § 704.730 *and* Vt. Stat. Ann. § 27-101.

³⁰ *See* 11 U.S.C. § 522(f)(1).

Brinskele, stemming from a judgment against her husband stemming from unpaid taxes assessed against his business.³¹ The husband quit-claimed the entirety of his interest in certain real property to Ms. Brinskele after the United States had recorded that judgment with the county recorder's office.³² Ms. Brinskele thereafter filed a voluntary petition for chapter 11 bankruptcy relief, and the Internal Revenue Service filed a proof of claim regarding their judgment against the property.³³ The IRS filed a motion for summary judgment on the proof of claim, and Ms. Brinskele filed a cross-motion seeking a determination that the underlying tax assessments were illegal.³⁴ The court granted the IRS' motion for summary judgment and denied Ms. Brinskele's cross-motion.³⁵ The court noted that the record demonstrated the lien's validity, and further held that Ms. Brinskele lacked standing to challenge the tax penalties and liens against certain property when she received that certain property "as-is" via quit-claim deed.³⁶

The *Brinskele* case differs from the following cases in three key aspects: first, the Brinskele's did not divorce before or after the transfer of property; second, the debtor did not attempt to avoid the lien using the Homestead Exemption; and third, Ms. Brinskele did not have any interest in the property prior to the initial transfer.³⁷ Nevertheless, *In re Brinskele* clearly demonstrates that a debtor in receipt of encumbered, quit claimed property may not then challenge the underlying lien. The inability for debtors to challenge a lien makes avoidance via the Homestead Exemption an important tool to consider, when available.

³¹ See, e.g., *In re Brinskele*, No. 18-30194-DM, 2021 Bankr. LEXIS 1104 (Bankr. C.D. Cal. Apr. 23, 2021).

³² See *id.* at *1–3.

³³ *Id.* at *2.

³⁴ *Id.* at *1.

³⁵ *Id.* at *10.

³⁶ *Id.*

³⁷ See *id.* at *8–10.

II. Homestead Exemption Caselaw

A. Tenancy by the Entirety States

In *In re LaBorde*, Ms. LaBorde attempted to avoid four judgment liens on her New York state residence under the Homestead Exemption.³⁸ The liens stemmed from civil suits against her ex-husband.³⁹ The first judgment was docketed against her ex-husband while the couple were still married and held the residential property as co-tenants by the entirety.⁴⁰ The remaining judgments attached after the divorce decree, but prior to the husband quit-claiming his interest in the residence to Ms. LaBorde.⁴¹ The court relied on New York State precedent that a decree of divorce transforms a tenancy by the entirety into a tenancy in common.⁴² The initial lien attached to the husband's tenancy-by-the-entirety, while the following liens attached to his co-tenancy in common.⁴³ The court denied Ms. LaBorde her motion to avoid the liens to the extent of on the one-half tenancy she obtained from her husband but granted it to the extent of her own one-half tenancy.⁴⁴

The trustee in *In re Hutchins* sought to avoid two liens by the United States against the debtor's marital residence, securing the amount of her ex-husband's criminal fines.⁴⁵ Ms. Hutchins and her ex-husband purchased a Vermont residence as tenants by the entirety.⁴⁶ The husband was later convicted of seven counts relating to drug trafficking, and the criminal fines against him were recorded as two liens against the marital residence.⁴⁷ The first lien attached

³⁸ See *In re LaBorde*, 231 B.R. 162, 162–65 (Bankr. W.D.N.Y. 1999).

³⁹ *Id.*

⁴⁰ *Id.* at 165.

⁴¹ *Id.*

⁴² *Id.* (citing *Greenhouse Realty, Inc. v. St. George*, 546 N.Y.S.2d 483 (N.Y. App. Div. 1989)).

⁴³ *In re LaBorde*, 231 B.R. at 167.

⁴⁴ *Id.*

⁴⁵ See *In re Hutchins*, 306 B.R. 82, 87–8 (Bankr. D. Vt. 2004).

⁴⁶ *Id.* at 87.

⁴⁷ *Id.* at 87–8.

during the couple's marriage, while the second attached following their divorce, but before the husband quitclaimed his interest to Ms. Hutchins.⁴⁸ The Vermont Bankruptcy Court noted the "nearly identical" facts in the case of *In re LaBorde* and relied on the reasoning of the *LaBorde* Court.⁴⁹ The court noted that, pursuant to Vermont law, the debtor and ex-husband's co-tenancy by the entirety was replaced by a co-tenancy in common upon divorce.⁵⁰ The first lien attached to the husband's co-tenancy by the entirety and remained affixed to his co-tenancy in common.⁵¹ The second lien attached to the husband's co-tenancy in common but did not attach to Ms. Hutchins co-tenancy.⁵² The court here, like the court in *In re LaBorde*, granted the trustees motion to avoid to the extent of the debtor's one-half interest.⁵³

In the case of *In re Garbo*, Ms. Garbo attempt to avoid a judgment lien against residential property she obtained from her ex-husband by quitclaim deed.⁵⁴ The couple had purchased the property together and met the qualifications for a joint tenancy by the entirety.⁵⁵ The couple's stipulation of settlement, dated December 31, 2018, specified that the ex-husband would immediately execute a quitclaim deed transferring full interest and ownership of the marital residence to Ms. Garbo.⁵⁶ Discover Bank secured a judgment against the ex-husband after the divorce was finalized and perfected the corresponding lien against the property on December 20, 2019.⁵⁷ The quitclaim deed was recorded on May 20, 2021.⁵⁸ Ms. Garbo filed for Chapter 7

⁴⁸ *Id.* at 82.

⁴⁹ *Id.* at 95–96 (citing *In re LaBorde*, 231 B.R. at 166).

⁵⁰ *See In re Hutchins*, 306 B.R. at 92.

⁵¹ *Id.* at 82.

⁵² *Id.*

⁵³ *See id.* at 97; *see also In re Laborde*, 231 B.R. at 167.

⁵⁴ *See In re Garbo*, BK 21-11053 CLB, 2022 Bankr. LEXIS 338 (Bankr. W.D.N.Y Jan. 27, 2022).

⁵⁵ *See id.* at *1; *see also* 7 Powell on Real Property § 52.01 (2022).

⁵⁶ *See In re Garbo*, 2022 Bankr. LEXIS 338, at *1.

⁵⁷ *See id.* at *4–5.

⁵⁸ *See id.* at *4.

bankruptcy relief on October 13, 2021.⁵⁹ As a debtor, Ms. Garbo filed a motion to avoid the lien via the Homestead Exemption.⁶⁰ Denying her motion, the United States Bankruptcy Court for the Western District of New York held that Ms. Garbo had become the equitable owner of her husband's half interest in the marital residence upon the divorce decree in December 2018.⁶¹ Consequently, the lien was imposed on her equitable right to her husband's half interest.⁶² The court further reasoned that when the quitclaim deed was recorded, Ms. Garbo's perfected interest was already subject to the lien.⁶³

B. Community Property States

In *In re Scott*, Mr. Scott and his wife's dissolution of marriage judgment transferred her interest in their California residence to him free of warranty.⁶⁴ The residence was held as community property during their marriage.⁶⁵ After the divorce was finalized, the ex-wife's attorney recorded a "Family Law Attorney's Real Property Lien" against the residence.⁶⁶ Mr. Scott sought to avoid the lien under the Homestead Exemption.⁶⁷ Relying on the Ninth Circuit decision in *In re Stoneking*, he argued that the lien attached to his wife's community property interest prior to the conversion to sole ownership, and accordingly he could avoid the lien.⁶⁸ Mr. Scott argued the lien did not attach to the new sole ownership interest he had obtained from the divorce judgment.⁶⁹ The court denied Mr. Scott's motion on two grounds: (1) that the lien was an

⁵⁹ *See id.* at *2.

⁶⁰ *Id.* at *2-3 (citing 11 U.S.C. § 522(f)).

⁶¹ *Id.* at *4.

⁶² *Id.* at *5.

⁶³ *Id.* (citing *In re LaBorde*, 231 B.R. 162 (Bankr. W.D.N.Y. 1999)).

⁶⁴ *In re Scott*, 400 B.R. 257, 259 (Bankr. C.D. Cal. 2009).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 260 (citing *Law Offices of Moore & Moore v. Stoneking (In re Stoneking)*, 225 B.R. 690 (B.A.P. 9th Cir. 1998) (holding that a debtor who was the sole owner of residential property could avoid a lien imposed on the property while it was community property)).

⁶⁹ *See In re Scott*, 400 B.R. at 260.

unavoidable statutory lien under section 522(f) of the Bankruptcy Code; and (2) that he had not possessed a new sole ownership interest before the lien affixed.⁷⁰ The dissolution of marriage certificate had specifically referenced the incoming lien.⁷¹ Due to the factual dissimilarity, Mr. Scott could not rely on *Stoneking*, and his motion to avoid the lien was denied.⁷²

In the case of *In re Ashcraft*, the debtor, Ms. Ashcraft, had built a marital residence in Idaho with her husband.⁷³ Ms. Ashcraft's husband obtained a loan without her knowledge, defaulted, and subsequently a judgment lien was recorded against their property.⁷⁴ Ms. Ashcraft and her husband later divorced on November 21, 2017.⁷⁵ A contemporaneous quit claim deed was recorded which conveyed the husband's interest to Ms. Ashcraft.⁷⁶ Ms. Ashcraft filed for relief under chapter 7 of the Bankruptcy Code on June 4, 2008, and sought to avoid the judgment lien pursuant to the Homestead Exemption.⁷⁷ Relying on *Stoneking*, the Idaho Bankruptcy Court granted Ms. Ashcraft's motion to avoid under the Homestead Exemption holding that Ms. Ashcraft held a community interest at the time of the lien, the lien encumbered both the debtor and her spouse, and that the creation of the new ownership was separate from the lien.⁷⁸

Conclusion

Each of these exemption cases involved a bankruptcy court's examination of the nature of the joint ownership and continuing its analysis from that point. While there are differences in the construction of community property and a tenancy by the entirety, those differences were not

⁷⁰ *See id.* at 265.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *In re Ashcraft*, 415 B.R. 428 (Bankr. D. Idaho 2008).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* (citing 11 U.S.C. § 522(f)(1)).

⁷⁸ *In re Ashcraft*, 415 B.R. at 431–35 (citing *Law Offices of Moore & Moore v. Stoneking (In re Stoneking)*, 225 B.R. 690 (B.A.P. 9th Cir. 1998)).

dispositive in these cases. The courts would, however, look to other jurisdictions which practiced their doctrine of joint ownership for guidance.⁷⁹ Contrary to what is often assumed, Tenancy by the Entirety jurisdictions do not seem to offer any greater protection in this line of cases than the community property jurisdictions.⁸⁰ In fact, the only debtor in the aforescribed cases who was successful in their avoidance motion did so in a community property jurisdiction.⁸¹ The determinations in these cases was not based on unique doctrines of joint ownership but other dispositive factors – for example, Ms. Garbo failed due to a determination of existing equitable ownership, while Mr. Scott was unable to avoid a statutory, nonqualified lien.⁸² While there are patterns in these decisions, they do not stem from the doctrines of joint ownership that govern the forum jurisdictions.

⁷⁹ See, e.g., *In re Hutchins*, 306 B.R. 82 (Bankr. D. Vt. 2004) (citing *In re LaBorde*, 231 B.R. 162 (Bankr. W.D.N.Y. 1999)); *In re Ashcraft*, 415 B.R. 428, 431 (Bankr. D. Idaho 2008).

⁸⁰ See e.g., *Lieberman & Lavine*, supra note 11, at 84; *Romano*, supra note 11, at 5.

⁸¹ See *In re Ashcraft*, 415 B.R. at 428.

⁸² See *In re Garbo*, BK 21-11053 CLB, 2022 Bankr. LEXIS 338, at *4 (Bankr. W.D.N.Y. Jan. 27, 2022); see also *In re Scott*, 400 B.R. 257, 260 (Bankr. C.D. Cal. 2009).