

7.24.12 # 126

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney 

SUBJECT: Notice of Defense of EMSA Interests by the County Attorney
in the Case of Lawrence Geraci, Jr., et al. v. Sunstar EMS, et al.
Florida Second District Court of Appeal Case No. 2D11-1234

DATE: July 24, 2012

NOTICE: THIS IS TO ADVISE THE BOARD, SITTING AS THE EMS AUTHORITY, THAT WE ARE DEFENDING EMS AUTHORITY INTERESTS IN AN APPELLATE ACTION.

DISCUSSION: A claim was filed within a probate action to collect ambulance fees due to the EMS Authority d/b/a Sunstar EMS. The EMS claim became jeopardized by a negative ruling of the Second District Court of Appeal (DCA). The appeal to the Second DCA was taken by the attorney for the estate to appeal an ex parte ruling of the probate court relating to a leased condominium. The ruling of the probate court was favorable to the interests of creditors of the estate, which included Sunstar EMS. The ruling of the Second DCA reversed the decision of the probate court. If not appealed to the Florida Supreme Court, the ruling could impede the Sunstar's, and any County's or other creditor's, ability to pursue claims or liens for anything from utilities charges to code enforcement to mechanic's liens under similar factual situations in the future. We have filed a Motion for Certification to the Supreme Court with the Second DCA requesting that the Second DCA certify the issue within the appeal to the Supreme Court as it conflicts with other appellate cases and/or is a question of great public importance. The state Agency for Health Care Administration, through one of its contractors Xerox Recovery Services, is likely to join Sunstar EMS in the appeal to the Florida Supreme Court as well, as it is repeatedly a creditor of estates facing these hurdles to collection when this particular issue of leased property is present.

Attached for your reference is a copy of the June 27, 2012 Opinion of the Second District Court of Appeal and the Motion for Certification to Florida Supreme Court.

JLB:SRS:DSC

Attachments

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

LAWRENCE GERACI, JR., as Personal)
Representative of the Estate of Mary J.)
Geraci, Deceased,)
)
Appellant,)
)
v.)
)
SUNSTAR EMS, an unregistered fictitious)
name of Pinellas County Emergency)
Medical Services Authority, and AGENCY)
FOR HEALTH CARE ADMINISTRATION,)
)
Appellees.)
_____)

Case No. 2D11-1234

Opinion filed June 27, 2012.

Appeal from the Circuit Court for Pinellas
County; Lauren C. Laughlin, Judge.

Russell R. Winer, St. Petersburg, for
Appellant.

No appearance for Appellees.

SILBERMAN, Chief Judge.

Lawrence Geraci, Jr., as personal representative of the Estate of Mary J. Geraci, seeks review of the order determining that the deceased's condominium is not a "homestead" exempt from forced sale under article X, section 4 of the Florida Constitution. The question before this court is whether a condominium that is subject to a long-term leasehold may qualify as a homestead to be protected from forced sale to

pay the creditors of the deceased owner. We answer this question in the affirmative and, therefore, reverse the trial court's order.

The property at issue is a condominium in the "On Top of the World" development in Pinellas County. The trial court determined that the condominium is the subject of a 100-year lease agreement from 1976, and the decedent owned the remaining term on the lease. Upon her death, the appellees filed claims against the decedent's estate as creditors. Geraci filed a petition to determine whether, under article X, section 4(a)-(b) of the Florida Constitution, the condominium qualified as a homestead and was therefore exempt from a forced sale to pay the creditors' claims. The trial court determined that the condominium did not qualify as a homestead because it is a leasehold and not a fee simple interest in land. Geraci challenges this ruling on appeal.

There are three contexts in which the homestead has significance in Florida law: (1) taxation, (2) exemption from forced sale, and (3) descent and devise. Snyder v. Davis, 699 So. 2d 999, 1001-02 (Fla. 1997). The applicable context for the homestead in this case is the exemption from forced sale, which is set forth in article X, sections 4(a)-(b) of the Florida Constitution.

Those provisions provide as follows:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

According to these provisions, a homestead owner's heirs are entitled to claim an exemption from its forced sale to pay creditors of the decedent owner's estate. The question in this case is whether the leasehold interest in the condominium qualifies as a "homestead" for purposes of this exemption.

Article X, section 4(a) does not distinguish between the different kinds of ownership interests that are entitled to the homestead exemption against forced sale. In re Alexander, 346 B.R. 546, 549-50 (Bankr. M.D. Fla. 2006); Cutler v. Cutler, 994 So. 2d 341, 344 (Fla. 3d DCA 2008); S. Walls, Inc. v. Stilwell Corp., 810 So. 2d 566, 571 (Fla. 5th DCA 2002). And the Florida Supreme Court has long since adopted the general rule that a fee simple estate is not necessary to this exemption. See Bessemer Props., Inc. v. Gamble, 27 So. 2d 832, 833 (Fla. 1946); Coleman v. Williams, 200 So. 207, 209 (Fla. 1941). In fact, "any beneficial interest in land" may entitle its owner to the exemption. Bessemer Props., Inc., 27 So. 2d at 833.

In considering the exemption from forced sale, a court must instead "focus on the debtor's intent to make the property his homestead and the debtor's actual use of

the property as his principal and primary residence." In re Dean, 177 B.R. 727, 729 (Bankr. S.D. Fla. 1995). When a lessee's interest in a leasehold estate includes the right to use and occupy the premises for a long term and the lessee has made the residence his principal and exclusive residence, such an interest is entitled to Florida's homestead exemption from forced sale. Id. at 729-30; see also In re McAtee, 154 B.R. 346, 348 (Bankr. N.D. Fla. 1993) (finding a long-term lease to be subject to the exemption from forced sale because it constituted an interest in real property and was more than a "simple possessory interest"); S. Walls, 810 So. 2d at 572 (finding a co-op to be subject to the exemption from forced sale because "a co-op owner owns the unit, pays valuable consideration for it, and has the right to the exclusive use and possession of it for the duration of the lease"). This construction of the homestead exemption from forced sale is consistent with "important public policy considerations such as promoting the stability and welfare of the state by encouraging property ownership and the independence of its citizens by preserving a home where a family may live beyond the reaches of economic misfortune." In re McAtee, 154 B.R. at 347-48.

In this case, the trial court declined to apply the homestead exemption to the condominium based on its determination that the homestead protection at issue is actually that of descent and devise. The court appeared to recognize that the condominium may qualify as homestead for purposes of the homestead exemption from forced sale but explained that, in the context of descent and devise, the supreme court has held that the property interest must be a fee simple interest in land. See In re Estate of Wartels, 357 So. 2d 708, 710 (Fla. 1978) (holding that a co-op is not a homestead for purposes of descent because it is not "an interest in realty").

The trial court's decision is erroneous because the homestead protection at issue in this case is not that of descent and devise. Article X, section 4(c)¹ prohibits the devise of the homestead if the owner is survived by a spouse or minor child. In this case, there is no question of a surviving spouse or minor child's right to prohibit descent or devise. Instead, this case involves the application of the homestead exemption from forced sale as set forth in article X, section 4(a)(1), to satisfy the appellee creditors' claims. Cf. Cutler, 994 So. 2d at 344 (analyzing whether property held in trust that was devised to an heir constituted homestead property for purposes of determining whether it was protected from forced sale under article X, section 4(a)(1)). Thus, Wartels is inapposite, and the general rule that a fee simple estate is not necessary to the forced sale exemption applies. See Dean, 177 B.R. at 730; S. Walls, 810 So. 2d at 572.

We recognize that at least two courts have refused to so distinguish Wartels. See In re Lisowski, 395 B.R. 771, 777 (Bankr. M.D. Fla. 2008) (concluding that, under Wartels, the homestead exemption from forced sale applies only to improved land or real property that is owned by the debtor); Phillips v. Hirshon, 958 So.

¹That provision provides as follows:

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

See also §§ 732.401(1) (statutory homestead exemption pertaining to descent), .4015 (statutory homestead exemption pertaining to devise), Fla. Stat. (2009).

2d 425, 430 (Fla. 3d DCA 2007) (holding that a co-op did not qualify for homestead exemption for purposes of descent and devise because it was not an interest in realty under Wartels). However, we do not find the reasoning of these cases persuasive because they do not adequately reconcile the supreme court's decision in Wartels with the court's jurisprudence extending the exemption from forced sale to other beneficial interests in land and not limiting the exemption to a fee simple interest.

In conclusion, the trial court erred in determining that the decedent's condominium was not a homestead for purposes of the exemption from forced sale because it was not a fee simple interest in land. Accordingly, we reverse the denial of Geraci's petition to determine homestead status with directions for the court to afford the condominium homestead status under article X, section 4 of the Florida Constitution in relation to the creditor appellees' claims.

Reversed and remanded.

KELLY and BLACK, JJ., Concur.

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

LAWRENCE GERACI, JR., as Personal
Representative of the Estate of Mary J.
Geraci, Deceased,

Appellant,

v.

Case No. 2D11-1234

SUNSTAR EMS, an unregistered fictitious
Name of Pinellas County Emergency
Medical Services Authority, and AGENCY
FOR HEALTH CARE ADMINISTRATION,

Appellees.

MOTION FOR CERTIFICATION TO SUPREME COURT

COMES NOW Appellee, SUNSTAR EMS, by and through its undersigned counsel, and pursuant to Rule 9.330, Florida Rules of Appellate Procedure, files this Motion requesting this Court to Certify this case to the Supreme Court on one or more of the following grounds:

1. This Decision Constitutes a Matter of Great Public Importance.

The effect of this Court's decision in Geraci v. Sunstar EMS and Agency For Health Care Administration impedes the collection of legitimate debts owed to local governments and the State of Florida, and similarly impacts other creditors from collecting debts in the context of a probate estate, at a time when

governmental resources to provide services for the health and welfare of its citizens have been greatly reduced. Appellee is confident that this decision could affect many of its claims in probate cases in the future and by extension will have a similar impact in the other 66 Florida Counties.

2. This Opinion Conflicts with a Decision of the Third District Court of Appeal.

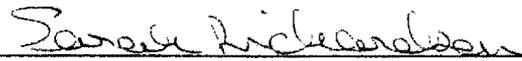
On pages 5 and 6 of this Court's Opinion dated June 27, 2012, after concluding that the case of In re Estate of Wartels, 357 So. 2d 708 (Fla. 1978), is inapposite, stated: "We recognize that at least two courts have refused to so distinguish Wartels. See . . . Phillips v. Hirshon, 958 So. 2d 425, 430 (Fla. 3d DCA 2007)(holding that a co-op did not qualify for homestead exemption for purposes of descent and devise because it was not an interest in realty under Wartels)."

3. This Opinion Conflicts with a Decision of the Supreme Court.

In the case of In re Estate of Wartels, 357 So. 2d 708 (Fla. 1978), the Supreme Court examined the meaning of "homestead" under Article X, Section 4 of the Florida Constitution, and concluded that the words contained in that section "have been repeatedly defined to mean that homestead property must consist of an interest in realty. [*citations omitted*]." Id. at 710. The Court then held that the decedent's cooperative apartment, for which the decedent had claimed an interest

thorough the “purchase of the shares in the cooperative corporation . . . [and] a lease for his individual cooperative apartment unit,” was not homestead property under the meaning of Article X, Section 4(c). Id. at 711. Therefore, this Court’s Opinion reversing the Order before this Court, the “Order on Determination of Homestead Status,” conflicts with the Supreme Court’s Wartels case.

WHEREFORE, Appellee Sunstar EMS respectfully requests that this Court certify this case to the Supreme Court on one or more of the above-stated grounds.



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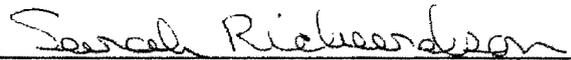
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Attorneys for Sunstar EMS, Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion has been sent by U.S. Mail on the 11th day of July, 2012, to Russell R. Winer, Esquire, USAmeriBank Building, 1840 4th St. North, Suite 201, St. Petersburg, FL 33704-4303, and Karen Dexter, Xerox Recovery Services (f/k/a ACS Recovery Services), 2316 Killearn Center Blvd., Tallahassee, FL 32309-3524.



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