William & Mary Law Review

Volume 7 (1966)
Issue 2

Article 16

May 1966

Bankruptcy - Tax - Validity of Unrecorded Federal Tax Lien Against Trustee in Bankruptcy. United States v. Speers, 86 S. Ct. 411 (1965)

F. Prince Butler

CURRENT DECISIONS

Bankruptcy—Tax—Validity of Unrecorded Federal Tax Lien Against Trustee in Bankruptcy. In *United States* v. *Speers*,[1] the Kurtz Roofing Company filed a petition in bankruptcy on June 20, 1960 and, in the ensuing proceedings, the trustee in bankruptcy argued that an unrecorded federal tax lien[2] arising on June 3, 1960 was invalid as to him. The trustee asserted that according to § 70, sub. C of the Bankruptcy Act[3] he was vested with the rights of a "judgment creditor" within the meaning of § 6323 of the Internal Revenue Code,[4] which entitles a "judgment creditor" to prevail over an unrecorded federal tax lien. The Court upheld the trustee's position.

The problem with which the court was confronted in this case was one of reconciling two conflicting federal policies.[5] One was the intention of Congress to give the United States maximum assistance in collecting revenues, which is embodied by § 6323 of the Internal Revenue Act. The other was the intention of Congress to increase the size of a bankrupt's estate available to unsecured creditors, which is expressed by § 70, sub. C of the Bankruptcy Act.

The view that a trustee is not a "judgment creditor" for the purposes of avoiding an unrecorded federal tax lien originated in dictum handed down in *In re Taylorcraft Aviation Corp.*,[6] however, no explanation was offered to verify this position. Further support was given this view by

1. 86 S. Ct. 411 (1965).

2. Internal Revenue Code of 1954 §§ 6321, 6322, 26 U.S.C.

3. 11 U.S.C. § 110, sub. C (1989); § 70, sub. C, popularly known as the "strong arm clause", provides:

> "The trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor actually exists."

4. 26 U.S.C. § 6323 (1954), provides: "[T]he lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the secretary or his delegate . . ."

5. See, In re Fidelity Tube Corp., 278 F.2d 776 (3d Cir. 1960).

6. 168 F.2d 808, 810 (6th Cir. 1948). In this case there was a controversy between a recorded tax lien and an unrecorded mechanics lien at the time of bankruptcy. The Court stated, "the trustee was not a judgment creditor . . ." as though this were self-evident and offered nothing to support this opinion.

a definition of "judgment creditor" in *United States* v. *Gilbert.*[7] There it was stated that the words "judgment creditor", in the predecessor of § 6323, were used by Congress, "in the usual conventional sense of a judgment of a court of record. . . ." In recent years many courts have followed this doctrine relying either on *Taylorcraft* or *Gilbert.*[8] The opposite view dates from *United States* v. *Sands*[9] which expressly rejected the dictum of *Taylorcraft* on the grounds that courts had frequently upheld the rights of trustees in bankruptcy over unrecorded conditional vendors.[10] The court not only likened the rights of the Federal Government to collect its taxes to those of an unrecorded conditional vendor but also included a trustee in bankruptcy within the meaning of "judgment creditor" as it is used in § 70, sub. C.[11]

In the case at bar, the court regarded *Sands* as the leading authority prior to *Gilbert.* During the period between *Sands* and *Gilbert* an unsuccessful effort was made in Congress to expressly exclude from § 6323 "artificial" judgment creditors such as trustees in bankruptcy.[12] However, Congress decided to rely upon "judicial interpretation of the existing law." [13] The Court felt that "judicial interpretation of existing law" must have referred to the law as stated in *Sands.* Whether or not this phrase did in fact refer to *Sands* is certainly open for dispute.[14]

Since *Gilbert* the trend has definitely been for courts to find in favor of unrecorded federal tax liens over trustees in bankruptcy.[15] It appears

7. 345 U.S. 361 (1953). The controversy in this case was between an unrecorded federal tax lien and a municipal tax assessment.

8. *Accord,* Brust v. Sturr, 237 F.2d 135 (2d Cir. 1956); In re Fidelity Tube Corp. 278 F.2d 776 (3d Cir. 1960); Simonson v. Granquist, 287 F.2d 489 (9th Cir. 1961); United States v. England, 226 F.2d 205 (9th Cir. 1955). In each of these cases the trustee was held not to be a "judgment creditor" under § 6323.

9. 174 F.2d 384, 385 (2d Cir. 1949). In this case the Court still held the federal tax lien to be superior to the rights of the trustee because the Government had perfected its lien by taking possession of the personalty prior to bankruptcy.

10. Empire State Choir Co. v. Beldock, 140 F.2d 587, 589 (2d Cir. 1944), was cited in Sands as listing cases supporting this position.

11. *Accord,* In re Fisher Plastics Corp., 89 F.Supp. 446, 448 (D. Mass. 1950); In re Sport Coal Co., 125 F.Supp. 517 (S.D. W.Va. 1954). Both of these cases held a trustee to be a "judgment creditor" under § 6323.

12. H.R. Rep. No. 1337, 83d Cong., 2d Sess., to accompany H.R. 8300, p. A407.

13. S. Rep. No. 1622, 83d Cong., 2d Sess., to accompany H.R. 8300, p. 575.

14. In effect, the Court admitted that it may not have correctly construed the intentions of Congress by indicating that Congress could overrule this case by passing new legislation if it found such a course to be advisable.

15. *Supra,* note 8.

certain that, without further legislative action, this decision will reverse the trend. In the words of the Court, this decision reduces, the Government's claim for unpaid taxes to the status of an unsecured claim, sharing fourth-class priority with unsecured state and local tax claims....

F. Prince Butler

Constitutional Law—ADMISSIBILITY OF EVIDENCE—REASONABLE SEARCH AND SEIZURE. In November 1963, a dwelling in Chesapeake, Virginia was broken into and coins and whiskey were stolen. The following day, the defendant, John E. Hawley arrived at a motel driving a borrowed automobile. Before checking out on the same day, Hawley received permission from the motel manager to park the automobile in front of the office, stating that he would return to pick up the car in several days. After ten days had passed the manager phoned the police concerning the vehicle. Learning that the car was believed to be involved in the burglary, the police proceeded, without a warrant, to enter through an unlocked door finding under the front seat the coins and whiskey. Five months later Hawley was apprehended and indicted for the burglary.

At the trial the defendant moved that the coins and whiskey be excluded as evidence on the ground that they were procured by an unreasonable search in violation of the Fourth Amendment.[1] The trial court overruled the motion, and following the defendant's conviction for statutory burglary, the cause was brought on error to the Supreme Court of Appeals of Virginia.[2] The Appellate court held that there was no error in admitting the coins and whiskey in evidence. They found that the search and seizure was reasonable[3] on the grounds that the car had been abandoned by Hawley and that its contents were, therefore, *bona vacantia*.[4]

1. U.S. Const. Amend. IV
"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches seizures, shall not be violated . . ."

2. Hawley v. Commonwealth, 206 Va. 479, 144 S.E.2d 314 (1965).

3. The court recognized that they were bound to follow the rule established in *Mapp v. Ohio*, 367 U.S. 643 (1961) that evidence obtained by unreasonable search and seizure is constitutionally inadmissable in state criminal prosecutions.

4. From a determination that the owner had permitted Hawley to use the car during