

The Court sustained the Chapter 7 trustee's objection to the Debtor's claim that her real property, held as tenants by the entirety, was exempt from a federal criminal restitution award which was entered against her individually.

In re Conrad, --- B.R. ---, 2016 Bankr. LEXIS 10 (Bankr. D. Md. Jan. 4, 2016) (Catliota, J.)

Summary by Justin P. Fasano, McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A.

Maria Conrad (the "Debtor") filed for Chapter 7 bankruptcy and Roger Schlossberg (the "Trustee") was appointed as the Chapter 7 trustee. Prior to filing bankruptcy, the United States District Court for the Eastern District of Virginia entered a federal criminal restitution award in favor of the United States of America and against the Debtor in the amount of \$834,004.60. However, the United States of America never recorded a notice of lien pursuant to 18 U.S.C. § 3613(d).

The Debtor owned certain real property in Maryland as tenants by the entirety and sought to exempt this property in her bankruptcy as such. The Trustee objected to this claim of exemptions, citing the case of *United States v. Craft*, 535 U.S. 274 (2002). In *Craft*, the Supreme Court ruled that, based on the language of the federal tax code, a federal tax lien against one spouse could attach to entireties property, despite state law holding that only joint creditors could reach such property.

The Bankruptcy Court upheld the Trustee's objection to exemptions. The Bankruptcy Court acknowledged that 11 U.S.C. § 522(b)(3)(B) authorized the Debtor to exempt entireties property to the extent it was exempt from process under "applicable nonbankruptcy law," and that under Maryland law, such property was exempt from claims of individual creditors. However, the Bankruptcy Court found that the "applicable nonbankruptcy law" in this case was 18 U.S.C. § 3613, the federal criminal restitution statute. Further, the Bankruptcy Court held that the statutory collection remedies available to a holder of a federal criminal restitution award were virtually identical to the statutory remedies available to the holder of a federal tax lien. Therefore, there was no reason why the holder of a federal criminal restitution award could not assert the same rights that the Supreme Court held in *Craft* were available to a holder of a federal tax lien. The two other reported cases on the issue supported the Bankruptcy Court's position.

The Bankruptcy Court also rejected, based on the language of the restitution award, the argument that the parties to the restitution award anticipated that it would be paid monthly, not through attachment or sale. The Plea Agreement in the case stated that if the Court imposed a schedule of payments, that schedule was only a minimum requirement for the Debtor, and not a limitation on collection methods.

Finally, the Bankruptcy Court rejected the argument that the failure to file a notice of lien changed the outcome of the objection. The Bankruptcy Court noted that under 18 U.S.C. § 3613 (c), a lien arises upon entry of the restitution order. Recordation of a notice of lien under 18 U.S.C. § 3613(d) is only necessary to perfect the lien as to third parties.

This decision is currently being appealed.