UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

GREGORY A. BENNETT, d/b/a B&G PRECISION MACHINING COMPANY — Case No. 92-20370 K

Debtor

In re

THOMAS A. GORROW, d/b/a B&G PRECISION MACHINING COMPANY — Case No. 92-20369 K

Debtor

DECISION

The facts are as stipulated by the parties. The question is whether certain equipment (which is now sold, with approximately $20,000 in proceeds being held in escrow) was the property of the debtors or of their partnership.

If it was property of the debtors, then Bennett's share of the proceeds will go to his Chapter 7 Trustee (principally, as the Court understands it, for payment of priority, non-dischargeable taxes). (Gorrow is in Chapter 13.) If it was property of the firm, then the proceeds will go to Marine Midland Bank in partial satisfaction of a loan it extended to the debtors and the firm, secured by the assets of the firm.

Were this a dispute between the debtors and Marine alone, I might rule that Marine is correct in its view that the debtors are estopped by their representations to Marine from asserting that the property was not that of the firm.

However, the debtors are here arguing the position that the debtors' estates' Trustees have apparently declined to argue. While it is not clear whether the debtors have authority to assert the Trustees' positions[1] the decision here obviates the need to consider that question, since I conclude that even as to the Trustee, this property must be deemed to be property of the firm, rather than of the individuals.

Unlike *In re Leichter*, 471 F.2d 785 (2d Cir. 1972) and similar cases, this is not a question of whether Marine's financing statement gave proper notice to the world as to its claims against the property. It is apparently not disputed that the firm did in fact exist and that Marine was duly perfected as to the firm's property. This is very different from cases in which the U.C.C. filing was against an assumed name rather than against the "real" party.

Marine filed against B & G Precision Machining Company's property. The question is only whether the property in question was among that firm's assets.

When the debtors purchased the equipment in November of 1988 (more than 3 years before bankruptcy) they joined the seller in executing a Bill of Sale which named "Thomas Gorrow and Gregory

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[1]As a Chapter 13 debtor, Gorrow might well enjoy section 544 status, but it would seem that Bennett would need the consent of the Trustee or leave of Court to assert the Trustee's rights.

Bennett, individually and d/b/a B & G Precision Machining" as "Buyer." That document incorporated a "Schedule A" itemizing the equipment and captioned "Schedule A to Bill of Sale to B & G Precision Machinery."

It appears that the firm had existed since 1985, and that each partner had contributed approximately $4,000 at that time. When they bought the equipment on credit in 1988, they might have contributed a small amount of added equipment, but payments on the subject equipment were made exclusively from partnership funds. The equipment was depreciated on the firm's tax returns only. It was never considered to be property of the individuals. Apparently the individuals never filed a d/b/a certificate; only the firm did.

Although there is no explanation for the debtors' having taken title "individually and d/b/a B & G Precision Machinery," there is no evidence of any intention that the property be anything other than partnership property. On the contrary: It has been stipulated that "The Partners intended that the equipment be owned by the Partnership..."

Because of a provision of New York Law that has not been cited to me, the fact that this property was purchased with partnership assets and was intended to be partnership property are dispositive.

Section 12(2) of the New York Partnership Law states: "Unless the contrary intention appears, property acquired with

partnership funds is partnership property."

This provision is identical to section 8 of the Uniform Partnership Act, and cases construing that Act as adopted in the various States uniformly view the intention of the parties as controlling, rather than record ownership, where the property was paid for from partnership assets.[2]

It is clear that this equipment is partnership property in light of governing statute and the facts discussed above.

The prevailing party is to submit an order in accordance with this decision.

Dated: Buffalo, New York
July 27, 1992

U.S.B.J.

[2]See, for example *Price v. Dist. of Col. R.H.C.*, 512 A.2d 263, (D.C. App. 1986); *In re Schreiber's Estate*, 227 N.W.2d 917, 68 Wis.2d 135 (1975); *Pearson v. Norton*, 40 Cal. Rptr. 634, 230 C.A.2d 1 (1964); *Price v. McFee*, 77 A.2d 11, 196 Md. 443 (1950); *Shumway v. Shumway*, 679 P.2d 1133, 105 Idaho 415 (1984).