



LIEN ON ME, WHEN YOU ARE WEARY

By W. Christopher Barrier

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

It was a gray and blustery day but Dr. Shade N. Froyd had a tight smile on his face as he came into Jack's Rainbow Tavern and sidled up to Coon Dog Twichell. "Well," said Froyd (professor of remedial astrology at Brooks County Technical College), "it looks like your friend Dooley Schworn is not long for this world, and about to leave a penniless widow to boot!"

Twichell was startled. "Where did you hear that, Shade?" Froyd replied that he read on Max Brantley's blog (third-hand hearsay from people Max did not know, he not having spoken to Dooley or his wife Entira) that Dooley had moaned the previous evening that he had been hit in the stomach by "The Big C" – **cancer**, of course.

Bad news travels far...

And everyone in Pike City knew about Dooley's financial problems. His brother Omo wanted to get in the ready-mix concrete business, to take advantage of the 2006 home building boom in Pike City. He had borrowed a slug of money to assemble a company, but the Bank required a guaranty from Dooley, albeit unsecured, (Entira having made it perfectly clear to Dooley that under no circumstances would she permit the pledge of their home or the unencumbered rent houses they had owned as husband and wife for many years).

So, when the concrete business tanked along with the new housing market in 2008, Dooley was sued along with Omo, but Entira was not named nor the real estate mentioned. Omo

and his wife also owned some investment real estate as husband and wife (by the entirety), but the two of them had signed the note and also a mortgage on those properties. Dooley and Omo were forced to confess judgment for over \$200,000.

Holding the sack...

Omo and his wife struggled unsuccessfully to avoid bankruptcy, finally leaving Dooley holding the sack. Dooley surrendered to the Bank an interest in a duck club that stood in his name alone, not his and Entira's, and agreed with the Bank to keep the interest on the judgment paid, to apply any windfalls to the principal, and to sit down with the Bank in five years to see what else could be done. Dooley, never a heavy hitter, was pessimistic about ever whittling down the principal by much.

Dooley knew there would be a judgment lien against his real estate, but he was not sure what that did (and did not) mean to him and Entira. He was quite a bit older than Entira and did indeed have some health problems, so he was clearly concerned about her financial future and the issues Froyd had raised, unbeknownst to Dooley. He also hated the thought of taking bankruptcy in his lifetime.

Squelch me if you can...

Twichell was aware of the whole situation, although not representing any of the players. He was anxious to find out what he could do on the health issue, but he felt that squelching the "penniless widow" rumors would also help Dooley and Entira, and that Froyd was a good place to start.

"Let me explain how tenancies by the entirety and judgment liens work, Shade," said Twichell, taking a deep breath. "When spouses own property as tenants by the entirety, neither spouse may convey his or her interest to a third party or affect the right of survivorship in the other. In Arkansas, in theory, the interest of the debtor-spouse in the estate may be sold or levied on for his or her own debts, but only subject to the other spouse's contingent right of survivorship. If, for example, the husband, being the debtor, dies, creditors cannot attach the wife's interest. If the wife dies, however, a creditor has a defeasible interest in the estate."

Listen to the Cases...

The cases tell us that the right of survivorship is a key tenet of ownership as tenants by the entirety: "[an] estate by the entirety is peculiar to marriage and entails the right of survivorship. The right of survivorship to the whole can only be dissolved in a divorce proceeding, by death, or by the voluntary action of both parties."

"It is sometimes stated that the entirety is a different being than the two spouses, hence, its property is not subject to claims against one spouse," said Twichell. "The better analysis is a matter of priorities and contingencies. The right of survivorship is superior in operation to a judgment lien, which cannot halt the working of that right when the right vests on death.

"Theoretically, a lien could exist, but, contingent upon the judgment debtor spouse surviving the non-debtor. Otherwise, a lien creditor might seize and sell half of a property, but have to give it back in the event the contingency did not vest. The right of survivorship simply does not work that way in fact."

A new day dawns...

“So, if Dooley and Entira stay married (which seems likely) and Dooley passes on first (which also seems likely, with or without ‘The Big C’), Entira will get those properties and the judgment lien will evaporate like the morning dew,” concluded Twichell. No fun for Dr. Froyd.

Froyd’s disappointment was further deepened when Dooley Schworn himself burst in the restaurant and ordered a tall glass of sweet milk with cornbread crumbled in it. “Man, I need to cool my pipes! Last night, Entira hit me with ‘The Big C’ (**Chili**) and my stomach still hasn’t recovered!!!!”

CHRIS BARRIER practices real estate and business law with Mitchell Williams in Little Rock.