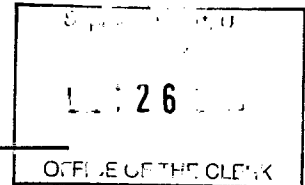


ORIGINAL

No. 19-1354



In The
SUPREME COURT OF THE UNITED STATES

TAN PHAN,

Petitioner,

v.

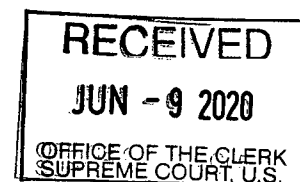
MINH TRUONG, et al

Respondents (Debtors).

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Chapter 7 bankruptcy require the nonexempt debt to be secured as a lien in order to liquidate debtors' homestead? And if state statute conflicts with state constitution, then which law must be applied to the case at hand?

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the unpublished opinion of the U.S. Court of Appeals for the Fifth Circuit (Case No. 19-20419).

OPINIONS BELOW

All below courts refused to liquidate debtors' homestead just because I'm an unsecured creditor (see opinion).

JURISDICTION

The opinion of the court of appeals was entered on October 21, 2019. My petition for writ of certiorari was originally postmarked December 26, 2019, so this Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Tex.Prop.Code § 41.001 provides:

"Sec. 41.001. INTERESTS IN LAND EXEMPT FROM SEIZURE. (a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.

(b) Encumbrances may be properly fixed on homestead property for:

- (1) purchase money;
- (2) taxes on the property;
- (3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);
- (4) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse

in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
(5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;”

Tex. Const. Art. XVI, § 50 (a) provides:

“Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

- (1) the purchase money thereof, or a part of such purchase money;
- (2) the taxes due thereon;
- (3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
- (4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;”

U.S. Courts website provides:

<http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics>

“Role of the Case Trustee

When a chapter 7 petition is filed, the U.S. trustee (or the bankruptcy court in Alabama and North Carolina) appoints an impartial case trustee to administer the case and liquidate the debtor's nonexempt assets. 11 U.S.C. §§ 701, 704. If all the debtor's assets are exempt or subject to valid liens, the trustee will normally file a "no asset" report with the court, and there will be no distribution to unsecured creditors. Most chapter 7 cases involving individual debtors are no asset cases. But if the case appears to be an "asset" case at the outset, unsecured creditors (7) must file their claims with the court within 90 days after the first date set for the meeting of creditors. Fed. R. Bankr. P. 3002(c). A governmental unit, however, has 180 days from the date the case is filed to file a claim. 11 U.S.C. § 502(b)(9). In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim because there will be no distribution. If the trustee later recovers assets for distribution to unsecured creditors, the Bankruptcy Court will provide notice to creditors and will allow additional time to file proofs of claim. Although a secured creditor does not need to file a proof of claim in a chapter 7 case to preserve its security interest or lien, there may be other reasons to file a claim. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

Commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all the debtor's property. It consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.

The primary role of a chapter 7 trustee in an asset case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee accomplishes this by selling the debtor's property if it is free and clear of liens (as long as the property is not exempt) or if it is worth more than any security interest or lien attached to the property and any exemption that the debtor holds in the property."

STATEMENT OF THE CASE

The court of first instance (bankruptcy) has jurisdiction under 28 U.S. Code § 1331. Debtors filed a Chapter 7 bankruptcy petition & exempted their homestead from being liquidated. I objected to that claim because a homestead is exempt from all debts, but there are at least 7 exceptions clearly defined in the Texas law that they claimed and "the refinance of a lien against debtor's homestead" is one of those.

The Fifth Circuit Court of Appeals' opinion (attached as the only appendix hereinafter referred to as "opinion") has most finding of facts and the key fact is on its page #5:

"Phan used his funds to pay off the mortgage on the Debtors' property (which would have been an "encumbrance properly fixed on homestead property" under § 41.001)"

That means the type of debt is on the list of § 41.001, in other words the debt is a nonexempt debt. However, all below courts refused to liquidate debtors' homestead under Chapter 7 Bankruptcy Rule just because I "did not obtain an encumbrance on the property in the form of another mortgage or lien".

REASONS FOR GRANTING THE PETITION

- 1) To correct the Court of Appeals' misapplication of law to facts significantly different from those in Tex. Prop. Code § 41.001; especially this is not a seizure or forced sale. Neither I nor the bankruptcy trustee needs to seize anything from debtors because:
 "Commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all the debtor's property."
 (see page 4)

And trustee can sell the nonexempt property even if it is free and clear of liens (see page 5):

 "The primary role of a chapter 7 trustee in an asset case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. The trustee accomplishes this by selling the debtor's property if it is free and clear of liens (as long as the property is not exempt)"

- 2) To maintain uniformity of the laws:
Tex. Prop. Code § 41.001 uses the phrase "encumbrance properly fixed on homestead property" while the Tex. Const. Art. XVI, § 50 (a) refers to it as 'debt' only (see page 3).

The judgment against debtors in the amount of \$148,142 as mentioned on page #2 of the opinion is clearly a debt and state statute is obviously subordinate to state constitution similarly to Supremacy Clause, so we don't need to convert it to an encumbrance or obtain a lien for the debt to be categorized as a nonexempt debt. A lien is required only if creditors want to foreclose the homestead, but it's not the case here.

CONCLUSION

For the foregoing reasons and my case is very unique, this Court should grant my PETITION FOR WRIT OF CERTIORARI then rule on my case to set it as a precedent for future references.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tan Phan', with a long horizontal flourish extending to the right.

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Date: June 1st, 2020