

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BOBBY HUGH FOWLER,

Plaintiff-Appellant,

v.

SCOTT F. SHADEL,

Defendant-Appellant.

OPINION AND ORDER

04-C-0373-C

This is an appeal from a final order of the United States Bankruptcy Court. Plaintiff-appellant Bobby Hugh Fowler objects to the bankruptcy court's decision sustaining the objection of defendant-appellant Scott F. Shadel, Bankruptcy Trustee. Shadel objected to Fowler's attempt to exempt from his bankruptcy estate two vehicles owned by Fowler's solely owned corporation. I conclude that Fowler has failed to show that the bankruptcy court erred in sustaining the objection. Fowler has an equitable interest in the corporation's property; he does not have legal title that would make the vehicles part of his bankruptcy estate and therefore subject to exemption under the bankruptcy laws.

From the stipulation of facts filed by the parties in the bankruptcy proceeding, I find that the following facts are material and undisputed.

UNDISPUTED FACTS

Plaintiff-appellant Bobby Hugh Fowler is the sole stockholder of Fowler Trucking, Inc. He is also the company's sole employee. Fowler Trucking has two assets: a 1990 Mack CH Truck and a 2000 Chevy Impala. Fowler drives the Mack Truck as his primary work vehicle and uses the Chevy Impala for personal purposes. Without the use of the truck, Fowler would be unable to generate income to support himself.

Fowler's net take-home pay from his trucking work is \$1000 a month. He receives monthly Social Security payments in the amount of \$991 and a pension payment of \$74.55. His total combined income exceeds his monthly expenses by only about \$6.00.

On December 29, 2003, Fowler filed for relief as debtor under Chapter 7 of the Bankruptcy Code. He claimed his stockholder interest in the truck and the Impala as exempt under various subsections of Wis. Stat. § 815.18(3). He did not claim any exemption for his stock in Fowler Trucking.

Trustee Shadel filed an objection to the claimed exemptions on March 18, 2004. At a hearing on April 26, 2004, the bankruptcy court sustained the objection, holding that if Fowler had any interest in the vehicles, it was not one that would give rise to an exemption.

OPINION

The only question raised on this appeal is whether a stockholder's equitable interest

in property can be “property of the estate” of the stockholder and subject to an exemption. Appellant Fowler approaches the question as if it were sufficient to show that he has an equitable interest, when that is merely the beginning of the inquiry and not the end. “Before an exemption can be claimed, it must be estate property.” Matter of Yonikus, 996 F.2d 866, 869 (7th Cir. 1993).

It is undisputed that as a stockholder of Fowler Trucking, appellant Fowler has an equitable interest in the property owned by the corporation. Button v. Hoffman, 61 Wis. 20, 20 N.W.667 (1884). It is equally undisputed that as a stockholder, he has no legal interest in the corporation’s property. Id. at 21, 20 N.W. at 668 (“From the very nature of a private business corporation, or, indeed, of any corporation, the stockholders are not the private and joint owners of its property. The corporation is the real, though artificial, person substituted for the natural person who procured its creation, and have [sic] pecuniary interests in it, in which all its property is vested, and by which it is controlled, managed, and disposed of.”)

Appellant Fowler created the Fowler Trucking corporation; it is the corporation that owns the truck and the Impala, not Fowler. In this respect, Fowler is no different from a stockholder of General Motors or Ford. It makes no difference that appellant is the only stockholder of Fowler Trucking. Button, 61 Wis. 20, 20 N.W. 667. He cannot treat corporate property as his own without violating the principles of incorporation, which

distinguish between an entity and its stockholders. In re Russell, 121 B.R. 16, 17 (Bankr. W.D. Ark. 1990) (“[a] corporation has a separate legal existence from the shareholders and the corporation, not its shareholders, owns the corporate assets and owes the corporate debts”). Thus, in a bankruptcy proceeding, a stockholder’s corporate shares are property of the bankruptcy estate but the assets of the corporation are not.

In creating a corporate entity, appellant Fowler achieved certain advantages, not least of which was protection from debts incurred by the corporation. At the same time, however, he gave up the ownership of the corporate assets and the concomitant right to claim them as exempt property of the bankruptcy estate. The outcome is unfortunate for appellant because it deprives him of the use of the truck that is his main source of income. Unfortunate as it is, his situation does not warrant reading into the bankruptcy law an exemption that does not exist. The bankruptcy judge reached the right conclusion in denying the trustee’s objection to appellant’s attempt to claim the corporate vehicles as exempt property of the bankruptcy estate.

ORDER

IT IS ORDERED that the order of the United States Bankruptcy Court denying plaintiff-appellant Bobby Hugh Fowler’s claimed exemptions of a Mack Truck and Chevy

Impala from

his bankruptcy estate is AFFIRMED.

Entered this 6th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge