DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

BankAtlantic v. Estate of Glatzer

61 So. 3d 1222 (Fla. 3d DCA 2011) · Decided May 18, 2011

SUMMARY

The Florida Third District Court of Appeal held that an estate could not transfer funds from a professional association’s corporate account to an estate depository account. Because the professional association was a separate legal entity and the bank had contractual setoff rights against the association’s account, the transfer impaired the bank’s rights. The court reversed and remanded with directions to return the funds and any interest earned.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Salter, J.; Gersten, J.; Schwartz, J.
JURISDICTION	Florida
DECIDED	May 18, 2011
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	BankAtlantic appealed two non-final circuit court orders directing it to transfer funds from a deceased physician's professional association account to an estate depository account at another bank.
STANDARD OF REVIEW	De novo review of the appealability and legal effect of the non-final orders; the opinion does not expressly state a standard-of-review formula.
PRECEDENTIAL VALUE	published opinion
PARTIES	BankAtlantic v. Estate of Glatzer

TOPICS

estate administration · probate · creditor claims · corporate veil piercing · appellate jurisdiction

PRACTICE AREAS

probate · commercial litigation · corporate law · secured transactions · appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court's orders directing transfer of the professional association's funds were reviewable non-final orders.
2. Whether the estate could take possession of and marshal funds held in the professional association's corporate account as estate assets.
3. Whether transferring the funds to an estate depository account impaired BankAtlantic's possessory and contractual right of setoff.
4. Whether the orders could be upheld because the probate court had not yet adjudicated competing claims to the funds.

HOLDINGS

1. The orders directing transfer of the funds were reviewable non-final orders under Florida Rule of Appellate Procedure 9.130(a)(3)(B).
2. The estate could not treat funds held in the professional association's corporate-name account as assets of the decedent's estate merely because the decedent owned all of the association's shares.
3. Transferring the professional association's funds from BankAtlantic to an estate depository account at another bank impaired BankAtlantic's possessory and contractual right of setoff.

KEY QUOTATIONS

> *"In Gettinger v. Gettinger, 165 So.2d 757 (Fla.1964), the Supreme Court of Florida held that "the affairs of a corporation, even though substantially owned by a decedent, cannot be administered by decedent's executor as assets of the decedent's estate."""* (1223)

FACTUAL BACKGROUND

BankAtlantic was a secured creditor of the deceased physician's professional association under a note and mortgage containing a contractual right of setoff against the borrower's accounts. The physician personally guaranteed the note, and his death constituted an event of default. Despite the parties' agreement that the physician owned all of the association's shares, the estate caused funds held in the association's corporate-name account at BankAtlantic to be transferred to an estate depository account at another bank. The court found no evidence supporting piercing the corporate veil or treating the association's funds as estate assets.

PROCEDURAL HISTORY

The circuit court entered two non-final orders requiring BankAtlantic to transfer funds held in the professional association's account to an estate depository account. BankAtlantic appealed, and the Third District Court of Appeal reversed and remanded with directions to order repayment of the transferred funds and any earnings.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remand for entry of an order directing the return to BankAtlantic of the transferred funds and any interest earned on those funds while in the transferee bank's possession.

CASES CITED

- Dania Jai-Alai Palace v. Sykes, 450 So. 2d 1114 (Fla. 1984)
- Gettinger v. Gettinger, 165 So. 2d 757 (Fla. 1964)
- CMR Distrib., Inc. v. Resolution Trust Corp., 593 So. 2d 593 (Fla. 3d DCA 1992)
- Perez v. Lopez, 454 So. 2d 777 (Fla. 3d DCA 1984)

OPINION

Bankatlantic v. Estate of Glatzer

61 So. 3d 1222

SALTER, J.

SALTER, J. BankAtlantic appeals two non-final circuit court orders directing it to transfer the funds in a deceased physician's professional association account to the depository account (at a different bank) established for the administration of his estate. We reverse both orders and remand for the entry of an order directing repayment of the funds (and any earnings thereon) to the account from which they were transferred. BankAtlantic was a secured creditor of the late doctor's professional association under a note and mortgage. The promissory note included a right of setoff: RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account).... *1223Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and^all such accounts and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph. The decedent personally guaranteed his professional association's promissory note, and his death constituted an event of default under that note. The orders requiring transfer of the funds to a different bank thus impaired BankAtlantic's right of setoff. Although the parties agreed that the deceased physician owned all of the shares of his professional association, there was no evidence presented to support a "piercing of the corporate veil" under Dania Jai-Alai Palace v. Sykes, 450 So.2d 1114 (Fla.1984), or any other alter ego theory. While the appellee Estate was apparently entitled to take possession of the professional association stock held by the doctor at his death,1 no such conclusion extended to the association's funds on deposit in the corporate name at BankAtlantic. In Gettinger v. Gettinger, 165 So.2d 757 (Fla.1964), the Supreme Court of Florida held that "the affairs of a corporation, even though substantially owned by a decedent, cannot be administered by decedent's executor as assets of the decedent's estate." In this case, "substantially" is 100%, and the result is identical. The Estate seeks affirmance of the orders below on three independent grounds: (1) that the orders are not appealable; (2) that the Estate has the power to "take charge of and marshal" the funds in the professional association account; and (3) that the probate court ruling should be upheld because no decision was made regarding any competing claims to the funds. None of these arguments is persuasive. As to jurisdiction, the orders are reviewable non-final orders under Florida Rule of Appellate Procedure 9.130(a)(3)(B). CMR Distrib., Inc. v. Resolution Trust Corp., 593 So.2d 593 (Fla. 3d DCA 1992). Regarding the Estate's second argument, section 69.031(1), Florida Statutes (2010), and the cases cited by the Estate refer to marshaling "part or all of the personal assets of the estate" and to the use of court-approved depositories for such assets. The point in this case is that the stock of the professional association is an asset of the Estate, but the funds of the professional association are a step removed from the Estate. The decedent's Estate essentially ignored the separate corporate existence of the professional association and that entity's obligations to its own creditors. The third argument also fails. BankAt-lantic's rights are not protected just because the funds are frozen in a restricted depository account of the Estate. In this case, BankAtlantic's possessory and contractual rights to setoff are impaired by the transfer to a different bank.2 Reversed and remanded, with directions to order the return of the transferred funds (and any interest earned on such funds while in the transferee bank's possession) to BankAtlantic. . § 733.607(1), Fla. Stat. (2010); Perez v. Lopez, 454 So.2d 777 (Fla. 3d DCA 1984). . As an example of another such impairment, if the transferee bank later failed, BankAtlantic would have to protect its interests as an indirect creditor of the estate's depository account (not as a direct creditor of a named account holder/debtor) in the transferee bank's liquidation.