IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

PENSACOLA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 3 :97-cv-242/LAC

WILFORD A. SIMPSON, JANET L. SIMPSON, CYNDA B. SIMPSON, WILLIAM A. SIMPSON, WARREN A. SIMPSON, WHITNEY A. SIMPSON, and WESLEY A. SIMPSON,

Defendants.
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SUMMARY JUDGMENT

THIS CAUSE comes before the Court on the parties' motions for summary judgment (docs. 26, 31). Also pending is Defendants' motion for Rule 11 sanctions, (doc. 34), which Plaintiff opposes (doc. 40). The Court has taken both motions for summary judgment under advisement, (docs. 30, 37), and is now prepared to rule on all motions. For the reasons stated below, Defendants' motion for summary judgment is GRANTED. Plaintiffs motion for summary judgment and Defendants' motion for sanctions are both DENIED.

I. STATEMENT OF THE CASE

A. Background

Both Plaintiff and Defendants agree that the facts in the instant action are undisputed, and indeed both recite almost identical factual circumstances in the memoranda in support of their respective motions for summary judgment.

1. On December 29, 1983 Defendants Wilford and Janet Simpson, as husband and wife, acquired as tenants by the entireties a parcel of property located in Walton County, Florida. That property, totaling approximately 27.77 acres, also includes buildings and an airplane runway.
2. On October 12, 1984, Defendant Wilford Simpson transferred his interest in the property to Janet Simpson by quitclaim deed.
3. On June 10, 1985 Plaintiff assessed it first tax liability against Defendant Wilford Simpson for the tax year 1981.
4. On October 30, 1987 Plaintiff filed a notice of federal tax lien as to Defendant Wilford Simpson's 1981 tax liability.
5. On December 17, 1987 Defendant Janet Simpson transferred her interest in the property by warranty deed to her children, Defendants Cynda, William, Warren, Whitney, and Wesley Simpson, but retained a life estate in the property.
6. On April 22, 1988 the children transferred their interest in the property by warranty deed to only children Cynda and William Simpson, but still reserved a life estate for Janet Simpson.
7. On June 24, 1988 the Defendants Cynda and William Simpson transferred their interest into the Earnest Mill Family Preservation Trust. Janet Simpson still retained a life estate in the property.
8. Twelve additional tax liabilities were assessed by Plaintiff against Defendant Wilford Simpson in the years 1991, 1994, and 1995 for the tax years 1984-1992. The respective tax liens were subsequently filed in 1992, 1994, and 1995. The total unpaid balance

of tax liability alleged by Plaintiff is $1,284,537.10.

9. Civil penalties were also assessed against Defendant Wilford Simpson in 1992 and
1994 for tax years 1978-1981, totaling $2,696.66. Notice of Liens were filed as to these assessments in 1994.
10. On April 29, 1992 and May 27, 1994 notices of federal tax lien were filed with the Clerk of the Circuit Court of Walton County against the Defendants Janet, Cynda, William, Warren, Whitney, and Wesley Simpson as nominees of Wilford A. Simpson.
11. Defendant Wilford Simpson has not paid either the balance of tax liability or the civil penalties assessed in 1985 and thereafter.

B. Procedural History

On May 19, 1997 Plaintiff filed this civil action seeking a monetary judgment against Defendant Wilford A. Simpson for the unpaid balances and foreclosure of its liens against the 27.77 acres of property and structures located in Walton County (doc. 1). Default judgment was entered against Defendant Wilford Simpson in the amount of $1,284,537.10 for unpaid federal income taxes and $2,696.66 for unpaid civil penalties as of February 28, 1996 plus further interest and statutory additions as allowed by law (doc. 36).

The remaining Defendants,[1] however, timely filed a responsive pleading and moved for summary judgment against Plaintiff (docs. 26, 27). After the Court

[1] Only Wilford A. Simpson defaulted. Defendants Janet, Cynda, William, Warren, Whitney, and Wesley Simpson remain and are the only defendants moving for summary judgment and sanctions.

took that motion under advisement, (doc. 30), Plaintiff filed a cross-motion for summary judgment, which also served as its response in opposition to Defendants' motion (doc. 31). The Court has taken that motion under advisement as well, (doc. 37), and is prepared to rule on both motions.[2]

II. MOTIONS FOR SUMMARY JUDGMENT

A. Standard

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, show that no genuine issue of material fact exists and that the party moving is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed. 2d 265 (1986). The substantive law will identify which facts are material and which are irrelevant. Anderson v. Liberty Lobby. Inc., 477 U.S. 242, 248, 106 S.Ct. 2505,2510,91 L.Ed. 2d202(1986). An issue of fact is material if it is a legal element of the claim under the applicable substantive law which might affect the outcome of the case. Id.

At the summary judgment stage, a court's function is not to weigh the evidence to determine the truth of the matter, but to determine whether a genuine issue of fact exists for trial. Anderson, 477 U.S. at 249, 106 S.Ct. at 2510. A genuine issue exists only if sufficient evidence is presented favoring the

[2] Additionally, Defendants filed a motion for Rule 11 sanctions, (doc. 34), which is opposed by Plaintiff (doc. 40). That motion will also be disposed of in this order.

nonmoving party for a jury to return a verdict for that party. Id. "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." Miranda v. B & B Cash Grocery Store. Inc., 975 IF.2d 1518, 1534 (11th Cir. 1992) (citing Mercantile Bank & Trust Co. v. Fidelity and Deposit Co., 750 F.2d 838, 841 (11th Cir. 1985)).

When assessing the sufficiency of the evidence in favor of the nonmoving party, the court must view all the evidence, and all factual inferences reasonably drawn from the evidence, in the light most favorable to the nonmoving party. Hairston v. Gainesville Sun Publ'g Co., 9 F.3d 913, 918 (1lth Cir. 1993). The court is not obliged, however, to deny summary judgment for the moving party when the evidence favoring the nonmoving party is merely colorable or is not significantly probative. Anderson, 477 U.S. at 249, 106 S.Ct. at 2510. A mere scintilla of evidence in support of the nonmoving party's position will not suffice to demonstrate a material issue of genuine fact that precludes summary judgment. Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990).

B. Discussion

Under Florida law, property held as a tenancy by the entireties cannot be charged with the individual debts of either spouse, in the absence of fraud. United States v. Gurley 415 F.2d 144, 149 (5th Cir. 1969) (citing Meyer v. Faust, 83 So. 2d 847 (Fla. 195 5)).[3] "Because of the unique nature of a tenancy by the entireties under Florida law, a judgment lien cannot attach to real property held in such an

[3] In Bonner v. City of Prichard the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981. 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

estate... , and since property held by the entireties is not subject to levy and sale under execution, an 'Execution Lien' cannot attach thereto." Id.

It is undisputed that Defendants Wilford and Janet Simpson took title to the property at issue as tenants by the entireties,[4] and Plaintiff readily concedes that "[t]here is no evidence before this Court that the Simpsons acquired the real property as tenants by the entireties in order to defeat Mr. Simpson's creditors" (doc. 31, memorandum at 9). Therefore, Defendant Wilford Simpson's interest in the property was unreachable by Plaintiff or any other creditor while held as a tenancy by the entireties.

A similar circumstance was at issue before the Fifth Circuit in Gurlev:

> [I]f the property here involved was then held by the Gurleys in a tenancy by the entirety, the filing of this federal tax assessment with the Clerk of the Circuit Court of Duval County would not have created a United States tax lien against said property because in matters involving the creation and enforcement of federal tax liens the Federal Courts respect those laws of a state which establish and regulate property rights within a state.

415 F.2d at 150 (citing Folsom v. United States, 306 F.2d 361 (5th Cir. 1962); United States v. American Nat'l Bank, 255 F.2d 504 (5th Cir. 1958)).

That court ultimately concluded that if the property was in fact held as an estate by the entireties, it could only be reached by creditors once the spouses' interests converted to a tenancy in common, where each spouse's separate interests in such property become liable for his or her individual debts. Id. If on remand the district court determined that the Gurleys were tenants by the entireties, then the tenancy would

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[4] A tenancy by the entireties cannot exist unless the five "unities" of marriage (the joint owners must be married to each other), title (they must both have title to the property), time (they must have both received title from the same conveyance), interest (they must have an equal interest in the whole of the property), and control (they must both have the right to use the whole property) are present. United Statesv. 15621 S.W. 209th Avenue, 894 F.2d 1511, 1514 (11th Cir. 1990); United States v. Gurlev, 415 F.2d 144, 149 (5th Cir. 1969). However, as stated previously, Plaintiff does not contest that Wilford and Janet Simpson held the property as tenants by the entireties.

be destroyed only upon the divorce of the husband and wife, thus creating a tenancy in common and simultaneously allowing the United States tax lien to attach to each spouses' interests. Id. at 149-50.

In the instant case, there simply was no opportunity for Plaintiff to reach the individual interest of Defendant Wilford Simpson. As a tenant by the entireties under the laws of Florida, his interest was unreachable by any creditor. United States v. 15621 S.W. 209th Avenue, 894 F.2d 1511, 15 14-15(11th Cir. 1990). Moreover, because the property was then conveyed to only Janet Simpson in fee simple, Wilford Simpson had absolutely no interest at the time the tenancy by the entireties was destroyed:

> No persons except husband and wife have a present interest in an estate by the entireties when such estate is unencumbered by any lien existing prior to the creation of such estate and is unencumbered by any lien created jointly by the husband and wife after the estate by entireties came into being. It is not subject to execution for the debt of the husband. It is not subject to partition; it is not subject to devise by will; neither it is subject to the laws of descent and distribution. It is, therefore, an estate over which the husband and wife have absolute disposition and as to which each, in the fiction of the law, holds the entire estate as one person. Therefore, there appears to be no plausible reason why the law should not recognize as valid any formal agreement executed according to law whereby one spouse would be divested of his or her interest in such estate and the other be invested with the unqualified fee-simple title.

Hunt v. Covington, 200 So. 76 (Fla. 1941).

Plaintiff now argues that the subsequent transfers to Janet Simpson, then to her children, and ultimately to the Mills Family Preservation Trust were fraudulent, as those grantees were effectively nominees of Wilford Simpson, and that it is entitled to foreclose its liens against the property (doc. 31, memorandum at 8-14). However, a large component of this argument becomes moot when considered in light of the safeguards afforded property held by tenants by the entireties. If, *arguendo*, the transfer to Janet Simpson was not fraudulent, then clearly she hold the property in fee simple and is free to dispose of it as she wishes. On the other hand, if that conveyance was fraudulent, Janet Simpson would not have fee simple title to the property, but rather the property would still be held by Wilford and Janet Simpson as tenants by

the entireties. In either case, the subsequent transfers to the children and trust become irrelevant, as they too are either entirely valid or entirely void depending on the validity of the initial transfer to Janet.[5]

Furthermore, it is also unnecessary to address whether the conveyance from Wilford and Janet Simpson to only Janet was fraudulent. As discussed immediately above, if the conveyance to Janet was fraudulent, the property remained a tenancy by the entireties and was unreachable by creditors of only Wilford Simpson. If the conveyance was valid, then Janet Simpson held the property in fee simple and Wilford had no interest at all. While there is a possibility that by divorce or some other reason the tenancy by the entireties could be destroyed, thus creating a tenancy in common and making the validity of subsequent conveyances of utmost importance, that day has not yet arrived. As such, the Court declines to make those determinations today.[6]

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[5] Unless, of course, the children took the property as bona fide purchasers for value. Even if this were the case, it would have no bearing on the outcome of this action as the children's purchases would then be protected from prior creditors under the Florida statutes even if the transfer to Janet was fraudulent. See United States v. Ressler, 433 F.Supp. 459, 464 (SD. Fla. 1977), *aff'd*, *576* F.2d 650 (5th Cir. 1978).

[6] If that day arrives, at least a portion of the property would presumably be reachable as a tenancy in common between Wilford Simpson and his wife; that is if Plaintiff could demonstrate that the conveyances made to Janet Simpson and then to the children and trust

were fraudulent.

The facts of this case mandate an unusual result. Frequently, a debtor will attempt to covey his own property to a third party or into a tenancy by the entireties as an attempt to hinder or obstruct his creditors. Without discerning the motives behind their decision, the Court notes that Defendants did exactly the opposite, destroying the tenancy by the entireties in favor of a fee simple held by Janet Simpson alone. While this conveyance, if valid, would have placed the property beyond the reach of Wilford's individual creditors, the tenancy by the entireties already afforded that protection. Nonetheless, because it is undisputed that Wilford and Janet Simpson acquired the 27.77 acre parcel as tenants by the entireties without intention to defraud or avoid creditors, the Plaintiff is simply unable to enforce a lien against Mr. Simpson's interests in the property as it is held today, regardless of subsequent conveyances. Therefore, summary judgment in favor of Defendants is warranted.

III. MOTION FOR SANCTIONS

Defendants also move for Rule 11 sanctions against Plaintiff and allege that the Government's motion for summary judgment is "frivolous, not 'substantially justified,' and is not 'warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal or existing law'" (doc. 34:1). However, the Court finds Defendants' argument unpersuasive. By filing their own motion for summary judgment, Defendants invited a response in opposition from the Plaintiff. Indeed, the non-movant is *required* in this district to file a responsive memorandum to a motion for summary judgment and failure to do so "may be sufficient cause to grant the motion." N.D. FLA. Loc.R. 7.1(C)(1).

The language of Rule 11 "stresses the need for some prefiling inquiry into both the facts and the law

to satisfy the affirmative duty imposed by the rule." FED. R. CIV. P. 11 advisory committee's note. The rule, as amended in 1983, is intended to "reduce frivolous claims, defenses or motions" and to deter "costly meritless maneuvers," thus avoiding unnecessary delay and expense in litigation. Donaldson v. Clark, 819 F.2d 1551, 1556 (11th Cir. 1987) (citations omitted). The standard for testing conduct under Rule 11 is "reasonableness under the circumstances," a standard more stringent than the original good faith requirement required under the rule. Id. Where there is some legal and factual basis for the argument, sanctions are inappropriate. See. e.g., Davis v. Carl, 906 F.2d 533, 536-37 (11th Cir. 1990).

In the instant case, Plaintiff's arguments are well-grounded in Eleventh Circuit jurisprudence. Although they now fail because of their inapplicability to the unusual factual posture of this case, the significance of those arguments may come to bear in the future. Simply because the Court finds those arguments unavailing today does not mean they are without merit, nor does it compel this Court to resort to Rule 11 sanctions. Moreover, as Plaintiff was required to respond to Defendants' motion, it's cross-motion for summary judgment did not impose any additional expenses upon the Court or the parties than if it had been titled only as a responsive memorandum.[7] For these reasons, the Court finds that sanctions are not proper.

IV. SUMMARY

The Court's ruling in this matter may be summarized as follows, and **IT IS** HEREBY ORDERED:

1. Defendants JANET, CYNDA, WILLIAM, WARREN, WHITNEY, AND WESLEY

[7] The Court reminds Defendants that the local rules required them to file their own responsive memorandum and statement of facts in opposition to Plaintiff's cross-motion. The Court did not hold then' to that strict standard here, as each motion for summary judgment also effectively serves as opposition to the other, making additional argument unnecessary.

SIMPSON's motion for summary judgment (doc. 26) is **GRANTED** and summary judgment is hereby entered in favor of those Defendants. Plaintiff takes nothing by this action from said Defendants who shall go without day.

2. Plaintiff's cross-motion for summary judgment (doc. 31) is **DENIED**.

3. Defendants' motion for Rule 11 sanctions is **DENIED**.

ORDERED on this 24th day of June 1998.

Lacey A. Collier
United States District Judge