Michigan Law Review

Volume 37 | Issue 7

1939

BANKRUPTCY-CORPORATE REORGANIZATION - FRATERNAL BENEFIT SOCIETY ENTITLED TO BENEFITS OF SECTION 77B

Russel T. Walker
University of Michigan Law School

BANKRUPTCY — CORPORATE REORGANIZATION — FRATERNAL BENEFIT SOCIETY ENTITLED TO BENEFITS OF SECTION 77B — Plaintiff's right to petition for reorganization under section 77B of the Bankruptcy Act was

challenged on the ground that plaintiff was an "insurance corporation" within the meaning of section 4 of the Bankruptcy Act and therefore excepted from the benefits of the act. *Held*, that when Congress used the words "insurance corporation" in the Bankruptcy Act, it meant a corporation authorized by the law of its creation to do an insurance business. As Congress knew that the various States had authorized the formation of fraternal benefit societies, described as such in enabling statutes, when Congress passed this statute without defining the characteristics of "insurance corporations," it recognized the various definitions thereof in the statutes of the several states as to what constitutes an insurance corporation. Under the Florida law, petitioner was not an insurance corporation, but a fraternal benefit society, and therefore not excluded from benefits of the act. *Grand Lodge, Knights of Pythias of North America v. McKee*, (C. C. A. 5th, 1938) 95 F. (2d) 474.

The weight of authority definitely supports the result in the principal case, as to result of the failure of Congress more definitely to define "insurance corporation." [1] The same result has been reached with reference to banking corporations [2] and building and loan companies,[3] which are also excepted from the operation of the act. The courts have inferred that the purpose of these exceptions was to allow the states which had set up machinery to regulate corporations endowed with great "public interest" to continue their policies of regulation through insolvency, without interference from the federal system.[4] It is clear that Congress knew that the states had built up a separate body of law to govern fraternal benefit societies and consequently, as fraternal benefit societies were not named in the exception, it could not have been the intent of Congress to include them in the insurance corporation category, unless, of course, the state had classified such societies as insurance corporations.[5] Thus, although it is admitted that fraternal benefit societies are in the public interest group,[6] nevertheless the legislative intent seems definitely to show a purpose to exclude them from the operation of the exception. If, however, the states feel that the fraternal benefit societies should be classed as insurance corporations to

[1] In re Grand Lodge A. O. U. W., (D. C. Cal. 1916) 232 F. 199; Grand Lodge v. O'Connor, (C. C. A. 5th, 1938) 95 F. (2d) 477; In re Union Guarantee & Mortgage Co., (C. C. A. 2d, 1935) 75 F. (2d) 984; In re Prudence Co., (C. C. A. 2d, 1935) 79 F. (2d) 77. But see contrary result based on need for uniform result. In re Supreme Lodge of the Mason's Annuity, (D. C. Ga. 1932) 286 F. 180.

[2] Gamble v. Daniel, (C. C. A. 8th, 1930) 39 F. (2d) 447; Clemons v. Liberty Sav. & Real Estate Corp., (C. C. A. 5th, 1932) 61 F. (2d) 448; Woolsey v. Security Trust Co., (C. C. A. 5th, 1934) 74 F. (2d) 334; Kansas ex rel. Boynton v. Hayes, (C. C. A. 10th, 1932) 62 F. (2d) 597.

[3] Security Building & Loan Assn. v. Spurlock, (C. C. A. 9th, 1933) 65 F. (2d) 768.

[4] In re Union Guarantee & Mortgage Co., (C. C. A. 2d, 1935) 75 F. (2d) 984; Woolsey v. Security Trust Co., (C. C. A. 5th, 1934) 74 F. (2d) 334; In re Grafton Gas & Elec. Co., (D. C. W. Va. 1918) 253 F. 668; Security Building & Loan Assn. v. Spurlock, (C. C. A. 9th, 1933) 65 F. (2d) 768.

[5] In re Grand Lodge A. O. U. W., (D. C. Cal. 1916) 232 F. 199.

[6] In re Supreme Lodge of the Mason's Annuity, (D. C. Ga. 1923) 286 F. 180; In re Union Guarantee & Mortgage Co., (C. C. A. 2d, 1935) 75 F. (2d) 984.

bring them within the exception, the decisions seem to allow sufficient leeway for the states to alter their statutes so as to bring the fraternal benefit society within the insurance corporation definition.[7] There can be no objection to the result in the principal case on the ground that it was a delegation of Congressional power, as there are other phases of the Bankruptcy Act dependent on local law which have not been questioned.[8] One case has objected to this result on the ground that uniformity is required and this can only be achieved by applying one interpretation of what is an "insurance corporation" under the Bankruptcy Act.[9] However, the majority of states have distinguished between the insurance corporation and the fraternal benefit society by statutory definitions,[10] special incorporating statutes,[11] or laws which except fraternal benefit societies from the operation of the general insurance laws.[12] Consequently it would seem evident that under the majority of state laws, the result will be the same as that reached in the principal case on this point,[13] with possible variations among the states as to what constitutes a fraternal benefit society.

Russel T. Walker

[7] In re Union Guarantee & Mortgage Co., (C. C. A. 2d, 1935) 75 F. (2d) 984.

[8] Ibid.

[9] In re Supreme Lodge of the Mason's Annuity, (D. C. Ga. 1923) 286 F. 180.

[10] Logan v. State, 170 Tenn. 619, 98 S. W. (2d) 109 (1936); Herzberg v. Modern Brotherhood, 110 Mo. App. 328, 85 S. W. 986 (1905); Lafferty v. Supreme Council Catholic Mutual Ben. Assn., 259 Pa. 452, 103 A. 280 (1918); State ex rel. Conner v. Western Mutual Ben. Assn., 47 Idaho 360, 276 P. 37 (1929).

[11] Railway Passenger & Freight Conductors' Mutual Aid & Benevolent Assn. v. Robinson, 147 Ill. 138, 35 N. E. 168 (1893); Logan v. State, 170 Tenn. 619, 98 S. W. (2d) 109 (1936); Westerman v. Supreme Lodge of Knights of Pythias, 196 Mo. 670, 94 S. W. 470 (1906).

[12] Brotherhood of Railway Employees v. Riggins, 214 Ala. 79, 107 So. 44 (1925); Supreme Ruler of Mystic Circle v. Darwin, 201 Ala. 687, 79 So. 259 (1918); Union Fraternal League v. Walton, 112 Ga. 315, 37 S. E. 389 (1900); Marshall v. Grand Lodge A. O. U. W., 133 Cal. 686, 66 P. 25 (1901); Neighbors of Woodcraft v. Westover, 99 Colo. 231, 61 P. (2d) 585 (1936); Jones v. International Order of Twelve, (La. App. 1933) 148 So. 73.

[13] There are contrary decisions. Modern Brotherhood of America v. Lock, 22 Colo. App. 409, 125 P. 556 (1912); Blakeley v. State, 194 Ark. 276, 108 S. W. (2d) 477 (1937).