

A New Twist on Florida's Enhanced Exemptions

In a recent opinion by the Honorable Raymond B. Ray, the Court once again had to determine whether a debtor was “receiving the benefits of a homestead exemption”. See, *in re Walton*, -- B.R. --, 2013WL6987089 (Bankr. S.D.Fla. 2013).

Florida's Enhanced Personal Property Exemption

Florida is an “opt-out” state, meaning that a debtor filing bankruptcy in the State of Florida applies the exemptions set forth in Florida's Constitution and/or Statutes.¹ Section 4, Article X of Florida's Constitution exempts from forced sale any person's homestead with three limited exceptions (the “Homestead Exemption”).² Section 222.25(4) provides that a debtor may claim an exemption “in personal property not to exceed \$4,000, if the debtor does not claim or receive the benefits of a [H]omestead [E]xemption.” Fla. Stat. §222.25(4). This additional exemption in personal property is referred to as an enhanced personal property exemption or “wildcard exemption.”

In recent years there had been split in authority among the Florida bankruptcy courts as to the proper interpretation of “receiving the benefit” of the Homestead Exemption. “Some courts ... interpreted the phrase broadly to mean that if a debtor is eligible to claim the Homestead Exemption under Florida law then the debtor receives the benefit of the exemption unless there was a clear intent to abandon the homestead property.” *Walton*, at *1 (internal citations omitted). Other Florida bankruptcy courts took a narrow view “that a debtor is not receiving the benefits of the Homestead Exemption if the debtor does not affirmatively exempt their property under the Homestead Exemption or shield the property from creditors, and leaves it open for administration by the trustee.” *Id* at 2 (internal citations omitted).

In 2011, the Florida Supreme Court “resolved the conflict, and held that the narrow view is appropriate as it gives a full meaning to the language and policy of the Personal Property Exemption.” See, *Osborne v. Dumoulin*, 55 So.3d 577, 582 (Fla. 2011). Importantly, the *Dumoulin* court adopted the following analysis of the Bankruptcy Court of the Middle District of Florida in *In re Bennet*:

“Whether a debtor has equity in the property, lives in the home, or enjoys any other types of tax benefits has no relevance to the question of whether a debtor receives the benefits of the Florida Homestead Exemption.”

See, *Walton* at *2 (quoting *In re Bennett*, 395 B.R. 781, 788 (describing certain advantages that do not constitute a benefit of the Homestead Exemption in an analysis that was adopted in *Dumoulin*).

¹ The application of Florida's exemptions is subject to a debtor satisfying the residency requirements as set forth in 11 U.S.C. §522(b)(3)(A).

² The exceptions are not relevant to this article.

Relevant Facts of *Walton*

In *Walton* a husband and wife jointly filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”). The wife owned the homestead property solely in her own name and claimed it exempt applying the Homestead Exemption. The husband applied Florida’s “wildcard exemption” and claimed an additional \$4,000 of his personal property as exempt. *Walton* at *1. The Trustee objected to the “wildcard exemption” claiming that the husband was “receiving the benefit” of the Homestead Exemption. *Id.*

Applying *Dumoulin* To The Facts

The court analyzed *Walton* through the framework set forth in *Dumoulin*. The crux of the analysis is whether the husband was able to apply the Homestead Exemption to the real property at the time of filing. Because the wife “maintain[ed] a premarital 100% ownership interest of the [r]eal [p]roperty” and the property was not held TBE³ the husband was not receiving the benefit of the Homestead Exemption. *Id.*

Further, the Court held that the benefit of residing in the homestead has no relevance in determining whether the husband was receiving the benefit. The determination rested upon the fact that at the time the husband and wife filed the joint petition the husband had no interest in the real property. Because the husband had no ownership interest in the property the creditors of the husband and wife were not losing any protections. *Id.*

The husband’s creditors never had any legal right to any interest in the home outside of bankruptcy because the husband had no ownership interest. The joint creditors were not losing any protections for the same reason as outside of the bankruptcy context the wife could apply the Homestead exemption and the husband could properly exempt the additional \$4,000 in personal property by applying Florida’s wildcard exemption. Accordingly, the Court found that the husband was not benefitting from the claimed Homestead Exemption and overruled the Trustee’s objection.

Conclusion

The application of exemptions in bankruptcy is crucial in each individual case. A thorough understanding of the applicable exemptions, the current state of the law and a debtor’s or debtors’ current financial situation is important to successful representation.

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³TBE means Tenancy by the Entirety - a legal distinction, recognized in Florida, in which the married couple by reason of their legal unity takes the whole estate as a single person with the right of survivorship as an incident thereto so that if one dies, the entire estate belongs to the other by virtue of the original title. See, e.g., *Gerson v. Broward County Title Co.*, 116 So. 2d 455 (Fla. 2d DCA 1959).