

RECENT DEVELOPMENTS IN HOMESTEAD LAW AND BANKRUPTCY

Bench Bar Conference 2019

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1. May a debtor exempt post-petition appreciation in homestead property?

Wilson v. Rigby, 9th Circuit appeal no. 17-35716

Opinion issued on 11/27/2018; petition for *en banc* review is pending.

At the time of filing, Debtor Debra Wilson had just \$3,560 in equity in her homestead property. By the time the Trustee sold the property, there was well in excess of \$125,000 in net proceeds, all the result of postpetition appreciation.

Bankruptcy Judge Alston ruled that under the “snapshot rule,” the Debtor’s available exemption amount is fixed under Washington exemption law at the equity available on the date of the bankruptcy filing. Thus, any postpetition appreciation not only belongs to the bankruptcy estate, but may not be exempted even if the debtor has additional unused exemptions. The Debtor was not allowed to amend her Schedule C to claim up to \$125,000 in exemption based upon the appreciated value.

Both U.S. District Judge Richard Jones and the Ninth Circuit (2-1 opinion) affirmed. The majority opinion found a difference between Washington’s homestead statute and that of California, and thus distinguished Circuit cases decided under California exemption statutes that appear to reach a different conclusion.

2. How far does the “snapshot rule” extend?

Wolfe v. Jacobson, 676 F.3d 1193 (9th Cir. 2012).

Under the snapshot rule, bankruptcy exemptions are fixed at the time of the bankruptcy petition. The entire state statute is applied as of the date of filing. California’s homestead exemption included a reinvestment requirement, making any exemption on the date of filing subject to the obligation to reinvest. In *Wolfe*, a creditor got relief from stay and the home was sold at a sheriff’s sale. Debtor got her homestead money but did not reinvest. The court held that the trustee was entitled to the non-reinvested proceeds.

Wolfe distinguished *In re Herman*, 120 B.R. 127 (9th Cir. BAP 1990), which in examining the California homestead statute held that debtors could avoid a judgment lien in their homestead under § 522(f) regardless of what happened postpetition, because a postpetition change has no impact on the exemption analysis. *Wolfe* found that *Herman* rested on unpersuasive policy arguments.

In re Good, 2018 Bankr. LEXIS 3609 (9th Cir. BAP, November 5, 2018).

Debtor was living in his house when he filed a Chapter 13 petition. He claimed a homestead exemption, to which nobody objected. Debtor later moved out of the house, and the case converted to Chapter 7. The Trustee moved to sell the property, but the Debtor objected to the sale, citing the exemption claim in the 13. The Court upheld the Debtor's right to the exemption.

The case mainly concerns whether the Chapter 7 trustee's objection was timely, and whether the debtor was estopped from claiming the exemption by failing to assert the right at an earlier time. But the Bankruptcy Court (as noted by the BAP) also held that the Debtor's moving out of the house postpetition did not affect the right to the exemption. Because the snapshot rule applies at the time of filing, a debtor has a right to a homestead even the debtor may not qualify for one at the time of conversion.

In a case recently reported on by the ABI (Rochelle's Daily Wire, 1/9/2019), a New York bankruptcy judge held that the snapshot rule permitted a debtor living in his house on the date of the bankruptcy filing to claim a homestead even though shortly before filing the debtor had signed a contract to sell the property. *In re Deborah Ward*, No. 8-16-72793, Bankr. E.D.N.Y., December 27, 2018.

3. Must a debtor reinvest proceeds in a new homestead after sale by a Chapter 7 trustee?

In re John and Janice Good, 588 B.R. 573 (Bankr. W.D.Wa. 2018)

Memorandum decision by Judge Barreca entered 8/24/2018, No. 16-15265.

Under RCW 6.13.070(1), a homeowner has an exemption right in the proceeds from the *voluntary* sale of his/her homestead, provided that the sale is in good faith for the purpose of acquiring a new homestead, and the proceeds are reinvested within one year.

Before the bankruptcy court were these questions: (1) Is there a reinvestment requirement in a *forced* sale under Washington law, and (2) if there is no reinvestment requirement, is a bankruptcy sale by a trustee a forced sale for purposes of applying 6.13.070(1).

Judge Barreca held that a forced sale carries no reinvestment requirement under state law, and that a sale by a Chapter 7 trustee is a forced sale. It requires court involvement and is therefore a legally compelled sale. Further, the trustee has the powers of a judicial lien creditor, and under Washington law a judicial lienholder's interest is subject to homestead rights.

See also In re Jefferies, 468 B.R. 373 (9th Cir BAP 2012), affirming Judge Lynch's holding that a transfer of property between spouses pursuant to a divorce decree was not a voluntary sale, and therefore the debtor (who was not living in the property and had no automatic homestead right) could not claim an exemption in proceeds.

Contrast with *Felton v. Citizens Federal Savings*, 101 Wn.2d 416 (1984), which held that a nonjudicial foreclosure sale was a voluntary sale because the homeowner consented to legal process upon signing the deed of trust. Both *Good* and *Jefferies* distinguish *Felton* based upon the necessity of court involvement in the sales at issue in those cases.

Contrast with *In re MacLeod*, 14-17536 (see Findings issued by Judge Barreca at Doc. 319), where an individual debtor in possession sold his homestead during the Chapter 11 case. After the case converted to Chapter 7, the trustee brought a motion for turnover of the proceeds. The debtor was ordered to turn over all proceeds used for non-homestead purposes.

4. Homestead exemption is subject to a federal tax lien.

In re Selander, No. 16-43505; memorandum decision by Judge Heston 10/19/2018 (Doc. 155).

The IRS, if it holds a properly filed notice of tax lien, has a right to the entire homestead exemption.

Chapter 7 trustee sold overencumbered homestead property pursuant to a carve-out deal with the secured creditor Umpqua Bank where the debtor agreed to the sale provided he received a \$125,000 homestead exemption. The IRS had a filed tax lien. The trustee moved to distribute the \$125,000 to the debtor, but the IRS opposed on the basis that the exemption remains liable for a properly noticed tax lien under § 522(c)(2)(B). The trustee then moved to send the money to the IRS, but only after a subordination for fees and costs under § 724(b). The IRS argued that the use of exempt funds to pay costs of administration was prohibited under *Law v. Siegel*. The Court held that the trustee was required to deliver all \$125,000 in exempt funds to the IRS.