

In re Masingale: “100% of Value” Exemption Claim

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A. Introduction

In a recent Ninth Circuit Bankruptcy Appellate Panel (“BAP”) opinion from a case originating in the Eastern District of Washington, the BAP held that a debtor who claimed a homestead exemption of “100% of FMV” in her bankruptcy schedules without objection was entitled to exempt her home’s full sale price even though the amount exceeded the statutory limit.¹ That case, *In re Masingale*, considered two questions: (1) whether the absence of an objection to the homestead exemption claim meant that the exemption was valid, and (2) whether the debtors had claimed an exemption in the full market value of the home at filing or at the time of sale.²

B. Facts

Husband and wife debtors in *In re Masingale*,³ scheduled their residential property as worth \$165,430 and encumbered by a \$130,724 mortgage lien.⁴ Debtors claimed an exemption in their homestead under 11 U.S.C. § 522(d)(1) for “100% of FMV.”⁵ No party objected to the claimed homestead exemption.⁶

Mr. Masingale passed away in 2016, but Ms. Masingale continued with the chapter 11 bankruptcy.⁷ In 2017, the bankruptcy court confirmed her chapter 11 plan.⁸ Ms. Masingale was unable to complete her plan, and a year later, the bankruptcy court converted the case to chapter 7.⁹

In 2021, Ms. Masingale filed a motion to sell her home for \$400,500, and she requested that the bankruptcy court deem the net sale proceeds fully exempt.¹⁰ The Trustee objected, arguing that the home and any sale proceeds were property of the bankruptcy estate and that only he had the authority to sell the home.¹¹

¹ *Masingale v. Munding (In re Masingale)*, 644 B.R. 530 (B.A.P. 9th Cir. 2022).

² *Id.*

³ *Id.* at 533.

⁴ *Id.* at 534.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Ms. Masingale withdrew her motion to sell and filed a motion to compel the Trustee to abandon her home.¹² She argued that because no party had objected to her claimed homestead exemption, she was entitled to exempt “100% of FMV.”¹³ The Trustee objected to the motion to abandon and countered with his own motion to sell the home.¹⁴ The State of Washington Attorney General’s Civil Rights Unit also objected to the motion to abandon and joined the Trustee’s objection and motion to sell.¹⁵ In the Trustee’s opposition and motion to sell, he argued that the homestead exemption was fixed on the petition date, which in 2015 would have been \$45,950 under 11 U.S.C. § 522(d)(1), and that any post-petition appreciation inured to the benefit of the bankruptcy estate.¹⁶

Following a hearing, the bankruptcy court denied the motion to abandon and granted the Trustee’s motion to sell.¹⁷ The bankruptcy court limited Debtor’s homestead exemption to \$45,950, and Ms. Masingale timely appealed.¹⁸ During the pendency of her appeal, Trustee sold the home for \$422,000, netting sale proceeds of \$222,783.¹⁹

C. Discussion

1. Validity of Exemption in the Absence of an Objection

Debtor, relying on the Supreme Court’s decision *Taylor v. Freeland & Kronz*,²⁰ argued that because no party objected to her claimed homestead exemption of “100% of FMV,” she was entitled to the full amount even if it exceeded the statutory limits.²¹ The State countered that *Taylor* was inapposite to the facts of this case because creditors were prevented from objecting to Debtor’s exemption post-conversion under Rule 1019(2)(B)(i).²² The Ninth Circuit BAP agreed with Debtor and concluded that 11 U.S.C. § 522(l) and *Taylor* were dispositive.²³

Section 522(l) of the Bankruptcy Code provides that “[t]he debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. . . . Unless a party in interest objects, the property claimed as exempt on such list is

¹² *Id.* at 534-35.

¹³ *Id.* at 535.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 536.

¹⁹ *Id.*

²⁰ 503 U.S. 638 (1992).

²¹ *In re Masingale*, 644 B.R. at 535.

²² *Id.* BR 1019(2)(B)(i) provides that parties in interest are not afforded a new time period to object to exemptions when cases are converted from chapter 11 to chapter 7 more than a year after plan confirmation.

²³ *In re Masingale*, 644 B.R. at 538.

exempt.”²⁴ In *Taylor*, the Supreme Court held that “§ 522(l) means what it says: if no one files a timely objection, an exemption claim is valid even if it had no “colorable basis” in the law.”²⁵ The Ninth Circuit BAP concluded that because neither the Trustee nor the State timely objected, Debtor’s exemption claim was no longer contestable.²⁶

The Ninth Circuit BAP added that despite the fact that the Trustee had no opportunity to object because he was not appointed until after the case was converted to chapter 7, Rule 1019(2)(B)(i) “make[s] clear that he [could not] object now.”²⁷

2. Debtors’ Exemption Claim of “100% of FMV”

In answering the second question of the home’s fair market value, the Ninth Circuit BAP considered another Supreme Court decision: *Schwab v. Reilly*.²⁸ The Court in *Schwab*, went beyond reaffirming its holding in *Taylor*, stating that “[i]f an interested party fails to object within the time allowed, a claimed exemption will exclude the subject property from the estate even if the exemption’s value exceeds what the Code permits.”²⁹ The Court noted that a debtor seeking to claim the entire asset as exempt should list the value as “100% of FMV,” which would encourage a trustee to promptly object if the trustee believed the value of the asset exceeded any statutory exemption limit.³⁰ If the trustee fails to object to debtor’s exemption, the debtor would be entitled to exclude the full value of the asset.³¹

In this case, the State, argued that the cited language from *Schwab* was mere dicta or a suggestion, but the BAP disagreed.³² Consistent with *Schwab*, the BAP concluded that Debtors wanted to claim the entire value of their home as exempt, so they claimed an exemption in an amount equal to “100% of FMV.”³³ The BAP added that “[t]he Masingales followed the Supreme Court’s suggestion to the letter.”³⁴

3. The Snapshot Rule

Lastly, the Ninth Circuit BAP held that the “snapshot rule” did not change the result.³⁵ The so called “snapshot rule” fixes the debtor’s claimed exemptions on the

²⁴ 11 U.S.C. § 522(l).

²⁵ 503 U.S. at 640.

²⁶ *In re Masingale*, 644 B.R. at 539.

²⁷ *Id.*

²⁸ 560 U.S. 770 (2010).

²⁹ *Id.* at 775-76.

³⁰ *Id.* at 792-93.

³¹ *Id.* at 793.

³² *In re Masingale*, 644 B.R. at 535.

³³ *Id.* at 540.

³⁴ *Id.*

³⁵ *Id.* at 543.

petition date.³⁶ Invoking the snapshot rule, the Trustee argued that the Debtor's exemption was limited to the value of the property at filing and would not include appreciation.³⁷ The Trustee sold the property for \$422,000 in 2020.³⁸ The Debtor had scheduled it at \$165,430 in 2015.³⁹

Judge Faris agreed that "it is well settled that post-petition appreciation of estate property inures to the benefit of the bankruptcy estate," but that Ninth Circuit precedent on the snapshot rule does not address the question of "what happens when a debtor claims an exemption in postpetition appreciation to which the debtor is not entitled and no one timely objects."⁴⁰

As a matter of first impression, the Ninth Circuit BAP held that the Debtor's "claim of an exemption equal to '100% of FMV' includes post-petition appreciation and becomes incontestable if there is no timely objection."⁴¹

The Ninth Circuit BAP found that the bankruptcy court erred in limiting the Debtor's homestead exemption to the statutory limit of \$45,950.⁴² Thus, the BAP reversed the portion of the bankruptcy court's order that determined the amount of the Debtor's homestead exemption.⁴³ The Trustee has appealed the BAP's opinion to the Ninth Circuit Court of Appeals.

D. Questions after *In re Masingale*

1. *Is it sanctionable for an attorney to recommend her client claim "100% of FMV" in a homestead?*

In *Masingale*, the Ninth Circuit BAP stated, "[i]mproperly claiming exemptions, in the hope that no one will object, is risky at best,"⁴⁴ indicating its disdain for the approach taken by Debtor.

But in *Taylor*, the Supreme Court implicitly approved such an approach. The Court rejected the Trustee's argument that a court may invalidate an exemption notwithstanding the 30-day period where the debtor did not have a good-faith or reasonably disputable basis for claiming it.⁴⁵ The Court stated it had "no authority to limit the application of § 522(l) to exemptions claimed in good faith" and that

³⁶ *Wilson v. Rigby*, 909 F.3d 306, 308 (9th Cir. 2018).

³⁷ *In re Masingale*, 644 B.R. at 535.

³⁸ *Id.* at 543.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 544.

⁴³ *Id.*

⁴⁴ *In re Masingale*, 644 B.R. at 544.

⁴⁵ *Taylor v. Freeland & Kronz*, 503 U.S. 638, 639 (1992).

Congress is better suited to rewrite 11 U.S.C. § 522(*l*) to include a good-faith requirement.⁴⁶

The Ninth Circuit BAP concluded “we do not condone the conduct of the Masingales and their counsel, and we do not mean to immunize them from all consequences for making a baseless claim of exemption.”⁴⁷ The BAP recognized that there are avenues for a bankruptcy court to impose penalties against parties and attorneys such as 11 U.S.C. § 727(a)(4)(B), Rule 1008, Rule 9011, and 18 U.S.C. § 152.⁴⁸

2. Does the ruling that claiming 100% of FMV includes post-petition appreciation matter for new Washington cases under the revised homestead law?

The *Masingale* decision likely will have little effect for debtors claiming a homestead exemption under Washington State law. On April 19, 2021, the Washington Legislature passed the Homestead Exemption Bill (ESSB 5408).⁴⁹ In addition to dramatically increasing the homestead exemption to the greater of \$125,000 or the county median sale price of a single-family home in the preceding calendar year,⁵⁰ ESSB 5408 provides that the exemption is determined on the date of filing and that appreciation in the value of the debtor’s exempt interest in the property during the bankruptcy also belongs to the debtor.⁵¹

⁴⁶ *Id.* at 645.

⁴⁷ *In re Masingale*, 644 B.R. at 544.

⁴⁸ *Id.*

⁴⁹ Homestead Exemption Act, S.B. 5408, 67 Leg., 2021 Reg. Sess. (Wash. 2021).

⁵⁰ RCW 6.13.030(1).

⁵¹ RCW 6.13.070(2).