

>> THE FINAL CASE ON THE COURT'S CALENDAR FOR TODAY IS OSBOURNE VERSUS DUMOULIN.

>> MAY IT PLEASE THE COURT.

MY NAME IS LESLIE OSBOURNE AND I'M THE APPELLATE IN THIS CASE.

YOUR HONOR, THIS IS OUR APPEAL FROM THE 11TH CIRCUIT.

THE QUESTION DEALING WITH FLORIDA STATUTE 222.54.

THE QUESTION BROUGHT UP WAS WHAT DOES IT MEAN IF A PERSON DOES NOT CLAIM THE HOMESTEAD AND INDICATES AN INTENT TO SURRENDER THEIR HOME?

IS THAT ENOUGH TO GIVE THEM THE EXTRA PERSONAL PROPERTY EXEMPTION OF 222.254?

I WOULD ASSERT THAT THE ANSWER TO THAT QUESTION MUST BE NO.

>> EXPLAIN THIS.

HOW ARE THEY RECEIVING THE BENEFIT OF THE HOME IF THEY ARE SURRENDERING THE HOMESTEAD?

>> YOUR HONOR, I THINK NUMBER ONE, WE ARE INTERCHANGING THE WORD SURRENDER AND ABANDON. AND WHAT I WOULD SUGGEST IS THAT THE CASES THAT HAVE COME BEFORE THIS COURT GOING BACK YEARS TO HUTCHINSON SHOE IN 1930, THIS COURT POINTED OUT HOMESTEAD IS SELF-PERPETUATING.

WHEN YOU LIVE IN THAT HOME, IT BECOMES YOUR HOMESTEAD AND YOU ARE AUTOMATICALLY ENTITLED TO THE HOMESTEAD PROTECTION.

NOTHING FURTHER NEED BE DONE. YOU NEED TO MAKE NO STATEMENT, YOU NEED TO TAKE NO FURTHER ACTION.

YOU ARE PROTECTED UNDER THE
CONSTITUTION TO RECEIVE THE
HOMESTEAD BENEFIT.
PROTECTION BENEFITS.
PROTECTION FROM YOUR CREDITORS.
WHAT ENDS UP HAPPENING HERE IS
WHAT WE ARE HAVING IS THE
STATEMENT OF CONTENTION IS A
BANKRUPTCY FORUM WHERE SOMEBODY
JUST SAYS I INTEND TO DO
SOMETHING.

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I INTEND TO BE PRESIDENT OF THE
UNITED STATES DOES NOT MAKE YOU
PRESIDENT OF THE UNITED STATES.
IT IS JUST SOMETHING THAT I
INTEND TO BE SOME DAY.

>> ARE YOU SAYING THAT HAS NO
LEGAL EFFECT?

IT HAS NO ESTOPPEL EFFECT?

>> THE REASON I WOULD SAY THAT
IS THAT THIS COURT HAS LONG HELD
WHAT IS REQUIRED FOR
ABANDONMENT.

THIS IS ONE OF THE FIRST TIMES
IN HISTORY WE HAVE HAD DEBTORS
ARGUING THEIR HOMESTEAD IS NOT
THEIR HOMESTEAD.

USUALLY IT IS THE OTHER WAY
AROUND.

BUT THERE ARE SEVERAL STANDARD
TESTS THAT NEED TO BE MET IN
ORDER TO ABANDON YOUR HOMESTEAD
UNDER THE LAW.

YOU HAVE TO INDICATE YOU ARE NO
LONGER GOING TO HAVE THIS AS
YOUR HOMESTEAD.

THE THING THAT I INTEND TO
SURRENDER MIGHT MEET THE FIRST
OBLIGATION AND OTHER COURTS HAVE
LOOKED AT IT.

THE BANKRUPTCY COURTS HAVE SAID,
WE INTEND TO SURRENDER AND WE

ARE TAKING THAT AS A STATEMENT OF INTENTION BUT THEY ARE NOT ACTUALLY DOING IT.

>> ARE YOU SAYING UNDER THE SITUATION THAT WE WOULD HAVE IN A GIVEN CASE IS THAT, ONCE THE PERSON ELECTS TO TAKE THE DEBTOR EXEMPTION OF 4000, THAT THEY COULD ALSO GO BACK AND GET THEIR HOMESTEAD EXEMPTION FOR BANKRUPTCY PURPOSES? IN OTHER WORDS, GET BOTH IN SOME WAYS?

>> I AM SAYING IN THIS PARTICULAR CASE.

>> BUT, AGAIN, IF THERE IS A SITUATION, THOUGH, WHERE-- AND WE ARE NOT BANKRUPTCY EXPERTS HERE.

WE INTERPRET STATUTE AS TO WHAT RECEIVES THE BENEFITS AND WHAT THAT MEANS.

IF IN FACT THE ELECTION IS MADE AND IS MADE IN A WAY THAT THEY CANNOT FOR BANKRUPTCY PURPOSES REASSERT IT-- AND ISN'T THAT, I MEAN, CANNOT BE DONE IN BANKRUPTCY, WHERE YOU TAKE THE 4000 AND YOU GIVE UP YOUR RIGHT TO CLAIM THE HOMESTEAD EXEMPTION?

>> YES AND NO.

AGAIN, AND I DON'T MEAN TO NOT ADDRESS THE QUESTION, THAT IS WHAT HAPPENED HERE.

WHEN THE CASE WAS FILED THE DEBTOR ACTUALLY CLAIMED HOMESTEAD.

>> SHE THOUGHT IT WAS GOING TO BE A SALE.

>> EXACTLY.

UNDER THE BANKRUPTCY RULES,

AFTER THE CREDITORS MEETING WHICH HAPPENED ON OCTOBER 26.
>> IF THAT HAD HAPPENED, IF SHE HAD SOLD WITHIN THE CREDITORS WOULD HAVE GOTTEN-- IT IS NOT LIKE SHE WOULD HAVE BEEN ABLE TO REPAY.

>> SHE CLAIMED FOR THAT PURPOSE. WHEN THAT FELL THROUGH SHE CHANGED HER MIND BUT I BELIEVE AGAIN THIS IS SOMEWHAT OF A REPAIRING BECAUSE IN THIS CASE THE DEBTOR RECEIVES THE BENEFITS OF THE HOMESTEAD.

LET'S FORGET THE BANKRUPTCY EXISTS FOR A MOMENT.

THE DAY BEFORE SHE FILED BANKRUPTCY, WHEN SHE FILED IN SEPTEMBER, THE DAY BEFORE IT WAS HER HOME.

SHE WAS RESIDING THERE.

IT WAS PROTECTED FROM HER CREDITORS.

THIS COURT HAS LONG HELD THAT THE HOMESTEAD IS SACROSANCT OR, AS ONE PUT IT, SACRED COW.

WE PROTECT THAT ABOVE ALL ELSE IN THE BENEFIT OF THE HEALTH AND WELL-BEING OF THE FAMILY.

>> IS THAT ANYBODY WHO EVER HAD A HOMESTEAD OR BEFORE SOMEBODY TRIED TO EXECUTE ON THEIR ASSETS IS NEVER GOING TO GET THE BENEFIT OF THIS \$4000?

>> YES, JUDGE.

THAT IS EXACTLY WHAT I'M SAYING. IF YOU GOT THE HOMESTEAD BENEFIT.

>> DIDN'T SHE FILE AN AMENDMENT PETITION?

SHE TOOK THE EXEMPTION FOR THE HOMESTEAD AND CLAIMED THE \$4000?

SO, I MEAN SHE IS COMING UP FOR
A RIGHT TO BENEFIT FROM
HOMESTEAD.

>> I WOULD ARGUE TWO REASONS
WHERE THAT IS NOT THE CASE.

>> I AM TALKING ABOUT THIS CASE.

>> IN THIS CASE JUDGE.

REASON NUMBER ONE, THE DEBTOR
INITIALLY CLAIMED THE HOMESTEAD.
FROM THE TIME OF THE CREDITORS
LEAVING, ANY CREDITOR HAS 30
DAYS TO OBJECT TO THAT STATUTE
OTHERWISE IT IS AUTOMATICALLY
ALLOWED BY LAW AND THE UNITED
STATES SPRING COURT HAS SAID
NOBODY CAN COME BACK AND
CHALLENGE.

AGAIN THAT 30 DAYS-- HER
AMENDMENT WAS MORE THAN 30 DAYS
SO SHE CLAIMED SHE DEFENDED THAT
CLAIM OF HOMESTEAD AGAINST HER
CREDITORS, WHICH IS SOMETHING
THAT WAS BROUGHT UP IN JUDGE
JORDAN'S COURT, THE DISTRICT
COURT.

NUMBER ONE SHE HAD ALREADY--
THAT BENEFIT FROM DAY ONE.

>> AND THEN SHE WAIVED IT.

YOU SAID YOU CAN'T WAIVE IT ONCE
YOU CLAIM IT?

>> YOU COULD SAY I AM WAIVING
THAT EXEMPTION.

>> THAT IS MANIFESTED BY THE
AMENDMENT.

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>> THAT BRINGS US TO THE SECOND
ISSUE.

>> ISN'T THE PURPOSE OF
HOMESTEAD TO PROTECT THE OWNER
OF THE HOME?

>> YES YOUR HONOR.

>> IF THE HOMEOWNER DOES NOT
WANT TO BE PROTECTED-- YOU ARE

USING THE SHIELD AS A SWORD.
>> THAT IS MY POINT JUDGE.
THAT IS EXACTLY WHAT SHE HAS
DONE.
SHE HAS USED THE SHIELD AS A
SWORD.
>> WOULDN'T SHE BE ABLE TO
CHOOSE THE HOMESTEAD OR THE
\$4000 AND IF SHE IS GOING TO DO
BETTER WITH A \$4000 SHE CAN
WAIVE THE HOMESTEAD?
>> AT WHAT POINT?
>> WHAT IS WRONG WITH THAT?
FLORIDA LAW DOES NOT ALLOW YOU
TO WAIVE THE HOMESTEAD.
>> OKAY, IF THERE IS AN
AFFIRMATIVE WAIVER, I MEAN
THROUGH ALIENATION OR
ABANDONMENT OR THE STANDARDS YOU
ARE SUGGESTING, WHY CAN'T SHE DO
THAT?
AND THEN GET THE BENEFIT OF THE
\$4000?
>> HAD SHE ACTUALLY DONE THAT I
WOULD AGREE WITH YOU.
HAD SHE ACTUALLY ABANDONED THE
PROPERTY, THEN YES SHE WOULD BE
ENTITLED TO IT, BUT SHE DIDN'T.
>> IN THIS CASE, SHE AMENDED THE
BANKRUPTCY PETITION.
SHE SAID THAT SHE WAS NOT GOING
TO CONTEST THE FORECLOSURE?
SO WHAT MORE DOES SHE NEED TO DO
IN ORDER TO DEMONSTRATE THAT SHE
HAD ABANDONED THE HOMESTEAD?
>> YOUR HONOR, FIRST OF ALL EVEN
THOUGH SHE SAID THAT INITIALLY,
SHE DIDN'T.
INITIALLY SHE CLAIMED IT.
>> YOU TALKED ABOUT FROM THE
POINT WHERE SHE ACTUALLY AMENDED
IT, SAID I AM NO LONGER CLAIMING

THE HOMESTEAD.

I AM ABANDONING.

I AM GIVING UP MY INTEREST IN
THIS PROPERTY.

WHAT MORE DOES SHE NEED TO DO IN
ORDER TO SATISFY WHAT YOU CLAIM
WOULD DEMONSTRATE ABANDONMENT?

>> TWO STEPS HAPPENED.

SHE SAID I'M GOING TO ABANDON.

NUMBER TWO, THE OBJECTIVE
HAPPENED, RELINQUISH THE
PROPERTY.

SHE DIDN'T DO THAT.

>> IT SOUNDS LIKE THERE WAS A
PROBLEM WITH THE RULES, THE
BANKRUPTCY RULES, AND NOT THE
STATUTE, SO MUCH BECAUSE,
CORRECT ME IF I'M WRONG, BUT IT
IS MY IMPRESSION THAT THIS
FLORIDA LAW MAY BE RISING OUT OF
OLD BANKRUPTCY CASES.

YOU CAN SELL YOUR HOMESTEAD AND
THE PROCEEDS OF THAT SALE REMAIN
HOMESTEAD FOR A REASONABLE
PERIOD OF TIME.

>> ABSOLUTELY AND-- THE
HOMESTEAD, AS LONG AS YOU INTEND
TO INVEST IN A NEW HOMESTEAD,
CORRECT.

>> THIS IS WHAT IT SOUNDS TO ME.
IF AT SOME POINT A CREDITOR
WOULD HAVE A REMEDY BUT THIS IS
A PROBLEM CREATED BY BANKRUPTCY
RULES, NOT FLORIDA LAW.

>> I DON'T THINK SO, JUDGE.

I THINK WE ARE GETTING OFF TO
THE AMENDED ISSUE WHICH I DON'T
THINK IS REALLY THE ISSUE.

I THINK THE ISSUE IS THE BENEFIT
LANGUAGE AND WHEN DO YOU RECEIVE
THE BENEFITS?

THE STATUTE IN MANY OF THE CASES

TALK ABOUT THE PRESENT TENSE
STATUTE.

MEANING YOU RECEIVE THE BENEFIT
AT THE TIME.

IN THIS CASE, BECAUSE OF THE
BANKRUPTCY.

>> HELP ME EXPLAIN EXACTLY WHAT
BENEFIT SHE HAS RECEIVED FROM
THE HOMESTEAD EXEMPTION.

>> THE BENEFIT SHE RECEIVED WAS
THE CONSTITUTIONAL PROTECTION
FROM CREDITORS.

>> I UNDERSTAND THAT, BUT I'M
TALKING ABOUT IN THIS CASE.

WHAT BENEFIT HAS SHE RECEIVED
FROM THE EXISTENCE OF THE
HOMESTEAD EXEMPTION?

>> AGAIN, MAYBE I'M NOT
UNDERSTANDING YOUR QUESTION YOUR
HONOR, BUT IT IS THE PROTECTION
FROM CREDITORS?

HER HEIRS ARE PROTECTED.

>> BUT IN BANKRUPTCY, I GUESS,
EVER SINCE THE STATUTE PASSED
THE BANKRUPTCY JUDGES HAVE TRIED
TO FIGURE OUT IF THIS LANGUAGE
SHOULD BE GIVEN A BROAD OR A
NARROW READING.

JUDGE HYMAN HAS SAID THE
EXCLUSION SHOULD ONLY APPLY TO
THE DEBTOR AGAINST THE SALE OF
THE HOMESTEAD MEANING OF THE
CREDITORS CAN REACH THE
HOMESTEAD, THE PERSON HASN'T
RECEIVED THE BENEFIT OF THE
HOMESTEAD EXEMPTION.

AGAIN THIS IS NOT MY AREA BUT IT
JUST SEEMS TO ME THAT YOU ARE
ARGUING THAT-- I THINK YOU SAID
TO JUSTICE CANADY THAT, IF THEY
HAD HOMESTEAD PROPERTY, THAT YOU
NEVER CAN GET THIS 4000-DOLLAR

CREDIT, THAT IT IS ONLY FOR PEOPLE THAT HAVE NEVER HAD A HOMESTEAD, PEOPLE THAT HAVE NOT CLAIMED HOMESTEAD.

THAT IS WHAT WE ARE DEALING WITH, WHETHER WE GIVE IT A BROAD OR A NARROW MEANING.

THE STATUTE PASSED BY THE FLORIDA LEGISLATURE TO GIVE SOME RELIEF TO DEBTORS.

>> I BELIEVE IT SHOULD BE GIVING-- GIVEN A NARROW READING.

>> DO YOU AGREE THAT THAT IS THE DISPUTE?

YOU ARE NOT SAYING WHY SHOULD IT BE GIVEN A NARROW READING BUT I AM SUGGESTING, WITHOUT GETTING INTO THE NUANCES OF BANKRUPTCY LAW, THAT IF WE ACCEPT THE POSITION OF THE BUSINESS LAW SECTION AND ALSO AT LEAST THE VIEW OF ONE OF THE JUDGES IN THE BANKRUPTCY AND THE BANKRUPTCY COURT THAT THE ONLY, RECEIVING THE BENEFITS IF YOU ARE ABLE TO SUCCESSFULLY DEFEND YOUR HOMESTEAD AGAINST TORT SALE DURING BANKRUPTCY.

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AM I MISSING SOMETHING ABOUT-- SHE CAN'T CLAIM BOTH THINGS. SHE CAN'T GET A 4000-DOLLAR EXEMPTION ON PERSONAL PROPERTY PLUS GET THE BENEFIT OF HER HOMESTEAD.

THAT IS WHAT I ASKED YOU EARLIER.

SHE CAN'T DO BOTH, SO THAT IS WHERE THE EQUITY COMES IN WITH THE INTENT.

IF YOU WAIVE ONE, YOU CAN CLAIM THE BENEFITS OF THE \$4000.

>> THAT IS WHERE THE REAL

PROBLEM IS.

>> THE WAY BANKRUPTCY WORKS, THE BANKRUPTCY TRUSTEE WANTS THE MARSHALL ASSETS TO SATISFY THE CREDITS.

ONE OF THE THINGS THAT WAS EXEMPT WITH THE HOMESTEAD PROPERTY.

UNLESS AND UNTIL YOU DON'T CLAIM IT, AND SHE DID NOT CLAIM IT BY FILING THE AMENDMENT SAYING SHE WAS NO LONGER CLAIMING THE HOMESTEAD SO THEREFORE THE HOMESTEAD PROPERTY WOULD GO TO THE TRUSTEE, WOULD IT NOT? SHE COULD NOT RECEIVE THE BENEFIT BECAUSE THE TRUSTEE IS THE STATE.

>> THAT IS THE DIFFERENCE BETWEEN CLAIMING THE EXEMPTION AND THE ACTUAL ADMINISTRATION. THAT IS NOT WHAT THE ISSUE IS HERE.

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>> WHY NOT?

WHY NOT?

THAT SOUNDS LIKE A PERFECT QUESTION.

IT DESCRIBES WHAT THE ISSUE REALLY IS PERFECTLY.

IF YOU CAN GET YOUR HANDS ON IT.

>> JUDGE, I COULD NOT GET MY HANDS ON IT.

>> EXPLAIN THAT TO ME.

>> SHE CLAIMED IT EXEMPT.

>> I UNDERSTAND THAT POINT.

THAT IS THE POINT.

THIS IS A BANKRUPTCY RURAL PROBLEM.

AGAIN IT COMES DOWN TO YOU HAVE IT PERIOD OF TIME IN WHICH TO DO SOMETHING, RIGHT?

SHE CHANGED HER MIND AFTER THAT

PERIOD OF TIME EXPIRED SO THE BANKRUPTCY RULE CREATES THE PROBLEM, NOT THE FLORIDA STATUTORY PROVISION.

>> I WOULD SUGGEST YOUR HONOR IT COMES UP MOSTLY IN THE BANKRUPTCY SETTING BECAUSE THIS IS WHERE WE DEAL WITH THE 4000-DOLLAR ISSUE.

>> IT COULD BE JUST A NORMAL CREDITOR NOT IN BANKRUPTCY.

>> I WOULD SUGGEST IF WE IGNORE THE BANKRUPTCY FOR A MOMENT AND JUST LOOK AT FLORIDA LAW AND WHAT THE FLORIDA LAW HAS BEEN GOING BACK YEARS AND YEARS AND YEARS, HOMESTEAD COMES FIRST. HOMESTEAD HAS ALWAYS COME FIRST. THAT IS WHY I SAID EARLIER THAT NORMALLY WHEN YOU ARE DEALING WITH EXEMPTIONS AND LOOKING AT WE WANT A BROAD INTERPRETATION OF THE RULE, TO GIVE THE BENEFIT OF THE EXEMPTION AS MUCH AS POSSIBLE TO PARTIES SEEKING IT. HOWEVER, WHEN THAT RULE IS DIRECTLY CONFLICTING WITH THE HOMESTEAD BENEFIT, THE HOMESTEAD WHICH THIS COURT HAS ALWAYS SAID IS THE MOST IMPORTANT OF THOSE RULES, THE HOMESTEAD HAS TO BE GIVEN THE BROADEST INTERPRETATION AND THE BENEFIT THEREIN.

THIS IS WHERE WE NARROWLY-- MORE NARROWLY CONSTRUE THIS PARTICULAR STATUTE IN CONJUNCTION WITH READING INFORMATION TO THE HOMESTEAD. THE HOMESTEAD BENEFIT HAS AND WE SHOULD COME FIRST.

THE 4000 IS A SECONDARY STATUTE,

WHICH AGAIN IS A STATUTE IN THE CONSTITUTION.

>> IT COMES FIRST IF SHE WANTS IT.

IF SHE DOESN'T WANT IT, THEN SHE NO LONGER HAS IT.

>> THAT BRINGS US BACK TO THE POINT OF DETERMINATION.

>> YOU ARE SAYING 30 DAYS, AGAIN GOING BACK TO BANKRUPTCY RULES AND AFTER THAT PERIOD EXPIRES, YOU CAN'T GIVE IT UP.

THAT IS WHERE YOU ARE GOING ON THIS.

>> I AM SAYING THAT SHE RECEIVED THE BENEFIT UNDER THIS COURT'S RULING UNDER THE CONSTITUTION. THE MINUTE SHE FILED, NOTHING ABOUT HER FILING BANKRUPTCY WAVE TO THE HOMESTEAD AND THAT PROTECTION STOOD.

>> HELP ME UNDERSTAND AGAIN WHY DO YOU CAN'T GET YOUR HANDS ON THE HOMESTEAD.

IS THE HOMESTEAD WORTH ANYTHING? IS THAT THE UNDERLYING PROBLEM HERE THAT IT IS NOT WORTH ANYTHING?

>> THAT COMES UP A LOT.

>> OKAY, IF IT IS NOT WORTH ANYTHING THEN IT SEEMS LIKE TO ME THE BENEFIT SHE IS GIVEN BY THE HOMESTEAD EXEMPTION IS NOT WORTH A WHOLE LOT.

>> PEOPLE ARE KEEPING THEIR HOMESTEAD.

THEY ARE STILL LIVING THERE.

THEY ARE SAYING THERE IS NO EQUITY BECAUSE WE ARE CURRENTLY IN A DOWN MARKET, SO THEREFORE NOBODY CAN SELL IT BECAUSE THEY KNOW A TRUSTEE CAN'T SELL THE

PROPERTY, AS THEY HAVE TO GET ENOUGH MONEY FOR THE SECURITY. AGAIN--

>> THAT TRUSTEE COULD EVICT HER BECAUSE IT IS HIS PROPERTY NOW.

>> IT IS NOT A LANDLORD. BUT YES YOUR HONOR.

>> I UNDERSTAND HOW IT WORKS.

>> I APOLOGIZE.

>> IN ORDER FOR THEM TO HAVE AN INTEREST IN THE HOMESTEAD TO CLAIM THE 4000 UNDER STATUTE 222.254 THE DEBTOR MUST NOT CLAIM THE PROPERTY AS A DEBT AND TWO, TIMELY AND PROPERLY SHOW A CLEAR AND UNAMBIGUOUS ATTEMPT. DO YOU AGREE WITH THAT?

>> YES SIR, BUT I AM SAYING THEY NEED TO GIVE INTENT AND SHOW THEY ARE ACTUALLY ABANDONING.

>> THAT SEEMS INCONSISTENT WITH YOUR ANSWER TO THE CERTIFIED QUESTION.

CAN YOU EXPLAIN?

>> IF THEY GIVE AN INTENT THAT IS ONLY-- INTENT PLUS ACTUALLY GIVING UP THE PROPERTY. SAYING THEY ARE GOING TO DO SOMETHING DOES NOT MAKE IT SO.

[INAUDIBLE]

>> I WOULD SAY YOU CAN'T CLAIM IT.

YOU MUST SAY I INTEND TO GIVE THAT UP AND YOU MUST ACTUALLY GIVE IT UP.

>> ARE YOU ACTUALLY SAYING AS LONG AS SHE IS STILL LIVING IN THE PROPERTY, AS LONG AS IT HAD NOT BEEN TAKEN FROM HER IN THE FORECLOSURE ACTION, THAT SHE WAS STILL REAPING THE BENEFITS OF THE HOMESTEAD EXEMPTION?

>> YES YOUR HONOR.
HAD THE PROPERTY VALUES GONE UP
DURING THAT TIME PERIOD, SHE
COULD HAVE TURNED AROUND-- SHE
WOULD NOT SAY I WOULD GIVE THAT
TO MY TRUSTEE.
SHE IS KEEPING IT.

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>> I APOLOGIZE FOR HAVING
TROUBLE UNDERSTANDING THIS BUT,
YOU CAN TAKE THE HOMESTEAD.
IN THESE CIRCUMSTANCES, TELL ME
IF I AM WRONG.

ARE YOU PRECLUDED FROM GETTING
ACCESS TO THE HOMESTEAD AND
ADMINISTERING THAT AS FAR AS THE
BANKRUPTCY?

>> I WAS PRECLUDED.

>> I UNDERSTAND THAT, BUT WHAT
IF SHE SAID I DON'T WANT IT?
I EXPRESSED MY INTENTION TO
SURRENDER IT.

AT THAT POINT ARE YOU PRECLUDED
FROM TAKING THAT IN AS PART OF
THE BANKRUPTCY ESTATE?

>> AT THAT POINT I COULD, YOUR
HONOR.

>> ECONOMICALLY IT DOES NOT MAKE
SENSE FOR YOU TO DO THAT, SO
THAT IS WHAT THIS IS ABOUT.
BUT YOU CAN DO IT.

ECONOMICALLY, THE CALCULATION
YOU MADE IS THAT DOES NOT MAKE
SENSE.

>> FOUR OR FIVE MONTHS LATER
AFTER THE DEBTOR HAS LIVED THERE
AND IS RECEIVING THE BENEFITS,
LIVING IN YOUR HOME AND
PROTECTING YOUR HOME FROM
CREDITORS, ALL OF WHICH HE DID,
UNTIL SUCH TIME SHE DECIDED DOWN
THE ROAD IT IS NOT IN MY BEST
INTEREST ANY MORE.

SHE TURNED AROUND AND USED THE SHIELD AS A SWORD TO GET THE EXTRA 4000.

>> I THINK WE UNDERSTAND YOUR ARGUMENT.

>> MADAM CHIEF JUSTICE, GOOD MORNING.

I AM PATRICK SCOTT AND MY PARTNER HERE FROM THE BUSINESS LAW IS--

>> ARE YOU PROCEEDING PRO BONO IN THIS CASE?

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>> I AM.

>> IF YOU COULD HELP THE COURT -- WHAT WAS THAT?

>> PRO BONO AND POSTMORTEM.

>> IF YOU COULD GIVE THE COURT A BENEFIT OF WHY ONE OF THE OVERRIDING POLICY ISSUES THAT BRINGS A FIRM LIKE YOURS INTO, AS TO WHAT WE ARE FACED WITH, IN THIS PARTICULAR STATUTE?

>> I AM GENERALLY, BY THE WAY, A TRUSTEE LAWYER, AND THE BUSINESS LAW SECTION OF THE FLORIDA BAR IS GENERALLY NOT REGARDED AS THE CONSUMERS ORGANIZATION I WOULD SAY.

BUT, TENS OF THOUSANDS OF DEBTORS HAVE BEEN GIVEN AN OPPORTUNITY BY THE 2007 LEGISLATURE TO RECEIVE AN INCREASE IN THE 1868 EXEMPTION THAT WAS GIVEN TO ALL FLORIDIANS FOR PERSONAL PROPERTY.

THAT 1,000-DOLLAR EXEMPTION HAS DROPPED TO \$70 IN VALUE TODAY USING 1868 DOLLARS.

BUT IN THE COURSE OF PROPOSING THAT LEGISLATION FROM THE BUSINESS LAW SECTION, WHATEVER CAUSED THIS PERCEPTION, THE

PERCEPTION WAS THERE HAD TO BE A BALANCE OF SOME KIND.

NOT ALL FLORIDIANS WOULD GET THE EXTRA \$4000, SO THE EXTRA \$4000 WAS GIVEN TO THOSE WHO NEEDED THE BENEFITS.

THE CLAIM REALLY DOESN'T HAVE AN AMBIGUOUS MEANING AT ALL AND WE SUGGEST THAT THE PHRASE "RECEIVED THE BENEFIT" OUGHT TO BE INTERPRETED NARROWLY BECAUSE IF THE EXEMPTION STATUTE IS TO BE INTERPRETED LITERALLY, AS HAS BEEN THIS COURT'S POLICY, THIS COURT'S POLICY, FOR THE BENEFIT OF THE PUBLIC INTEREST THAT THEY REPRESENT, THEN THE EXCEPTION "RECEIVING THE BENEFIT" SHOULD BE INTERPRETED NARROWLY.

THE COURT DEFINED AND 14 FLORIDA JUDGES PUBLISHED OPINIONS IN 2-1/2 YEARS.

BOTH DISTRICT COURT JUDGES WHO HAVE PUBLISHED OPINIONS HAVE COME TO THE CONCLUSION THAT WE SUGGEST, WHICH IS THAT THE MERE RESIDENCE OR MERE CONTINUITY OF RESIDENTS IN A HOME IS NOT RECEIVING THE BENEFITS OF THE HOMESTEAD EXEMPTION.

IT IS RECEIVING THE BENEFITS OF OF THE HOME OR PERHAPS THE HOMESTEAD.

IT IS RECEIVING SHELTER FROM RAIN.

IT IS RECEIVING THE POTENTIAL FOR APPRECIATION.

IT IS RECEIVING A DISCOUNT UNDER ARTICLE VII OF THE CONSTITUTION FROM REAL ESTATE TAX.

>> IF YOU ARE ACTUALLY LIVING THERE AND THIS IS YOUR ONLY

RESIDENCE, AREN'T YOU ALSO RECEIVING THE BENEFIT OF THE HOMESTEAD EXEMPTION, WHERE YOU GET YOUR TAX NOTICE, YOUR ADJUSTED VALUE OR WHATEVER YOU CALL IT, IS GOING TO BE REDUCED BY 25,000 OR 50,000 OR WHATEVER IT IS NOW, SO YOU ARE IN FACT RECEIVING THE BENEFIT OF THE HOMESTEAD EXEMPTION ALSO, AREN'T YOU?

>> YOU ARE RECEIVING THE BENEFIT OF THE ARTICLE VII EXEMPTION. THE STATUTE IS CLEAR THAT IT IS THE ARTICLE X EXEMPTION THAT IS BEING QUESTIONED. ARE YOU RECEIVING THE EXEMPTION FOR FOR-SALE AND EXEMPTION FROM BANKRUPTCY.

>> I WAS ON THE NEXT PAGE. THE STATUTE SAYS THE BENEFITS OF THE HOMESTEAD EXEMPTION UNDER SECTION 4, ARTICLE X, IF THAT IS SIGNIFICANT FOR THE INTERPRETATION THAT IT IS ONLY THE BENEFIT FROM FOR-SALE THAT THAT IS AT ISSUE AS TO WHETHER YOU GET THE 4000.

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>> OTHER LINES CAN BE DRAWN AND SEVERAL COURTS HAVE DRAWN OTHER LINES.

SOME HAVE SAID IF YOU'VE STAYED IN ATTENTION TO SURRENDER WHICH IS THE BANKRUPTCY FORM THAT IN NO WAY RELATES TO SOMETHING IS PROPERTY OF THE STATE IS EXEMPT FROM THE STATE.

IT IS AN INTENT AS TO WHETHER YOU ARE GOING TO OPPOSE FORECLOSURE VIA SECURED PARTY-- SOMEONE WHO IS NOT AFFECTED BY THE HOMESTEAD EXEMPTION.

SOMEBODY WHO IS NOT PREVENTED FROM FORCE LEVY.

THE POSITION OF THE COURT THAT WE CITED HAS BEEN THAT, ONCE YOU ACCEPT OR TAKE THE BENEFITS OF THE HOMESTEAD EXEMPTION, AFTER MAKING THE DECLARATION THAT PREVENTED THE RESTRAINT OR WITHOUT EVER MAKING A DECLARATION, THAT RESTRAINT CREDITORS FROM YOU, IF YOU ACCEPT THOSE BENEFITS, IF YOU RECEIVE THOSE BENEFITS, YOU ARE NOT ENTITLED TO \$4000.

>> WHAT WOULD BE THE BENEFIT?

>> THE BENEFIT IS STATED IN ARTICLE X.

THE BENEFIT IS THE BENEFIT APPLYING IN BANKRUPTCY CASES.

FRANKLY, NO ONE IS RECEIVING THE BENEFIT.

>> THE CERTIFIED QUESTION USES THE WORD INTENSIVE SURRENDER TO PROPERTY.

IS THAT A BANKRUPTCY TERM?

>> IT IS A NARROW CERTIFIED QUESTION WHEN ASKED THAT WAY. IT DOESN'T REALLY RESPOND TO THE 12 JUDGES WHO ISSUED OPINIONS ON THIS, THE 12 BANKRUPTCY JUDGES AND TWO DISTRICT JUDGES.

IF SHE FILED A PARTICULAR PAPER IN BANKRUPTCY COURT, IS THAT ENOUGH TO SHOW THAT SHE IS ENTITLED TO THE 4000-DOLLAR EXEMPTION?

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ANSWERING THAT, UNFORTUNATELY, WE HOPE YOU WILL BROADEN THE QUESTION BECAUSE IT DOESN'T REALLY RESOLVE THE BIGGER CONTROVERSY, WHICH IS WHAT IS RECEIVING THE BENEFIT AND WHILE

THE LINE CAN BE DRAWN IN A LOT OF PLACES, MR. OSBORNE DRAWS THE LINE FOR EXAMPLE THAT, IF YOU REMAIN IN THE HOME AND RECEIVE THE BENEFIT AND HE USES IT, THREE BANKRUPTCY JUDGES HAVE USED IT, WHICH IS THE POTENTIALITY FOR A BENEFIT IN THE FUTURE AFTER YOU COME OUT OF BANKRUPTCY.

>> LET ME ASK YOU THIS BEFORE YOU GET TOO FAR.

WE ARE TALKING ABOUT THE ACTUAL QUESTION WHICH IS ABOUT THE INTENT TO SURRENDER THE PROPERTY AND WHAT WOULD BE YOUR ANSWER TO JUST THAT CERTIFIED QUESTION?

I KNOW YOU WANTED TO BE BROUGHT IN BUT WHAT IS YOUR ANSWER TO JUST THAT CERTIFIED QUESTION?

>> AND THE CERTIFIED QUESTION WE BELIEVE THAT IT IS A RELEVANT WHETHER SHE STATED INTENT TO SURRENDER OR NOT BECAUSE IT IS POSSIBLE TO STAY THE INTENT BUT TO BENEFIT FROM THE HOMESTEAD EXEMPTION.

AN EXAMPLE IS GIVEN BY JUDGE MARK'S IN THE HERNANDEZ CASE AND THE SAME EXAMPLE GIVEN IN OUR AMICUS BRIEF WHICH IS A DEBTOR WHO IS MARRIED FILES ALONG. HIS WIFE DOES NOT FILE BANKRUPTCY.

THE ONLY PROPERTY THAT WOULD HAVE BEEN ADMINISTERED FOR THE BENEFIT OF JOINT CREDITORS IS A COMMON SITUATION IN BANKRUPTCY COURT.

THE WIFE, WHO IS NOT FILING BANKRUPTCY, HAS NOT DISCLAIMED THE HOMESTEAD EXEMPTION.

SHE ACTUALLY IS AN OBSTACLE TO THE BANKRUPTCY ESTATE REALIZING THE PROPERTY AND SHE WOULD BE AN OBSTACLE IN THE SAME CONTEXT IF YOU ARE OUTSIDE OF BANKRUPTCY AND APPLYING THIS IN A FORCE LEVY SITUATION.

THE DEBTOR IS RECEIVING THE BENEFIT OF THE HOMESTEAD EXEMPTION.

THAT IS THE EXAMPLE GIVEN BY THE AMICUS BRIEF OF THE BUSINESS LAW SECTION AS TO WHY THOSE WORDS WERE PUT INTO THE STATUTE THAT DON'T NATURALLY FLOW.

THEY ARE NOT WORDS YOU NATURALLY SEE AN STATUTE.

IN STATUTE.

RECEIVES THE BENEFITS.

BECAUSE, IF THE DEBTOR VERSUS-- IF THE CLAIM OF EXEMPTION OR CONTINUED RESIDENCY PRESENTS NO RESTRAINT, THEN THE ONLY BENEFIT PROVIDED BY ARTICLE X, SECTION 4 IS UNAVAILABLE TO THE DEBTOR.

>> HOW WOULD YOU REWORD THE CERTIFIED QUESTION?

>> I THINK THE QUESTION YOUR HONOR REALLY IS BEST STATED AS, IF A DEBTOR PRESENTS AND RECEIVED, PRESENT AND USES NO OBSTACLE TO THE LEVYING CREDITOR OUTSIDE OF BANKRUPTCY OR TO THE BANKRUPTCY TRUSTEE INSIDE OF BANKRUPTCY, IS SHE RECEIVING THE BENEFITS OF A HOMESTEAD EXEMPTION?

THERE IS NO QUESTION HERE, SHE IS NOT CLAIMING THE BENEFITS OF THE HOMESTEAD EXEMPTION.

SOMEONE ASKED ABOUT CHANGING THE EXEMPTION.

THE BANKRUPTCY RULES PROVIDE FOR CHANGING CLAIMS OF EXEMPTION UP UNTIL THE CASE IS CLOSED BUT THE LIMIT IS THAT THE COURT CAN CONTROL IT BY DETERMINING WHETHER THE CHANGE WAS IN BAD FAITH OR PREJUDICED.

ANOTHER PARTY RELIED ON IT.

MR. OSBOURNE HAD THE INITIAL 30 DAYS WHEN SHE AMENDED.

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>> THAT IS WHAT HE SEEMS TO BE SAYING.

IT WAS AMENDED IN CHANGE TO THE DETRIMENT.

THAT IS WHAT THIS WHOLE ARGUMENT SEEMS TO ME TO BE BASED ON.

>> THEY DIDN'T SUFFER ANY DETRIMENT BECAUSE HE DID NOT ACT IN RELIANCE.

THAT IS WHAT PREJUDICE WOULD BE IN THIS CONTEXT.

HE ACTED IN RELIANCE UPON IT.

>> THE FACT IS IF HE WANTED THE HOMESTEAD, HE COULD TAKE IT, RIGHT?

>> THE 11TH CIRCUIT HAS ACTUALLY STATED THEY ARE PAST THE ISSUE OF THE CHANGE IN EXEMPTION.

IT CONTINUES TO BE TALKED ABOUT IN THE BREACH BUT THEY ACTUALLY ACKNOWLEDGE THERE WAS AN APPEARANCE IN THE BANKRUPTCY DISTRICT COURT THAT THERE WAS NO PREJUDICE AND THERE WAS NO BAD FAITH.

THERE ARE SITUATIONS THAT COME UP WHERE A DEBTOR FOR EXAMPLE IS FOUND IN BAD FAITH CHANGES HIS EXEMPTION BECAUSE HE WANTS TO INCLUDE A PROP OR HE CONCEALED FROM THE COURT ORIGINALLY AND HE

IS DENIED THAT FOR THE VERY REASON THAT HE HAD ACTED IN BAD FAITH.

THERE ARE CONTROLS IN THE FORCED LEVY CONTRACT.

WHEN THE DEBTOR USES THE PROCEDURE IN CHAPTER 222 OF FLORIDA STATUTES TO DESIGNATE OR SET ASIDE THE HOMESTEAD, THERE IS A PROCEDURE BEFORE A LEVY AND IN THE PROCEDURE FOR AFTER THE LEVY.

IF THE DEBTOR CHOOSES TO DO THAT, THAT MAY WELL BE IN THE STATE COURT CONTEXT A CLAIM OF HOMESTEAD AND IT MAY WELL BE ALSO THAT IF HE WITHDRAWS THAT AFTER HAVING INITIALLY CLAIMED THAT THAT THERE WILL BE A BAD FAITH CONTROL OF SOME KIND. THE COURT WILL LOOK AT PRINCIPLES THAT WOULD STOP THAT PERSON WHO WITHDRAWS THE CLAIM FROM DOING SOMETHING THAT CHALLENGES THE INTEGRITY OF THE JUSTICE SYSTEM OR THAT ADVERSELY AFFECTS ANOTHER PARTY WHO RELIED ON ITS DETRIMENT TO THE ORIGINAL CLAIM.

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THAT DID NOT HAVE BEEN HERE.

HE HAD AN EXTRA 30 DAYS TO OBJECT.

HE DID OBJECT.

THE TRUSTEE HAD HIS OPPORTUNITY TO TAKE IT TO THE COURT SYSTEM.

>> THEY SEEM TO SAY THAT-- SHE IS NOW DECEASED.

SHE HAD THE CAR AND NOW SHE IS GOING TO THE BANKRUPTCY--

[INAUDIBLE]

THAT IS EXEMPT, THE 4000-DOLLAR CAR OR WHATEVER IT IS WORTH.

AND SHE TAKES THE CAR IN AND SELLS THAT CAR AND TAKES THE PROCEEDS.

CAN SHE COME IN THERE AFTER AND REPUDIATE HER INTENT TO SURRENDER AND NOT TO CLAIM THE HOMESTEAD?

I THINK THAT WAS THE TRUSTEE'S CONCERN IS THAT WE DON'T WANT TO UNDULY PUNISH SOMEONE, BUT WE DON'T WANT TO PUT SOMEBODY IN A POSITION TO TAKE ADVANTAGE OF BOTH THE HOMESTEAD AND THE EXEMPTION.

HOW WOULD THAT WORK?

>> ONE OF THE COURTS AND I DON'T RECALL WHICH, IN THE OPINIONS ACTUALLY FOUND THE DEBTOR CHANGED HER EXTENSION TOO LATE IN THE CASE AND THAT SHE WOULD BE DEPRIVED OF THAT OPPORTUNITY BECAUSE SHE CHANGED IT SO LATE IN THE CASE THAT FOR EXAMPLE SHE HAD OUR READY RECEIVED HER DISCHARGE.

FOR EXAMPLE SHE HAD ALREADY PUT THE TRUSTEE THROUGH THE FULL ADMINISTRATION OF THE CASE AND THE ADMINISTRATION OF THE CASE WAS COMPLETED, SHE WENT BACK AND SAW TO CHANGE IT.

TO ME, IT IS A CASE SPECIFIC SCENARIO THAT IS CONTROLLED BY THE TRIAL JUDGE AND I CAN'T REALLY SPEAK ON HOW YOU COULD WORK SOMETHING INTO A RULE.

I JUST KNOW IF YOU APPLY THIS OTHER RULE, YOU HAVE TURNED, IF YOU APPLY MR. OSBOURNE'S RULE, YOU HAVE TURNED IT INTO A RENTER'S EXEMPTION.

>> I AM NOT THAT FAMILIAR WITH

BANKRUPTCY LAW, BUT THIS PROPERTY WAS IN FORECLOSURE. AND WITH HER SAYING I AM NOT CLAIMING THAT EXEMPTION, THE TRUSTEE CAN STILL TAKE THE PROPERTY EVEN THOUGH IT IS IN FORECLOSURE?

>> HE OWNED IT FROM THE TIME SHE CLAIMED IT NONEXEMPT. HE OWNED IT AND CONTINUED TO OWN IT UNTIL ONE DAY HE FILED A NOTICE OF INTENT.

>> THERE IS NO WAY THAT THE DEBTOR COULD HAVE SOMEHOW NEGOTIATED WITH THE FORECLOSURE PEOPLE AND GOT DOWN THE MORTGAGE TO A POINT WHERE SHE COULD NOW AFFORD IT AND CONTINUE TO STAY THERE, BECAUSE IT IS NOW TECHNICALLY THE TRUSTEE'S PROPERTY.

>> IT IS, BUT CONCEIVABLY AFTER MR. OSBOURNE DETERMINED IT WAS VALUELESS TO THE ESTATE AND ABANDONED IT, SHE MIGHT HAVE FOUND YOURSELF IN A POSITION WHERE THE BANKS PRACTICALITY WAS THAT THEY WOULD GO BACK AND MAKE NEW TERMS WITH HER.

IT IS NOT IMPOSSIBLE THAT SHE COULD GET TO KEEP THIS PROPERTY, BUT SHE DIDN'T IMPAIR A CREDITOR OR A TRUSTEE FROM OBTAINING THE PROPERTY BY DOING THAT.

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IT IS CONCEIVABLE THAT COULD HAPPEN BUT IT DID NOT HAPPEN IN THIS CASE.

[INAUDIBLE]

>> JUDGE KILLIAN SUGGESTS THAT, IF YOU DON'T INDICATE AN INTENT TO SURRENDER OR IF YOU INDICATE AN INTENT TO SURRENDER UNTIMELY

OR I THINK HE WOULD GO SO FAR AS TO SAY THAT IF YOU WOULD INDICATE AN INTENT TO SURRENDER AND DON'T PERFORM IT, I THINK HE WOULD SAY IN ANY OF THOSE THREE CIRCUMSTANCES YOU DON'T GET THE EXEMPTION.

IN FACT, THE INTENT TO SURRENDER JUST ISN'T A CONCEPT THAT RELATES TO INTENTION AT ALL.

IT RELATES TO THE STATE OF MIND OF THE DEBTOR, AND WHETHER SHE IS GOING TO RECEIVE THE FUTURE POTENTIAL BENEFIT AT THE CHOICE OF THE WORDS RECEIVES THE BENEFITS HAS TWO COMPONENTS TO IT.

THE BENEFITS MUST BE ACTUAL AND IT MUST BE ECONOMIC ACCORDING TO THE HOUSE OF REPRESENTATIVES STAFF ANALYSIS ON THIS BILL.

>> OF ALL THE BANKRUPTCY JUDGES, IS THERE ONE OPINION THAT YOU THINK MOST CLOSELY GIVES REASONS IN A LOGICAL FASHION THAT GIVES MEANING TO THE EXEMPTION?

>> YES.

CHIEF JUDGE HYMAN'S OPINION.

I THINK IT SAYS PRETTY MUCH WHAT WE SAY.

IT IS NOT THE ONLY REASON I AGREE WITH IT OF COURSE.

>> DO YOU GET DOUBLE POINTS FOR THAT?

[LAUGHTER]

>> I WANTED TO HIT ON JUST A COUPLE OF THINGS THAT MR. OSBOURNE SAID.

>> ONE THING I WANT TO ASK, WE ARE INTERPRETING THE LEGISLATIVE INTENT.

THE BUSINESS LAW SECTION SAID WE

DIDN'T REALLY WORD THIS AS WELL AS WE COULD HAVE AND WHAT WE JUST DID.

IF THE LEGISLATURE WANTED TO SAY THAT LIVING IN A CALM DURING FORECLOSURE AND NOT RECEIVING THE BENEFITS, WOULD THAT BE, WOULD THERE BE ANY LAW IN FEDERAL BANKRUPTCY? IN OTHER WORDS IS THIS AREA PREEMPTED OR SUBJECT TO WHAT THE STATE LAW SAYS?

>> THERE IS NO PREEMPTION.

>> SO IF OUR STATE, IF WHAT YOU ARE SAYING IS, PEOPLE IN BANKRUPTCY-- IT IS BETTER TO LET THEM STAY IN THEIR HOMES WHILE ALL OF THIS IS GOING ON, AND STILL RECEIVED 4000-DOLLAR CREDIT.

YOU ARE SAYING THAT ACTUALLY WAS WHAT YOU UNDERSTAND TO BE THE INTENT.

>> THESE ARE THE PEOPLE WHO IT AFFECTS.

THE PEOPLE REMAINING IN A HOME WHILE OFFERING IT TO THEIR TRUSTEE ARE RECEIVING NO PRESENT BENEFITS.

BUT, A SITUATION COULD BE CONCEIVED WHERE THEY COULD IN THE FUTURE RECEIVE A BENEFIT.

IT IS AN UNUSUAL SITUATION AND WOULD NOT AFFECT VERY MANY OF THE PEOPLE WHO MR. OSBOURNE WOULD AFFECT.

BUT THEY COULD RECEIVE A BENEFIT IN THE FUTURE BUT THEY ARE NOT RECEIVING THE BENEFIT NOW.

IF THEY CEASE TO RECEIVE THE BENEFIT IN THE FUTURE, THAT STRANGE ALIGNMENT OF STARS CAME

ABOUT THAT THEY COULD ACTUALLY PRESERVE THEIR HOME, BUT TRUSTEE ABANDONS IT AND THEY PRESERVE IT.

THEY GO ON-- LIFE AFTER BANKRUPTCY.

A NEW DEBT IS INCURRED AND THE NEW CREDITOR LEVEES AND SEEKS A FOR-SALE AND THIS DEBTOR WANTS AT THAT POINT TO RECEIVE THE BENEFIT.

THEY DON'T GET \$4000 IN PROPERTY.

>> SO, IS THIS REALLY, THIS ISSUE REALLY FUELED BY THE FACT THAT THERE ARE PROBABLY A LOT MORE PEOPLE IN BANKRUPTCY WHO ARE IN FORECLOSURE OR HOMES THAT ARE NOT WORTH AS MUCH AS THEIR MORTGAGE?

IS IT THAT KIND OF THING?

>> I AM SURE IT IS A FRUSTRATING THING FOR TRUSTEES.

THE DUTY IS TO MAXIMIZE THE PROPERTY THAT THEY DON'T WANT TO ASK THE DEBTOR TO LEAVE.

THEY HAVE BEEN OFFERED THE PROPERTY BY THE DEBTOR BECAUSE THE DEBTOR WANTS TO SAY, IN THIS CASE AN OLD CHRYSLER, AND THEY DON'T WANT THE PROPERTY BECAUSE THE TRUSTEE KNOWS THE PROPERTY WON'T ACTUALLY PRODUCE ANY RECOVERY FOR THE BANKRUPTCY ESTATE BUT THEY ALSO DON'T WANT THE DEBTOR TO LEAVE.

THEY REALLY WANT THE DEBTOR TO HAVE NEITHER EXEMPTION, BECAUSE THAT \$4000 IS MORE MEANINGFUL TO THE BANKRUPTCY ESTATE JUST AS IT IS MORE MEANINGFUL TO THE DEBTOR.

[INAUDIBLE]

>> THE CERTIFIED QUESTION IS, IF A DEBTOR STATES AN INTENT TO SURRENDER AND DOES NOT CLAIM THE EXEMPTION, THAT DEBTOR RECEIVES-- IT IS DIFFICULT TO ANSWER BECAUSE IT IS NOT ASKING THE QUESTION ABOUT WHETHER THE DEBTOR IS USING THE EXEMPTION AS A BAR OR A RESTRAINT AGAINST PREDATORS.

ORDINARILY, A DEBTOR WHO STATES INTENT TO SURRENDER, AS MS. DUMOULIN DID--

>> HERE IS THE QUESTION.

WHETHER A DEBTOR WHO ELECTS NOT TO CLAIM A HOMESTEAD EXEMPTION, AN INTENT TO SURRENDER THE PROPERTY, IS ENTITLED TO THE ADDITIONAL EXEMPTION FOR PERSONAL PROPERTY.

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>> SHE IS ALWAYS ENTITLED IN THAT CIRCUMSTANCE.

>> THAT WOULD BE THE EXEMPTION.

>> UNLESS SHE WAS MARRIED TO A PERSON WHO WAS CLAIMING THE EXEMPTION HIMSELF.

>> THE CRITICAL ISSUE IS, IS SHE CLAIMING SOMETHING THAT WOULD PREVENT A FOR-SALE?

>> SHE IS NOT CLAIMING-- SHE IS NEITHER CLAIMING NOR BENEFITING FROM ANYTHING THAT WOULD IMPEDE THE TRUSTEE OR THAT WOULD IMPEDE A FOR-SALE.

>> THAT IS REALLY ALL THAT THE BANKRUPTCY TRUSTEE SHOULD BE CARING ABOUT AND, AGAIN, AS YOU SAY-- IF THEY ARE GIVING UP THEIR INTENT AND ACTUALLY NOT CLAIMING AN EXEMPTION FROM FOR-SALE, THEN THEY ARE NOT

RECEIVING THE BENEFIT.

>> I AGREE.

>> THAT IS WHAT JUDGE HYMAN SAID.

>> HE GOES FURTHER AND POINTS OUT THAT A PERSON--

>> YES.

>> THANK YOU VERY MUCH.

I BELIEVE YOU HAVE USED YOUR TIME BUT I WILL GIVE YOU A MINUTE IF YOU HAVE ANYTHING PRESSING.

>> I AGREE WITH MR. SCOTT THAT THE REAL QUESTION TO BE DETERMINED IS WHAT DOES THE PHRASE "RECEIVE THE BENEFITS" MEAN?

I ASSERT FOLLOWING THIS COURT'S PRIOR CASES UNDER THE HOMESTEAD, THAT IT MEANS YOU GOT YOUR HOMESTEAD PROTECTION. THIS IS A WOMAN WHO HAD CREDITORS.

HER HOME WAS PROTECTED BEFORE SHE FILED.

THE BANKRUPTCY IS IRRELEVANT.

I WOULD SAY THAT BENEFIT, ACCORDING TO BLACK'S LAW DICTIONARY AND DECIDED IN MY BRIEF ON PAGE 14, ESSENTIALLY IT IS A RIGHT AND A PRIVILEGE.

>> BUT, YOU WOULD WANT HOMEOWNERS THROUGHOUT THE STATE TO ACTUALLY ABANDON, LEAVE THEIR HOMES, AND YOU THINK THAT IS CONSISTENT WITH WHAT THE LEGISLATURE INTENDED?

AS LONG AS THEY ARE LIVING IN THE HOME AS OPPOSED TO ABANDONING, THAT IS WHAT THE LEGISLATURE THOUGHT THEY WERE DOING?

>> IT HAD NOTHING TO DO WITH--
>> WHY DID THEY PUT THE TERM
HOMESTEAD IN IF IT WAS JUST FOR
RENTERS?

[INAUDIBLE]

AGAIN, THE CONCEPT MR. SCOTT
USED WHERE YOU HAVE A HUSBAND
AND WIFE AND, AGAIN, THE
HUSBAND, LET'S SAY, INCURS ALL
THE DEBTS, BUT THE PROPERTY IS
IN THE NAME OF THE WIFE, HE
RECEIVES THE BENEFIT.

>> BUT EVEN IF THE INTENT OF
THAT SECTION WAS FOR PEOPLE WHO
DON'T HAVE A HOMESTEAD, THESE
PEOPLE HAVE GIVEN IT UP AND YOU
ARE ESSENTIALLY A PERSON WITHOUT
A HOMESTEAD, AREN'T YOU?

>> BUT THEY HAVEN'T GIVEN IT UP.
AS MR. SCOTT SAID--

>> IF YOU HAVE THE RIGHT TO FIX
THAT PROPERTY, THEN THEY HAVE
ESSENTIALLY GIVEN IT UP.

>> NO, BECAUSE WHAT HAPPENS
HERE, INITIALLY, THEY DON'T
CLAIM IT.

THERE IS NO EQUITY IN THE
PROPERTY, SO WE ARE WORKING IT
OUT WITH HER LENDER AND TRYING
TO GET IT, AND WE WANT TO STAY
IN THE PROPERTY BUT WE ALSO WANT
OUR \$4000, SINCE THE TRUSTEE
WOULD ABANDON IT.

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>> THAT IS WHAT YOU DID IN THIS
CASE.

YOU OWN THE PROPERTY AS TRUSTEE.
WE ARE TALKING ABOUT YOUR WIFE.
BUT YOU OWNED IT, AND THEN YOU
DECIDED THAT YOU DIDN'T WANT IT.

>> THERE WAS NO EQUITY AT THAT
TIME AND THEN IT PURPORTS BACK
TO THE DEBTOR ON THE DAY OF

FILING.

>> IF YOU HAD TAKEN IT-- THAT SEEMS TO ME YOU WERE READING OUT, WHEN YOU SAY RECEIVE THE BENEFIT, YOU ARE READING OUT OF THE STATUTE THE BENEFIT OF THE HOMESTEAD EXEMPTION UNDER SECTION 4, ARTICLE X WHICH IS THE PROVISION THAT PREVENTS FOR-SALE.

>> UNTIL SUCH TIME SHE ABANDONED UNDER THE LAW.

>> SHE IS CERTAINLY NOT RECEIVING MUCH BENEFIT WHILE YOU OWN THE PROPERTY.

>> AGAIN, SHE DID POST-BANKRUPTCY AND CONTINUED TO LIVE THERE.

I WAS UNABLE TO TOUCH IT.

IT WASN'T UNTIL SHE CHANGED HER MIND, WHEN SHE DECIDED DOWN THE ROAD THAT IT WOULD NO LONGER BE AN ADVANTAGE FOR HER.

>> I BELIEVE THAT WE HAVE EXPLORED THIS ISSUE AND WE UNDERSTAND YOUR ARGUMENT HERE. THANK YOU BOTH FOR YOUR ARGUMENT.

THE COURT WILL NOW STAND IN RECESS.

>> PLEASE RISE.