

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Jul 28, 2014, 4:58 pm  
BY RONALD R. CARPENTER  
CLERK

E

RECEIVED BY E-MAIL

6/7

Supreme Court No. 90331-0

**IN THE SUPREME COURT OF THE STATE OF  
WASHINGTON**

---

---

CERTIFICATION FROM THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

*In re Larry Charles Wieber and Rose Woude Wieber,*

Bankruptcy Case No. 14-10294-KAO

---

OPENING BRIEF OF DEBTORS LARRY AND ROSE WIEBER

(Respondent)

---

Steven C. Hathaway, WSBA No. 24971

ORIGINAL

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. ASSIGNMENTS OF ERROR ..... 1

III. STATEMENT OF THE CASE..... 1

    A. Bankruptcy Estate..... 4

    B. Exemptions ..... 5

    C. State and Federal Exemption Schemes..... 5

    D. Washington State allows the Debtor to  
    Choose Exemptions ..... 6

    E. Domicile Requirements ..... 7

IV. ARGUMENT ..... 8

    A. SPLIT OF AUTHORITY ..... 8

    B. EXEMPTIONS DO NOT APPLY  
    EXTRATERRITORIALY..... 9

    C. EXEMPTIONS APPLY EXTRATERRITORIALY..... 10

V. CONCLUSION ..... 15

TABLE OF AUTHORITIES

CASES

*Arrol v. Broach (In re Arrol)*,  
170 F.3d 934 (9th Cir. 1999) ..... 8, 10, 11, 12

*Carter v. Anderson (In re Carter)*,  
182 F.3d 1027 (9th Cir. 1999) ..... 7

*Drenttel v. Jensen-Carter (In re Drenttel)*,  
403 F.3d 611 (8th Cir. 2005) ..... 10, 11, 12, 13

*Drummond v. Urban (In re Urban)*,  
375 B.R. 882 (B.A.P. 9th Cir. 2007) ..... 8

*Hammond v. Cleaveland*,  
23 F. 1, 3 (W.D. Wis. 1885) ..... 13

*In re Brooks*,  
393 B.R. 80 (Bankr. M.D. Pa. 2008) ..... 4

*In re Calhoun*,  
47 B.R. 119 (Bankr. E.D. Va. 1985)..... 13

*In re Capps*,  
438 B.R. 668 (Bankr. D. Idaho 2010) ..... 10

*In re Andrews*,  
225 B.R. 485 (Bankr. D. Idaho 1998)..... 14

*In re Ginther*,  
282 B.R. 16 (Bankr. D. Kan. 2002) ..... 8

*In re Halpin*,  
1994 WL 594199 (Bankr. D. Idaho Nov. 1, 1994) ..... 9

*In re Jarski*,  
301 B.R. 342 (Bankr. D. Ariz. 2003)..... 13

*In re Jevne*,  
387 B.R. 301 (Bankr. S.D. Fla. 2008)..... 12

*In re Marriage of Baker*,  
149 Wash. App. 208 (Wash. Ct. App. 2009) ..... 14

<i>In re McNabb</i> , 326 B.R. 785 (Bankr. D. Ariz. 2005).....	11
<i>In re Schermer</i> , 161 Wash. 2d 927 (2007).....	14
<i>In re Sipka</i> , 149 B.R. 181 (D. Kan. 1992).....	8, 9, 10
<i>In re Stockburger</i> , 192 B.R. 908 (E.D. Tenn. 1996).....	8, 13
<i>In re Stratton</i> , 269 B.R. 716 (Bankr. D. Or. 2001).....	8, 13
<i>In re Tanzi</i> , 287 B.R. 557 (Bankr. W.D. Wash. 2002).....	13
<i>In re Williams</i> , 369 B.R. 470 (Bankr. W.D. Ark. 2007).....	12
<i>In re Wilson</i> , 62 B.R. 43 (E.D. Tenn. 1985).....	13
<i>In re Woodruff</i> , No. 04-63288, 2005 WL 1139891 (Bankr. W.D. Mo. Apr. 28, 2005).....	13
<i>Owen v. Owen</i> , 500 U.S. 305 (1991).....	12
<i>Payne v. Wood</i> , 775 F.2d 202 (7th Cir.1985).....	5
<i>Pinebrook Homeowners Ass'n v. Owen</i> , 48 Wash. App. 424 (1987).....	14
<i>Stephens v. Holbrook (In re Stephens)</i> , 402 B.R. 1 (B.A.P. 10th Cir. 2009).....	12, 13
<i>Tanzi v. Comerica Bank-Cal. (In re Tanzi)</i> , 297 B.R. 607 (B.A.P. 9th Cir. 2003).....	13

**COURT RULES**

Fed. R. Evid. 301 ..... 6  
Fed. R. Bankr. P. 4003(a) ..... 6  
Fed. R. Bankr. P. 4003(c) ..... 6

**STATUTES**

11 U.S.C. § 119 ..... 7  
11 U.S.C. §§ 307-308 (2006) ..... 7  
11 U.S.C. § 307 (2006) ..... 7  
11 U.S.C. § 308 (2006) ..... 7  
11 U.S.C. § 522 (2006) ..... 5, 8  
11 U.S.C. § 522(1) (2006) ..... 6  
11 U.S.C. § 522(b) (2006) ..... 4, 10  
11 U.S.C. § 522(b)(1) (2006) ..... 5  
11 U.S.C. § 522(b)(2) (2006) ..... 5  
11 U.S.C. § 522(b)(2)(A) (2006) ..... 7, 8  
11 U.S.C. § 522(b)(3) (2006) ..... 8  
11 U.S.C. § 522(b)(3)(A) (2006) ..... 14  
11 U.S.C. § 522(d) (2006) ..... 5, 6  
11 U.S.C. § 541 (2006) ..... 4  
11 U.S.C. § 541(a) (2006) ..... 4  
11 U.S.C. § 1306(a) (2006) ..... 4  
Wash. Rev. Code § 2.60.020 ..... 1

**OTHER AUTHORITIES**

119 (2006) Stat. 23, 81-82 ..... 7

Bankruptcy Abuse Prevention and Consumer Protection  
Act of 2005, Pub. L. No. 109-8 ..... 7

Laura B. Bartell, The Peripatetic Debtor: Choice of Law and  
Choice of Exemptions, 22 Emory Bankr. Dev. J. 401 (2006) ..... 14

## I. INTRODUCTION

Does Washington's Homestead exemption statute apply extraterritorially to real property located outside the state of Washington?

## II. ASSIGNMENTS OF ERROR

The Bankruptcy Court determined that it was appropriate to certify the question to the Washington Supreme Court pursuant to Wash. Rev. Code § 2.60.020 because the state law is unsettled.

## III. STATEMENT OF THE CASE

Larry Charles Wieber and Rose Woude Wieber ("Debtors") filed a Voluntary Petition for Chapter 13 bankruptcy relief in the Western District of Washington at Seattle on January 16, 2014 ("Petition Date") with the Clerk of the Court using the CM/ECF system, case number 14-10294. ECF No. 1. There is no dispute that the Debtors have been domiciled in the state of Washington for more than 730 days immediately preceding the Petition Date.

The Debtors reside at 8067 Chinook Way, Blaine, Washington which has a fair market value of approximately \$568,000 and liens of approximately \$621,000. They also own a cabin situated on 2.5 acres at 519 Chandler Road, Ketchikan, Alaska. The 519 Chandler Road, Ketchikan, Alaska property has a fair market value of \$179,000 with

approximately \$75,000 owing on a deed of trust and approximately \$4,100 owing for delinquent property taxes. *See* Schedule A and D, ECF No. 11.

On April 12, 2012, nearly two years prior to the Petition Date, the Debtors recorded an Abandonment of Homestead with the Whatcom County Auditor wherein they abandoned any and all claims of a homestead in their 8067 Chinook Way, Blaine, Washington home. *See* ECF No. 37, Exhibit 1. Several days later, on April 20, 2012 the Debtors executed a Declaration of Homestead which was recorded with the Ketchikan, Alaska Recording District wherein they declare under penalty of perjury that “they intend to build a home and reside at 519 Chandler Road, Ketchikan, Alaska and now claim and declare the property as our homestead.” *See* ECF No. 37, Exhibit 2. The Debtors have claimed the 519 Chandler Road, Ketchikan, Alaska property as exempt on their bankruptcy schedules under Washington’s homestead exemption statute. *See* Schedule C, ECF No. 11.

The Debtor/husband was a founder of Aluminum Chambered Boats, Inc. (“ACB”), and served as its Chief Executive Officer from 2000 until February 24, 2010. In early 2010 ACB began having severe financial issues which led to the Debtor/wife withdrawing \$250,000 from her retirement account which she loaned to the company on a short-term basis. Approximately 1 month after the Debtor/wife loaned the company the

\$250,000 the Debtor/husband was fired as Chief Executive Officer of ACB. *See* ECF No. 38 and ECF No. 39.

The \$250,000 loan from the Debtor/wife to ACB was never repaid leading the Debtors to initiate suit in Whatcom County Superior Court against the company's Board of Directors including Bruce Kiessling ("Creditor"). The lawsuit was dismissed because the statute of limitations had run but the case is on appeal. *See* ECF No. 37.

Creditor filed Proof of Claim No. 7 in the Debtors' bankruptcy the amount of \$13,556 based on attorney fees he incurred defending himself against the Debtors' Whatcom County Superior Court lawsuit. *See* Claim 7-2, Western District of Washington Claims Register for 14-10294. Creditor objected to the Debtors' exemption in the Alaska Property arguing the homestead exemption should be disallowed stating the Debtors do not have an intent to actually reside on the Alaska Property claiming it is uninhabitable, that the Debtors have never resided on it, and the Washington homestead exemption statute does not apply to real property located outside the State of Washington. *See* ECF No. 22. The Debtors and counsel responded to Creditor's objection to exemptions and have disputed the allegations therein. *See* ECF No. 37, ECF No. 38 and ECF No. 39.

On May 28, 2014 the matter came before the U.S. Bankruptcy Court for the Western District of Washington at Seattle with the Debtors appearing through counsel, Steve Hathaway and Creditor appearing through counsel, Bruce Borrus. Counsel for both parties requested that the Bankruptcy Court certify the question of whether the Washington Homestead Exemption Act applies extraterritorially to real property located in other states to the Washington State Supreme Court, pursuant to the Federal Court Local Law Certificate Procedure Act. RCWA 2.60.010 et seq. (1965).

A. Bankruptcy Estate.

Pursuant to 11 U.S.C. § 541 (2006) of the United States Bankruptcy Code (“Code”), a debtor's estate is created on the date a case is commenced under the Code. 11 U.S.C. § 541(a). The estate consists of all assets of the debtor, including those in which debtor has claimed an exemption. *In re Brooks*, 393 B.R. 80, 84 (Bankr. M.D. Pa. 2008). “[A]ll property of the debtor becomes part of the estate available to satisfy the creditors' claims. In Chapter 13 most post-petition property acquired by the debtor is also considered property of the estate. 11 U.S.C. § 1306(a). The debtor may protect some of the property by claiming exemptions under 11 U.S.C. § 522(b). Anything properly exempted passes through

bankruptcy; the rest goes to the creditors.'" *Id.* (quoting *Payne v. Wood*, 775 F.2d 202, 204 (7th Cir.1985)).

## B. Exemptions

For most individuals filing for bankruptcy, and regardless of the chapter under which they file, no provision of the Bankruptcy Code is more important than 11 U.S.C. § 522, which governs a debtor's right to protect certain property from creditors while their personal liability for creditor claims is discharged through the bankruptcy process. Exemptions permit debtors to keep enough property to maintain a minimum standard of living going forward to financial recovery. In most bankruptcy cases an individual debtor has enough exemptions to keep their property out of the bankruptcy estate.

## C. State and Federal Exemption Schemes

The general rule under the Bankruptcy Code is that a debtor is permitted to choose between the federal exemptions prescribed in 11 U.S.C. § 522(d) or the exemptions provided by state law and non-bankruptcy federal law. *Id.* § 522(b)(1). However, the Bankruptcy Code provides an opt-out provision whereby the state can either require the debtor to exempt property under the state law exemptions or grant the debtor the option of choosing between state exemptions and the 11 U.S.C. § 522(d) exemptions. *See id.* § 522(b)(2). Residents domiciled in those

states that have opted out of the federal exemption system have no choice but to use applicable state exemptions and non-bankruptcy federal exemptions.

D. Washington State allows the Debtor to Choose Exemptions

Washington State has not opted out of the federal exemption system. Debtors domiciled in Washington can choose between either the federal exemptions enumerated in 11 U.S.C. § 522(d) or the exemptions available under Washington law and non-bankruptcy federal law.

In order for property to be exempt and excluded from property of the estate available to satisfy debts, the property must be claimed as exempt in writing in the debtor's schedules. 11 U.S.C. § 522(1); Fed. R. Bankr. P. 4003(a); Official Form 6, Schedule C.

A claimed exemption is presumptively valid. Once an exemption has been claimed, it is the objecting party's burden to prove that the exemption is not properly claimed. Fed. R. Bankr. P. 4003(c). Initially, this means that the objecting party has the burden of production and the burden of persuasion. The objecting party must produce evidence to rebut the presumptively valid exemption. If the objecting party can produce evidence to rebut the exemption, the burden of production then shifts to the debtor to come forward with unequivocal evidence to demonstrate that the exemption is proper. Fed. R. Evid. 301. The burden of persuasion,

however, always remains with the objecting party. Carter v. Anderson (In re Carter), 182 F.3d 1027, 1028 (9th Cir. 1999).

Unless a successful objection to the exemptions is made, the property is exempted from the bankruptcy estate and is not available for distribution to creditors.

#### E. Domicile Requirements

Prior to 2005, the Bankruptcy Code specified that the applicable state exemption law was the law of the state that had been the debtor's domicile for the greater part of 180 days preceding the filing of the petition. 11 U.S.C. § 522(b)(2)(A) (?YEAR?). In 2005, through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA")<sup>1</sup>, Congress amended this section of the bankruptcy laws to extend the time that a debtor must live in a state before being able to claim that state's exemptions, from the greater part of 180 days to 730 days. *See* BAPCPA, Pub. L. No. 109-8, *id.* §§ 307, 119 Stat. 23, 81 (2005). If the debtor did not maintain a domicile in a single state during that time, then the applicable law would be the place of the debtor's domicile for the majority of the 180-day period prior to the 730 days before filing the petition. Id.

---

<sup>1</sup> Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, *id.* §§ 307-308, 119 (2006) Stat. 23, 81-82

If the law of the debtor's domicile, for purposes of 11 U.S.C. § 522, is different from the law of the forum wherein the debtor's property is located the court must give effect to those exemptions allowed by the law of the state of domicile, and it makes no difference where the property is situated or where the petition is filed, so long as the property is exempt under the law of the domiciliary state.<sup>2</sup>

#### IV. ARGUMENT

##### A. SPLIT OF AUTHORITY

Courts are divided on the application of a state exemption if the state law is silent as to the exemption's extraterritorial effect.<sup>3</sup> Some courts adopt a blanket rule that state exemption laws should never have effect outside the state, or rely upon state court rulings applying choice-of-law provisions.<sup>4</sup>

##### B. EXEMPTIONS DO NOT APPLY EXTRATERRITORIALLY

---

<sup>2</sup> See, e.g., Arrol v. Broach (In re Arrol), 170 F.3d 934, 41 (9th Cir. 1999) C.B.C.2d 995 (9th Cir. 1999) (debtor domiciled in California for majority of 180-day period preceding petition date under former 11 U.S.C. § 522(b)(2)(A) entitled to claim California homestead exemption in residence located in Michigan); In re Stockburger, 192 B.R. 908 (E.D. Tenn. 1996), aff'd, 106 F.3d 402 (6th Cir. 1997) (unpublished opinion) (debtor's property located in Tennessee held to be exempt under Georgia law, which was state of debtor's domicile under former section 522(b)(2)(A); court rejected trustee's assertion that exemption should be determined according to law of the state where property is permanently located); see also Drummond v. Urban (In re Urban), 375 B.R. 882 (B.A.P. 9th Cir. 2007) (domicile provision in section 522(b)(3), as amended by 2005 Act, requiring extraterritorial application of California exemptions in Montana bankruptcy case did not violate uniformity requirement in Bankruptcy Clause of the Constitution).

<sup>3</sup> Compare Arrol, 170 F.3d at 41 C.B.C.2d 995 (9th Cir. 1999), and In re Stratton, 269 B.R. 716 (Bankr. D. Or. 2001), with In re Sipka, 149 B.R. 181 (D. Kan. 1992).

<sup>4</sup> E.g., In re Sipka, 149 B.R. 181; In re Ginther, 282 B.R. 16 (Bankr. D. Kan. 2002).

In In re Capps, 438 B.R. 668 (Bankr. D. Idaho 2010), the debtor owned a home in Colorado since approximately 1994. The debtor moved from Colorado to Idaho in December 2006, because the debtor's employer moved to Idaho. The debtor lived in an apartment in Idaho. In 2009, the debtor filed a Chapter 7 bankruptcy proceeding in Idaho, and claimed the Colorado home as exempt under Idaho state law. The debtor testified that she "considers the Colorado property her home, wishes to reside there permanently, and would live in Colorado if economic circumstances allowed." Id. at 670. The Capps' court identified the issue as "whether Idaho's homestead exemption . . . may be utilized to shield property . . . when that property is not located in Idaho." Id. at 671. There was no Idaho appellate opinion on point. The court denied the debtor's exemption claim, following an earlier Idaho bankruptcy court decision in In re Halpin, No. ?DOCKET?, No. ?DOCKET?, 1994 WL 594199 (Bankr. D. Idaho Nov. 1, 1994).

Along the same vein is In re Sipka, 149 B.R. 181. The debtor lived in Michigan, was a party to a dissolution proceeding in Michigan from which she received cash proceeds. The debtor claimed the Michigan dissolution home sale proceeds as exempt under Kansas law. Similar to Iowa law, Kansas law allowed debtors to exempt one acre of homestead, and Kansas also exempted sale proceeds, if the proceeds were invested in

another homestead. The court observed that the "debtor now seeks to extend the exemption to a situation where the involuntary sale took place in another state." Id. at 182. There was no Kansas appellate opinion on point. The bankruptcy court examined the law in five other jurisdictions, and observed that the majority rule disallowed such exemption claims. The District Court held the Kansas exemption was not available to the debtor, and denied the exemption claim:

In the case at bar . . . Kansas would not have recognized an exemption for the debtor's Michigan homestead in the first instance. Accordingly, the transfer of the proceeds resulting from the involuntary sale of the homestead in Michigan does not render the proceeds exempt under Kansas law. Id. at 182-83.

### C. EXEMPTIONS APPLY EXTRATERRITORIALLY

Other courts take the position that the exemption statute's silence should not be taken as a rejection of the exemption's application outside the state or an invitation to invoke the state's choice-of law provisions.<sup>5</sup>

Washington's homestead exemption laws are silent concerning the applicability of the exemption to extraterritorial property. When state law does not contain express limitations, bankruptcy courts have been more willing to read the state exemptions expansively to cover the debtor's

---

<sup>5</sup> E.g., Drenttel v. Jensen-Carter (In re Drenttel), 403 F.3d 611 (8th Cir. 2005); Arrol, 170 F.3d at 41 C.B.C.2d 995 (9th Cir. 1999).

property outside of the state in order to effectuate the intent of Congress in the Code.

In Arrol v. Broach the court allowed a debtor who had moved from California to Michigan shortly before bankruptcy to claim the California homestead exemption for the debtor's Michigan property, noting the California exemption statute did not explicitly limit the homestead exemption to property in California.<sup>6</sup>

In Drenttel, the debtor lived in Minnesota and had a house in Minnesota. *See Drenttel, 403 F.3d 611, 612 (8th Cir. 2005)*. In June 2003, the debtor sold the Minnesota home, and then used the proceeds from the sale of the Minnesota home to purchase a home in Arizona. In July 2003, the debtor filed a chapter 7 bankruptcy proceeding in Minnesota, and claimed the Arizona home as exempt under Minnesota law.

In rejecting the trustee's argument, the Court of Appeals for the Eighth Circuit reasoned that nothing in 11 U.S.C. § 522(b) suggests that Congress intended state choice-of-law rules to be invoked, noting that the entire law of a state, including state-imposed limitations on exemptions, is not always applicable in bankruptcy proceedings.<sup>7</sup> Thus, the court in

---

<sup>6</sup> Arrol, 170 F.3d at 936; cf. In re McNabb, 326 B.R. 785, 787 (Bankr. D. Ariz. 2005) (suggesting if California exemptions were applicable, they could apply to Arizona homestead).

<sup>7</sup> Drenttel, 403 F.3d at 614 (citing Owen v. Owen, 500 U.S. 305, 313, 111 S. Ct. 1833, 114 L. Ed. 2d 350 (1991)); *see also* Arrol, 170 F.3d at 936 (determination of applicable

Drenttel found that the Minnesota exemption should be applied to an Arizona homestead, as this position is consistent with Minnesota's general policy supporting the liberal construction of its exemption laws in favor of the debtor.<sup>8</sup>

In *Williams*, the debtors lived in Iowa from August 2000 through March 2006. See *In re Williams*, 369 B.R. at 470. The debtors then moved to Arkansas in March 2006, and filed a chapter 7 bankruptcy proceeding in Arkansas in July 2006. The debtors claimed as exempt their house in Arkansas, pursuant to the Iowa exemption statute. *Williams* held "the homestead exemption allowed under Iowa law is not resident specific," *In re Williams*, 369 B.R. at 475, and "Iowa's homestead exemption is available to the debtors in this case as a matter of federal bankruptcy law and overrules the trustee's objection." *Id.* at 476.

In *Stephens*, the debtor lived in Iowa with her husband. See *Stephens v. Holbrook (In re Stephens)*, 402 B.R. 1, 2 (B.A.P. 10th Cir. 2009). In June 2005, the debtor sold her Iowa home, and in August 2005 the debtor moved from Iowa to Oklahoma, with the proceeds from the sale

---

exemption scheme debtor may use is an issue involving federal choice of law; state's conflicts of law jurisprudence is "simply irrelevant").

<sup>8</sup> See also *In re Jevne*, 387 B.R. 301 (Bankr. S.D. Fla. 2008) (relying upon policy favoring liberal construction of exemption laws as set out in *Drenttel*, court held that Rhode Island exemptions have extraterritorial effect); *In re Williams*, 369 B.R. 470 (Bankr. W.D. Ark. 2007) (finding extraterritorial application of Iowa's homestead exemption to be consistent with Iowa's liberal construction of its homestead laws).

of the Iowa home. In May 2007, the debtors filed a chapter 7 bankruptcy proceeding in Oklahoma, and claimed the Iowa home sale proceeds as exempt, pursuant to the Iowa homestead statute. The Tenth Circuit B.A.P. concluded "the pertinent Iowa statutes . . . do not plainly limit its homestead exemption either to residents of, or real property located within, the State of Iowa." Id. at 8.

Bankruptcy courts have also been more willing to read the state exemptions expansively to cover the debtor's property outside of the state in order to effectuate the intent of Congress in the Code with respect to Arizona,<sup>9</sup> Georgia,<sup>10</sup> Minnesota,<sup>11</sup> Missouri,<sup>12</sup> Oregon,<sup>13</sup> Virginia,<sup>14</sup> and Wisconsin exemption statutes.<sup>15</sup>

In other cases, including the state of Washington, no party asserted that territorial limitations on exemptions preclude their applicability, and the bankruptcy court simply applied the exemption.<sup>16</sup>

---

<sup>9</sup> See In re Jarski, 301 B.R. 342, 346 (Bankr. D. Ariz. 2003) (dictum).

<sup>10</sup> See In re Stockburger, 192 B.R. 908.

<sup>11</sup> See Drenttel, 403 F.3d at 614-15.

<sup>12</sup> See In re Woodruff, No. 04-63288, 2005 WL 1139891, at \*3 (Bankr. W.D. Mo. Apr. 28, 2005).

<sup>13</sup> See In re Stratton, 269 B.R. at 718.

<sup>14</sup> See In re Calhoun, 47 B.R. 119, 122-23 (Bankr. E.D. Va. 1985).

<sup>15</sup> See Hammond v. Cleaveland, 23 F. 1, 3 (W.D. Wis. 1885).

<sup>16</sup> See, e.g., In re Wilson, 62 B.R. 43, 46 (E.D. Tenn. 1985) (finding Tennessee exemptions applicable "regardless of where the property is situated"); In re Tanzi, 287 B.R. 557, 560 (Bankr. W.D. Wash. 2002), aff'd sub nom. Tanzi v. Comerica Bank-Cal. (In re Tanzi), 297 B.R. 607 (B.A.P. 9th Cir. 2003) (finding either Washington or California exemption law applicable to Florida homestead); In re Andrews, 225 B.R. 485 (Bankr. D. Idaho 1998) (applying Idaho exemption law to property of Washington resident who filed jointly with Idaho wife in Idaho).

“The homestead act ‘implements the policy that each citizen have a home where [the] family may be sheltered and live beyond the reach of financial misfortune.’” In re Schermer, 161 Wash. 2d 927, 953, 169 P.3d 452 (2007) (alteration in original) (internal quotation marks omitted) (quoting Pinebrook Homeowners Ass’n v. Owen, 48 Wash. App. 424, 427, 739 P.2d 110 (1987)). Courts favor the act and construe it liberally to promote its purpose of protecting family homes. In re Marriage of Baker, 149 Wash. App. 208, 211, 202 P.3d 983, 984, 2009 Wash. App. LEXIS 522, at \*2-3 (Wash. Ct. App. 2009).

By adopting the opt-out provision, Congress enacted a federal exemption scheme that incorporates the categories and amounts of exempt property specified in the law of the applicable state if the state chooses to opt out of the federal exemptions. 11 U.S.C. § 522(b)(3)(A) was intended to make the substantive content of state exemptions applicable to debtors under circumstances where the state would decline to do so. Laura B. Bartell, The Peripatetic Debtor: Choice of Law and Choice of Exemptions, 22 Emory Bankr. Dev. J. 401 (2006).

## V. CONCLUSION

The debtors, by counsel, respectfully submit that based on the authority cited herein Washington's homestead law applies to extraterritorial real estate.

Respectfully Submitted,

---

Steven C. Hathaway, WSBA 24971  
Counsel for the Respondent Debtors

## OFFICE RECEPTIONIST, CLERK

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, July 28, 2014 4:59 PM  
**To:** 'Steven Hathaway'  
**Subject:** RE: Debtor's Answering Brief

Rec' d 7-28-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Steven Hathaway [mailto:[shathaway@expresslaw.com](mailto:shathaway@expresslaw.com)]  
**Sent:** Monday, July 28, 2014 4:58 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** Debtor's Answering Brief

Supreme Court No. 90331-0 – In re Larry Charles Wieber and Rose Woude Wieber  
U.S. Bankruptcy Court, Western District of Washington No. 14-10294

Please find attached the Debtors' answering brief.

Respectfully Submitted,

Steven C. Hathaway  
WSBA 24971  
(360) 676-0529  
[shathaway@expresslaw.com](mailto:shathaway@expresslaw.com)