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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CERTIFICATION FROM THE UNITED STATES BANKRUPTCY

COURT FOR THE WESTERN DISTRICT OF WASHINGTON

IN

IN RE LARRY CHARLES WIEBER AND ROSE WOUDE WIEBER,

Case No. 14-10294-KAO

CREDITOR BRUCE KIESSLING'S REPLY BRIEF

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I. INTRODUCTION

Debtors Larry and Rose Wieber (“Debtors”) spend the vast majority of their Opening Brief (“Resp.”) discussing the procedural history of the underlying bankruptcy matter, the specific facts regarding Debtors’ Washington and Alaska properties, the Bankruptcy Code, and the interaction between the Bankruptcy Code and state exemption laws. None of this discussion, however, is relevant to the question before the Court.

Debtors discuss the application of Washington’s homestead law, chapter 6.13 RCW (“Homestead Law”), solely in the bankruptcy context. The Homestead Law has a much broader application. The Homestead Law applies not just in bankruptcy cases, but whenever a judgment creditor tries to enforce a judgment in Washington by executing on the judgment debtor’s residence. The question before the Court is an important and unresolved issue of Washington law.

The certified question (and the only question) before the Court is whether Washington’s Homestead Law applies to real property located outside of Washington. To answer that question, the Court needs to look no further than the text of the statute. Not only is the Homestead Law located in a section of the Revised Code of Washington (“Code”) that is expressly limited to Washington courts, but numerous provisions in the Homestead Law itself evidence the Legislature’s intent to limit its application to real property in Washington.

Moreover, Debtors’ reliance on decisions by federal bankruptcy courts to support an extraterritorial reach of the Homestead Law is

misplaced. State legislatures and courts have territorial limits that bankruptcy courts do not have. Bankruptcy courts (and the entire federal judiciary) are, in many ways, supposed to disregard the territorial boundaries that limit the reach of state governments. Even so, the majority of bankruptcy courts still refuse to apply state homestead statutes to real property beyond the borders of the state.

By focusing on the text of the statute, the Court should answer the Bankruptcy Court's certified question "no," and hold that the Homestead Law applies only to real property located in Washington.

II. REPLY ARGUMENT

A. **The Homestead Law Contains Provisions Evidencing the Legislature's Intent that the Statute Apply Only to Real Property in Washington**

Under well-established principles of statutory construction, the Court must begin with the statute's text. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 196 (2005). The primary purpose of the Court's inquiry is to ascertain the Legislature's intent. *Id.* at 632. If the statute's text is unambiguous, "the legislature means precisely what it says," and the Court must end its inquiry with the text. *Id.* The Court's review of the statute's text must go beyond the particular provision at issue; a statute's "meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002); *Roggenkamp*, 153 Wn.2d at 633 ("These principles require every provision [to] be viewed in relation to other provisions and

harmonized if at all possible to [e]nsure proper construction of every provision.” (quotation marks omitted)).

In this case, Debtors claim that “Washington’s homestead exemption laws are silent concerning the applicability of the exemption to extraterritorial property.” Resp. at 10.¹ Debtors are correct to the extent that the Homestead Law does not *explicitly* state whether the statute applies extraterritorially. That, however, does not mean the statute is silent on the issue. To the contrary, the Homestead Law contains a number of provisions that evidence the Legislature’s intent that the statute applies only to real property in Washington.

1. The Homestead Law Is Located in the Section of the Code About Enforcement of Judgments in Washington

The Homestead Law is contained in Title 6 RCW—entitled “Enforcement of Judgments”—which provides authority for, and limitations on, a Washington court’s ability to enforce judgments. *See State v. Jackman*, 156 Wn.2d 736, 751, 132 P.3d 136 (2006) (holding that courts may look to the statute’s location in the Code as evidence of the Legislature’s intent); *see also State v. Arth*, 121 Wn. App. 205, 212, 87 P.3d 1206 (2004). Title 6 RCW explicitly applies only to courts “of this state.” RCW 6.01.010.² Its various provisions (such as execution, chapter

¹ Debtors’ Opening Brief failed to provide page numbers. For the Court’s convenience, Kiessling refers to the pages of the Debtors’ Opening Brief, excluding the table of authorities.

² “Except as otherwise expressly provided, the provisions of this chapter and of chapters 6.13 [the Homestead Law] . . . apply to both the superior courts and district courts of this state.” RCW 6.01.010. The Washington Legislature did not presume to impose the Washington Homestead Law on the courts of foreign states.

6.17 RCW, and garnishment, chapter 6.26 RCW) are aimed at Washington authorities. The various exemptions contained in Title 6 RCW, like the Homestead Law, are in that section of the Code to prevent Washington authorities from executing on certain property under the authority provided in that Title. The Homestead Law's location in Title 6 RCW strongly evidences the Legislature's intent for it to apply only to Washington real property—that is, property under the control of Washington courts and Washington sheriffs capable of enforcing judgments in Washington.

2. Provisions of the Homestead Law Support the Territorial Limits of the Law

The Homestead Law itself contains numerous provisions that implicitly require the homestead to be located on real property within Washington. One such example is the specific procedure for a judgment creditor to execute on a property's excess value above the exemption amount. The Homestead Law states that the judgment creditor must “apply to the *superior court of the county in which the homestead is situated* for the appointment of a person to appraise the value thereof.” RCW 6.13.100 (emphasis added). A superior court is authorized to “appoint a disinterested qualified person *of the county* to appraise the value of the homestead.” RCW 6.13.150 (emphasis added). “The court shall determine a reasonable compensation for the appraiser,” RCW 6.13.190, and the appraiser “must take an oath to faithfully perform [his or her duties].” RCW 6.13.140.

The statute authorizes a court to take certain action, mandates other action, and vests jurisdiction in the county of the homestead's situs. These provisions cannot be applied if the real property is located outside of Washington. The Washington Legislature cannot require a foreign court to follow these procedures, just as a foreign state could not require a Washington court to follow the foreign state's procedures. *See, e.g.*, RCW 6.36.025 (requiring a Washington court to apply the "same procedures" to a foreign judgment as the Washington court would apply to a Washington judgment). Even if a foreign court voluntarily followed the Homestead Law's procedures, that court would violate RCW 6.01.010's express language limiting Title 6 RCW's application to Washington courts ("courts of this state"). Alternatively, a Washington court attempting to apply the Homestead Law's execution procedures to foreign property would violate the statute's clear language vesting jurisdiction in the court of the county where the property is located. Further, a Washington court lacks the power to order the relief the Homestead Law provides when the real property is located in another state. The only way to harmonize these various statutory provisions is to limit the Homestead Law's application to real property located in Washington.

Other provisions in the Homestead Law further support such a reading. The Homestead Law gives a court the authority to divide the homestead in a manner that preserves property (up to the exemption amount) for the judgment debtor. RCW 6.13.150. The Homestead Law

also authorizes a court to order the homestead's sale, and even provides specific procedures for accepting bids. RCW 6.13.160. Even after the property is sold, the Homestead Law states the order in which the proceeds are to be applied, RCW 6.13.170, and also creates certain protections for the proceeds. RCW 6.13.180. Washington courts lack the power to order the division and sale of real property located in other states. *See, e.g., In re Marriage of Kowalewski*, 163 Wn.2d 542, 547, 182 P.3d 959 (2008) (discussing a court's authority to affect real property located in another state). A Washington court also, arguably, cannot specify how proceeds held in other jurisdictions should be applied, nor can the Washington Legislature create statutory protections for those funds.

Further, the Homestead Law provides that a superior court judgment against the homestead's owner becomes a statutory lien upon the judgment's recording in the county where the property is located. RCW 6.13.090. Washington has no power to create a statutory lien on real property located in another state. To the contrary, each state's law prescribes the mechanisms for enforcing a judgment. *See Thornton v. Thornton*, 492 S.E.2d 86, 93 n.8 (S.C. 1997) ("Generally, a court of one state cannot create a lien on property located in another state.") Whether a statutory lien on real property exists is decided under the law of the state where the property is located. The fact that the Legislature includes this statutory lien in the Homestead Law evidences the Legislature's intent to limit the reach of the Homestead Law to real property located in Washington. *Price v. Kitsap Transit*, 125 Wn.2d 456, 472, 886 P.2d 556

(1994) (Durham, J., concurring) (“The Legislature is presumed to know the law when drafting statutes.”)

The Homestead Law also provides specific protections and rights if a spouse or domestic partner becomes incompetent or disabled. In that case, the Homestead Law requires the competent spouse to apply to the “superior court of the county in which the homestead is situated” for an order allowing the sale, conveyance, or encumbrance of the homestead. RCW 6.13.210. In certain instances, a copy of the order permitting such action must be served on the “prosecuting attorney of the county in which such homestead is situated,” and it is the “duty of such prosecuting attorney . . . to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.” RCW 6.13.220. Like ordering the sale or division of real property located in another state, the Legislature has no power to require action by a prosecuting attorney in another state—especially action in accordance with Washington law.

Moreover, the Homestead Law repeatedly uses two specific terms that provide support for restricting its application to real property in Washington. First, RCW 6.13.100 specifically requires a judgment creditor to petition a “superior court.” *See also* RCW 6.13.090; RCW 6.13.210. While Washington’s general jurisdiction trial court is called the

“superior court,” that is not true of all states.³ For example, New York’s general jurisdiction trial court is called the supreme court. Second, the Homestead Law’s use of the term “of the county” presents a similar issue because not all states have counties. *See* RCW 6.13.050, .090, .100, .130, .210 & .220. Louisiana and Alaska both lack counties; they have parishes and boroughs, respectively. The legislature could have used words of general application (such as “courts of general jurisdiction” and “jurisdiction,” respectively), but it did not. Applying the statute literally would create the absurd result that real property in certain states could not be executed upon because the state lacks “superior courts” or “counties,” or alternatively, a court would have to adopt a definition of those terms unsupported by their plain meaning. Instead, limiting the Homestead Law’s application to real property in Washington would avoid this issue entirely.

In sum, the Homestead Law’s various procedures irreconcilably conflict if the Homestead Law is applied to real property located outside of Washington. These conflicts evidence the Legislature’s intent for the Homestead Law to apply to real property only in Washington, and the Court must read the statute in a way that harmonizes these many statutory provisions.

³ In fact, the Homestead Law even discusses the interaction between a “district court” and a superior court, but like superior courts, not all states have district courts. *See* RCW 6.13.090.

3. Liberal Interpretation of the Homestead Law Cannot Override the Statute's Many Provisions Evidencing Its Territorial Bounds

Debtors do not address the Homestead Law's many provisions evidencing the Legislature's intent that the Homestead Law apply only to real property in Washington. Instead, Debtors reference the Homestead Law's important policy "that each citizen have a home," and that courts "favor the act and construe it liberally." *See* Resp. at 14; *see also Baker v. Baker*, 149 Wn. App. 208, 211, 202 P.3d 983 (2009). This general principle, however, does not override the limits of the Homestead Law that are expressed in its text. *See Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n of State of Wash.*, 133 Wn.2d 229, 243, 943 P.2d 1358 (1997) ("[A] statutory directive to give a statute a liberal construction does not require [a court] to do so if doing so would result in a strained or unrealistic interpretation of the statutory language.")

The general policy Debtors cite—that the Homestead Law serves to "implement the policy that each citizen have a home" that is protected from creditors, Resp. at 14—does not support applying the statute extraterritorially. *See In re Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007) (citing *Pinebrook Homeowner's Ass'n v. Owen*, 48 Wn. App. 424, 427, 739 P.2d 110 (1987)). The Homestead Law simply does not protect every person's home. It provides no protection for the many people renting an apartment, house, or other type of residence. It also does not protect a residence in which the owner has no equity. While the Legislature may have been motivated to protect the right of "each citizen

[to] have a home,” the statute’s text unquestionably protects only certain residences. Among the residences the statute does not protect are those located outside of Washington—as demonstrated by the numerous provisions that require the real property to be located in Washington. The policy of applying the Homestead Law liberally does not support rewriting an unambiguous statute to serve a general policy the Legislature chose not to implement.

In fact, extraterritorial application promotes forum shopping—not the general policy Debtors cite. For example, applying the Homestead Law extraterritorially would allow a Washington citizen with little or no equity in his or her Washington residence to instead claim a homestead protection on real property in another state.⁴

B. Bankruptcy Opinions Applying Homestead Statutes Extraterritorially Are Not Persuasive Authority When Interpreting the Washington Statute

In Debtors’ attempt to persuade the Court that the Washington Legislature intended the Washington Homestead Law to apply to real property beyond the state’s borders, Debtors make a curious argument:

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 [Bankruptcy] Code with respect to Arizona, Georgia, Minnesota, Missouri, Oregon, Virginia, and Wisconsin exemption statutes.

⁴ This situation is precisely what the Debtors have attempted in the underlying bankruptcy action. By their own admission, Debtors reside in Blaine, Washington, but currently have no equity in their Washington residence. *See* Resp. at 1. In 2012, Debtors declared their Alaska property as their homestead, despite continuing to reside in Blaine. *Id.* at 2–3.

Resp. at 13. The Court should not be persuaded by the rationale that a few bankruptcy courts have used to apply a state's homestead laws to real property located beyond that state's borders.

Generally, a state legislature, a state court, and state agencies have authority to act only within the state's borders. *See, e.g., State v. Wimbish*, 100 Wn. App. 78, 82, 995 P.2d 626 (2000) (“[A] state court’s subpoena powers are limited to the state’s borders.”); *State v. Lee*, 48 Wn. App. 322, 325; 738 P.2d 1081 (1987) (“A warrant of arrest has no validity beyond the borders of the state by whose authority it was issued.”); *State v. Mayes*, 20 Wn. App. 184, 193, 579 P.2d 999 (1978) (“The state of Washington has no criminal jurisdiction over actions having no effect in this state.”) The state’s power to affect real property is likewise limited to the real property within its borders. *See, e.g., In re Estate of Stein*, 78 Wn. App. 251, 261, 896 P.2d 740 (1995) (“[T]he requirement of full faith and credit to a sister state’s judgment admitting a will to probate does not give such judgment extraterritorial effect on assets in other states . . . The courts of a decedent’s domicile do not have jurisdiction to control devolution of real property held in another state. . . .”)

In contrast, the power of bankruptcy courts is not limited by state boundaries. Congress gave bankruptcy courts power over all of a debtor’s property, “wherever located.” 11 U.S.C. § 541(a). The Bankruptcy Code is a federal statute that applies in all fifty states. Bankruptcy courts are not

limited by state boundaries.⁵ Debtors are generally correct when they say that bankruptcy courts try “to effectuate the intent of Congress in the [Bankruptcy] Code.” But Debtors are flat wrong to think that the intent of Congress as expressed in the Bankruptcy Code has any bearing on the question of Washington law that is before the Court.

In this case, the Court is asked to state the territorial reach of the Homestead Law—a statute enacted by the Washington Legislature. The opinions of bankruptcy judges who are interpreting the Bankruptcy Code or the statutes of other states have little persuasive value to the Court when it considers the question of the Washington Legislature’s intent as expressed in a Washington statute. The few state courts that even touch upon the territorial boundaries of its homestead laws have recognized such limitation. *See Wm. Cameron & Co. v. Abbott*, 258 S.W. 562, 564 (Tex. Civ. App. 1924); *Rogers v. Raisor*, 14 N.W. 317, 318 (Iowa 1882); *see also Cherokee Const. Co. v. Harris*, 122 S.W. 485, 487 (Ark. 1909) (stating general rule that homestead rights are created by statutes that do not apply extraterritorially); *Nat’l Tube Co. v. Smith*, 50 S.E. 717, 718–19 (W. Va. 1905) (reading territorial limits into state exemption laws); *Graham v. Stull*, 22 S.W. 738, 739 (Tenn. 1893) (acknowledging that homestead laws and similar statutes are not applied extraterritorially).

Title 6 RCW strikes a balance between the rights of judgment

⁵ For example, in a bankruptcy case the defendant need not have minimum contacts with the forum state because the forum is the entire United States—not just the state where the bankruptcy court is located. *In re Fed. Fountain, Inc.*, 165 F.3d 600, 602 (8th Cir. 1999). Similarly, the Bankruptcy Rules provide for nationwide service of process. Fed. R. Bankr. P. 7004(b).

creditors to enforce judgments in Washington courts and the rights of judgment debtors to exempt property from execution. The bankruptcy court decisions cited by the Debtors do not address the question presented to the Court.⁶ In reaching its decision, the Court should focus on the text of the statute passed by the Legislature, and on the territorial limits of the power of the Legislature and Washington courts.

III. CONCLUSION

Debtors spend most of their Opening Brief discussing procedural facts that are inapposite to the narrow question before the Court: whether the Homestead Law applies to real property outside of Washington. Debtors fail to address any of the Homestead Law's numerous provisions that answer the question with a "no." Debtors also point to *no* specific statutory language evidencing the Legislature's intent for the law to apply extraterritorially. Instead, Debtors cite to federal bankruptcy decisions to argue for a liberal interpretation of the Homestead Law. But whether a federal court liberally interprets a statute using federal authority simply has no bearing on how Washington's highest court should interpret a Washington statute. That issue of Washington law is decided by looking at the statute's text, which in this case, compels the Court to hold that the Homestead Law does not apply to real property outside of Washington.

⁶ Even if the Court were to look to bankruptcy decisions as persuasive authority, the rule applied by the majority of bankruptcy courts is that state law homestead statutes do not apply extraterritorially. *See* Creditor Kiessling's Opening Brief at 10–14. Further, Debtors make no argument for why the Court should follow the minority rule (instead of the majority rule), and do not address Creditor Kiessling's discussion of the reasons supporting the Court's adoption of the majority rule. *See id.* at 14.

RESPECTFULLY SUBMITTED this 7th day of August, 2014.

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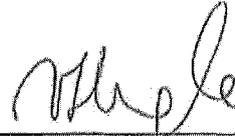
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I hereby certify that on this 7th day of August, 2014, I caused Creditor Bruce Kiessling's Reply Brief to be filed via email with the Clerk of the Supreme Court, and a true and correct copy of the same to be delivered via email and via Federal Express, to the following counsel of record:

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