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Supreme Court No. 90331-0

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 OPENING BRIEF

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I. INTRODUCTION

The certified question from the United States Bankruptcy Court for the Western District of Washington presents an issue of first impression in Washington: “Does the Washington homestead exemption law, RCW 6.13.010-.240, apply extraterritorially to real property located in other states?” Order Certifying Question to the Washington Supreme Court (“Order Certifying Question”). The statute’s text compels the answer.

No part of Washington’s homestead exemption statute, chapter 6.13 RCW (“Homestead Law”), says it applies to property outside of Washington. No published decision from any Washington court has ever held that Washington’s Homestead Law applies extraterritorially to property outside Washington.

To the contrary, the structure and function of the Homestead Law makes clear it can be applied only to property within Washington. This holding would accord with the vast majority of other states and courts to have considered the territorial reach of other state’s homestead exemption statutes. Washington—like virtually every other state that has considered whether to apply its homestead exemption statutes beyond its borders—should refuse to apply the homestead exemption statute extraterritorially.

Accordingly, the question certified by the Bankruptcy Court—whether RCW 6.13.010-.240 applies to real property located in other states—should be answered “no.”

II. ASSIGNMENTS OF ERROR

This matter concerns the United States Bankruptcy Court for the

Western District of Washington's certified question:

Does the Washington homestead exemption law, RCW 6.13.010–.240, apply extraterritorially to real property located in other states?

III. STATEMENT OF THE CASE

This case arises from a Chapter 13 bankruptcy proceeding (Case No. 14-10294) filed by Larry Wieber and Rose Wieber (“Debtors”) in the United States Bankruptcy Court for the Western District of Washington on January 16, 2014. In that proceeding, the Debtors, residents of Blaine, Washington, claim a homestead exemption under RCW 6.13.010–.030 for real property located in Ketchikan, Alaska. (Dkt. #37 at 1).¹

Bruce Kiessling, a creditor, filed objections to Debtors’ exemptions, including an objection to Debtors’ assertion of a Washington homestead exemption in Alaska real property. (Dkt. #22). Kiessling objected in part on the basis that case law has not applied Washington’s Homestead Law extraterritorially, and requested that the Bankruptcy Court certify to this Court the question of the statute’s territorial reach. (Dkt. #22 at 3). Debtors responded to Kiessling’s objections regarding extraterritorial application only by asserting that “[i]t is far from settled that Washington’s homestead exemption does not apply extraterritorially.” (Dkt. #37 at 3). The bankruptcy court shortly thereafter certified the following question to this Court:

¹ The docket numbers refer to the bankruptcy court pleadings included in the record on appeal in the Order Certifying Question.

Does the Washington homestead exemption law, RCW 6.13.010-.240, apply extraterritorially to real property located in other states?

Order Certifying Question. App.

IV. ARGUMENT

A. **The Homestead Exemption**

The bankruptcy court looks to the forum state's homestead exemption law to determine the applicability of any exemption. *See, e.g., In re Arrol*, 170 F.3d 934, 936 (9th Cir. 1999) ("This is a federal choice of law in which the choice has been made. That choice is the applicable state exemption law. . . ."); *see also In re Sholdan*, 217 F.3d 1006, 1008 (8th Cir. 2000) ("The scope of a state-created exemption is determined by state law." (*citing In re Johnson*, 880 F.2d 78, 79 (8th Cir. 1989))).

Article 19 of the Washington Constitution says: "The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families." Const. art. 19, § 1. Under that section, the Washington Legislature passed the Homestead Law, codified in chapter 6.13 RCW. *Algona v. Sharp*, 30 Wn. App. 837, 839, 638 P.2d 627 (1982).

The Homestead Law defines a "homestead" as:

[R]eal or personal property that the owner uses as a residence. In the case of a dwelling house or mobile home, the homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing

thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

RCW 6.13.010(1).

Under Washington law, a homestead is “exempt from attachment and from execution or forced sale for the debts of the owner up to” a statutory maximum of \$125,000 in value. RCW 6.13.070(1) (exemption); RCW 6.13.030 (maximum amount of exemption).

B. The Statutory Text of the Homestead Law Supports the Conclusion That It Applies Only to Property in Washington

Nothing in the statutory text of Washington’s Homestead Law expressly supports (or even mentions the possibility of) applying the exemption extraterritorially to real property in another state. The Homestead Law’s legislative history contains no express statements supporting its extraterritorial application. But the statutory text is not silent on the issue. Instead (and as described below), numerous statutory provisions support reading the statute as applying only to Washington real property. The question, therefore, is whether this Court should read a broader scope and coverage into the Homestead Law than the Legislature chose to articulate. The answer is self-evident: no.

Washington’s Homestead Law is part of Title 6 RCW, entitled “Enforcement of Judgments.” Title 6 grants Washington courts powers to enforce judgments and also sets forth limitations on those powers. The Homestead Law, like the other exemptions in Title 6 RCW, is a limitation

on a Washington court's power to enforce judgments.

The applicable sections of Title 6 apply to the courts of the state of Washington. RCW 6.01.010 explains: “the provisions of this chapter and of chapter[] **6.13** . . . apply to both the superior courts and district courts *of this state*.” RCW 6.01.010 (emphasis added). Title 6 sets forth specific procedures for attaching or executing against property (including real property that could be subject to a homestead exemption) when the owner is in bankruptcy. *See* RCW 6.01.050. Those procedures require actions to be taken by a local sheriff, *id.*, which necessarily must take place within state boundaries because out-of-state sheriffs are not within the control of Washington courts, do not act under the authority of Washington statutes, and are not bound to uphold Washington law. Because a Washington court cannot enforce a judgment by executing against out-of-state property (e.g. property located in Alaska), it makes no sense to exempt a portion of that property from execution by a Washington court.

Relatedly, Washington's Homestead Law includes specific procedures for execution against a homestead, many of which require action to be taken in the superior court of the county where the property is located. For example, a judgment creditor seeking to execute on excess value in a property exempted by the Homestead Law must first “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). In turn, RCW 6.13.130 authorizes a judge to “appoint a disinterested qualified person *of the county* to appraise the value of the

homestead.” (emphasis added). If the property can be divided, the court in the county where the property is located may order the property’s division. RCW 6.13.150. If the property cannot be divided, then the court in the county where the property is located may order the property’s sale. RCW 6.13.160.

These procedures can only be undertaken by a Washington court, which evidences a strong legislative intent for the Homestead Law to apply only to property located in Washington. The plain language of RCW 6.01.010 states that the various procedures in RCW 6.13 apply to “courts of *this state*”—Washington courts. Further, the specific procedures of chapter 6.13 RCW must be undertaken by the courts in the county where the property is located. *See, e.g.*, RCW 6.13.100.

Combined, this unambiguous language cannot be construed to apply beyond Washington. *See, e.g., State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (“When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise.” (citing *State v. Wilson*, 125 Wn.2d 212, 217, 883 P.2d 320 (1994))). Any attempt by a foreign court to utilize the Homestead Law’s various procedures renders meaningless RCW 6.01.010’s command that those procedures apply to Washington courts. Similarly, if a Washington court attempted to use the Homestead Law’s procedures on property located in another state, it would violate chapter 6.13 RCW’s various statutory commands vesting

jurisdiction in the court in the county where the property is located.²

Moreover, Washington law cannot create special appraisal, division, or sale procedures in a foreign court, or grant subject matter jurisdiction to a foreign judge over such an action. Nor can Washington law authorize (or require) a foreign judge to grant any relief within his or her judicial district, particularly with respect to property. It is black letter law that a state has authority over property within its own boundaries. *See, e.g., In re Marriage of Kowalewski*, 163 Wn.2d 542, 547, 182 P.3d 959 (2008) (“[A] decree awarding real property located outside the state has no legally operative effect in changing legal title, except as provided by the law of the situs state.”); *Brown v. Brown*, 46 Wn.2d 370, 372, 281 P.2d 850 (1955) (“The rule is well established that in divorce proceedings the courts of one state cannot directly affect the legal title to land situated in another state.”).

Allowing a judgment debtor to use Washington’s Homestead Law

² If a creditor wishes to execute against property located in a state outside of Washington, the execution procedures of the other state will govern. For example, in discussing the reach of a state’s homestead law, one court explains:

While the Full Faith and Credit Clause requires states to give the same effect to a judgment from another state’s courts the same effect it would have there, under Supreme Court jurisprudence this has never meant that states were also required to give effect to the other state’s exemption laws . . . Thus, because a foreign judgment when executed upon has been converted or incorporated in some sense into a local judgment, a creditor is bound by the local rules on enforcing judgments, and is not bound by the enforcement rules of the state where the judgment originated . . . In line with these cases, it appears the majority of states have held that they are not required to give effect to another state’s exemption laws.

In re Fernandez, 2011 WL 3423373, *7 (W.D. Tex. Aug. 5, 2011) (internal citations omitted).

to exempt foreign property would have the practical effect of expanding the amount of the homestead exemption for foreign property. The appraisal, division, and sale procedures discussed in the previous paragraphs are in the statute to allow a judgment creditor to recover the property's value in excess of the statutory maximum exemption amount. However, if the exempted property is located in another state, a judgment creditor would be left without any direct statutory ability to recover this excess value. Simply, if the statute is read to compel the judgment creditor to use a Washington court, the Washington court cannot order the foreign property's division or sale, and if the statute is read to allow use of a foreign court, that court need not (and may not have authority) to follow Washington's statutory processes. The result: the homestead exemption could protect the *entire* value of the property—no matter how large the excess—because it would be impossible for a judgment creditor to follow the Homestead Law's statutory procedures for recovering the value in excess of the exemption amount.

This interpretation is illogical and, ironically, would provide greater protection to debtors whose property is located outside of Washington than those whose homestead is within the state. Nothing in the Homestead Law's text supports the statute's extraterritorial application, and certainly no language supports reading a Washington statute to provide greater protection to foreign property than Washington property. Statutes should not be construed to lead to such an absurd or illogical result. *State v. Delgado*, 148 Wn.2d 723, 733, 63 P.3d 792

(2003) (Madsen, J., dissenting) (“[A] reading that results in absurd results must be avoided because it will not be presumed that the legislature intended absurd results.”) (citations omitted). Rather, the entire Homestead Law should be read together harmoniously, which is possible only when it is read as limited to property located within the state. *State v. Chapman*, 140 Wn.2d 436, 448, 998 P.2d 282 (2000) (“Under rules of statutory construction each provision of a statute should be read together (*in pari materia*) with other provisions in order to determine the legislative intent underlying the entire statutory scheme.”).

Additionally, disallowing use of Washington’s homestead exemption to protect real property outside of Washington would discourage forum shopping by debtors trying to take advantage of Washington’s \$125,000 homestead exemption for property located in states that have smaller exemptions.³ As one bankruptcy court warned when declining to apply Texas’s homestead exemption to property located outside of the state, “[t]o reach a contrary result could lead to absurd results. By the mere happenstance of filing in Texas, or through blatant forum shopping, a debtor could attempt to change the size, value or susceptibility to claims of creditors of real property located in other states. . . .” *In re Peters*, 91 B.R. 401, 404 (Bankr. W.D. Tex. 1988); *see also In*

³ The policy against forum shopping is plainly implicated in the underlying bankruptcy proceeding. The property Debtors asserted a homestead exemption over is located in Alaska. Alaska law caps the value of Alaska’s homestead exemption at \$54,000. Alaska Stat. § 09.38.010(a). In contrast, Washington law more than doubles the protection given to the debtor, allowing a debtor to exempt up to \$125,000 in value under the homestead exemption. RCW 6.13.030.

re Halpin, 1994 WL 594199, *2 (Bankr. D. Idaho Nov. 1, 1994) (“Not allowing the use of the Idaho homestead statute to protect non-Idaho land would also discourage forum shopping by debtors seeking to take advantage of Idaho's somewhat liberal \$50,000 exemption as to property located in states where the local exemption is less.”).

C. Washington Should Follow the Majority of States and Limit Its Homestead Exemption to Property Within Washington

1. The Majority Rule: The Homestead Exemption Does Not Apply Extraterritorially

Several states have squarely considered the issue posed by the certified question in this case. The majority rule is *against* extraterritorial application of one state’s homestead exemption to property located in another state. *See, e.g.*, William Houston Brown, Lawrence R. Ahern, III & Nancy Fraas MacLean, *Bankruptcy Exemption Manual* § 4.7 (2012 ed.) (“In the majority of jurisdictions, homestead statutes have ‘no extraterritorial effect,’ and so cannot be applied to protect the debtor’s real property in a different state.”) (citation omitted); Dale Joseph Gilsinger, Annotation, *Extraterritorial Application of a State’s Homestead Exemption Pursuant to Bankruptcy Code § 522*, 47 A.L.R. Fed. 2d 335 (2010) (“State courts have repeatedly, and almost uniformly, held that a state’s homestead exemption only extends to property located within that state.”); *see also In re Fernandez*, 2011 WL 3423373, *11 (W.D. Tex. 2011) (“The majority of courts to address the issue of extraterritorial application of state exemption laws have adopted the state-specific view, and looked to state law to determine whether the exemption may apply

extraterritorially. The Court has reviewed the extensive case law, and it appears that this is not merely the majority position, but the majority position by a considerable margin.” (internal citation omitted)).

Numerous courts have followed that majority rule when faced with the same question posed in this case regarding the extraterritorial applications of a state’s homestead exemption statute. *See, e.g., In re Carter*, 213 B.R. 26, 32 n.1 (Bankr. N.D. Ala. 1997) (Alabama); *Cherokee Constr. Co. v. Harris*, 122 S.W. 485, 487 (1909) (Arkansas); *In re Kelsey*, 477 B.R. 870, 873–74 (Bankr. M.D. Fla. 2012) (Colorado); *In re Adams*, 375 B.R. 532, 534 (Bankr. W.D. Mo. 2007) (Florida); *In re Capps*, 438 B.R. 668, 671–73 (Bankr. D. Idaho 2010) (Idaho); *In re Ginther*, 282 B.R. 16, 20–21 (Bankr. D. Kan. 2002) (Kansas); *In re Gosnick*, 400 B.R. 582, 683–84 (Bankr. W.D. Mich. 2008) (Michigan); *In re Larsen*, 122 B.R. 733, 742 (Bankr. D.S.D. 1990) (South Dakota); *In re Peters*, 91 B.R. 401, 403–04 (Bankr. W.D. Tex. 1988) (Texas); *In re Katseanes*, 2007 WL 2962637, *3 (Bankr. D. Idaho Oct. 9, 2007) (Utah).

Several states include language in their homestead exemption statutes expressly barring extraterritorial application, or limiting the statutes to property located within the state. *See, e.g.,* Alaska Stat. § 09.38.010 (homestead exemption is limited to “property in this state used as the principal residence” of the debtor); Col. Rev. Stat. § 38-41-201(1) (“Every homestead in the state of Colorado shall be exempt from execution....”); Haw. Rev. Stat. § 651-92(a) (Hawaii homestead exemption limited to “property in the State of Hawaii”); Ky. Rev. Stat.

Ann. § 427.060 (homestead exemption applies to property that “debtor uses as a permanent residence in this state”); N.D. Cent. Code § 47-18-01 (homestead exemption can be invoked only by a resident of North Dakota and applied to the land and dwelling on which that North Dakota resident resides); Okla. Stat. tit 31 § 1(A)(1) (homestead exemption can be invoked only by a person residing in Oklahoma to protect “the principal residence of such person”); S.C. Code Ann. § 15-41-30 (homestead exemption may only be invoked by a debtor domiciled in South Carolina and applies to the property debtor uses as a residence); Wis. Stat. §§ 815.18(2)(r), 815.18(13)(d), 815.20(1) (Wisconsin homestead exemption limited to “resident owner” occupying property within state).

Turning to Washington’s Homestead Law, the fact it does not include statutory language that expressly bars application of the homestead exemption to property outside Washington is of no import. Courts routinely limit the application of homestead exemptions to property within the forum state even when the exemption statute is silent about extraterritorial application—let alone when it evidences a legislative intent to limit its territorial reach, as does Washington’s Homestead Law. *See supra* Section IV.B.

The case of *In re Capps*, which decided whether Idaho’s exemption statute applied extraterritorially, is instructive. 438 B.R. 668, 672 (Bankr. D. Idaho 2010). The *Capps* court first looked to whether the statute’s express language limited its application to property within the state. *Id.* at 672. But the statute was silent. *Id.* Next, the *Capps* court

looked to Idaho state courts' interpretation of the statute and noted that Idaho courts had not addressed whether the statute applied to property outside of the state. *Id.* Accordingly, because there was no decisional support in Idaho for applying the homestead exemption statute extraterritorially, and giving deference to Idaho's public policies of discouraging "exemption shopping" and protecting creditors' expectations, the court concluded that the Idaho statute should not be applied extraterritorially. *Id.* at 673.

Similarly, in *In re Stephens*, the court noted that Idaho's homestead exemption statute neither permitted nor prohibited extraterritorial application to property outside the state; rather, "[t]he statute simply doesn't mention or contemplate extraterritorial effect." 2012 WL 3205362, *2 (9th Cir. BAP Aug. 2, 2012). In that case, the debtor argued that the silence and lack of any express bar to extraterritorial effect should be combined with the liberal construction of exemption statutes to allow Idaho's homestead exemption to apply extraterritorially. *Id.* The court rejected that argument. It acknowledged that exemptions must be liberally interpreted under Idaho law, but even a liberal interpretation did not allow exemption statutes to be construed "beyond what they reasonably could be construed to cover" in order to avoid conferring rights or benefits not intended by the Idaho Legislature. *Id.* at *3. The court held that Idaho's homestead exemption statute did not apply to property in other states "in light of the Idaho Supreme Court's presumption against implied extraterritoriality of its statutes, and its refusal to judicially expand

exemption entitlements beyond the explicit terms of the exemption statutes.” *Id.* at *4.

This Court should apply similar reasoning to that applied in *Capps* and *Stephens*, and interpret Washington’s homestead exemption statute to apply to only Washington property. While Washington’s Homestead Law contains no express language on the issue of extraterritorial application, its statutory scheme evidences a legislative intent to limit its application to Washington property. Further, reading such territorial limits into the statute would protect against reaching the absurd result of having the statute potentially offer greater protections to foreign property than Washington property. Combined, this statutory support is, at the very least, analogous to the policy reasons that led the *Capps* and *Stephens* courts—as well as the majority of other courts—to give territorial limits to a homestead statute.

2. The Minority Rule: Washington’s Statutory Text Undermines Minority Rule’s Adoption

Though the rule against extraterritorial application is the majority rule, it is not unanimous because extraterritorial application can turn on specific statutory language.⁴ The courts that allow debtors to invoke homestead exemption statutes to protect foreign property generally base

⁴ A handful of federal courts have applied homestead exemption statutes in accordance with the minority rule. *See, e.g., In re Grimes*, 18 B.R. 132, 133 (Bankr. D. Md. 1982) (Maryland); *In re Drenttel*, 403 F.3d 611, 614–15 (8th Cir. 2005) (Minnesota); *In re Woodruff*, 2005 WL 1139891, *3 (Bankr. W.D. Mo. April 28, 2005) (Missouri); *In re Fernandez*, 2011 WL 3423373, *23 (W.D. Tex. 2011) (Nevada); *In re Varnasi*, 394 B.R. 430, 436 (Bankr. S.D. Ohio 2008) (New Hampshire); *In re Stratton*, 269 B.R. 716, 719 (Bankr. D. Or. 2001) (Oregon). No state court appears to have applied the minority rule absent express statutory authority.

that conclusion on specific statutory language or some unique facet of state law. For example, Virginia applies its homestead statute extraterritorially because the statute includes specific language dealing with situations when “property is located outside of the commonwealth.” *See* Va. Code Ann. § 34-6. Further, courts applying the minority rule often do so based on legislative intent derived from related exemption provisions.

The Tenth Circuit Bankruptcy Appellate Panel in *In re Stephens* held that Iowa’s homestead exemption statute applied extraterritorially. 402 B.R. 1 (10th Cir. BAP 2009). That conclusion was based on a close reading of Iowa’s exemption statutes, which revealed that Iowa’s personal property exemption specifically said it was only available to residents. Because the homestead statute did not have the same limitation, the court presumed the Iowa legislature intentionally excluded the reference to residency in the homestead statute, which evidenced an intention for it to apply extraterritorially. *Id.* at 7–8.

Likewise, in *In re Arrol* the Ninth Circuit held that California’s homestead exemption applied to property in Michigan based on unique aspects of California law. 170 F.3d 934, 937 (9th Cir. 1999). The court started its analysis by acknowledging that “the general rule is that state homestead laws have no extraterritorial force and are only available to residents of the state.” *Id.* at 936. The court then turned to California’s homestead exemption statute, and found it was entirely silent regarding any application outside the state. *See id.* With a silent statute and no on-

point California case law, the court then turned to the policy behind the statute. *See id.* It held the policy was to allow debtors to “reside and enjoy the comforts of a home, freed from any anxiety that it may be taken from them against their will’ [which] exists independently from state boundary lines.” *Id.* (internal citations omitted) (*quoting Strangman v. Duke*, 295 P.2d 12 (1956)). Importantly, the court then looked for guidance in related California statutes, including California’s automobile exemption statute, which applies to automobiles outside the state at the time of the bankruptcy petition’s filing. *Id.* at 936–37. Analogizing the homestead exemption to the automobile exemption, the court found “nothing” that would limit California’s homestead exemption to property in California. *Id.* at 937.

Arrol supports the conclusion that extraterritorial application of homestead statutes is a state-specific inquiry. *Arrol* does *not* establish a rule that homestead exemption statutes always apply to property outside a state unless such application is expressly prohibited. As the Ninth Circuit Bankruptcy Appellate Panel explained in *In re Stephens*, the decision in *Arrol* was the result of “the distinctive bodies of state law that control each decision.” 2012 WL 3205362, *4 (9th Cir. Aug. 2, 2012). In application (and unlike *Arrol*), the *Stephens* court “found plenty of support in Idaho law” to limit the exemption to property within the state. *Id.* at *4.

Turning to this case, like *Arrol* the purpose of Washington’s Homestead Law is to provide “shelter for the family and an exemption for a home.” *Bank of Anacortes v. Cook*, 10 Wn. App. 391, 395, 517 P.2d

633 (1974). In Washington, “[t]he 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 Dependency of Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007) (quoting *Pinebrook Homeowners Ass'n v. Owen*, 48 Wn. App. 424, 427, 739 P.2d 110 (1987)). Courts construe the Homestead Law liberally to promote its purpose of protecting family homes. *Id.*; see also *Pinebrook*, 48 Wn. App. at 427. But—as the Ninth Circuit made clear in *Stephens*—no matter how liberal the construction, a court cannot create law that does not otherwise exist. *Stephens*, 2012 WL 3205362 at *4 (liberal construction of exemption statutes does not authorize courts to engage in “judicial legislation” to fill in gaps in the protections given by state legislatures to debtors).

Unlike *Arrol*, ample statutory support exists in Washington’s Homestead Law to limit its application to only property located in Washington. The *Arrol* court found “nothing” in California’s homestead exemption statute to indicate a territorial restriction to its application. *Arrol*, 170 F.3d at 937. In contrast, Washington’s Homestead Law, which balances the rights of judgment creditors and judgment debtors, sets forth a judicial process for creditors to obtain the value of the property in excess of the amount of the homestead exemption. That judicial process expressly binds the courts of the state of Washington, and necessitates the property being located in Washington. See *supra* Section IV.B. Applying the Homestead Law to foreign property would frustrate this statutory scheme, and lead to the illogical result of protecting foreign property more

than Washington property. *See id.* These statutory ramifications render the *Arrol* court's conclusion about California's homestead law inapplicable to the interpretation of Washington's Homestead Law.

V. CONCLUSION

The certified question in this case—whether Washington's Homestead Law applies extraterritorially—can be answered by examining the statute's plain language. While the statute contains no express provision limiting its territorial reach, the statute contains a number of procedures that necessitate the property being located in Washington. This Court must harmonize the Homestead Law's various provisions, and therefore, should limit the Homestead Law's application to property in Washington. Such a holding would not only uphold the legislative intent evidenced by the various procedures that require a Washington property, but it would bring Washington case law in line with the great majority of other states and courts that apply territorial limits to homestead statutes.

RESPECTFULLY SUBMITTED this 7th day of July, 2014.

By 

Bruce J. Borrus, WSBA No. 11751
Gavin W. Skok, WSBA No. 29766
James H. Wendell, WSBA No. 46489
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Attorneys for Creditor Bruce Kiessling

VI. APPENDIX

Order Certifying Question to the Washington Supreme Court

Entered on Docket June 2, 2014

Below is the Order of the Court.



Karen A. Overstreet

Karen A. Overstreet
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

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Karen A. Overstreet
Bankruptcy Judge
United States Courthouse
700 Stewart Street, Suite 6301
Seattle, WA 98101
206-370-5330

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

Larry Charles Wieber and
Rose Woude Wieber,

Debtor(s).

Chapter 13

Case No. 14-10294

ORDER CERTIFYING QUESTION TO THE
WASHINGTON STATE SUPREME COURT

This matter came before the Court on the Objection to Exemptions filed by creditor, Bruce Kiessling ("Kiessling") [ECF No. 22]. A hearing was held on May 28, 2014. Kiessling appeared through counsel, Bruce Borrus, and Debtors appeared through counsel, Steve Hathaway. The Debtors claim a homestead exemption in real property located at 519 Chandler Road, Ketchikan, Alaska ("Alaska Property") under RCW 6.13.010, .020, and .030. See Schedule C, ECF No. 11. Kiessling objects to the Debtors taking a homestead exemption in the Alaska Property pursuant to RCW 6.13.010-030, and argues that the homestead exemption

Order - 1

1 should be disallowed because (1) Debtors do not have the intent to actually reside on the Alaska
2 Property as evidenced by the fact that the Alaska Property is uninhabitable and Debtors have
3 never resided on it, and (2) the Washington homestead exemption statute does not apply to real
4 property located outside the State of Washington.¹ Kiessler and the Debtors asked this Court to
5 certify, pursuant to The Federal Court Local Law Certificate Procedure Act, RCW ch. 2.60, to
6 the Washington State Supreme Court the question of whether the Washington Homestead
7 Exemption Act applies extra-territorially to real property located in other states.

8 At the hearing on May 28, 2014, the Court held that bankruptcy law, specifically 11
9 U.S.C. § 522(d)(3)(A), directs what law applies to the exemption question. *In re Arrol*, 170 F.3d
10 934 (9th Cir. 1999)(Section 522 controls thereby making state conflict of laws rules irrelevant,
11 and concluding that California law permits taking of exemption in Michigan property); *see also*
12 *In re Stephens*, 2012 WL 3205362 (B.A.P. 9th Cir. 2012)(following *Arrol* and concluding that
13 Idaho law has a presumption against extraterritorial application of statutes, therefore debtors
14 cannot take exemption in Alaska property); *In re Harris*, 2010 WL 2595294 (Bankr. D. Idaho
15 2010)(holding that Idaho debtors cannot take exemption in Washington state property). There is
16 no dispute that Washington is where the Debtors have been domiciled for the 730 days
17 immediately preceding the petition date. Accordingly, Washington law governs the exemption
18 question.

19 Under RCW 6.13.010, property included in the homestead must be actually intended or
20 used as the principal home for the owner. In this case, the Court held that there was an issue of
21 fact regarding the Debtors' intention to establish their residence on the Alaska Property. As a
22 result, the Court converted the matter to an adversary proceeding to allow the parties to conduct
23 discovery and set the matter for trial. *See* Order at ECF No. 44. Additionally, at the hearing, the
24 Court went on to explain that the Washington statute, RCW. 6.13.010, et seq., does not state
25 whether the homestead exemption may apply to property located outside the State of
26

27
28 ¹ Kiessler's Objection to Exemptions also objected to the Debtors' exemption under RCW 6.15.010(1)(c)(vi) for a
"Claim against Directors and certain unknown shareholders of Aluminum Chambered Boats." The Court sustained
that objection and disallowed the exemption. *See* Order at ECF No. 44.

1 Washington. Therefore, the Court agreed to certify this legal question to the Washington State
2 Supreme Court.

3 A question may be certified to the Washington State Supreme Court when “in the opinion
4 of any federal court before whom a proceeding is pending, it is necessary to ascertain the local
5 law of this state.... and the local law has not been clearly determined....” RCW 2.60.020. The
6 certification process is intended to “build a cooperative judicial federalism” and serve the interest
7 of judicial efficiency and comity. *Lehman Bros. v. Schein*, 416 U.S. 386, 391, 94 S.Ct. 1741
8 (1974). Because the Washington State Supreme Court has not answered the question of whether
9 the Washington Homestead Exemption Act applies extra-territorially to real property located in
10 other states, this matter should be presented to it.

11 The following question is hereby certified to the Washington State Supreme Court:

- 12 1. Does the Washington homestead exemption law, RCW 6.13.010-.240, apply extra-
13 territorially to real property located in other states?

14 This Court does not intend its framing of the question to restrict the Washington State Supreme
15 Court’s consideration of any issues that it determines are relevant. If the Washington State
16 Supreme Court decides to consider the certified question, it may in its discretion reformulate the
17 question. *See Affiliated FM Ins. Co. v. LTK Consulting Services Inc.*, 556 F.3d 920, 922 (9th Cir.
18 2009).

19 The Clerk of the Court is directed to submit to the Washington State Supreme Court
20 certified copies of this Order; a copy of the docket in the above-captioned matter; and Docket
21 Numbers 22, 37-41, and 44 in this case. The record so compiled contains all matters in the
22 pending case deemed material for consideration of the local law question certified for answer. In
23 accordance with RAP 16.16(e)(1), which requires this Court to designate who will file the first
24 brief, the Court designates creditor, Bruce Kiessling, as the party who will file the first brief in
25 the Washington State Supreme Court on the certified question listed in this Order.² The parties
26 are referred to state RAP 16.16 for additional information regarding procedures before the

27
28 ² RCW 2.60.030(4) requires Kiessling to file his brief within 30 days after the filing of the record in the
Washington State Supreme Court.

1 Washington State Supreme Court. The Clerk of the Court shall notify the parties within three
2 days after the above-described record is filed in the Washington State Supreme Court.

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/// END OF ORDER ///

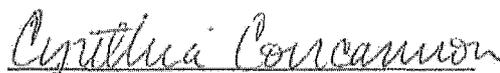
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July, 2014, I caused Creditor Bruce Kiessling's Opening Brief, the Appendix, and this Certificate of Service 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:

Steven C. Hathaway
3811 Consolidation Ave
PO Box 2147
Bellingham, WA 98227

shathaway@expresslaw.com

Dated this 7th day of July, 2014, at Seattle, Washington.


Cynthia Concannon
Cynthia Concannon

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, July 07, 2014 12:40 PM
To: 'Concannon, Cynthia B.'
Cc: shathaway@expresslaw.com; Borrus, Bruce; Wendell, James
Subject: RE: In re Larry Charles Wieber and Rose Woude Wieber, Case no. 90331-0

Rec'd 7-7-14

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: Concannon, Cynthia B. [mailto:cconcannon@Riddellwilliams.com]
Sent: Monday, July 07, 2014 12:38 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: shathaway@expresslaw.com; Borrus, Bruce; Wendell, James
Subject: In re Larry Charles Wieber and Rose Woude Wieber, Case no. 90331-0

Dear Clerk,

Attached for filing, please find Creditor Bruce Kiessling's Opening Brief, an Appendix, and a Certificate of Service for the following:

Case name: In re Larry Charles Wieber and Rose Woude Wieber

Case number: 90331-0

Filed by: Bruce J. Borrus

(206) 624-3600

WSBA #11751

bborrus@riddellwilliams.com

cc: Steven C. Hathaway

Cynthia Concannon | Riddell Williams P.S.

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