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Division I  
State of Washington

No. 73742-2-I  
(Appeal of King County No. 14-2-15399-6)

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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IN THE GENERAL RECEIVERSHIP OF  
JACOB G. BUTTNICK

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**BRIEF OF APPELLANT**

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## **STATEMENT OF THE CASE**

### **STATEMENT OF PROCEDURE**

In 2013 Jacob Buttnick (“Buttnick”) executed an Assignment for the Benefit of Creditors naming Sheena Aebig as the receiver, and a receivership was commenced on June 20, 2013 in King County Superior Court under Cause No. 13-2-23670-2SEA. CP 49, lines 14-16. Ms. Aebig was generally unsuccessful in selling the property for anything, since RCW 7.60.260(2)(I) precludes a receiver from selling homesteaded property, and Ms. Aebig was unable to obtain a price sufficient to obtain Buttnick’s consent.

Buttnick then executed a new Assignment for the Benefit of Creditors, naming Kevin Hanchett of Resource Transition Consultants, LLC as the receiver (“Hanchett”). CP 51, lines 3-5. Hanchett obtained from Buttnick a consent to sell the debtor's property claimed as homestead. CP 51, lines 9-11. The consent, specifically, did not waive the homestead exemption. It only permitted the conversion of real property into cash.

All of the creditors were aware of the homestead, the consent, and the declaration of homestead. They did nothing until after the sale when there was money. No creditors objected to the homestead exemption at

the time or even questioned the homestead claim. Instead they waited until the property had been converted to cash before even raising the issue.

Hanchett was successful in selling the Buttnick real property located at 201 First Ave. South, in Pioneer Square for \$3,235,000. The sale was approved by Orders of this Court entered on October 28, 2014 (CP 25-28) and November 7, 2014 (CP 29-30). From the sale proceeds, Hanchett paid the undisputed liens of Fairview Investment (CP 27, lines 9-10), and he retained a sufficient amount to pay the debtor's homestead exemption (CP 26, lines 18-21).

After the sale, creditors Jolan and Foundation Bank objected to the debtor's claimed exemption. A hearing was heard before the Honorable Carlos Velategui, Court Commissioner. Commissioner Velategui sustained the homestead exemption. CP 31, line 22.

Creditor Jolan then filed a motion for revision. CP 33-47. The hearing was held before the Honorable Timothy Bradbury. Judge Bradbury found there were material issues of fact that required an evidentiary hearing. An evidentiary hearing was held on June 8-9, 2015 before the Honorable Judith Ramseyer. CP 48.

Judge Ramseyer entered Findings of Fact and Conclusions of Law and an order invalidating Buttnick's homestead. CP 48-56.

At that point, Buttnick filed a notice of appeal that was later converted to a motion for discretionary review.

The receivership continued on, and eventually an order approving the receiver's final report was entered. CP 71-73. This appeal followed. CP 74-78.

### **STATEMENT OF FACTS**

Buttnick comes from an old and prosperous Seattle family. The J&M building has been in the Buttnick family since 1929.

Buttnick was not, however, the astute businessman of his ancestors. Throughout his life, Buttnick engaged in any number of catastrophic business ventures. By 2010, Buttnick had lost his residence (CP 52), and every other asset he had. Buttnick lives on his Social Security income.

The testimony at trial supported Buttnick's contention that he resided in the property. Susan Jones, an architect interested in working on renovating the property, testified that Buttnick resided in the property. Ms. Jones testified that she visited Buttnick at the building numerous

times, and it was her professional judgment that he was residing in the property. RP Vol. 1, pp. 98-100.

Kevin Hanchett, the receiver in this case, came to the conclusion that Buttnick was living in the property:

Q: Did you come to any conclusion as to who was resident in the property?

A: Well when I was touring the upstairs area with Mr. Buttnick, he took us through what appeared to be a living area. There was furniture, there was laundry, there was a table, and I assume from that tour that Mr. Buttnick was residing in the property.

Q: Did anything later happen to cause you to be more sure of that assumption?

A: . . . But then, more specifically, during the course of the marketing effort Mr. Buttnick would be -- would get very upset if agents toured the properties without making prior arrangements because he wanted to make sure that he was prepared to receive them, that he had his place somewhat cleaned up, was dressed, and so it continued to appear that he was residing there. And then after the property was sold the buyer contacted me in regards to whose obligation it was to bring an unlawful detainer action to remove Mr. Buttnick from the property.

RP Vol. 1, p. 151, line 21.

Judge David DeLaittere, Buttnick's former lawyer and long-time friend, testified, " My understanding is for the last four or five years after

he was -- basically his house was foreclosed on, he moved to the J&M which is -- what -- 201 First Avenue South.” RP Vol. 1, p. 114, lines 10-12.

Judge DeLaittere further testified, “I did not go upstairs to his apartment and that's where he told me he was living.” RP Vol. 1, p. 114, line 15. Judge DeLaittere further testified that the lawfulness of Jack's residence in the J&M was a controversy. RP Vol. 1, p. 118, line 22 - p. 119, line 10. Jack visited other people for periods of time to attend religious services or during the Jewish high holidays when he could not walk to synagogue because it was too far. RP Vol. 1, p. 119, line 18 - p. 120, line 8.

Tatyana Mamieva testified that during Buttnick's illness she used to bring him food. RP Vol. 2, p. 36, line 25 - p. 37, line 12. She testified there was a room with a bed, window, and furniture. RP Vol. 2, p. 37, lines 7-8. And when asked if Buttnick was living there at the time as far as she could tell, Mamieva answered: “Yes, he lived there. Yeah. For him there was no place to go. That was the place where he was living.” RP Vol. 2, p. 37, lines 9-11.

Rickey Ferguson testified that Buttnick was living in the property, and Rickey took the pictures of Buttnick's living quarters. RP Vol. 2, p. 15, line 22 - p. 17, line 24.

Similarly, Irwin Koval testified that Buttnick lived at the J&M from the time his house was foreclosed until the time he was forced to leave when the building was sold. RP Vol. 2, p. 26, lines 1-6.

In fact, other than other professionals, everyone who knew Buttnick was aware that he lived in the J&M building, and he did so until after the property was sold.

#### **ASSIGNMENTS OF ERROR**

The Court committed error when, after it found Buttnick resided in the property and refused to allow him a homestead exemption in the proceeds from sale of the property.

The Court committed error when it found that both actual residence **and** intent to reside were necessary to claim a homestead exemption.

## **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Is a homesteader who actually resides in the property claimed as a homestead entitled to a homestead exemption in the property even when he does not intend to reside there forever?

In order to defeat the presumption in favor of the homestead, must the creditor prove that the debtor has abandoned the property?

## **STANDARD OF REVIEW**

This appeal presents a question of statutory review. Matters of statutory interpretation are reviewed *de novo*. *O.S.T. ex rel. G.T. v. BlueShield*, 181 Wn.2d 691, 696, 335 P.3d 416, 419 (2014); *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). To the extent this appeal presents subsidiary issues involving determinations of fact, those issues are reviewed under the "substantial evidence" standard. *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn.2d 693, 712, 732 P.2d 974.

## **SUMMARY OF ARGUMENT**

Jacob Buttnick resided in the J&M building because he had no other place to live. His residence had been foreclosed upon and this was the only place left. RCW 6.13.010 provides for a homestead exemption if

the debtor actually resides in the property. The lower court found that Buttnick regularly stayed in the property. The lower court, however, made an error of law in ruling that in addition to actual residence, it was necessary to prove an intent to reside.

The lower court took a one-condition test and added a second condition. This was error and this Court should reverse the court below and allow Mr. Buttnick his homestead exemption.

### **LEGAL ARGUMENT**

Actual residence is sufficient to establish a homestead exemption.

Washington's homestead statute is codified in RCW 6.13.010 *et. seq.* It provides, "The homestead consists of real or personal property that the owner uses as a residence. . . . or [intends to use] as the principal home for the owner." RCW 6.13.010(1) provides:

(1) The **homestead consists** of real 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.** [Emphasis added.]

One way to establish a homestead is to simply live on the claimed property. Regardless of intent, actual use is intent. The legislature amended the statute to read “**actually intended or used** as the principal residence.”

RCW 6.13.040 reads, in pertinent part, as follows:

Automatic homestead exemption--  
Conditions--Declaration of homestead--  
Declaration of abandonment.

(1) Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner . . . .

A second way to establish a homestead is to file a written homestead declaration. RCW 6.13.040(2). This second method may be used by an owner who is not currently living on the property, but who

intends to reside thereon. This second method requires the filing of a homestead declaration.

In this case, the lower court found that Buttnick actually lived in the property. CP 55. He recorded a declaration of homestead with the King County Recorder. CP 55. He did everything possible to claim and perfect his homestead. He resided in it and he recorded a declaration of homestead.

Washington law is clear that homesteads are presumed to be valid.

RCW 6.13.070(2) provides:

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county or district in which the homestead is situated.

The statute was addressed by the court in *Fed. Intermediate Credit Bank of Spokane v. O/S Sablefish*, 111 Wn.2d 219, 228, 758 P.2d 494, 499 (1988). The court held:

The persistent theme of our homestead case law is that “[h]omestead statutes are enacted as a matter of public policy in the interest of

humanity and thus are favored in the law and are accorded a liberal construction.”<sup>1</sup>

Homestead and exemption statutes are favored in law and should be liberally construed in favor of the debtor; they do not protect, and are in derogation of, the rights of creditors. *Lien v. Hoffman*, 49 Wn.2d, 642, 649, 306 P.2d 240 (1957).

Homestead laws are enacted in derogation of creditors to provide a place for debtors to live.

The purpose of the homestead laws is to protect the debtor's domicile. *Webster v. Rodrick*, 64 Wn.2d 814, 394 P.2d 689 (1964). Homestead laws are to be liberally construed in favor of the debtor. They limit creditors' rights. *First Nat'l Bank v. Tiffany*, 40 Wn.2d 193, 242 P.2d 169 (1952).

The burden of proof is on the creditor objecting to the homestead. *In re White's Estate*, 52 Wn.2d 171, 173, 324 P.2d 262, 263 (1958). Here, the court below found that Buttnick was residing in the property.

Conclusion of law 7 (CP 55) provides:

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<sup>1</sup> *Macumber v. Shafer*, 96 Wn.2d 568, 570, 637 P.2d 645 (1981); see also *First Nat'l Bank v. Tiffany*, 40 Wn.2d 193, 202, 242 P.2d 169 (1952) (homestead statutes do not protect the rights of creditors; rather they are in derogation of such rights).

Here, it is established that Mr. Buttnick lived on and off in the J&M building, but the evidence also establishes that he never intended to make the J&M his primary residence.

This simple sentence epitomizes the facts that support allowance of the homestead and the error of law that lead the lower court astray. The lower court found that Buttnick lived in the property. This fact is sufficient to establish he resided there. The fact that he did not intend to remain there forever is not dispositive. RCW 6.13.010(1) requires either intent or actual residence.

*In re Greene*, 346 B.R. 835, 844 (Bankr. D. Nev. 2006), *aff'd in part, rev'd in part*, 583 F.3d 614 (9th Cir. 2009), is very similar in facts to Buttnick. Greene, like Buttnick, owned a piece of property he claimed as a homestead. Like Buttnick, his residence on the property was suspect and spotty. He told a Washoe County officer that he did not live in the trailer but slept in a tent. Nevertheless, the *Greene* court found that he was entitled to claim the property as a homestead:

Moreover, Debtor's intention to vacate the property is not necessarily inconsistent with his homestead claim. As noted above, the homestead exemption must be determined as of the petition. What occurs later is not germane. A debtor is not bound to reside

forever in his homestead once the case is closed. He is free to assign his interest, to liquidate it, or convert it into a commercial property. *Culver v. Chiu*, 266 B.R. 743 (9th Cir. BAP 2001) [*aff'd* 304 F.3d 905 (9<sup>th</sup> Cir. 2002)].

Here, the court below denied Buttnick his homestead exemption because he intended, at some future time, to move elsewhere. The fact of the matter is that Buttnick was homeless. He had nowhere else to go. He lived in the property, as untidy as it was, because he had no other place to live. He had already lost his house and everything else he owned. Loss of his homestead meant that he was moving to the street.

There is no clearer case than this case that the decision of the court below robbed Buttnick of his homestead exemption. He lost his domicile. Preservation of domicile is one of the fundamental purposes of the homestead exemption. *Webster v. Roderick, supra*. Here, the lower court misapplied the law. The court found, contrary to RCW 6.13.040, that it was necessary for Buttnick to comply with two different conditions, i.e. that he reside in the property and intend to make it his homestead. The statute is clear that only one of these conditions is necessary.

If the debtor resides on the property, the claim of homestead is valid. CP 54. Alternatively, if the debtor declares that he intends to claim

the property as his homestead and files a declaration of homestead, the homestead is valid. CP 54. The court below misapplied the law and established a two-part test to claim a homestead when only one part is necessary.

### **CONCLUSION**

Homestead exemptions are enacted to keep debtors off the street. They are in derogation of creditors rights. Here there was ample evidence that Jack Buttnick was actually residing in the property. He had no other place in which to live. The sale of the building and his eviction made him homeless.

When the homestead law was amended in 1982 it provided for an automatic exemption if the debtor lived in the property. Here, Buttnick lived in the property. That was sufficient. The court erred when it added an additional condition, i.e. that he intend to reside in the property. Actual residence is the test. This Court should rule and allow Mr. Buttnick his homestead exemption.

Respectfully submitted this April 15, 2016.

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## DECLARATION OF SERVICE

The undersigned declares under penalty of perjury of the laws of the State of Washington that on April 15, 2016, I served a copy of the foregoing document on all counsel of record by email per agreement as follows:

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