Case No. 22-60050

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: MONTE L. MASINGALE; ROSANA D. MASINGALE,

***Debtors*.**

JOHN D. MUNDING, Chapter 7 Trustee,

STATE OF WASHINGTON,

Appellants,

v.

ROSANA D. MASINGALE,

Appellee.

APPEAL FROM UNITED STATES BANKRUPTCY APPELLATE PANEL

FOR THE NINTH CIRCUIT

BAP No. EW - 22-1016 - FLB

APPELLANT MUNDING'S CORRECTED OPENING BRIEF

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Page

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Page(s)

Page(s)

Statutes and Rules

I. INTRODUCTION

This matter comes before the 9th Circuit Court of Appeals ("9th Circuit") following the published decision of the Bankruptcy Appellate Panel for the 9th Circuit ("BAP") which reversed, in part, the prior Order Denying Debtor's Motion for Order Directing Abandonment of Property and Granting Trustee's Motion to Sell Property ("Sale Order") of the United States Bankruptcy Court for the Eastern District of Washington, specifically the Honorable Fredrick P. Corbit ("Bankruptcy Court"). This appeal presents fundamental issues of bankruptcy law arising from the abrogation of the federal homestead exemption authorized under the Bankruptcy Code by the BAP and the BAP's conflicting interpretation and misapplication of Supreme Court and 9th Circuit precedent governing capped homestead exemption and the ownership of post-petition appreciation in property of the bankruptcy estate.

The task of the federal courts is to interpret the Bankruptcy Code, not to balance the equities or create exceptions to homestead statutes enumerated in the statutes governing the validity and amounts of exemptions. *Law v. Siegal*, 134 S.Ct. 1118 (2014). Although the Bankruptcy Court may sit as a court of equity, any equity can only be exercised within the confines of the plain text of the Bankruptcy Code. The Bankruptcy Code balances the policy of providing debtors with a "fresh start"

against the equally important principle of equal treatment of creditors. As the Supreme Court stated over 100 years ago in *Williams v. U.S. Fid. & Guar. Co.*, 236 U.S. 549 (1915):

> "[i]t is the purpose of the bankrupt[cy] act to convert the asset of the bankrupt into cash for distribution among creditors, and then to relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh from the obligations and responsibilities consequent upon … misfortunes. And nothing is better settled than that **statutes should be sensibly construed to effectuating the legislative intent."**
>
> *Williams* at 555. (Emphasis added).

To resolve any doubt, if it existed, the Supreme Court case of *Law v. Siegal*, 134 S.Ct. 1188 (2014), articulately stated:

> The code's meticulous – not to say mind-numbingly detailed – enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions.
>
> *Siegal* at 1196

In the case at hand, the Bankruptcy Code's homestead exemption scheme contains no authorization for any court to enlarge or modify the substantive homestead rights, including monetary caps and all other limitations imposed by Congress. Here, the Bankruptcy Court did not make exceptions, but applied the plain text of the Bankruptcy Code to correctly hold: 1) the lack of objection to a claimed homestead exemption asserted by Chapter 11 debtors-in possession under 522(d)(1), in a case subsequently converted to Chapter 7, removed from the estate

only a "fixed interest" in the property equal to the value of the exemption; 2) the amount of the allowed homestead exemption claimed by the Chapter 11 debtors-in-possession of "100% of FMV" was capped as a matter of law at $45,950 under the clear language of Section 522(d)(1) of the Bankruptcy Code; and 3) that all post-petition appreciation in the residence which accrued during the bankruptcy proceedings belonged to the bankruptcy estate.

The Bankruptcy Court's decision is entirely consistent with the detailed – enumerations of the allowable homestead exemption under Section 522(d)(1) and the definition of property of the estate defined by Section 541 of the Bankruptcy Code. The Bankruptcy Courts holding is also consistent with United States Supreme Court and 9th Circuit precedents interpreting the homestead exemption and the appropriate disposition of post-petition asset appreciation.

In contravention of established law, the BAP reversed the Bankruptcy Court and judicially created a new exemption to the statutory maximum allowable dollar amount that may be claimed in exempt property. The BAP held as a matter of law that in the absence of any timely objection under Federal Rule of Bankruptcy Procedure (FRBP) 4003(b) to a claimed capped homestead exemption dollar amount notated as "100% of FMV" on Schedule C created a valid homestead exemption claim for the full fair market value of the Masingales' residence. The fact that the newly created homestead exception exceeded the maximum statutory dollar amount

specified in the plain text of Section 521(d)(1) simply didn't matter. Through its application of the newly created exception to the capped homestead exemption, the BAP further concluded that all post-petition appreciation in the Residence belonged to the Masingales, regardless of the undisputed fact that the Residence was never abandoned during the Chapter 11 or subsequent Chapter 7 bankruptcy proceedings, and it was property of the bankruptcy estate until it was sold by the Chapter 7 trustee.

In short, the practical effect of the decision of the BAP was nothing less than to create a judicial exception to the federal bankruptcy scheme of exemptions in direct conflict to the Supreme Court's holding in *Law v. Seigel*, 134 S. Ct 1188 (2014). Not only does the BAP decision make an unauthorized exception to the capped homestead exemption, but the ruling also that the Masingales are entitled to all post-petition appreciation in the residence is inconsistent with 9th Circuit law.

This Court in *In re Gebhart*, 621 F.3d 1206 (9th Cir. 2017), held "that what is frozen as of the date of filing the petition is the value of the debtor's exemption, not the fair market value of the property claimed as exempt". *Id.* at 1211. *Gebhart*, is consistent with the recent ruling in *Wilson v. Rigby*, 909 F.3d 306, (9th Cir. 2018) which held that property of the bankruptcy estate includes, "the appreciation in value of a debtor's home." *Id* at 309.

The BAP lacked authority under the Code or otherwise to create a judicial exception to the capped bankruptcy exemption statute for the exclusive financial

benefit of the Masingales at the expense of their creditors. This Court is respectfully requested to reverse the decision of the BAP and affirm the entire decision of the Bankruptcy Court.

II. STATEMENT OF JURISDICTION

The decision of the BAP entered November 2, 2022, is final and was timely appealed by the Trustee to the 9th Circuit on November 16, 2022. The 9th Circuit has appellate jurisdiction to consider final decisions of the BAP under 28 U.S.C. § 158(d)(1).

III. STATEMENT OF ISSUES

Issue No. 1. Is a homestead exemption, a "Capped Homestead Exemption", to which a debtor is entitled to claim under 11 U.S.C. § 522(d)(1)? Answer: Yes.

Issue No. 2. Is a homestead exemption claimed under 11 U.S.C. § 522(d)(1) subject to the maximum dollar amount defined within the text of 11 U.S.C. § 522(d)(1)? Answer: Yes.

Issue No. 3. Under 11 U.S.C. § 522(d)(1) is a debtor permitted to claim a homestead exemption value in excess of the fixed dollar limitation imposed by the Bankruptcy Code equal to the "100% of the fair market value" of the property in which an exemption is claimed? Answer: No.

Issue No. 4. Does the failure of a party in interest to object to an improperly claimed exemption in excess of the fixed dollar amount limit imposed by the Bankruptcy Code entitled the debtor to the financial benefit of the improperly claimed exemption? Answer: No.

Issue No. 5. Is post-petition appreciation in the fair market value of a debtor' residence property of the bankruptcy estate? Answer: Yes.

IV. STANDARD OF REVIEW

A bankruptcy court's interpretation of the Bankruptcy Code is reviewed *de novo*. *Mwangi v. Wells Fargo Bank*, 764 F.3d 1169 (9th Cir. 2014). The scope of bankruptcy exemptions is reviewed *de novo*. *Lieberman v. Hawkins (In re Lieberman)*, 245 F. 3d 1090, 1091 (9th Cir. 2001). A review of the BAP's statutory interpretation is *de novo*. *In re Boyajian*, 564 F.3d 1088, 1090 (9th Cir. 2009).

V. STATEMENT OF THE CASE

The pertinent facts of this case were accurately and succinctly set forth by the Honorable Fredrick P. Corbit of the Bankruptcy Court in the Order of Sale. MundER-34-39. The facts as documented within the Order of Sale are expanded upon for purposes of application to the arguments presented below. This bankruptcy proceeding started as a Chapter 11 reorganization under the administration and direction of the Masingales. Despite the conversion of this case to a liquidating Chapter 7, the original petition date of September 28, 2015, established the value of

the Masingales' Capped Homestead Exemption and marks the moment when the Masingales' property, including the Residence, became property of the bankruptcy estate.

A. Chapter 11 Proceeding – September 28, 2015, to November 19, 2018.

On September 28, 2015, the Masingales filed a voluntary petition for Chapter 11 bankruptcy seeking to reorganize their financial affairs. MundER-84-86. The Masingales became "debtors-in-possession" by operation of law under 11 U.S.C. §1107, and from that moment owed a fiduciary duty to the bankruptcy estate and its creditors. *In re Count Liberty, LLC,* 370 B.R. 259, 275 (Bankr. C.D. Cal. 2007) (noting that "a chapter 11 debtor-in-possession stands in the shoes of a trustee and is a fiduciary for the estate and its creditors."). The Masingales administered their Chapter 11 case as debtors-in-possession from September 28, 2015, until November 19, 2018, when their case was converted to Chapter 7. The Masingale's residence, in which the exemption value in dispute in this matter is claimed, was never abandoned, and remained property of the bankruptcy estate.

On September 28, 2015, as required by FRBP 9009, the Masingales filed the required Official Forms B6A (12/2007) "Schedule A" and B6C (04/13) "Schedule C". MundER-81-83. Schedule A and C disclose specific information concerning the debtors' assets, liabilities, and claims of exemption in specific property.

MundER-81-83. The Masingales never sought to amend either Schedules A or C during their bankruptcy proceedings as evidenced by the docket. MundER-87-112.

Schedule A disclosed an ownership interest in real property located at 19716 E. 8th Avenue, Greenacres Washington ("Residence") with a value of $165,430.00, unreduced by liens or encumbrances. MundER-81-82. The Masingales disclosed a mortgage obligation encumbering the Residence in the amount of $130,724.00. MundER-81-82. Accordingly, the net equity in the Residence was $34,706.00 at the time the initial bankruptcy petition was filed on September 28, 2015.

Notably, Schedule C was filed utilizing Official Form 6C, which was promulgated in April of 2013. MundER-83. The information required to be disclosed by the Masingales in Official Form B6C (04/13) were different than the Schedule C placed at issue in the Supreme Court's decision of *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) and the Schedule C placed at issue in *Schwab v. Reilly*, 560 U.S. 770 (2010).

The Masingales utilized the federal exemptions permitted under 11 U.S.C. §522(b) (for strategic legal purposes, including the Wildcard exemptions as further identified in Schedule C) instead of the Washington State homestead exemption which authorized a maximum homestead of $125,000 at the time. RCW 6.13.030. MundER-83. Neither the State of Washington nor the federal homestead exemption were or are unlimited in the amount of value of the homestead that may be claimed.

In their Schedule C, the Masingales failed to disclose and did not check the box on Schedule C which requires a debtor to disclose a claim of homestead exemption exceeding $155,675. Form 6C (04/213). MundER-83. The Masingales' election of a homestead exemption in the Residence under 11 U.S.C. §522(d)(1) subjected them to a maximum allowable dollar amount under the statute of $45,950. MundER-81-83.

In their Schedule C, the Masingales unequivocally identified the "Current Value of Property Without Deducting Exemption" in their Schedule C as $165,430. MundER-83. A cursory review of the information disclosed in the Masingales' Schedule A and C shows the dollar amount the Masingale's claimed exempt in the Residence under 11 U.S.C. §522(d)(1) was $34,706, the net equity. A sum far less than the maximum permitted dollar amount of $45,950 under the Capped Homestead Exemption. Since the Residence was properly listed and claimed as exempt under 11 U.S.C. § 522(d)(1), no objection to that claim of exemption was warranted or required.

The Chapter 11 meeting of creditors was conducted and concluded on November 25, 2015, triggering the 30-day window under FRBP 4003(b) for objections to the list of property claimed exempt by the Masingales, including the Residence. MundER-79-80. The deadline for objecting to the list of specific

property claimed exempt expired on December 27, 2015 ("FRBP 4003(b) Deadline").

On December 16, 2015, 11 days prior to the expiration of the FRBP 4003(b) Deadline, the Masingales as debtors-in-possession filed and served their Chapter 11 Plan of Reorganization and Chapter 11 Disclosure Statement. MundER-78; Mundr-75-77.

The Disclosure Statement declared in part:

> **Property to be Retained**
>
> The property to be retained, its value as listed in the Schedules or adjusted herein value allowed exempt pursuant to… and amount by which the property exceeds the allowable exemptions, if any, follows…
>
> | Item | Amount by with Exemption Exceeded |
> |---|---|
> | 2. Debtors' Home. Value: $165,430.00
Less Liens Of Class 9 ($130,734) and
10% sales costs ($16,543) leaves $18,163. | |
> | All exempt pursuant to 11 U.S.C. §522(d)(1)
leaves | $0.00 |

Chapter 11 Disclosure Statement, 12.16.15, page 27. MundER-75.

> … to the extent Debtors are retaining property exceeding their exemptions, only as described in Article VII supra, Debtors are paying for the right.

Chapter 11 Disclosure Statement, 12.16.15, page 29. MundER-77.

By their admissions, the Masingales confirmed that they understood they were bound by the statutory maximum dollar amount for the Capped Exemption under Section 522(d)(1) of the Bankruptcy Code.

The Plan further declared, in material part at Article VIII Exemptions as follows:

> …Debtors' exemptions are not allowed, to the extent they exceed the statutory limit, until full payment is made pursuant to this Plan.
>
> …Debtors must pay for property to be retained in excess of allowable exemptions.
>
> … The property claimed exempt by Debtors does exceed that amount allowable. Thus, Debtors shall pay an amount to Creditors, which is greater than the amount by which the claimed exemptions exceed those allowable by statute.

Chapter 11 Plan of Reorganization, 12.16.15, page 23. MundER-78.

The foregoing language continued to be mirrored and represented to the Bankruptcy Court in pleadings throughout the Chapter 11 proceeding. MundER-68-70. MundER-71; MundER-72-73; MundER-74. The Chapter 11 Plan was confirmed on August 23, 2017. MundER-65-67.

B. The Chapter 7 Bankruptcy Proceeding

The Masingales failed to consummate their Chapter 11 Plan, and the case was converted to a Chapter 7 bankruptcy proceeding on November 19, 2018. MundER-63-64. John D. Munding was appointed as the Chapter 7 trustee to administer the

case on November 19, 2019. MundER-61-62. Between the date of the Chapter 11 Plan confirmation of August 23, 2017, and the date of conversion to Chapter 7, 454 days elapsed. Because the period between the date of confirmation and the date of conversion was greater than 180 days, the Trustee and other parties in interest were precluded under FRBP 1019(2)(B) from objecting to claims of exemption in property listed by the Masingales in Schedule C.

On September 1, 2021, the Masingales filed a Motion to Sell Real Estate (Debtor's Home), Disburse Proceeds, Shorten Time Period to Objection ("Debtor's Motion to Sell"), to declare all net equity in the Residence exempt under Washington's new homestead exemption which was amended in early 2021 under RCW 6.13.030, a post-petition windfall. MundER-58-60. The Motion to Sell was withdrawn after objections were made to the meritless Debtor's Motion to Sell.

Undeterred, the Masingales then filed a Motion for Order Directing Abandonment of **Property of the Estate** ("Motion to Abandon") (emphasis added), to which the Trustee objected. MundER-57. The Trustee also filed a Motion and Notice for Order Authorizing Sale of Real Property Free and Clear of Liens ("Trustee's Motion to Sell"). MundER-42-52. In support of his objection and Motion to Sell the Trustee presented the only admissible evidence for the Court's consideration. i.e. value of the residence, liens, and terms of sale. MundER-53-56. The Bankruptcy Court denied the Motion to Abandon and Granted the Trustee's

Motion to Sell, holding the lack of an objection to the claim of homestead exemption in the Residence within 30 days of the conclusion of Chapter 11 341 creditors meeting, only removed from the estate a "fixed interest" in the residence equal to the maximum allowable dollar amount of the homestead exemption set forth in 11 U.S.C. § 522(d)(1). The Bankruptcy Court also held the post-petition increase in the value of the equity in the residence – after September 28, 2015 – belonged to the bankruptcy estate. MundER-37-41.

With no stay pending appeal, the Trustee sold the residence with the cooperation of Mrs. Masingale for $422,000. MundER-30-33. The net benefit to the bankruptcy estate and its creditors was $222,783.34. MundER-30-33. The Bankruptcy Court subsequently instructed the Trustee to hold remaining net proceeds pending further order of the Bankruptcy Court.

C. The Appeal to the Bankruptcy Appellate Panel.

Ms. Masingale appealed the Bankruptcy Court's decision to the Bankruptcy Appellate Panel for the Ninth Circuit ("BAP"). The BAP reversed the decision of the Bankruptcy Court in part holding that the absence of a timely objection under FRBP 4003 to the Masingales' notated amount of claimed exemption of "100% of FMV" was a claimed amount of the full fair market value of the property, including all post-petition appreciation. The Trustee has timely appealed the BAP's decision to the 9th Circuit.

VI. SUMMARY OF ARGUMENT

The central issues on appeal are whether the BAP committed error by concluding that in the absence of a timely objection under FRBP 4003(b) during the pendency of the Chapter 11 proceeding, the Masingales were entitled to the entire fair market dollar value of the Residence equity at time of sale, including all post-petition appreciation in value. MundER-15-29.

Stated another way, did the BAP commit error by ruling that the lack of an objection being filed under FRBP 4003(b) automatically removes the Bankruptcy Code's limitation on the amount of value in a homestead exemption available under federal law, thus enriching the debtor at the expense of the bankruptcy estate and its creditors. The Masingales were entitled to a fixed dollar amount under their federal homestead exemption claim. The fixed amount to which they were entitled under the Bankruptcy Code was $45,950. But the BAP opinion engrafts a new exception to Bankruptcy Code by removing the fixed and capped dollar limit and implements an unlimited homestead exemption as to amount, including post-petition appreciation when no objection to the claim of exemption is filed by a party in interest within the 30-day window of FRBP 4003(b), despite the fact that settled law deems all post-petition appreciation in property of the estate belongs to the bankruptcy estate.

In bankruptcy cases, whether Chapter 11 or Chapter 7, the rights of both the debtors and creditors become fixed as of the date of the filing of the bankruptcy petition, here September 28, 2015. The filing of a bankruptcy petition starts a process where debtors either seek to reorganize their financial affairs through a Chapter 11 proceeding or to liquidate their non-exempt assets in exchange for a more expeditious discharge.

Article 1 § 8 of the United States Constitution exclusively grants to Congress the power to establish uniform Laws on the subject of Bankruptcies throughout the United States. U.S. Const. art. 1, § 8, cl. 4. Congress has codified the laws on the subject of bankruptcy through the Bankruptcy Code. The Bankruptcy Code effectuates the underlying policies behind Chapter 11 reorganization cases which allows a debtor to be in control of their assets as debtors-in-possession while financial affairs are reorganized. The policies underlying Chapter 7 allow for a general discharge of debts for an individual debtor in return for the relinquishment of all non-exempt property to the Chapter 7 trustee for sale and distribution under a structured priority scheme. The Bankruptcy Code balances the need for providing a debtor with a "fresh start" against the equally important principle of equal treatment of creditors. Section 522 (d) et. seq. places monetary caps on claimed exemptions that an individual debtor may claim. To promote fair and equal distribution to creditors holding the same class of claims, the Bankruptcy Code permits non-exempt

property interests to be sold and divided among creditors. 11 U.S. C. § 726. The Code is the statutory authority to which bankruptcy courts, district courts, courts of appeal, and the Supreme Court must turn to determine the validity of a claim of homestead exemption and the dollar amount thereof that may be legally claimed.

The procedural rules, defined by the Bankruptcy Code are supplemented by the Federal Rules of Bankruptcy Procedure, provide for guidance to debtors, debtors-in-possession, and trustees for claiming, defining, and objecting to exemptions. The Federal Rules of Bankruptcy Procedure promulgated by the Supreme Court, are constrained so not to abridge, enlarge, or modify any substantive right. 28 U.S.C. §2075.

Whether a claim of a federal homestead exemption can permit pre-petition property to pass to a post-petition debtor for purposes of a "fresh start" requires a two-step analysis. Step one requires a bankruptcy court to determine whether the real property being claimed exempt is the type of property for which an exemption can be claimed under Section 522(d)(1). The second step requires the court to fix the value of the debtor's exempt interest in the property as of the petition date. The debtor is allowed to exempt only the value of the debtor's interest in the property, not the entire property itself under the statutory text of 11 U.S.C. § 522(d)(1) and 11 U.S.C. § 541.

The BAP's reliance on *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) is simply incompatible with the Bankruptcy Code and the holdings of *Law v. Siegal*, 134 S.C. 188 (2014). The practical effect of the ruling is to reward the Masingales with a windfall in derogation of the substantive right of the creditors.

The Bankruptcy Court's conclusion that the lack of an objection under FRBP 4003(b) merely removed a "fixed interest" in the property equal to the value of the federal homestead exemption, statutorily capped at $45,950; and awarding all post-petition appreciation in value to the bankruptcy estate was the proper result under the Bankruptcy Code and 9th Circuit precedents.

For these reasons, the BAP's Opinion should be reversed, and the Bankruptcy Court's Opinion affirmed.

VII. ARGUMENT

A. A homestead exemption claim under 11 U.S.C. § 522(d)(1) is subject to a maximum dollar amount provided by statute.

The Bankruptcy Code establishes the statutory framework for federal homestead exemption and applicable exceptions. The Bankruptcy Code and prevailing law do not permit additional exceptions to the statutory exemption, including the creation of a new value of an undefined and unlimited federal homestead exemption up to the "full fair market value of the property", including all post-petition increases in value.

In *Law v. Siegel,* 134 S.Ct. 1188 (2014), the Supreme Court held:

> Code's meticulous – not to say mind-numbingly detailed – enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions.

Id. at 1196.

The plain language of Sections 522(l), 522(d)(1) and 541(a) control the disposition of the issues on appeal. Where the meaning of the statute is unambiguous, the inquiry ends and the sole function of the court is to enforce the statute according to its terms. *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (interpreting § 506 (b) to authorize payment of post-petition interest on allowed nonconsensual over secured claims). In *Rake v. Wade*, 508 U.S. 464 (1993), the Supreme Court explained, "The plain meaning of legislation should be conclusive, except in rare case in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.". This interpretation is bolstered by the "established canon of construction that similar language contained within the same section of a statute must be accorded a consistent meaning." *Nat'l Credit Union Admin v. First Nat'l Bank & Tr. Co*., 522 U.S. 579, 501 (1998). Because Section 522(1) refers to § 522 (b), and in turn § 522(d), the entire statute and subsections must be read together. *See United States v. Morton*, 467 U.S. 822, 828 (1984).

The relevant language of Section 522(1) reads as follows:

> The debtor shall file a **list of property** that the debtor **claims as exempt** under subsection (b) of this section… Unless a party in interest objects to the list of property, the **property** claimed on such list is exempt.

11 U.S.C. 522(l) (emphasis added).

The federal exemption scheme defines an allowable exemption by the debtor's "interest", not by "full market value". 11 U.S.C. 522(d). The word "interest" is distinct from the word "value" or "equity". *In re Chesanow*, 25 B.R. 228, 229 (Bankr. D. Conn. 1982).

Section 522 (l) requires an objection to the "property" being claimed exempt, not the "value" or "equity" or dollar amount claimed to be exempt, and not the value placed upon the property listed. It is beyond dispute that the federal homestead exemption of Section 522(d)(1) applies to a "debtor's aggregate **interest**, not to exceed $15,000 [$22,975] in value, in real property". 11 U.S.C. §522(d)(1) (emphasis added).

In the case of *In re Gebhart*, 621 F.3d 1206, 1210 (9th Cir. 2010), this Court considered the plain meaning of 11 U.S.C. § 522(d)(1), noting that the federal homestead statute was a "capped exemption", mooting any issues between application of the state or federal exemption schemes, and the subject properties of that case remained in the bankruptcy estate even though an interest in the property

was claimed exempt. In *Gebhart*, the Court addressed the consolidated appeal from two separate bankruptcy cases: In re *Gebhart*, a case from the District of Arizona, and *In re Chappell*, a case from the Western District of Washington. *Id.* at 1208-1209. In both cases, the debtors filed for Chapter 7 bankruptcy at a time when the value of the equity in their homes was less than the amount they were eligible to claim under the state and federal homestead exemption. There was no value in the homestead exemption that could be claimed by the bankruptcy estate. The value of the homes subsequently increased so that the properties had equity in excess of the value of the debtors' homestead exemptions as of their respective petition dates. *Id.* 1208.

The question presented by the consolidated appeals was whether the bankruptcy trustee may sell the homestead properties, or if the debtors were entitled to retain the post-petition appreciation. Relying on the decision of the Supreme Court in *Schwab v. Reilly*, 130 S.Ct. 2652 (2010), the *Gebhart* court noted that a claim of a capped exemption only removed a debtor's interest in property equal to the value on the date of the petition, not the property itself, from the bankruptcy estate. *Id.* at 2010.

Sections 522(l), 522(d)(1), and 541 are unambiguous and must be enforced according to the plain meaning of each statute. Consistent with the Bankruptcy Court's findings and conclusions, the Masingales' homestead exemption under 11

U.S.C. § 522(d)(1) was fixed as of September 28, 2015, and capped at a maximum of $45,950.

1. The value of the Masingale's "interest" in the Residence was fixed on September 28, 2015, the Chapter 11 petition date.

A debtor's exemptions have been long fixed at the "date of the filing of the [bankruptcy] petition." *Rigby v. Wilson*, 909 F. 3d 306, 309 (9th Cir. 2018), citing *White v. Stump*, 266 U.S. 310, 313 (1924), other cites omitted. The court in *Wilson, supra*, citing with approval the holding of *Klien v. Chappell, (In re Chappell)*, 373 B.R. 73 (B.A.P. 9th Cir. 2007), wherein the BAP held, "exemptions are determined on the date of the bankruptcy without reference to subsequent changes in the character or value of the exempt property." *Id*. at 77.

As stated in *Gebhart*:

> …[T]hat what is frozen as of the date of the filing of the petition is the value of the debtor's exemption, not the fair market value of the property claimed exempt. A number of our cases have held that, under the California exemption scheme, the estate is entitled to post-petition appreciation is the value of property a portion of which is otherwise exempt.

In re Gebhart, 621 F. 3d at 1211.

This Court in *Gebhart* went on to confirm that the rule awarding post- petition appreciation to the bankruptcy estate was not limited to confirmed that such analysis was not just limited to California exemptions but applied to "all statutes that limit the value of an exemption to an "interest" in property capped at a dollar value". *Id.*

The value of a debtor's exemption is limited by the value of the debtor's interest in the subject property on the petition date. Subparagraph (a) of Section 522, states that the "value" means fair market value as of the date of the filing of the petition…" 11 U.S.C. §522 (a). The definition of "value" is unambiguous and used throughout Section 522 to describe an interest in specific property that a debtor may claim as exempt. For example, Section 522(p)(1)(A) fixes a maximum state law homestead exemption claim on real property acquired within 1215 days before bankruptcy to $160,375.

Based upon the plain language of Section 522(d)(1), The Supreme Court's clear directive in *Law v. Siegal*, 134 Sct. 1188 (2014), the 9th Circuit holdings of *Wilson v. Rigby*, 909 F.3d 306 (9th Cir. 2018) and *In re Gebhart*, 621 F.3d 1206 (9th Cir. 2010), on September 28, 2015, the Masingales' maximum claim in exempt property as of the date of the petition was limited to Section 522(d) to $45,950. The Residence became property of the bankruptcy estate on September 28, 2015, subject only to a homestead claim by the Masingales up to the statutory maximum dollar amount of $49,950. Neither FRBP 4003(b) nor Section 522(l) of the Bankruptcy Code required a hypothetical future Chapter 7 trustee or other party in interest to object to the Masingales' claimed exemption in the Residence.

B. Neither FRBP 4003(b), nor Section 522(l) of the Bankruptcy Code required an objection to the Masingales' claimed exemption.

The relevant language placed at issue by the BAP's decision is Section 522(l), which reads as follows: "The debtor shall file a **list of property** that the debtor claims exempt under subsection (b) of this section. … Unless a party in interest objects, the **property** claimed as exempt on such **list** is exempt." 11 U.S.C. §522(l) (emphasis added). FRBP 4003(b)(1) provides that, "a party in interest **may** file an objection to the list of **property** claimed exempt within 30 days after the meeting of creditors held under §341(a) is concluded…". FRBP 4003(b)(1) (emphasis added).

The BAP concluded that the absence of an objection extinguished the dollar cap on the claimed homestead exemption in a tortured and flawed analysis. First, the "property" claimed as exempt on the "list" was the Masingales residence. The Masingales properly claimed the "property" exempt as a homestead on their "list". Any objection filed would lack merit and likely may be sanctionable. Second, a Chapter 7 trustee did not exist in the context of this case until almost three years after the deadline for filing objections to the listed property. Third, the operative word in FRBP 4003(b)(1) is "may". The word "may" as used in this context is an auxiliary verb used to indicate the possibility of or having the ability to do something. Under the plain reading of FRBP 4003(b), no party in interest is ever required to file an objection to "property" claimed exempt on the list filed under

Sections 522(l) and 522(d)(1). Under the BAP's theory, if no objection is filed, the statutory cap disappears and a homestead exemption unlimited by any dollar amount magically comes into existence.

1. The holding of *Taylor v. Freeland & Kronz* is distinguishable and does not apply to the facts of the present case.

In *Taylor*, the Supreme Court analyzed Section 522(l) and held that if a Chapter 7 trustee did not timely object to a claim of exemption, then an exemption claim is valid even if it had no "colorable statutory basis". *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). In *Taylor*, the debtor claimed certain *property* as exempt, specifically anticipated proceeds of an employment claim. The Chapter 7 trustee failed to object to the *property* being claimed exempt within the time period prescribed by FRBP 4003(b). Consequently, the Court ruled that by operation of Section 522(l) (in conjunction with FRBP 4003(b), the *property* claimed as exempt was in fact exempt, even if the debtor had no colorable basis for claiming the exemption. *Id* at 643-44. This was and remains the only holding of *Taylor*, as it was the only issue addressed by the Court. *Id* at 641, (As stated by the Court, the only issue was "whether the trustee may contest the validity of an exemption after the 30-day period if the debtor had no colorable bases for claiming the exemption.").

First, in the present case, there was no Chapter 7 trustee appointed during the 30-day period that could have objected to the *property* claimed as exempt. Second, here the Residence was not valued as "unknown" or claimed exempt in an

"unknown" amount. The claim is that the permitted exemption is limited to a fixed monetary amount by statute. The statutory cap imposed under 11 U.S.C. § 522(d)(1) cannot be waived by the lack of an objection or abrogated by judicial fiat.

In *Taylor* the Chapter 7 trustee filed an objection to the claim of exemption claimed by the debtor under 11 U.S.C. §522(d)(11). The claimed exemption and dollar amount in T*aylor* was stated as "unknown". Here, the Masingales, as debtors-in-possession, selected the capped exemption permitted by 11 U.S.C. §521(d)(1), placing a value on the Residence of $165,430, less encumbrances of $130,724. MundER-81-83. The Masingales in fact possessed a basis and right to claim a homestead exemption in the Residence under Section 522(d)(1) of the Bankruptcy Code, unlike the debtor in Taylor. No objection to the claim of exemption in the *property* listed as exempt by the Masingales' was required.

2. *Schwab v. Reilly* did not permit abrogation or elimination of the maximum dollar amount or cap established by 11 U.S.C. §522(d)(1).

In *Schwab v. Reilly*, 130 S.Ct. 2652 (2010), the Court revisited §522(l) after *Taylor*. The Supreme Court in *Schwab* reframed the issue before it as follows:

> This case presents an opportunity for us to resolve a disagreement among the Courts of Appeal about what constitutes a claim of exemption to which an interested party must object under §522(l). This issue is whether an interested party must object to a claimed exemption where, as here, the Code defines the property the debtor is authorized to exempt as an interest, the value of which may not exceed a certain dollar amount, in a particular type of asset, and the debtor's schedule of exempt property accurately describes the asset and declares the "value of [the] claimed exemption" in the asset to be an

> amount within the limits that the Code Prescribes. Fed. Rul Bkrtcy. Proc. Official Form 6, Schedule C (1991) (hereinafter Schedule C). We hold that, in cases such as this, an interest party needs to object to an exemption claimed in this manner in order to preserve the estate's ability to recover value in the asset beyond the dollar value of the debtor expressly declared exempt.

In *Schwab,* the debtor in a Chapter 7 case, utilizing federal exemptions available under 11 U.S.C. §522(b)(2), claimed two exempt interests in equipment pursuant to different sections of the Bankruptcy Code. She claimed a "tools of the trade" exemption of $1,850 in the equipment under §522(d)(6), which permits a debtor to exempt his/her "aggregate interest, not to exceed $1,850 in value, in any implements, professional books, or tools of trade." Additionally, in columns two and three of Schedule C she claimed miscellaneous exemption of $8,868 in the equipment under §522(d)(5), which at the time she filed for bankruptcy permitted a debtor to take a "wildcard" exemption equal to the "debtor's aggregate interest in any property, not to exceed" $10,225 "in value". *Schwab v. Reilly*, 130 S.Ct. at 2657. According to the Supreme Court, the total value of the claimed exemptions equaled the value the debtor ascribed to the property on Schedule B and in column four of Schedule C as the equipment's estimated market value. *Id.* at 2658. Schwab, the Chapter 7 trustee, did not object to the debtor's claimed exemptions because the dollar value assigned to each exemption in column three fell within the limits set forth in 11 U.S.C. §522(d). Because his appraisal revealed an equipment value of

$17,200 rather than the $10,718 stated by the debtor, he sought court authority to conduct an auction sale. The debtor objected, 'equating on Schedule C the total value of the exemptions she claimed in the equipment with the equipment's estimated market value." *Id.*, and asserting that "she had put the Chapter 7 trustee Schwab and her creditors on notice she intended to exempt the equipment's full value, even if that amount turned out to be more than the dollar amount she declared, and more than the Code allowed. *Id.*

The Supreme Court in *Schawb* **did not** hold that in the absence of a timely objection, debtors who made a notation in Schedule C of "100% of FMV" in their residence had a valid claim of exemption for the full fair market value of the property, including post-petition appreciation. Examples in the context of gratuitous dicta are not holdings, not law, and clearly under the subsequent holding by the Supreme Court in *Law v. Seigal*, 134 S.Ct. 1188 (2014) even the Supreme Court recognizes it cannot create new homestead exemption statute or exceptions to the existing statutes.

The Supreme Court in *Schwab* based its ruling, in part, upon a plain reading of the Schedule C as defined by Official Form 6, Schedule C (1991), which is remarkably different from the Schedule C defined by Official Form B6C (04/2013) utilized by the Masingales in this case. MundER-83. The Masingales Schedule C

using Official Form B6C discloses a description of the Residence at Column One, specifies the law providing for the homestead exemption under Section 522(d)(1) at Column Two, values the claimed exemption at Column 3 as "100% of FMV", and discloses the Current Value of the Property Without Deducting Exemption as $165,430. MundER-83. A plain reading of the Masingales' Schedule C reveals that the term "100 % of FMV" cannot be defined to mean "all" of the Residence, because the Masingales' available exemption was quantifiable by deducting the total amount of other exemptions claimed under §522(d)(5) from the maximum amount allowed by that provision. Simple arithmetic results in a quantified exemption amount. i.e. The FMV of $165,430, less secured debt of $130,724, equals the net equity of $34,706. MundER-81-83. The maximum 100 % of FMV placed on the value of a claimed federal homestead exemption on the petition date in the Residence could never exceed the statutory maximum amount allowed of $45,950. There was no need for an objection to the value of the claimed exemption as a matter of law.

Indeed, the $45,950 capped exemption was reaffirmed by the Masingales in the admissions and representation of their Chapter 11 Plan of Reorganization and Disclosure Statement filed 11 days prior to the deadlines for filing objections to claimed exemptions. Even if Schedule C was ambiguous or opaque in describing the value of the claimed exemption, the specific language of both the Chapter 11 Plan of Reorganization (MundER-78; MundER-74; MundER-71), Chapter 11

Disclosure Statement (MundER-75-77; MundER-72-73; MundER-68-70), and Motion to Direct **Abandonment of Property of the Estate** (emphasis added), MundER-57, establish beyond a doubt that the Residence was property of the bankruptcy estate and that the Masingales fully intended to be bound by all statutory exemption limits imposed under 11 U.S.C. §522(d).

Judicial Estoppel is a legal doctrine intended to protect the integrity of the court by preventing a party from intentionally changing position in litigation depending on the "exigencies of the moment." *See New Hampshire v. Main*, 532 U.S. 742, 753 (2001). The Masingales' disclosures, representations, and warranties repeatedly set forth in each version of their Chapter 11 Disclosure Statement and Chapter 11 Plan of Reorganization were intended by the Masingales to be relied upon by the Bankruptcy Court, the creditors, and other parties in interest. In these documents, the Masingales affirmed that the value of their claimed homestead exemption was capped at $45,950 under the mandates of Section 522(d)(1). The Masingales are now estopped from changes in their position.

C. Post-petition appreciation of estate property enures solely to the benefit of the bankruptcy estate by operation of the Snap Shot Rule.

Unless property is abandoned to the debtor, post-petition appreciation belongs to the bankruptcy estate. *See*, *Wilson v. Rigby*, 909 F. 3d 306 (9th Cir. 2018); *In re Gebhart*, 621 F. 3d 1206, 1211 (9th Cir. 2010); *In re Alsberg*, 68 F. 3d 312, 314 (9th Cir. 1995). Here it is undisputed that the Residence was never abandoned during the

Chapter 11 reorganization proceedings or the Chapter 7 liquidation proceeding. The residence was later sold by the Trustee in accordance with the Bankruptcy Court' decision currently under appeal.

In the case of *In re Gebhart*, 621 F. 3d 1206 (9th Cir. 2010) this Court, in considering homestead exemption issues and in reliance upon the decision of *Schwab v. Reilly*, 560 U.S. 130 S. Ct. 2652 (2010) concluded that a claim of a Capped Exemption only removed a debtor's interest in property equal to the value on the date of the petition, not the property itself, from the bankruptcy estate. *Id.* at 1210. Because the debtors in this case were debtors-in-possession for over three years and never sought to abandon the Residence, *Gebhart* is dispositive.

In September 2015, the Masingales' scheduled the Residence as having a "Current Value of the Debtor's Interest In Property, Without Deducting Any Secured Claim or Exemption" as $165,430. MundER-83. The Masingales further disclosed the "Amount of Secured Claim" as being $130,724. MundER-81. The Masingales selected the law providing for their claimed homestead exemption, 11 U.S.C. § 522(d)(1), valuing the claimed exemption as "100% of FMV", which is not defined anywhere in the Bankruptcy Code or FRBP. There are no meaningful differences between the facts at hand and those in *Gebhart*. *Gebhart's* reasoning is sound and was recently confirmed in *Wilson v. Rigby*, 909 F.3d 306 (9th Cir. 2018). Therefore, the Bankruptcy Court correctly relied on both *Gebhart* and *Wilson v. Rigby*, in

holding as a matter of law that the appreciation in value in the Residence was rightfully the property of the bankruptcy estate, not the debtors.

VIII. CONCLUSION

Because the Bankruptcy Court correctly found and concluded as a matter of law that: 1) the lack of an objection to the homestead exemption claimed under Section 522(d) of the Bankruptcy Code only removed from the bankruptcy estate a "fixed interest" in the Residence equal to the value of the exemption; 2) that the Masingale's exemption value of "100 of FMV" was capped under Section 522(d)(1) at the maximum dollar amount in the text of the statute at $45,950; and 3) that pursuant to Section 541 of the Bankruptcy Code all post-petition appreciation in the Residence's equity belonged to the bankruptcy estate. The BAP erred when it reversed the Bankruptcy Court as to these holdings. The decision of the BAP should be reversed, and the prior decision of the Bankruptcy Court affirmed.

Respectfully submitted this 6th day of April, 2023.

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CERTIFICATE OF COMPLIANCE

Under Federal Rules of Appellate Procedure (FRAP), I certify that this brief complies with the type and volume limitations imposed by FRAP 32(a)(7)(B) and is proportionately spaced with one-inch margins on all four corners with a total of 8,030 words using Word in Times New Roman 14-point font as required by FRAP 32(a) (5) and (6).

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Local Rule 28-2.6, the Appellant Chapter 7 Trustee John D. Munding states that there are no related cases in this Court.

Respectfully submitted this 6th day of April, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 6, 2023.

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