

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

JAMES MARTIN BURGESS, III and
SHAUNA LEANN BURGESS,

Case No. 6:08-bk-10481-ABB
Chapter 7

Debtors.

ORDER ABATING RULING ON TRUSTEE'S OBJECTION TO EXEMPTIONS

This matter came before the Court on the Trustee's Objection to Debtors' Amended Claim of Exemptions (Doc. No. 26) filed by the Chapter 7 Trustee Emerson C. Noble ("Trustee"), and the Objection thereto (Doc. No. 30) filed by the Debtors James Martin Burgess, III and Shauna Leann Burgess (collectively, "Debtors"). An evidentiary hearing was held on June 29, 2009 at which the Debtors, the Trustee, and their respective counsel appeared.

The Trustee's Objection addresses the Debtors' entitlement to benefit from a recent exemption, Section 222.25(4) of the Florida Statutes, enacted by the Florida Legislature in 2007. The Debtors were living in a home they intended to retain when they filed this case (Doc. No. 1). They changed their minds and now want to surrender the home and claim the enhanced \$4,000.00 personal property exemption provided by Section 222.25(4) (Doc. No. 21). They claim several assets as exempt pursuant to Section 222.25(4) in their Amended Schedule C, including a 2008 tax refund of \$3,884.00. The tax refund was neither listed in their original Schedule B nor claimed as exempt in their original Schedule C.

Courts interpreting Section 222.25(4) have reached differing conclusions on the operation of this controversial statute. *Compare* In re Bennett, 395 B.R. 781, 790 (Bankr. M.D. Fla. 2008) (holding where debtors do not affirmatively claim homestead exemption, homestead is subject to administration by the trustee; therefore, debtors are not receiving the benefit of Florida's constitutional homestead exemption and are thus entitled to the \$4,000 personal property exemption); *with* In re Kent, No. 3:08-bk-7156-PMG, 2009 WL 2837427, at *9-10 (Bankr. M.D. Fla. Aug. 10, 2009); In re Brown, 406 B.R. 568, 571 (Bankr. M.D. Fla. 2009), In re Rogers, 396 B.R. 100, 104 (Bankr. M.D. Fla. 2008), In re Magelitz, 386 B.R. 879, 884 (Bankr. N.D. Fla. 2008), In re Franzese, 383 B.R. 197, 205-206 (Bankr. M.D. Fla. 2008) (each concluding that, where debtor retains the home, debtor receives the benefit of Florida's constitutional homestead exemption and is not entitled to the \$4,000.00 personal property exemption).

Given the divergent opinions of the Courts interpreting Section 222.25(4) of the Florida Statutes, the Eleventh Circuit Court of Appeals recently certified the following question to the Florida Supreme Court for resolution: Whether a debtor who elects not to claim a homestead exemption and indicates an intent to surrender the property is entitled to the additional exemptions for personal property pursuant to Florida Statute Section 222.25(4). Osborne v. Dumoulin (In re Dumoulin), 326 Fed. Appx. 498 (11th Cir. 2009).

Because the certified question involves the issue raised in this case, because resolution of the issue appears imminent, and in an attempt to avoid a result inconsistent with this upcoming ruling, this Court will abate any ruling on the Trustee's Objection until the decisions of the Florida Supreme Court and Eleventh Circuit are issued. The intent is not to delay the administration of this case or to deprive the Debtors of their

requested exemption but rather to insure that the ultimate decision will conform to the decision of a higher court providing much needed guidance on this controversial statute.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Court will abate any ruling in this matter pending the decisions of the Florida Supreme Court and the Eleventh Circuit Court of Appeals on the question certified by the Eleventh Circuit Court of Appeals in Osborne v. Dumoulin (In re Dumoulin), 326 Fed. Appx. 498 (11th Cir. 2009); and it is further

ORDERED, ADJUDGED AND DECREED that upon entry of the rulings of the Florida Supreme Court and the Eleventh Circuit Court of Appeals and, if desired, the parties shall have an additional 30 days to file any supplemental memorandums of law to clarify or argue any matters relevant to the specific facts of this case based upon those rulings.

Dated this 21st day of September, 2009.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge