

CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Tarlesson v Broadway Foreclosure Investments LLC (5/17/2010)

Collection of Judgment; Homestead Act; Exemptions

Judgment creditor Broadway Foreclosure sought to satisfy a judgment through the sale of judgment debtor Tarlesson's home. The trial court permitted the sale subject to a \$150,000 homestead exemption.

After a prior judgment, an appellate court set aside Broadway's purchase of Tarlesson's home at a foreclosure sale, and quieted her title. The judgment required Tarlesson to reimburse Broadway over \$400,000 for the purchase price it paid at the sale, and certain expenses it incurred, but allowed her to stay in the home. When Tarlesson failed to make payment, Broadway sought to levy upon Tarlesson's home to satisfy the judgment.

In its December 2008 application to sell the home, Broadway did not contest that it was Tarlesson's home, but alleged she lost her right to claim an exemption when she conveyed her property by grant deed to her cousin, Peola Lane, in June, 2008. Tarlesson opposed, stating the property had been her principal residence since 1984, and was only conveyed to Lane to arrange financing, because Tarlesson could not qualify. Tarlesson retained the beneficial interest in her home at all times, and Lane reconveyed the property in February 2009, backdated to June 2008.

The trial court found the property was plaintiff's homestead because it was her principal dwelling where she resided when the judgment creditor's lien attached to the property and continuously thereafter. The court found she was not barred from claiming the homestead exemption and set the amount at \$150,000 based on her age and annual income. The court granted defendant Broadway's application to sell the property subject to the exemption. Broadway filed this appeal.

The First DCA began by noting the California Constitution (Article XX, section 1.5) and the Code of Civil Procedure (CCP section 680.010) protect the

interest of a natural person in a dwelling. The homestead exemption does not require that a judgment debtor file or record a homestead declaration, but "...is available when a party has continuously resided in a dwelling from the time that a creditors' lien attaches until a court's determination in the forced sale process that the exemption does not apply. (*Amin v Khazindar* (2003) 112 Cal.App.4th 582) A homestead exemption does not preclude sale of the home but entitles the homesteader to receive the value of the exemption if the property is sold to satisfy a judgment lien. (*Wells Fargo Financial Leasing, Inc. v D & M Cabinets* (2009) 177 Cal.App.4th 59) An unmarried person who is 55 years of age or older, with a gross annual income of \$15,000 or less, is entitled to claim the maximum exemption, which was \$150,000 at the time of the proceedings, and is now \$175,000. (CCP section 704.730)

Broadway claims that by deeding the property to her cousin, plaintiff lost the ability to claim the exemption. Since CCP section 703.020 provides the exemption applies only to "property of a natural person," Broadway reads the statute to imply ownership. The Justices differed in their interpretation, finding only that the judgment debtor must reside in the property as her principal dwelling at the time the judgment creditor's lien attaches and continuously thereafter until the court determines the dwelling is a homestead. (section 704.710(c)) **There is no ownership requirement.** There is nothing to suggest a claimant own the property, rather than merely possess it.

Several cases recognize that judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another. (*Breeden v Smith* (1953) 120 Cal.App.2d 62; *Mehrtash v Mehrtash* (2001) 93 Cal.App.4th 75) Such a result is consistent **with the purpose of the homestead exemption to protect one's dwelling against creditors.** Accordingly, Tarlesson's continued occupancy of her home qualifies it as her "homestead" under section 704.710(c). Broadway asserts that plaintiff Tarlesson should be estopped from claiming the benefits of the homestead exemption pursuant to the equitable theory of unjust enrichment. The argument is premised on plaintiff's failure to pay the expenses of ownership: mortgage, taxes and insurance. The defendant contends she should not enjoy the benefits of ownership without paying for them, and should not have the exemption. The Justices observed, however, that **the theory of unjust enrichment applies to prevent one party from obtaining a windfall at the expense of another in circumstances where its application "involves no violation**

or frustration of law or opposition to public policy, either directly or indirectly.”
(*Dinosaur Development, Inc. v White* (1989) 216 Cal.App.3d 1310)

To disallow plaintiff’s claimed exemption based on unjust enrichment would frustrate the application of section 704.710 and proper construction of the homestead exemption. The homestead law is not designed to protect creditors and should be liberally construed to promote the beneficial purposes of the homestead legislation to benefit the debtor and his family. (*Wells Fargo Financial Leasing, Inc v D & M Cabinets*, supra) There is no misrepresentation or laches on plaintiff’s part that could trigger such an estoppel.

Finally, Broadway argues Tarlesson does not meet the requirements of the exemption. The record demonstrates that she has shown by sworn affidavit that she makes less than \$15,000 a year and is over 55 years of age. This does qualify her for the exemption. Broadway has no conflicting evidence, nor can it point to a case that requires a higher showing of eligibility. Accordingly, Tarlesson is entitled to the exemption of \$150,000.

The judgment of the trial court is affirmed.

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