In re Bezares, 377 B.R. 413 (Bankr. M.D. Fla. Oct. 23, 2007), with the order on rehearing, 383 B.R. 796 (Bankr. M.D. Fla. Dec. 6, 2007)

377 B.R. 413
United States Bankruptcy Court, M.D. Florida.
In re Raymond T. BEZARES, Marci J. Bezares, Debtors.
Oct. 23, 2007.

ORDER ON TRUSTEE'S OBJECTION TO CLAIM OF EXEMPTION
(Doc. No. 8)

ALEXANDER L. PASKAY, Bankruptcy Judge.

The Florida Legislature in its last session passed Senate Bill 2118 modifying and ***414** codifying Section 222.25 of the Florida Statutes.

The relevant Florida Statute § 222.25(4) provides:

> 222.25 Other individual property of natural persons exempt from legal process.- — -The following property is exempt from attachment, garnishment, or other legal process:
>
> (4) A debtor's interest in personal property, not to exceed $4,000, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution. This exemption does not apply to a debt owed for child support or spousal support.

It took no time to raise the issue as to the scope of this amendment. That is, whether the increase is limited to $4,000 or if it is in addition to the existing current $1,000 exemption provided for by Article X, Section 4(a)(2) of the Florida Constitution, thus increasing the total amount to $5,000. This is precisely the issue presented for this Court's consideration in this case of Raymond T. Bezares and Marci J. Bezares (Debtors).

Mr. Bezares claimed $5,000 as personal property exemption. Not surprisingly, Ms. Jensen, the Trustee in this Chapter 7 case, challenged this claim contending that, by virtue of the amendment to Fla. Stat. § 222.25 (2007), the maximum allowable personal property exemption claim is $4,000. She argued that the personal property exemption provided for in the amendment is not in addition to the existing $1,000, making the total $5,000. Rather, it is an increased exemption that provides additional benefit (an additional $3,000) for those not claiming a homestead exemption. Neither counsel for the parties nor the Court has been able to locate any relevant interpretation of this change and the scope of the amendment in any case in the State of Florida.

The Trustee, in support of her objection, relies on the legislative history of Fla. Stat. § 222.25 which, according to the Trustee, leaves no doubt that the legislature intended that the amendment fix the maximum personal property exemption at $4,000 which includes the previous $1,000 exemption provided by the Florida Constitution.

Counsel for the Debtor had no authority to cite in support of his position, but relies on the well-established principle that the legislature has no power to abrogate, alter or amend any provisions of the Constitution. Notwithstanding, this Court initially opined that while recognizing the validity of the principle, it was not applicable to the current situation and proceeded to consider the text of the amendment and its legislative history.

A plain reading of the legislative history supports the initial conclusion urged by the Trustee that the amendment intended to fix the maximum allowable exemption on personal property to $4,000.

As stated in the Florida Senate Professional Staff Analysis and Economic Impact Statement:

> III. Effect of Proposed Changes: ... The bill also increases the amount of personal property exempt from creditor claims, which is owned by persons without homestead property.... Property Exempt from Creditor Claims The bill amends s. 222.25, F.S., to increase to $4,000 from $1,000 the amount of personal property exempt from creditor claims for persons who do not own homestead property. The exemption for persons with homestead ***415** property will remain at $1,000 as provided in the Florida Constitution....

Fla. S. Prof'l Staff Analysis and Econ. Impact Statement CS/SB 2118(2007).

A cursory reading of this Section indicates that the Debtor’s interest in personal property claimed as exempt cannot exceed $4,000 if a debtor does not claim or receive the benefits of a homestead exemption as provided in the Florida Constitution.

However, upon reflection, this Court is now satisfied that while the amendment as written would warrant the conclusion that the amount stated is a cap which includes indirectly the previous personal property exemption of $1,000, it must recognize the principle contended by the Debtor in its entirety. That is, that the legislature has no power to amend or alter a constitutional provision. The only method by which the Florida Constitution can be altered or amended is by virtue of Article XI, Section 5 of the Florida Constitution. Therefore, it is the judgment of this Court that the statutory amendment of the exemption as urged by the Trustee would in fact be a violation of the Constitution of the State of Florida which prohibits its amendment except by the method as provided for by the Florida Constitution pursuant to Article XI, Section 5.

Based on the foregoing, this Court is satisfied that the Debtor’s position is correct and the amendment to Fla. Stat. § 222.25 added $4,000 to the previous $1,000 making a total of $5,000 as the allowable amount of the personal property exemption available to a person who does not own homestead property or claim a homestead exemption.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Trustee’s Objection to Claim of Exemption (Doc. No. 8) be, and the same is hereby, overruled and the Debtor’s $5,000 personal property exemption is allowed as claimed.

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383 B.R. 796
United States Bankruptcy Court, M.D. Florida.
In re Raymond T. BEZARES, Marci J. Bezares, Debtors.
Dec. 6, 2007.
Order on rehearing

Attorneys and Law Firms

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ORDER ON TRUSTEE'S MOTION FOR REHEARING (Doc. No. 35)

ALEXANDER L. PASKAY, Bankruptcy Judge.

On October 23, 2007, this Court entered its Order overruling the Trustee's Objection to Claim of Exemption of personal property claimed by Raymond T. Bezares and Marci J. Bezares, the Debtors in the above-captioned Chapter 7 Bankruptcy case.

In its Order, the Court ruled that the amendment by the Legislature of Florida Statute 222.25(4) increased the exemption provided by Florida Constitution, Article X, of $1,000 to $5,000 and was not an impermissible attempt by the Legislature to amend the Florida Constitution. Based on the foregoing, this Court overruled the Trustee's objection to the Debtors' claim of $5,000 exemption in personal property and allowed the claim as filed.

The Trustee timely filed her request for rehearing and since the matter under consideration was a matter of first impression, the Court granted her Motion and allowed her to furnish additional argument and case law in support of her contention that the amendment to the Statute created a limit of $4,000 on personal property exemption. Thus, the Debtors should be allowed only $4,000 as a personal property exemption.

The Court has carefully considered the argument of the Trustee and the cases cited and is satisfied that its decision under consideration was proper and should be reaffirmed for the following reasons.

The Trustee's basis for support of her objection to the Debtors' personal property exemption claim is the proposition that it is clear from the language of the amendment to Florida Statute 222.25(4) that the Legislature intended to provide a maximum of $4,000 as the allowed personal property exemption. At the time of the original hearing on this matter, neither the Trustee nor the Debtors cited any authority which had considered the reach of the amendment.

The case cited by the Trustee upon rehearing is the case of Milam v. Davis, 97 Fla. 916, 123 So. 668, 690, cert. denied 280 U.S. 601, 50 S.Ct. 82, 74 L.Ed. 646 (1929). In Milam, the Supreme Court of Florida considered Florida Statute 222.13, the life insurance policy exemption, and held that the Statute was constitutional stating that the "organic provision exempting a stated amount of general personal property of the insured is not exclusive and is not a limitation upon any and all statutory exemptions in property of any kind or nature." This Court is satisfied that the basic premise is correct but it does not help the Trustee's position.

***798** The Trustee now contends that the amendment of Florida Statute 225.25(4) is a valid exercise of the Legislative power but contends that it was intended only to increase the current $1,000 maximum amount by $3,000 which can be claimed by a debtor who does not have or does not claim the constitutional homestead exemption.

Since the original hearing on the Trustee's Objection, another Bankruptcy Judge in this Court heard and decided the identical issue, as well as other issues not relevant to the matter under consideration. In the cases of Judith A. Dicesare, M.D.Fla., Case No. 8:07-bk-06536-MGW; Ronald J. Dickinson, Jr., M.D.Fla. Case No. 8:07-bk-07029-MGW, and Jill A. Gatto, M.D.Fla. Case No. 8:07-bk-07394-MGW, the Court pointed out that debtors in Florida can claim the $1,000 personal property exemption provided by the Florida Constitution, Article X, Section 4(a)(2) in addition to the $4,000 by the amendment. Also debtors can claim an additional automobile up to the value of $1,000. Equally, a debtor can claim interest in professionally prescribed health aids under Florida Statute 222.25(2). Both exemptions are in addition to the $1,000 exemption granted by the Constitution.

The plain reading of the language of the amendment under consideration compel the conclusion that the $4,000 increase in personal property exemption is cumulative and in excess of the constitutional $1,000 exemption. Therefore, the previous Order which overruled the Trustee's Objection to the $5,000 personal property exemption claimed by the Debtors shall stand as entered.

In light of the foregoing, it is unnecessary to consider the Trustee's request to certify the question of the constitutionality of the amendment to the Florida Constitution Article X, Section 4, by Florida Statute 222.25(4) to the Eleventh Circuit Court of Appeals pursuant to 28 U.S.C. § 158(d)(2)(A).

Accordingly, it is

ORDERED, ADJUDGED AND DECREED that the Trustee's Motion for Rehearing be, and the same is hereby, granted and upon reconsideration the Order (Doc. No. 33) overruling the Trustee's Objection to Claim of Exemption (Doc. No. 8) entered by this Court on October 23, 2007, be, and the same is hereby, reaffirmed and the Debtors' $5,000 personal property exemption is allowed as claimed.

DONE AND ORDERED.