IT IS ORDERED as set forth below:

Date: June 3, 2016

James R. Sacca
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

In re:	)	
	)	Case No. 15-22220-JRS
Fredric M. King and	)	
Renee M. King,	)	Chapter 13
	)	
Debtors.	)	

ORDER

Should Debtors who moved from Florida to Georgia less than 730 days before filing for bankruptcy, and who used the proceeds from the sale of their house in Florida to buy their unencumbered house in Georgia worth about $310,000, be entitled to claim the unlimited Florida homestead exemption or be limited to the federal homestead exemption in the amount of $23,675 each for a total of $47,350?[1] The resolution of this issue turns on the applicability of the Florida homestead exemption to property located outside of Florida.

[1] At the hearing on this matter, the Debtors also argued that § 522(p) should apply if the Debtors are not entitled to the Florida exemption, but this was not argued in their post hearing brief. Section 522(p) states, "as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $160,375 in value in—(D) real or personal property that the debtor . . . claims as a homestead . . . (B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-

Prior to 2005, the Debtors lived in New York and Mr. King allegedly agreed to be a guarantor on a commercial lease with Urstadt Biddle Properties, a landlord in New York ("Urstadt"). In 2005, the Debtors moved to Florida where they purchased a house which they retained until October 20, 2013 (the "Florida Residence"). At that time, they sold the Florida Residence for $425,000 (the "Proceeds"), and on November 20, 2013, they used the Proceeds to purchase a house in Forsyth County, Georgia for $292,000 (the "Georgia Residence").[2] The Debtors remained in Florida until sometime in April or May 2014, after which they moved to Georgia. Soon after they purchased the Georgia Residence, in December 2013, the Debtors transferred it to a Delaware limited liability company of which they are the members (the "LLC").

Meanwhile, in February 2013, Urstadt filed a suit in New York against Mr. King based on an alleged breach of the guaranty of the lease (the "New York Suit") and obtained a default judgment against him on March 3, 2014 for $218,000 (the "Default Judgment"). Mr. King claims he never received notice of the New York Suit. Thereafter, Urstadt recorded the judgment in Georgia, although it appears that the Writ of Fieri Facias was issued and recorded after the Debtors filed this bankruptcy case.[3] In addition, Urstadt filed a fraudulent transfer action in Forsyth County, Georgia against the Debtors alleging that the transfer of the Georgia Residence to the LLC was a fraudulent transfer. After the fraudulent transfer action was filed, the LLC

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day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State." It appears to this Court that this subsection does not apply to the facts of this case for a couple of reasons. One, because its purpose is to close the "mansion loophole" by limiting a homestead exemption on property acquired within 1215 days before filing a bankruptcy in a situation where a debtor moves into a state with a more generous homestead exemption. *In re Kim*, 405 B.R. 179, 186 (Bankr. W.D. Tex 2009) *aff'd* 748 F.3d 647 (5th Cir. 2014) In this case, the Debtors moved into a state with a less generous exemption so there is no need to limit the exemption as contemplated by that subsection. And two, for the reasons stated in this Order, the Florida exemption is not applicable here because it does not have extraterritorial effect so there is no exemption to limit to the amount set forth in the subsection.

[2] The Georgia Residence is valued at $309,820 on the Debtors' Schedule C and is free and clear of any liens.

[3] The Writ of Fieri Facias is dated October 30, 2015, and it was recorded on November 3, 2015, at 11:54 AM. The Debtors filed this bankruptcy case on October 29, 2015.

transferred the property back to the Debtors. There are disputes regarding the intent of the Debtors during the transfer; however, those issues are not presently before the Court.

The Debtors filed for chapter 13 bankruptcy relief on October 29, 2015. On the Debtors' Schedule C they claim the Georgia Residence as fully exempt, relying on Florida Constitution Article X, § 4(a)(1) and Florida Statutes §§ 220.01 and 222.02. The Trustee and Urstadt object to the Debtor taking the Florida homestead exemption because they claim it does not have an extraterritorial effect. [Docs. 19 and 21] The Debtors oppose the objections, claim the authorities cited therein are distinguishable, and request that this Court allow them the full amount of the Florida homestead exemption. [Doc. 25]

Discussion

A. Section 522(b)(3)(A)

Section 522 governs the exemptions that debtors may claim in bankruptcy to ensure that they receive a fresh start. "Generally speaking, courts construe bankruptcy exemption statutes—both state and federal—liberally in favor of bankruptcy debtors." *McFarland v. Wallace* (*In re McFarland*), No. 14-14514, 2015 WL 3825078, at *2 (11th Cir. June 22, 2015). When there is an objection to a debtor's exemption, the burden of proof is on the party objecting to the exemption. Fed. R. Bankr. P. 4003(c).

Section 522(b) allows a debtor to claim as exempt certain property from the bankruptcy estate and provides debtors with a choice between exempting property under § 522(b)(2) or (b)(3). 11 U.S.C. § 522(b)(1). Under § 522(b)(2), debtors may take the exemptions provided by the Bankruptcy Code in § 522(d). However, states may opt out of the exemptions provided in § 522(d) and a debtor cannot claim the federal exemptions if the state law "that is applicable to the

debtor under paragraph (3)(A) specifically does not so authorize." 11 U.S.C. § 522(b)(2). Section 522(b)(3) provides,

> Property listed in this paragraph is—
>
> (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place.
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> ***
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> If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

11 U.S.C. § 522(b)(3).

The petition in this case was filed on October 29, 2015. Between that date and the date that was 730 days immediately preceding the date of the filing of the petition, the Debtors lived in Florida and owned the Florida Residence and later lived in Georgia and purchased the Georgia Residence. Consequently, the statute requires the Court to look back an additional 180 days immediately preceding the 730 day period to determine where the Debtors were domiciled at that time. During the 180 days preceding the 730 days prior to the Debtors filing their bankruptcy petition, the Debtors were domiciled in Florida; therefore, Florida exemption law applies.[4]

B. State Exemption Law Extraterritorial Restriction

Consequently, the issue is whether the Debtors are entitled to the benefits of the Florida homestead exemption despite their homestead being located in Georgia. The majority of courts addressing the issue of whether state's exemptions laws have extraterritorial effect have adopted

[4] Florida is an opt-out state as to its residents only. *See In re Camp*, 631 F.3d 757, 760 (5th Cir. 2011).

a similar framework for analyzing this issue.[5] First, they look to see whether the plain language of the state's homestead exemption restricts its application to property located within the state. Next, if the homestead statute is silent as to its extraterritorial effect, courts look to the state's case law to see if the courts of that state have interpreted the homestead exemption to apply only to property located within the state. If the state law restricts its extraterritorial application, either expressly or in case law, then these courts conclude the exemption cannot be given extraterritorial effect by the bankruptcy court. Finally, if neither the statute nor case law provides guidance, then the courts look to the state's general principles governing exemptions, which are usually liberally construed in favor of debtors. *In re Drenttel*, 403 F.3d 611 (8th Cir. 2005); *In re Arrol*, 170 F.3d 934 (9th Cir. 1999). A small minority of courts have concluded that a state's restriction of the applicability of its state's homestead exemption to extraterritorial property is preempted by the choice of law provisions contained in § 522(b)(3)(A).[6]

Preemption may be express or implied. *U.S. v. Alabama*, 691 F.3d 1269, 1281 (11th Cir. 2012). There are generally three types of preemption, express, field and conflict. *Id.* First, express preemption exists when a federal statute expressly "manifests Congress's intent to displace state law." *Id.* Second, field preemption exists when "a congressional legislative scheme is 'so pervasive as to make the reasonable inference that Congress left no room for the states to supplement it.'" *Id.* Last, conflict preemption occurs either "when it is physically impossible to comply with both the federal and state laws" or "when the state law stands as an obstacle to the objective of the federal law." *Id.* Courts use judgment "informed by examining the federal statute

[5] *See, e.g.*, *In re Stephens*, 402 B.R. 1 (10th Cir. BAP 2009); *In re Fernandez*, No. EP-11-CV-123-KC, 2011 WL 3423373 (W.D. Tex. Aug. 5, 2011) (collecting cases); *In re Kelsey*, 477 B.R. 870 (Bankr. M.D. Fla. 2012); *In re Jevne*, 387 B.R. 301 (Bankr. S.D. Fla. 2008); *In re Adams*, 375 B.R. 532 (Bankr. W.D. Mo. 2007).
[6] *See In re Camp*, 396 B.R. 194 (Bankr. W.D. Tex. 2008), rev'd on other grounds *In re Camp*,631 F.3d 757 (5th Cir. 2011); *In re Garrett*, 435 B.R. 434 (Bankr. S.D. Tex. 2010).

as a whole and identifying its purpose and intended effects" to determine what constitutes an unconstitutional obstacle to federal law. *Id.* In determining whether a state law is preempted, courts "are guided by two cornerstones." "First, 'the purpose of Congress is the ultimate touchstone in every pre-emption case.'" *Id.* at 1282. "Second, we assume 'that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Id.*

Section 522(b)(3)(A) does not expressly manifest Congress's intent to displace state exemption law or the extraterritorial limitations in state exemption law. Conversely, it simply instructs federal courts to apply state exemption law. Field preemption also does exist. In fact, it is clear that Congress's intent was not to occupy the field regarding exemption laws, but to allow state exemption law to be relevant and often controlling by way of allowing states to opt out of the federal exemptions completely. Finally, the Court concludes conflict preemption does not exist. It is easily possible to comply with both the federal and state statute. The statute directs debtors to use a certain state's exemption law depending on their domicile prior to filing bankruptcy, and in so doing, to the extent applying § 522(b)(3)(A) renders a debtor ineligible for any exemption, the debtor may use the federal exemption. A debtor can easily comply with both the federal and state statute. The extraterritorial limit in the state exemption law also does not stand as an obstacle to the objective of the federal law. The purpose of § 522(b)(3)(A) is to prevent debtors from moving to a state with more favorable exemptions on the eve of bankruptcy in order to take advantage of that state's more favorable exemptions. 151 Cong. Rec. H1993-01. Enforcing extraterritorial limitations in a state's homestead exemption does not interfere with that purpose. To the contrary, this approach appears consistent with and contemplated by Congress in enacting § 522(b)(3) which provides a savings clause for debtors who are not

otherwise afforded an exemption from the state law they are required to apply pursuant to § 522(b)(3)(A).

This Court adopts the approach followed by the majority of courts and concludes that it should give effect to other states' limitations on the extraterritorial application of their homestead exemptions. Section 522(b)(3)(A) directs courts to determine which state's exemption laws apply and then apply those state exemption laws. This Court believes it should apply state exemption law the way courts in that state would apply the state law as the statute directs. The statute does not direct bankruptcy courts to apply the state exemption law in part or to disregard extraterritorial limitations; it simply instructs courts to apply the particular state's exemption law.

C. Florida Homestead Exemption

The Florida homestead exemption "is to be liberally construed in favor of protecting the family home." *In re Schlakman*, No. 05-36921-BKC-PGH, 2007 WL 1482011, at *2 (Bankr. S.D. Fla. Jan. 16, 2007). "The purpose of Florida's homestead provision is to protect families from destitution and want by preserving their homes." *Kellogg v. Schreiber* (*In re Kellogg*), 197 F.3d 1116, 1120 (11th Cir. 1999). It also extends to funds obtained as proceeds from a sale of a homestead to the extent the debtor intends in good faith to reinvest the proceeds into a new homestead. *In re Schlakman*, 2007 WL 1482011, at *3.

Florida Constitution Article 10, section 4 provides:

> There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:
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> (1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent

> inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family

The Florida constitution and statutes do not expressly restrict the location of the homestead to residences in Florida for purposes of the homestead exemption. However, bankruptcy courts in Florida have concluded that the Florida homestead exemption contains an implied requirement that it only applies to residences located within Florida.[7] These courts reason that such an interpretation discourages forum shopping and is consistent with the purpose of the Florida homestead exemption which is to protect the homes of families located within the state.

The Debtors argue that the Court should depart from the line of cases restricting the extraterritorial application of the Florida homestead exemption because the facts in this case are distinguishable. Particularly, they point to the fact that forum shopping is not a concern in this case because the Debtors moved from Florida, not to Florida. In both *Sanders* and *Schlakman* the debtors were claiming the Florida homestead exemption in a homestead, or proceeds from a homestead, located outside of Florida, while the debtors lived in Florida. In *Schlakman*, forum shopping does not appear to have been an issue with the facts of that case. Specifically, the debtor moved to Florida in 2001 and did not file for bankruptcy until 2005. The four years he lived in Florida prior to claiming the homestead exemption was two years more than that provided for in § 522(b)(3)(A), a section which is intended to prevent forum shopping. Nevertheless, the court concluded that the Florida homestead exemption did not apply to property located outside of Florida.

[7] *See In re Schlakman*, 2007 WL 1482011; *In re Sanders*, 72 B.R. 124 (Bankr. M.D. Fla. 1987); *In re Dicks*, 341 B.R. 327, 332 (Bankr. M.D. Fla. 2006) (stating in dicta that the Florida homestead law only protects homesteads acquired in Florida); *In re Jevne*, 387 B.R. 301 (Bankr. S.D. Fla. 2008) (stating in dicta that it is well settled that Florida's homestead exemption applies only to property located in Florida).

In *In re Adams*, 375 B.R. 532 (Bankr. W.D. Mo. 2007), the court faced a similar situation to the one before this Court. The debtors moved from Florida to Missouri and purchased a house in Missouri within the two years prior to filing for bankruptcy.[8] *Id.* Florida exemption law applied and the court addressed whether the debtors could claim the Florida homestead exemption despite the homestead being located in Missouri. *Id.* The debtors made a similar argument as the Debtors in this case, that the court should allow the exemption because they were not forum shopping. *Id.* The court concluded that they could not claim the Florida homestead exemption in the house located in Missouri relying on the line of Florida bankruptcy court cases concluding it has no extraterritorial effect. *Id.* The court reasoned that even if there was no concern about forum shopping, Florida bankruptcy courts expressed a second policy reason for limiting the extraterritorial effect of the exemption, that being that the law was drafted to protect homes of families located within the state. *Id.*

The Court finds that the facts in this case do not require a different result than those cases in which Florida bankruptcy courts have interpreted the Florida homestead exemption to contain an implied requirement that the homestead must be located in Florida. Florida courts have concluded that the Florida homestead exemption does not have an extraterritorial effect in order to prevent forum shopping and to remain consistent with its purpose to protect homes of families located within the state. This Court will apply the Florida homestead exemption the same way the Florida courts have regularly applied it; therefore, it concludes that the Debtors may not claim the Florida homestead exemption on their Georgia Residence.

Accordingly, for the reasons stated herein, it is hereby

[8] It is not clear whether the house in this case was purchased by way of proceeds from a Florida homestead or not.

ORDERED that the Trustee's and Urstadt's objection to the Debtors' exemption is GRANTED and the Debtors may only take the exemptions provided by the Bankruptcy Code in § 522(d).

[END OF DOCUMENT]