UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

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In re:

JOHN ALEXANDER COCHRANE, Debtor.

ORDER SUSTAINING OBJECTION TO DEBTOR'S CLAIM OF HOMESTEAD EXEMPTION

BKY 3-93-2056

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At St. Paul, Minnesota, this _____ day of January, 1994.

This Chapter 11 case came on before the Court on November 18, 1993, for evidentiary hearing on the objection of S.B. McLaughlin & Company, Ltd. and Tudor Oaks Condominium Project ("the Objectors") to the Debtor's claim of exemption in certain real estate. The Objectors appeared by William J. Fisher, their attorney. The Debtor appeared personally and by Michael J. Iannacone, his attorney. After receipt of evidence the record was held open until December 10, 1993, and then was closed.(FN1) Upon the evidence of record, counsel's memoranda and argument, and all of the other relevant files, records, and proceedings in this case, the Court makes the following order.

FINDINGS OF FACT

Numerous documentary, transactional, and historical facts are not seriously controverted, though the crucial inferences to be drawn from them are. The basic facts are as follows.

1. The Debtor filed a voluntary petition for reorganization under Chapter 11 in the United States Bankruptcy Court for the Southern District of Florida on December 21, 1992. Pursuant to a change of venue ordered by that court, his case is presently before this Court.

2. The Debtor is presently 71 years old.

3. The Debtor is an attorney at law. He is licensed to practice in the state courts of Minnesota and in numerous federal appellate courts.

4. The Debtor is an employee of, and principal shareholder in, Cochrane & Bresnahan, P.A., a law firm that maintains its offices in St. Paul, Minnesota.

5. The Debtor maintains an active trial practice on a nationwide scope. He specializes in major business litigation, primarily under the jurisdiction of the federal courts. Many of the lawsuits in which he is involved come under the administration of the Judicial Panel on Multi-District Litigation, and have their venue changed to a central forum court pursuant to that entity's supervisory authority.

6. By his own estimation, the Debtor spends one-third of each year away from his office, in travel throughout the United States for attendance at hearings and trials.

7. Since the out-of-state trials in which the Debtor participates sometimes span two to three months, his firm rents temporary office space in the venue of such trials.

8. Other than this temporary office rental, however, Cochrane & Bresnahan, P.A. maintains no office other than its one in St. Paul.

9. At all times relevant to this case, and for more than two decades, the Debtor has been married to Carolyn Cochrane.

10. Carolyn Cochrane is presently 56 years old.

11. Carolyn Cochrane is an attorney at law, so licensed by the state of Minnesota since 1966. Throughout the 1970s and 1980s, she was very active in public affairs in the Minneapolis-St. Paul metropolitan area, and was a member of the board of several public and quasi-public entities. For several of these memberships, and particularly for her tenure as chair of the Metropolitan Transit Commission, she was required by statute to maintain her residence in the state of Minnesota.

12. The Debtor and his wife have three children. All of them are now adults, the youngest having reached the age of majority in 1987. All three children attended elementary and secondary schools in the St. Paul, Minnesota area. At least two of them attended private colleges or universities, both outside the states of Minnesota and Florida.

13. From 1963 until 1982, the Debtor and his wife owned a homestead located at 1911 Baird Avenue in St. Paul, in joint tenancy.

14. In 1982, the Debtor conveyed his interest in the Baird Avenue property to his wife. He now states that he did this as part of an estate plan, due to his medical condition at the time, and after receiving the advice of counsel.

15. Carolyn Cochrane later sold the Baird Avenue property, receiving net proceeds of approximately $265,000.00. She applied these funds to the purchase of a lot at 1819 Hunter Lane in Mendota Heights, Minnesota, and the construction of a home there. The Debtor and his wife took title to this property as joint tenants, at the insistence of Commercial State Bank, the financial institution that provided the financing for the balance of the construction costs. The total cost of the land acquisition and construction was approximately $800,000.00.

16. In making this loan, Commercial State Bank relied on the strength of the Debtor's own financial position, including his personal income. Carolyn Cochrane was not qualified by virtue of her own income for a mortgage loan of the size necessary to complete the construction. The Debtor executed a promissory note and mortgage deed in favor of Commercial State Bank in connection with the loan.

17. Apparently, at some point the Debtor and his wife borrowed an additional sum and secured it with a second mortgage against the Hunter Lane property.

18. In 1991, the Debtor and his wife executed quit claim deeds through a straw person, to place the title of the Hunter Lane property into the name of Carolyn Cochrane alone.

19. Acting in her own right, Carolyn Cochrane refinanced the two mortgages against the Hunter Lane property at some point in 1992 or 1993. Other than, possibly, joining in a new mortgage deed, the Debtor was not a party to this transaction; in any event, he did not sign the promissory note in favor of the new lender.

20. Throughout the time in which the Debtor and/or his wife have held title to the Hunter Lane property, the Debtor has regularly given her money from his personal income to meet her

needs and those of their children. These needs included the servicing of the mortgages against the property. Carolyn Cochrane could not have kept current on the mortgage payments if the Debtor had not given her these funds.

21. Though in testimony the Debtor termed such payments "spousal maintenance," he has never been divorced, or legally or consensually separated, from her.

22. Carolyn Cochrane recently has sold the Hunter Lane property. After paying off the debt secured by the current mortgage against it, she received, or will receive, approximately $200,000.00 in net sale proceeds.

23. Throughout the period of ownership by the Debtor and/or his wife, the Hunter Lane property has received the benefit of a full homestead exemption for property tax purposes under Minnesota statute.

24. Throughout the period when the Debtor and/or his wife have owned the Hunter Lane property, he has stayed there when he was physically present in Minnesota.

25. The Debtor and his wife have been going to Florida since 1972. Apparently, they started going there for vacation purposes only. As time went on, they started to consider moving there permanently, once the youngest of their three children became old enough to leave their home.

26. At some point during 1982, the Debtor began repeatedly telling his friends and business associates that he was starting the process to become a legal resident of Florida. In particular, he told them he was "gonna vote down there," and that he had "a license to carry a gun down there."

27. On March 17, 1982, the Debtor filed a "Declaration of Domicile" pursuant to Fla. Stat. Section 222.17, with the Clerk of Circuit Court for Collier County, Florida. In this document, the Debtor stated that he "was formerly a legal resident of St. Paul, Minnesota," but that he had changed" [his] domicile to and [was] and [had] been a bona fide resident of the State of Florida since the 1 day of March, 1982." He gave his residence address in Florida as 264 Banyan Boulevard, Naples, Collier County.

28. When the Debtor was making these statements and undertaking these actions in 1982, he was not financially insolvent, and was actively engaged in the practice of law. At that time, a number of people in his acquaintance were taking steps to establish residency in Florida, in contemplation of retirement and for the purpose of currently or eventually reducing their personal income tax obligations.

29. Over the months or years preceding early 1982, the Debtor had become involved in real estate ownership and investment in and around Naples, Florida. His major involvement was as a minority shareholder in two large multi-family housing developments.

30. Throughout the 1980s, the Debtor and his wife also owned a succession of single housing units in the Naples area. They held one or more of these properties with an eye towards eventual occupation on a constant basis, after the Debtor retired from the practice of law. As to all of them, however, they expected to recoup appreciation in value from them if they sold them. These properties included the one at 264 Banyan Boulevard noted in the Debtor's Declaration of Domicile; then, one at 270 Banyan Boulevard; then, a condominium unit in a development called "Pier 8"; and, finally, a property located at 1155 Haldeman Circle.

31. In 1988, the Debtor and his wife acquired the land

at 3660 Haldeman Creek Drive(FN2) in Naples, and built the present structure on it over the next year. To pay for it, they used funds derived from past income from both of them and/or the equity in real property and investments that had been titled in one or both of them. This property consists of one-half of a back-to-back duplex, and is located in a ten-unit condominium development. Its price was $269,000.00. The Debtor schedules it as being free and clear of encumbrances.

32. The Debtor and his wife apparently hold title to 3660 Haldeman Creek Drive in some form of joint ownership. The Debtor states that their estate is a tenancy by the entireties under Florida law. At yet, he has not produced documentary evidence to prove this.

33. The Debtor, as an individual, currently claims a homestead exemption for 3660 Haldeman Creek Drive for Florida real estate tax purposes. The record does not reveal how long he has done so.

34. The Debtor currently holds no interest in real estate in Florida other than that in 3660 Haldeman Creek Drive.

35. Since 1982, the Debtor has engaged in a number of business activities other than the practice of law:

a. From 1982 until 1991, the Debtor was licensed as a real estate agent in Florida. For several years, he maintained an office on a part-time basis in or near Naples; his attempt to start up a real estate agency on a franchise was not successful. He let his Florida real estate license lapse in 1991.

b. When the Chapter 11 case of the St. Paul Athletic Club was foundering, the Debtor personally intervened to attempt to save its operations and ultimately took a major interest in the physical assets of that entity. The financial overexposure resulting from this effort appears to have been one of the precipitants of his personal filing in Chapter 11.

c. The Debtor is a principal in an entity known as Sandco International, a South Dakota corporation which apparently holds real estate and does business of some nature in Minnesota.

d. With several of the principals of the Objectors, the Debtor was a principal in a business entity known as "KSCS."

36. The Debtor "guestimates" that, in any given year between 1982 and 1991, he spent one-third of his time in Minnesota, one-third in Florida, and one-third in other locales while on trial or otherwise doing legal work. He produced no "hard" evidence in the form of personal or business calendars, travel or occupancy receipts or records, or the like, to corroborate this conclusory statement.

37. The Debtor claims to have spent approximately three months staying in Naples, Florida in 1992. The only corroborating

evidence or precise testimony in the record merits the following findings regarding his whereabouts and his use of the Haldeman Creek Drive property during that year:

a. He rented the Haldeman Creek Drive property out for the two full months of February and March, 1992, to "two golfers." He and his wife received a total of $9,000.00 in rent for this period.

b. During the months of May through July, 1992, he was almost constantly in Minnesota, for the trial in a lawsuit in the Minnesota state courts in which he was a named defendant and the Objectors were the named plaintiffs, and for the commencement of his appeal from the judgment the Objectors received against him. Throughout this time, he stayed at the Hunter Lane property in Mendota Heights, or, occasionally, in downtown Minneapolis.

c. He spent most of a period of two and one-half months in the late summer and the early and mid-fall of 1992 in Chicago, in the trial of the so-called "glass anti-trust case."

d. He may have spent two to four days in Naples during September and October, 1992, around the time of the Florida primary election.

e. He spent "most of" the month of November, 1992 in Naples.

f. He spent several days in Naples in December, 1992, to meet with his Florida bankruptcy counsel and to prepare for the filing of his Chapter 11 petition.

38. The Debtor rented the Haldeman Creek Drive property to the same two individuals identified in Finding of Fact 37.a. for some period of time in 1993 and, again, received a substantial payment from them for their use of the property.

39. As a senior citizen, the Debtor is entitled to receive standby air fare to the Naples area at the rate of $100.00, one way.

40. On May 3, 1991, the Debtor gave a personal financial statement to a current or prospective creditor of his. In that financial statement, he included an entry in the asset category for a full (non-joint) ownership interest in property he described a "Homestead," and that he valued at $1,000,000.00. In a separate entry he claimed an interest in a property he called "Florida Condo Westar," which he valued at $350,000.00. He acknowledges that the former entry was a reference to the property on Hunter Lane in Mendota Heights.

41. On his personal federal and Minnesota state income

tax returns for tax years 1990 and 1991, the Debtor gave the Hunter Lane address as his home address. The copy of his personal federal income tax return for 1992 that is in evidence shows the same address. The Debtor states that, on the final form of that return that he actually filed, he wrote in 3660 Haldeman Creek Drive, Naples, Florida, as his home address; he states, however, that he did not retain a copy of the final form. He filed his 1992 income tax returns on or about October 15, 1993, after the commencement of this case.

42. The Debtor has paid personal income taxes to the state of Minnesota on all income generated by him from his law practice.

43. The state of Florida has no personal income tax.

44. When he is staying at the Haldeman Creek Drive property in Naples, the Debtor uses the telephone and facsimile transmission to do legal work through the staff in his firm's St. Paul office. He does not maintain a separate law office in Florida, and is not licensed to practice in the Florida state courts.

45. The Debtor is listed by name in the St. Paul, Minnesota telephone book, at both his downtown St. Paul office and at the Hunter Lane address.

46. Since the mid-1980s, the Debtor has been listed by name in the Naples, Florida telephone book and city directory.

47. Insofar as licenses and other public privileges are concerned:

a. The Debtor holds a driver's license issued by the state of Florida, and has done so for several years.

b. He has been registered to vote in Naples since 1985.

c. He holds a permit to carry a hand gun, issued by the state of Florida.

d. He holds a library card from the Naples area public library.

48. Carolyn Cochrane, on the other hand, holds a Minnesota driver's license; is registered to vote in Minnesota; and holds library cards from the St. Paul and Ramsey County public library systems.

49. Neither Carolyn Cochrane nor any of her and the Debtor's three children have ever claimed Florida as their state of residence.

50. When the Debtor is outside of Minnesota, Carolyn Cochrane attends to the requirements of his personal financial affairs in St. Paul.

DISCUSSION

In the Schedule C that he filed in this case on January 4, 1993, the Debtor claimed numerous assets as exempt. He invoked in this schedule was the following:

homestead

Address:	3660 Haldeman Creek Drive Naples Fla 33962	
Debtor's interest:	350,000.00 350,000.00	Value exempt:

Law: Florida Constitution Article X, Section 4;
Florida Statute 222

This claim of exemption is the subject of the objection at bar.

Florida has chosen to immure its homestead exemption law in its state constitution. In pertinent part, that document provides:

> There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, . . . the following property owned by a natural person:
>
> (1) a homestead, . . . 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 his family . . .

Fla. Const. Art. X, Section 4(a).

As a Bankruptcy Court in one of the federal judicial districts in Florida has noted, "[t]he [Florida] homestead exemption protects the roof over the debtor's head..." In re McCarthy, 13 B.R. 389, 391 (Bankr. M.D. Fla. 1981). To establish the exemption, the debtor must show "an actual intention to reside [on the real estate in question] as a permanent place of residence, coupled with the fact of residence." Lanier v. Lanier, 116 So. 867, 868 (Fla. 1928). See also In re Samson, 105 B.R. 124, 125 (Bankr. S.D. Fla. 1989); In re Winter, 90 B.R. 516, 517-518 (Bankr. M.D. Fla. 1988); In re McCarthy, 13 B.R. 389, 390 (Bankr. M.D. Fla. 1981); In re Cooke, 1 B.R. 537, 538 (Bankr. N.D. Fla. 1979). The requisite intent must be bona fide. In re Samson, 105 B.R. at 125. As to the residence-in-fact element, the Florida Supreme Court has noted that " . . . the word 'homestead' implies occupancy as the home place . . ." Read v. Leitner, 86 So. 425, 426 (Fla. 1920) (emphasis added). The ultimate entitlement to the exemption must be determined from all the facts and circumstances of each case. Hillsborough Invest. Co. v. Wilcox, 13 So.2d 448, 450 (Fla. 1943). See also Lanier v. Lanier, 116 So. at 868; Read v. Leitner, 86 So. at 426; In re Carr, 19 B.R. 173, 174 (Bankr. N.D. Fla. 1982); Barlow v. Barlow, 23 So.2d 723, 724 (Fla. 1945) (all holding that debtor's abandonment of established homestead must be determined on all facts and circumstances).

In common with many other courts, the Florida Supreme Court has held that "[h]omestead laws should be liberally applied in the interests of the family home . . ." Read v. Leitner, 26 So. at 426-427. However, it has limited this broad exhortation by such pronouncements as:

> Under the law of this State, the homestead is not something to toy with and use as a "city of refuge" from the law's exactions . . .

Barlow v. Barlow, 23 So.2d at 723, and " . . . the law [of homestead exemptions] should not be used to defraud creditors," Read v. Leitner, 86 So. at 427. See also In re McCarthy, 13 B.R. at 391.

The governing law, then, identifies two facts as the pivotal ones: intent and occupancy-in-fact. The parties produced a welter of evidence going to these points, but little of it was direct or conclusive in itself; under the facts-and circumstances test, all of it must be considered to arrive at inferences as to the ultimate facts. Given the nature of the fact-finding process required, it is important to identify the way the law allocates the burdens of proof between the parties.

Under the applicable federal rule, the Objectors had "the burden of proving that [this] exemption . . . [was] not properly claimed." Fed. R. Bankr. P. 4003(c). Seemingly to the contrary, the Florida state appellate courts and several of the bankruptcy courts in Florida have held that the person claiming a homestead exemption under Fla. Const. Art. X, Section 4, has the burden of demonstrating his or her entitlement to it. Avila South Condominium Assoc., Inc. v. Kappa Corp., 347 So.2d 599, 605 (Fla. 1976); Matthews v. Jeacle, 55 So. 865, 866 (Fla. 1911); In re Parker, 147 B.R. 810, 812 (Bankr. M.D. Fla. 1992); In re Carr, 19 B.R. at 175; In re Estridge, 7 B.R. 873, 874 (Bankr. M.D. Fla. 1980). At first glance, this presents a conundrum. The federal rule unquestionably applies to this proceeding. However, it is arguable that an inconsistent provision of the state law that provides the substantive rule of decision should apply also.

The provisions, however, may both be applied in the context of a bankruptcy case so as to avoid a conflict. The federal rule can best be read as imposing the initial burden of production of evidence on the objecting party. Depending on the nature of the exemption in question, and on the legal tenability of the debtor's claim on its face, this burden might be met with relatively little evidence.(FN4) If the objector does meet it, the debtor then assumes a burden to produce countering evidence in support of his or her claim of exemptions. Ultimately, the Florida state-law rule is best applied to allocate the burden of persuasion--the burden that is applied if the evidence on the fact point at issue is in equipoise. This burden is generally imposed on the proponent of the issue in question--the party that stands to gain from an adjudication in the affirmative on the claim or element at issue. In re Newton, 161 B.R. 207, 211 (Bankr. D. Minn. 1993). Since the debtor claiming homestead under Florida law seeks the benefit of retaining the asset, it is only fair that he or she should be required to tip the equipoise. When these burdens are applied, it is clear that the Objectors have met their initial burden of production to challenge the Debtor's entitlement to a homestead exemption, as to both of its elements under Florida law. It is also clear that, though the Debtor produced some countering evidence, he did not bring forward enough to preponderate, so as to establish both elements of the exemption.

As to the intent element, the record establishes no more than that the Debtor has been planning for over a decade to permanently sever his personal, physical ties to Minnesota, and to take up a home place in Florida. This intention, however, always has been one for action to be consummated in the future--and so it remains. The Debtor early took on a number of superficialities, as first steps to change his "legal" residency. Such things as the filed "Declaration of Domicile," and submitting to the power of the state of Florida to regulate his exercise of certain personal legal privileges, might be enough to establish the Debtor as a "resident" of Florida for various isolated purposes. However, standing alone, or even in the aggregate, they do not unequivocally manifest a contemporaneous intent to presently occupy real estate in Florida

as a home place. The best and most conclusive evidence of that intent is action to carry it out--the substantial relinquishment of tangible and intangible ties, personal and business, to a former place of domicile, and the commencement of a sustained and permanent physical occupancy of property in Florida.

The Debtor's conduct since 1982 has manifested no such intention. His ties to and contacts with Minnesota remain as strong as they have been throughout his adult life and career. He still maintains the headquarters of an active law practice here. Though, it appears, he tried to start up an alternative source of personal income sited in Florida, he abandoned the effort--probably because he simply was not physically there on a sustained enough basis to give a real estate agency the right start. As evidenced by the financial statement he gave in May, 1991, as late as that he wanted at least some people he was dealing with to conclude that he still lived in Minnesota.

Perhaps, at some point in the early or mid-1980s, the Debtor had plans that would have placed him in Florida, comfortably retired from the practice of law, by the present time. For reasons that do not appear from the record, he never followed through. He did not testify to having plans to do anything comparable at any fixed date in the near future. His current intent, then, can only be as he apparently formed it several years back, when his personal investments and non-legal business activity started causing him financial difficulties: at some indefinite future time, after he resolved those problems, and after he then decided he no longer wanted to practice law, he would wind up his professional commitments, dispose of those of his business and personal assets that were located in Minnesota, and take up permanent, full-time occupancy of the property in Naples. At this point, however, his clear intent is to use the condominium as a place for personal retreat, for occasional vacations that might last up to a month, and to hold in expectation of moving there if he and his wife retire. He certainly does not intend to use it at this time as a permanent--and exclusive--residence.

As well-supported as the inference on the intent element is, the record is even more squarely against the Debtor as to the occupancy element. The only evidence of any precision that goes to the pattern of the Debtor's actual occupancy is that for the eleven months immediately preceding his bankruptcy filing. It establishes no more than a scattered, sporadic presence on the property, until a belated effort to spend several weeks straight in Florida to lay the groundwork for the bankruptcy filing. The proof of record, fairly exacting as it was, flatly contradicts the Debtor's summary assertion that he was present in Naples for any period longer than the total of three to four weeks established by the Objectors. Renting the condominium out was not necessarily fatal to a claim of homestead exemption under Florida law. Read v. Leitner, 86 So. at 426. However, the fact that the Debtor did for as long a time as was the case, and for as handsome a rent as he received, indicates that he simply had no real need to maintain the property to meet his own immediate need for housing, and did not actually use it to do so. Given his large personal income and the availability of cheap air fares to him, the Debtor clearly could have spent much more time there and still carried on his law practice through his St. Paul office. He did not.

The weight of the evidence shows that, if the Debtor occupied any place as "the home place" as of the commencement of this case, it was the Hunter Lane property in Mendota Heights. At

the risk of falling into the cant that pervades early state-court decisions on the homestead exemption,(FN5) one can say with full justification that the Hunter Lane property has been the place from which the Debtor has sallied forth into the business and professional world, and to which he retreated to find personal refuge. The fact that his wife held legal title to it is of no moment. The fact that the Debtor purports to have relinquished any claim to value in the Hunter Lane property is, similarly, of no consequence. Clearly, the Debtor has always had a personal attachment to the Hunter Lane property, as well as an economic stake that he had accreted for the benefit of his wife by contributing to the buildup of equity in it and in the predecessor property on Baird Avenue. Cf. In re Winter, 105 B.R. 124, 125 (debtor's continuing maintenance and financial investment in condominium apartment defeats finding that she established exempt homestead in rural Florida property). Nothing in the Florida homestead laws prevents a court from concluding that a debtor's de facto "home place" is one in which he has no legal title. To impose such a limitation on the adjudicative function could eviscerate the actual-occupancy element; it would essentially give a debtor the power to unilaterally declare that he had a protected homestead in any vacation property that he used with any degree of frequency, no matter how slight, regardless of whether he actually lived there.

Further support for this finding lies in the fact that the Debtor's spouse explicitly professes no intention to occupy the Haldeman Creek Drive property on any basis other than in the indefinite future, after their joint retirement. To be sure, the Florida constitution no longer limits the availability of a homestead exemption to "the head of a family," with all that that language required by way of an actual presence of spouse or children in the property at issue. See Historical Note to Fla. Const. Art. X, Section 4, in Fla. Stat. Ann. (West) (amendment approved by Florida electors in November, 1984, substituted "a natural person" for "the head of a family" in language identifying the owner of property who could claim it as homestead). Even so, Carolyn Cochrane's testimony circumstantially tends to indicate that the Debtor had the very same plans. The fact that none of their children have ever attended school in Florida, secondary or post-secondary, or otherwise established a permanent presence there, further suggests that the Cochranes have not yet intended to really relocate, or actually relocated, to Naples.

The Objectors, then, produced sufficient evidence to support a finding that, as of the commencement of this case, the Debtor simply did not occupy the Haldeman Creek Drive property as a home place, and the Debtor failed to muster evidence to outweigh the Objectors' proof. As a result, his claim of homestead exemption must be disallowed; the property, or its current value, will remain property of the estate in this case, and will be available to satisfy the allowed claims of creditors.

Viewed in its proper context, this result is not at all harsh. As the Objectors' counsel argues, the Debtor certainly will not be deprived of a place to live. His wife has realized almost $200,000.00 from the sale of the Hunter Lane property, and has every right to reinvest that value in a new homestead. Whether the Debtor has some sort of legal or equitable claim to a share of that value, in any current or future form, or whether he only ends up continuing to enjoy it through his continuing relationship with his wife, the result is the same: he will continue to have a roof over his head, as he conducts his affairs and proceeds toward whatever

retirement he chooses. The underlying social policy of the homestead laws being met through other avenues, then, there is no injustice or inequity in making the value of the Debtor's real estate holding in Florida available to the lawful claims of his several creditors.(FN6)

IT IS THEREFORE ORDERED:

1. That the Objectors' objection to the Debtor's claim of homestead exemption is sustained.

2. That Fla. Const. Art. X, Section 4, does not operate to remove the Debtor's interest in the property at 3660 Haldeman Creek Drive, Naples, Collier County, Florida, from the Debtor's bankruptcy estate.

BY THE COURT:

_____
GREGORY F. KISHEL
U.S. BANKRUPTCY JUDGE

(FN1)This was done to allow the Objectors the opportunity to adduce further evidence. Prior to the November 18 hearing, the Debtor had not fully responded to the Objectors' discovery requests. On their motion, the Court ordered him to do so by December 3. Apparently, after the Objectors received the Debtor's supplemental responses, they decided not to ask for a reconvening of the evidentiary hearing.

(FN2)Throughout his testimony, the Debtor gave the name of the street on which this property is located, as "Haldeman Circle." All of his bankruptcy statements and schedules give the name as indicated above, however.

(FN3)Florida is one of the majority of jurisdictions that have opted to deny debtors in bankruptcy the right to claim the "federal exemptions" under 11 U.S.C. Section 522(d). Fla. Stat. Section 222.20; In re Wilson, 694 F.2d 236, 237 n. 1 (11th Cir. 1982); In re Coplan, 156 B.R. 88, 90 (Bankr. M.D. Fla. 1993).

(FN4)A debtor's claim of exemption, of course, may be facially invalid- as where the debtor fails to cite a basis in law for the claim of exemption, or where the asset in question simply is not of the character or nature described in the law the debtor cites. In such a case, of course, the underlying dispute is not really factual in origin; the objector's burden under Rule 4003(c) is the simple procedural onus of coming forward and formally raising the issue by starting a judicial proceeding.

(FN5)One example of such is furnished by one of the Florida Supreme Court opinions cited earlier:

> [The homestead] was provided for the benefit of the family as a place of actual residence, as a haven where integrity patriotism and respect for civic and moral virtues is generated. It is the legal atom that neither

scientist nor legalist have discovered the means to crack.

Barlow v. Barlow, 23 So.2d at 723-724. Early Minnesota Supreme Court cases are replete with such pronouncements. E.g., Ferguson v. Kumler, 6 N.W. 618, 619 (Minn. 1880).

(FN6)The result in this order does not rest on any finding that the Debtor manipulated the form of his assets to take advantage of Florida's generous homestead exemption; such a finding was not necessary to reach a disposition of the issues. On the basis of a comparable finding, one Bankruptcy Court in Florida has judicially crafted a limitation on a debtor's homestead rights. In re Coplan, 156 B.R. 88 (Bankr. M.D. Fla. 1993). Since the Debtor here did not prove up the basic elements of the exemption, it was not necessary to get into this issue. If the Debtor claims his interest in the condominium as property held in a tenancy by the entireties that is "immune" from the estate, and if there is objection to that claim, this issue may be opened. First Nat'l Bank of Leesburg v. Hector Supply Co., 254 So.2d 777, 780 (Fla. 1971) (though real estate titled in husband and wife is presumed to be held in immune form of tenancy by entireties, "fraud may be proven" to defeat immunity).