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Negligent Vehicular Homicide Caps a Debtor's Homestead Exemption

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I. Section 522(q)(1)(B)(iv) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 places a $136,875 cap on homestead exemptions when the debt arises from a criminal act.

In an expansive reading of the homestead exemption cap added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the First Circuit Court of Appeals, in *Larson v. Howell,* held that criminal negligence is sufficient to trigger the section 522(q)(1)(B)(iv) homestead exemption cap. 513 F.3d 325, 328 (1st Cir. 2008). In *Larson v. Howell*, Larson was found guilty of negligent vehicular homicide. In Larson's bankruptcy case, the homestead exemption cap was applied because the debt arose from a criminal act. *Id.* at 327. The Court of Appeals reasoned that the cap should apply to Larson because (1) criminal acts are separate triggers of the subsection, (2) the debtor need not be convicted of the crime, and (3) Congress did not intend a conviction to be necessary in order to trigger the cap. *Id*. at 328–30.

The BAPCPA provision, section 522(q)(1)(B)(iv) of the Bankruptcy Code, applies a homestead exemption cap to Larson because her debt arose from negligent vehicular homicide. Section 522(q)(1)(B)(iv) applies a $136,875 cap on the homestead exemption where the "debtor owes a debt arising from any . . . criminal act, intentional tort, or willful or reckless misconduct." 11 U.S.C. §522 (2008), *amended by* 11 U.S.C. §522(q) (2007) (raising the dollar

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amount of the cap from $125,000 to $136,875 for cases commenced after April 1, 2007). In *Larson,* the debtor was driving her van in Massachusetts and took a shortcut through a parking lot, striking the oncoming motorcycle of Howell. Howell's wife, a passenger, died as a result of the accident. In the criminal case, the judge found facts sufficient to find Larson guilty of negligent vehicular homicide. *Larson v. Howell*, 513 F.3d 325, 327 (1st Cir. 2008).

Larson then filed for Chapter 7 bankruptcy and in the bankruptcy proceeding, the Court of Appeals determined that the homestead exemption cap should be applied to Larson's homestead exemption because the debt arose from a criminal act. The court used three factors to come to its conclusion. First, the Court of Appeals reasoned that use of the word "or" in the section 522(q)(1)(B)(iv) list of triggering acts indicates that criminal acts are separate triggers to the subsection, independent of any intent or recklessness. *Id*. at 328. Second, the court determined that the debtor need not be convicted of the crime, holding that section 522(q)(1)(B)(iv) applies "wherever the debtor's debt arises from . . . any criminal act." *Id*. at 330. Therefore, the provision is triggered whenever one admits to facts sufficient for a finding of guilt, as Larson did. Thirdly, the court employed statutory construction and reasoned that since Congress requires a conviction in section 522(q)(1)(A), the fact that such language requiring a conviction was not used in section 522(q)(1)(B)(iv) clearly shows that Congress did not intend it to be a prerequisite to initiating the cap on the homestead exemption. The court concluded that the cap on the homestead exemption applies to Larson because her act was a negligent crime and her debt to Howell arose from that criminal act.

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A. History of section 522 of the BAPCPA.

Section 522 of the Bankruptcy Code governs exemptions in bankruptcy cases and ensures that debtors have the opportunity to obtain a fresh start after the bankruptcy proceedings have ended. The section 522 exemption provision is designed to ensure that a debtor can maintain an appropriate standard of living by allowing the debtor to exempt property during a bankruptcy case. This right has historically been granted so that property essential to the life and livelihood of the debtor is protected from the reach of creditors. § 46: 1 NORTON BANKRUPTCY LAW AND PRACTICE 2D, Thomson/West, (11/2005). As a result of such exemptions, a debtor will not be rendered destitute and will be able to effectuate a fresh start. Therefore, to ensure that debtors are given a fresh start, exemption provisions are usually liberally construed to favor the debtors invoking them.

Section 522(q) establishes a homestead cap that is triggered when a debt is caused by certain criminal or unlawful conduct. It limits the homestead exemption to $136,875 if "the debtor owed a debt arising from … any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding five years." 11 U.S.C. §522 (2008), *amended by* 11 U.S.C. §522(q) (2007). However, there is an exception to this rule. The homestead exemption cap "shall not apply to the extent the amount of an interest in property … is reasonably necessary for the support of the debtor." *Id*.

In order to have the section 522(q)(1)(B)(iv) homestead exemption cap apply, the party objecting to the exemption must be able to prove that the criminal conduct and the bankruptcy proceeding are somehow connected "such that the bankruptcy filing would be deemed an abuse."

3 COLLIER ON BANKRUPTCY, ¶522.13[3][b] at 102.7 (Alan N. Resnick et al. eds., 15th ed. rev. 2007). One way this connection may be shown is by proof "that the debtor is attempting to discharge civil liability owing to victims of the crime." *Id*. Courts have found that various types of criminal conduct can trigger the homestead exemption cap. Convictions for conspiracy and wire fraud, if proven, may be sufficient to meet the requirements of §522(q). *In re* Farber, 355 B.R. 362, 371 (Bankr. S. D. Fla. 2006). Also, if the debtor acts to hinder, delay, or defraud the creditor, then it is appropriate for the court to apply the federal statutory limitation to his homestead exemption. *In re* Presto, 376 B.R. 554, 597 (Bankr. S. D. Tex. 2007).

B. Objecting to a homestead exemption by bringing a section 522(q)(1)(B)(iv) claim.

In *Larson v. Howell*, on October 11, 2005, the debtor filed for Chapter 7 bankruptcy and tried to claim a homestead exemption without a cap. Larson listed on Schedule A her single family residence valued at $544,000. On Schedule C, the debtor claimed a homestead exemption of $500,000 for her residence under Massachusetts state law.

While the BAPCPA does not specify who has standing to bring a section 522(q)(1)(B)(iv) claim, the Chapter 7 trustee and Howell objected to Larson's claimed homestead exemption with no cap. The BAPCPA is presumed to "include any party in interest who may file an objection to the debtor's exemption claim." 3 COLLIER ON BANKRUPTCY, ¶522.13[3][b] at 102.7 (Alan N. Resnick et al. eds., 15th ed. rev. 2007). As a result of this homestead exemption claim, the Chapter 7 trustee and Howell objected. Howell argued that the $500,000 exemption should be reduced pursuant to section 522(q)(1)(B)(iv) of the Bankruptcy

Code to $125,000 because Larson's criminal act caused another person to die within the preceding five years. (Currently, the amount of the cap is $136,875. However, the amount of $125,000 applied in *Larson* because the case was filed before the amendments to the Bankruptcy Code that adjusted the amount to the current level.)

Section 522(q)(1)(B)(iv) is also unclear as to what is required of an objecting party to show in order to prevail and have the homestead exemption cap lowered to $136,875. At a minimum, the objecting party's burden is to prove "that the debtor is liable on one of the listed debts." *Id*. The debtor may then respond to an objection to his claim of a homestead exemption by presenting evidence as a defense to owing the debt. This then requires the "bankruptcy court to conduct a trial … on liability" as if the "matter were being heard in the first instance in the bankruptcy court." *Id*. Also, while the language in section 522(q)(1)(B)(iv) does not require a conviction to constitute a criminal act, the objecting party will need to establish that the action taken by the debtor that gave rise to the debt owed meets all of the elements of a crime under the applicable state law.

C. The debtor's arguments in *Larson v. Howell*.

During a hearing on November 11, 2002, Larson admitted facts sufficient to a finding of guilt for negligent vehicular homicide. Larson was driving her van in Massachusetts and took a shortcut through a parking lot. As she made a left turn to go into the lot, she struck the motorcycle of Lloyd Howell and killed the passenger, Sherri LaMattina-Howell. At the hearing, Larson testified that "she did not see the motorcycle, but admitted that she caused the accident." *Larson v. Howell*, 513 F.3d 325, 327 (1st Cir. 2008). In September 2002, a civil action was also

filed by Howell against Larson claiming wrongful death and seeking damages for his wife's death, his own injuries, and the harm to his two children. However, this action was stayed pending the conclusion of the criminal trial. When the civil suit was resumed, the case was settled for $1,000,000.

The debtor employed three arguments to prove that the homestead exemption should remain $500,000 and not be lowered pursuant to section 522(q)(1)(B)(iv). First, the debtor assumed that since neither the Bankruptcy Code nor the BAPCPA defines what is meant by a "criminal act," the court should consider legislative history in determining the meaning of a "criminal act." Second, the debtor argued that legislative history demonstrated that Congress intended a criminal act to encompass conduct involving something greater than just negligence. For example, the earlier version of the statute, section 522(q)(1), stated that the language should be liberally construed to encompass misconduct that rises above the level of mere negligence. Third, the debtor claimed that the homestead cap should not be reduced to $125,000 because the claimed homestead of $500,000 was necessary for her support under section 522(q)(2).

D. The Court of Appeals reasoning for holding that the section 522(q)(1)(B)(iv) cap should be applied to Larson's homestead exemption.

In reaching its conclusion, that negligent criminal conduct is sufficient to trigger the section 522(q)(1)(B)(iv) homestead exemption cap, the *Larson* court rejected Larson's arguments. The Court of Appeals applied a plain language analysis. The court stated that "legislative history does not trump unambiguous statutory text." *Id*. at 329. Therefore, a House Conference Report, which Larson relied upon in formulating her argument, from 2002 stating that the cap should only apply to conduct that rises above negligence was rejected by the court.

Since the court determined that "criminal act" is a clear term, legislative history need not be relied upon.

1. Section 522(q)(1)(B)(iv) is disjunctive and the court need only find a criminal act.

In *Larson v. Howell,* the Court of Appeals reasoned that Larson need only be guilty of a criminal act, independent of any intent or recklessness, in order to trigger the homestead exemption cap. The court found the statutory list present in section 522(q)(1)(B)(iv) to be disjunctive; therefore, a judge must only find that the debt arose from a criminal act. The court reasoned that the use of the word "or" signals that just a criminal act will trigger the cap. Therefore, it is not necessary to also find that the act was an intentional tort or willful or reckless conduct. The *Larson* court posited that the disjunctive use implies that the "terms mean different things." *Id*.

2. Section 522(q)(1)(B)(iv) does not require a conviction in order to deem an act criminal and apply the cap.

Both state law and Congress do not require a conviction in order to establish an act as a "criminal act;" therefore, in *Larson v. Howell,* Larson's guilt of negligent vehicular homicide constitutes a criminal act and will trigger the homestead exemption cap. Massachusetts state law does not require an act to be accompanied by a conviction or to have a certain level of culpability in order to deem it a criminal act. Also, Congress did not include any language in the Bankruptcy Code to modify "criminal act." The *Larson* court posited that this shows Congress' intent to not "limit the statute's operation to the subset of crimes defined in part by intentionality, willfulness, or recklessness." *Id*. Therefore, the negligent vehicular homicide constitutes a

criminal act under both the state and Congress' understanding of a criminal act. Since negligence is a serious crime and can result in great injury and death, the court held that Congress wanted to restrict the ability "of individuals who face monetary liability for such crimes to shelter their assets under state homestead exemption provisions." *Larson v. Howell*, 513 F.3d 325, 329 (1st Cir. 2008). Therefore, since Larson committed a criminal act, her homestead exemption will be capped at $125,000.

3. Applying they theory of statutory construction, since Congress requires a conviction in the text of section 522(q)(1)(A), the fact that similar language was not used in section 522(q)(1)(B)(iv) proves that Congress did not intend it to be required.

Another important factor that the *Larson* court relied on in coming to its decision, that the homestead exemption cap will be applied to Larson, is that while Congress does not require a conviction in the statutory text for section 522(q)(1)(B)(iv), it does use such language requiring a conviction in section 522(q)(1)(A). According to statutory construction, the inclusion of language in one section and the omission of it in another section is intentional and has a purpose behind it. Therefore, the *Larson* court determined that by not including the requirement of a conviction in section 522(q)(1)(B)(iv) while including such language in another section shows that Congress did not intend to require a conviction in order to trigger the homestead exemption cap of section 522(q)(1)(B)(iv).

E. The holding of *Larson v. Howell*.

Since the evidence from the record shows that the debtor committed the act and the act is deemed a criminal act, the homestead exemption cap of section 522(q)(1)(B)(iv) is applied in *Larson*. Even though there was no official conviction, under Massachusetts' state law, "an

admission of facts sufficient for a finding of guilt … shall be deemed a tender of a plea of guilty for purposes or requesting a continuation without a finding." *Id*. at 330. In Larson's criminal case, the judge continued the case without a finding for one year based on the admissions made by the debtor. This device is commonly used by Massachusetts courts and the bankruptcy court can rely on the criminal court's continuance without a finding.

II. The implications of *Larson v. Howell* for future cases.

Both aspects of the court's decision – (1) that intent and recklessness need not be present to trigger the cap, and (2) that no conviction is necessary - have serious implications for future cases. Many state and federal statutes criminalize conduct that falls below the level of willful or reckless conduct. In cases where the applicable state homestead exemption exceeds the cap, creditors will have an incentive to argue that the circumstances giving rise to their claims come within the scope of the criminal provision. And the absence of a conviction will be no bar to applying a section 522(q)(1)(B)(iv) cap of $136,875 to the debtor's homestead exemption.

The decision of *Larson v. Howell* gives hope to creditors in future bankruptcy proceedings. Creditors now have another argument to get the most assets out of the debtor's estate. Creditors have a viable argument that whenever criminal actions are involved, whether or not there was any intent or conviction, that the homestead exemption should be capped pursuant to BAPCPA section 522(q)(1)(B)(iv).