

Presented:
Consumer Bankruptcy Practice

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Frost, Kim & Asarco – Oh My!

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Introduction – Select Homestead Issues

Texas law provides broad protection for homesteads. The law exempts homesteads from seizure or encumbrance in all but a narrow range of circumstances, and caps homesteads in size but not in value. *Tex. Prop. Code Ann. §§ 41.001, 41.002*. In addition to the homestead itself, Texas protects the proceeds of a homestead sale--but only for a limited time. Proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale. *Tex. Prop. Code Ann. § 41.001(c)*. The proceeds lose their exemption after six months, unless they are reinvested in another exempt Texas homestead. The rule is referred to as the "Texas Proceeds Rule."

In re Frost, 744 F3d 384 (5th Cir. 2014) - The Dollars vs. Dirt Case

The *Frost* case is one involving the proceeds of the sale of a homestead which came before United States Bankruptcy Judge Ronald King on a Section 522(c) issue. The facts of the case are as follows:

Procedural History

On November 30, 2009 the Debtor filed a voluntary chapter 13 proceeding. Although the applicable commitment period was 36 months, the Debtor filed a 51 month plan. Schedule A listed his homestead valued at \$257,000.00 with a secured lien of \$100,000.00.

The First Meeting of Creditors was scheduled for January 13, 2010 and was eventually concluded on January 28, 2010.

On March 3, 2010 the Debtor filed a Motion To Sell his Home Free And Clear of Liens in the amount of \$200,000.00. By this time, all exemptions were allowed pursuant to F.R.B.P. 4003(b) as no objections were lodged against the Debtor.

On March 23, 2010, the Trustee filed her Objection to the Debtor's Motion to Sell. In her Objection, the Trustee basically stated that the Debtor's Motion to Sell was not clear on how the net proceeds in the amount of \$81,000.00 were going to be used after the sale closed and funded. The Debtor simply stated that the proceeds would be paid into the Trustee's Office. The Trustee requested that the proceeds be used to increase the Debtor's Plan base. The Debtor listed General Unsecured Claims in the amount of \$55,000.00 and the Plan proposed a 1% dividend to same.

On July 1, 2010, the Bankruptcy Court granted the Motion authorizing the sale of the homestead and ordered the Debtor to deposit all of the proceeds with the Chapter 13 Trustee's office pending further orders of the Court.

On November 21, 2010, the Debtor then filed an Amended Plan shortening the term to 36 months and the 1% dividend to the General Unsecured Class remained the same.

On December 13, 2010 the Court issued its order on an objection to a secured claim filed by a creditor resulting in an additional Allowed General Unsecured claim in the amount of \$27,000.00.

On December 15, 2010, The Trustee filed her objection to the Amended Plan asking the Court to rule on her objection to the exemption of the sale proceeds.

January 3, 2011, the Court entered an interim Order authorizing the Trustee to release \$40,000.00 to the Debtor and to retain the remaining \$41,000.00 pending further Orders of the Court. The Court reasoned that the \$41,000.00 would be just enough to fund a 100% Plan.

Bankruptcy Court's Order

On May 11, 2011 the Court concluded that the net sale proceeds of \$81,000.00 would be exempt for six months commencing January 27, 2011 and remain exempt if reinvested into another homestead. However, the Court discovered that the Debtor had already spent \$23,000.00 and could no longer reinvest this amount into another homestead and therefore held that the \$23,000.00 was property of the estate and Ordered that the Plan base be increased by that amount and that the Trustee reserve the remaining amounts pending expiration of the 6 month period. Debtor appealed to the District Court.

Appeal To The U.S. District Court

The following were the issues on appeal:

1. Whether the bankruptcy court erred in finding that the homestead sale proceeds not reinvested in a homestead within 6 months from the date of sale lose their exempt status.
2. Whether the court erred in finding that the homestead sale proceeds not reinvested in a homestead after 6 months were property of the estate under 11 U.S.C. §541.
3. Whether the court erred in finding that the homestead sale proceeds not reinvested in a homestead after 6 months were property of the estate under 11 U.S.C. §1306.
4. Whether the court erred in holding that the Debtor's use of \$23,000.00 for purposes other than reinvestment in a homestead caused that amount of proceeds to lose its exempt status, and increased the base plan.
5. Whether the court erred in sustaining the Trustee's Objection to the Motion To Sell Real Property Free & Clear of All Liens and Interests.

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