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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6 In re:) BAP No. WW-06-1435-RKMo
7)
8 STEVE JAY CHAPPELL and JULIE) Bk. No. 04-18810
9 LYNN CHAPPELL,)
10)
11 Debtors.)
12)
13)
14 MICHAEL P. KLEIN, Chapter 7)
15 Trustee,)
16)
17 Appellant,)
18)
19 v.) O P I N I O N
20)
21 STEVE JAY CHAPPELL; JULIE)
22 LYNN CHAPPELL,)
23)
24 Appellees.)
25)
26)

Argued and Submitted on May 23, 2007
at Seattle, Washington

Filed - July 11, 2007

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Thomas T. Glover, Bankruptcy Judge, Presiding

Before: RIBLET*, KLEIN and MONTALI, Bankruptcy Judges.

* Hon. Robin L. Riblet, Bankruptcy Judge for the Central
District of California, sitting by designation.

1 RIBLET, Bankruptcy Judge:
2

3 We address whether postpetition appreciation of exempt
4 property is to be treated the same under the federal exemption
5 scheme as under a state's exemption scheme. We conclude that
6 controlling Ninth Circuit authority involving state homestead
7 exemptions, which holds that the bankruptcy estate is entitled to
8 postpetition appreciation in excess of the maximum value
9 permitted to be exempted under the statutory authority invoked by
10 the debtor, applies with equal force to exemptions taken under
11 the federal exemption scheme. The factual differences between
12 existing Ninth Circuit authority regarding state exemptions and
13 the federal exemption now in question constitute a distinction
14 without significant difference as to postpetition appreciation.
15 We thus also conclude that a debtor's entitlement to postpetition
16 appreciation is limited to the maximum value of the exemption
17 permitted under the exemption statute invoked.

18 We REVERSE and REMAND.
19

20 FACTS

21 Appellee debtors, Steve J. and Julie A. Chappell, filed a
22 Chapter 7 petition on June 30, 2004. Appellant Michael P. Klein
23 was appointed as Chapter 7 trustee.

24 In Schedules A and D the debtors disclosed ownership of
25 their residence on Camano Island in Washington, which they valued
26 at \$350,000¹ and declared to be encumbered by \$328,488.75 in

27
28 ¹ Trustee stipulated to the \$350,000 value as of the date
(continued...)

1 consensual liens. In Schedule C the debtors claimed the
2 \$21,511.25 balance of equity as exempt under 11 U.S.C.
3 § 522(d)(1),² the federal residence exemption.

4 The chapter 7 trustee did not object to the claims of
5 exemption within the 30-day period prescribed by Rule 4003(b), or
6 at any time thereafter. No party sought to have the subject
7 residence abandoned pursuant to § 554.

8 The lender moved for relief from the automatic stay in July
9 2006, claiming a value of the residence of \$350,000 based upon
10 the debtors' June 2004, schedules.

11 Appellant trustee opposed stay relief on the basis that the
12 value of the residence had increased to \$550,000. Accordingly,
13 trustee sought permission to market the residence on the premise
14 that a sale for that amount would result in net proceeds of
15 \$140,000, which would suffice to pay all creditors in full and
16 return a surplus to the debtors.

17 The debtors' response to the lienholder's stay relief motion
18 expressed an ability and willingness to cure the arrears, but
19 opposed the trustee's suggestion to market the residence.
20 Debtors contended that at the time of filing their bankruptcy
21

22 ¹(...continued)
23 of the filing of the Chapter 7 petition.

24 ² Unless otherwise indicated, all chapter, section and
25 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-
26 1330, and to the Federal Rules of Bankruptcy Procedure, Rules
27 1001-9036, as enacted and promulgated prior to the effective date
28 of The Bankruptcy Abuse Prevention and Consumer Protection Act of
2005, Pub. L. 109-8, 119 Stat. 23 ("BAPCPA"), because the case
from which this appeal arises was filed before its effective date
(generally October 17, 2005).

1 petition there was no equity in the residence beyond consensual
2 liens and their claimed exemption and, thus, the trustee was not
3 entitled to the postpetition appreciation. Furthermore, debtors
4 argued that the trustee's failure to object to the debtors'
5 claims of exemption raised a presumption that there was no equity
6 above the exemption at the time of filing. The debtors requested
7 a hearing regarding the value of the residence prior to it being
8 listed for sale.

9 In August 2006, appellant trustee filed a Motion to
10 Determine that Non-exempt Equity in the Debtors' Residence was an
11 Asset of this Estate. After hearings held in September 2006, the
12 bankruptcy court ordered that the subject residence was deemed
13 exempt from administration by the trustee. Based on a finding of
14 the \$350,000 value at the time of the petition, the bankruptcy
15 court concluded that because the value of the property was equal
16 to or less than the sum of the secured obligations and the
17 exemption claimed, the residence was withdrawn from
18 administration pursuant to § 522(1) at the expiration of the time
19 to object to exemptions and there was no remaining interest in
20 the residence for the trustee to administer.

21 This timely appeal ensued.
22

23 JURISDICTION

24 The bankruptcy court had subject-matter jurisdiction
25 pursuant to 28 U.S.C. § 1334 over this core proceeding under 28
26 U.S.C. § 157(b)(2)(A). We have jurisdiction under 28 U.S.C.
27 § 158.
28

1 ISSUES

2 (1) Whether the postpetition increase in value in the
3 residence beyond the debtors' exemption remained part of the
4 bankruptcy estate and therefore subject to administration by the
5 Trustee.

6 (2) Whether the debtors' federal residence exemption claim
7 sufficiently distinguishes this case from binding Ninth Circuit
8 case law holding that debtors are not entitled to the
9 postpetition appreciation in their residences beyond the amount
10 of their homestead exemptions under state law.

11
12 STANDARDS OF REVIEW

13 We review the scope of a statutory exemption de novo, as a
14 question of law. Gonzalez v. Davis (In re Davis), 323 B.R. 732,
15 734 (9th Cir. BAP 2005), citing Bloom v. Robinson (In re Bloom),
16 839 F.2d 1376, 1378 (9th Cir. 1988). The determination of a
17 homestead exemption based on undisputed facts is a legal
18 conclusion interpreting statutory construction which is reviewed
19 de novo. Wiget v. Nielsen (In re Nielsen), 197 B.R. 665, 667
20 (9th Cir. BAP 1996), citing Nadel v. Mayer (In re Mayer), 167
21 B.R. 186, 188 (9th Cir. BAP 1994). Whether property is included
22 in a bankruptcy estate is a question of law also subject to de
23 novo review. Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th
24 Cir. BAP 2000), citing Ramsay v. Dowden (In re Cent. Ark. Broad.
25 Co.), 68 F.3d 213, 214 (8th Cir. 1995).

26
27 DISCUSSION

28 We are guided by basic principles of bankruptcy law. Upon

1 the commencement of a voluntary chapter 7 case, all of a debtor's
2 legal and equitable interests in property on that date become the
3 property of the bankruptcy estate. § 541(a). The appointed
4 chapter 7 trustee serves as the official representative of the
5 estate. § 323(a). The trustee is required to collect and reduce
6 to money the property of the estate for which such trustee
7 serves, and to close the estate as expeditiously as is compatible
8 with the best interests of parties in interest. § 704(1).

9 Section 522 governs the allowance of exemptions in
10 bankruptcy. Under § 522(b)(1) and (2) a debtor has the option to
11 choose between those exemptions provided under federal bankruptcy
12 law under § 522(d), or alternatively, to choose those exemptions
13 made available under state and federal nonbankruptcy law.

14 Section 522(b)(1) also gives the individual states the ability of
15 legislatively "opting-out" of the federal bankruptcy exemption
16 scheme, in which case a debtor's exemptions are entirely
17 dependent on the state of the debtor's domicile. Washington is
18 not a state that has prohibited its domiciliaries from electing
19 the federal exemptions. 4 ALAN N. RESNICK & HENRY J. SOMMER, EDS.,
20 COLLIER ON BANKRUPTCY ¶ 522.01, p. 522-16 n.2 (15th ed. rev. 2007).
21 Thus, the debtors here were entitled to claim, and did, in fact
22 claim, federal exemptions. Pursuant to § 522(d)(1), debtors
23 claimed an exemption in their residence in the amount of
24 \$21,511.25.

25 "[T]he critical date for determining exemption rights is the
26 petition date." Goswami v. MTC Dist. (In re Goswami), 304 B.R.
27 386, 391-92 (9th Cir. BAP 2003), citing White v. Stump, 266 U.S.
28 310, 313 (1924) and Harris v. Herman (In re Herman), 120 B.R.

1 127, 130 (9th Cir. BAP 1990). “[E]xemptions . . . are determined
2 on the date of bankruptcy and without reference to subsequent
3 changes in the character or value of the exempt property[.]”
4 Culver, LLC v. Chiu (In re Chiu), 266 B.R. 743, 751 (9th Cir. BAP
5 2001), aff’d, 304 F.3d 905 (9th Cir. 2002), citing Herman, 120
6 B.R. at 130.

7 Section § 522(l) provides that, “[u]nless a party in
8 interest objects, the property claimed as exempt on [the
9 exemption schedule] is exempt.” § 522(l). A trustee cannot
10 contest the validity of a claimed exemption after expiration of
11 the 30-day period established by Rule 4003(b), even where the
12 debtor has no colorable basis for claiming the exemption. Taylor
13 v. Freeland & Kronz, 503 U.S. 638 (1992).

14 It is undisputed that the appellant trustee here did not
15 timely object to the debtors’ claims of exemption.

16
17 I

18 Debtors contend that they claimed as exempt the “aggregate”
19 or entire interest in their residence under § 522(d)(1), thereby
20 withdrawing the entire fee from bankruptcy administration. The
21 debtors rely upon Taylor, Owen v. Owen, 500 U.S. 305 (1991), and
22 Allen v. Green (In re Green), 31 F.3d 1098 (11th Cir. 1994).

23 In making their “aggregate”-interest-in-the-fee argument,
24 Debtors ignore two important facts. First, nothing in the
25 debtors’ Schedule C demonstrates an intent to claim to an
26 “aggregate” or entire interest. The value of their claimed
27 exemption is stated simply as “\$21,511.25,” the arithmetic
28 difference between the value of the residence and the consensual

1 liens. As reasoned in Hyman v. Plotkin (In re Hyman), 967 F.2d
2 1316, 1319 n.6 (9th Cir. 1992), because the time to object to
3 claimed exemptions is relatively short, "it is important that
4 trustees and creditors be able to determine precisely whether a
5 listed asset is validly exempt simply by reading a debtor's
6 schedules." Any ambiguity in the schedules is to be construed
7 against the debtor. Id.

8 Second, debtors ignore the dollar limit imposed by
9 § 522(d)(1).³ As the trustee concedes, the maximum exemption
10 available under § 522(d)(1) is \$36,900 (plus any available "wild
11 card" amount under § 522(d)(5)).⁴ Hence, the debtor's exemption
12 claim did not exceed the maximum amount available to them.

13 Taylor is not controlling here. In Taylor, the debtor
14 claimed as exempt proceeds from a lawsuit and a claim for lost
15 wages, listing the value as "unknown." No dollar limit was

16 ³ Section 522(d)(1) provides:

17
18 The following property may be exempted under
19 subsection (b)(1) of this section:

20 (1) The debtor's aggregate interest, not to exceed
21 \$18,450 in value, in real property or personal property
22 that the debtor or a dependent of the debtor uses as a
23 residence, in a cooperative that owns property that the
24 debtor or a dependent of the debtor uses as a
25 residence, or in a burial plot for the debtor or a
26 dependent of the debtor.

27 ⁴ The maximum allowable residence exemption for an
28 individual debtor is \$18,450 under § 522(d)(1), plus the
additional \$975 catchall exemption pursuant to § 522(d)(5),
effective April 1, 2004. See Revision of Certain Dollar Amounts
in the Bankruptcy Code Prescribed under Section 104(B) of the
Code, 69 Fed. Reg. 8482 (Judicial Conference of the United States
Feb. 24, 2004), 2004 WL 329158. The dollar limitation applies
separately with respect to each debtor in a joint case.
§ 522(m).

1 specified. The parties agreed that the debtor did not have the
2 right to exempt more than a small portion of the proceeds under
3 either state law or the federal exemptions. After expiration of
4 the 30-day period under Rule 4003(b), and subsequent to learning
5 that the lawsuit had been settled for a substantial sum, the
6 trustee filed a complaint demanding turn over of the settlement
7 proceeds. The United States Supreme Court held that the trustee
8 was precluded from contesting the claim of exemption after the
9 Rule 4003(b) 30-day period had expired, even though the debtor
10 had no colorable basis for claiming the exemption. Taylor, 503
11 U.S. at 643-44.

12 Unlike Taylor, the debtors here claimed an exemption in a
13 specified amount. The basis for their exemption claim in their
14 residence was valid under § 522(d)(1). The trustee does not
15 contest the validity of a claim of exemption up to the amount
16 permitted by § 522(d).

17 Equally unavailing is the debtors' reliance upon Green,
18 where the debtor claimed as exempt a lawsuit, listing the value
19 as one dollar. Importantly, the trustee in Green conceded that
20 listing the lawsuit at a one dollar value indicated that its
21 value was contingent, not that it had an actual present value of
22 one dollar. Green, 31 F.3d at 1098-99. The Eleventh Circuit
23 determined that the facts before it were materially the same as
24 those in Taylor. The Circuit concluded that because the debtor
25 had exempted the full value of her lawsuit, and because the
26 trustee did not object to her claim of exemption, the debtor was
27 entitled to the entire settlement fund. Green, 31 F.3d at 1101.

28 Thus, both Taylor and Green are factually distinguishable in

1 that in each instance the debtors expressed an intent to claim
2 the entire proceeds of an asset in an undetermined and
3 unspecified amount as exempt. In the present case before this
4 Panel, the debtors exempted a specific amount, \$21,511.25, under
5 a colorable basis, and gave no indication of an intent to claim
6 any more than that specific amount.

7 Relying on Owen, a 1991 United States Supreme Court case
8 which preceded Taylor, the debtors posit that the effect of
9 exempting property from the estate is to withdraw that property
10 from the estate and administration by the bankruptcy trustee.
11 Owen, however, is not helpful to the debtors' position. The
12 United States Supreme Court in that case addressed a rather
13 narrow issue of judicial lien avoidance, specifically whether a
14 judicial lien could be avoided when the state (in that case,
15 Florida) defined the exempt property so as specifically to
16 exclude the property encumbered by the judicial lien.⁵ In
17 explaining elementary bankruptcy principles, the Court stated in
18 dicta that an "exemption is an interest withdrawn from the estate
19 (and hence from the creditors) for the benefit of the debtor."
20 Owen, 500 U.S. at 308.

21 In clarifying a debtor's ability to avoid a lien under
22 § 522(f), the Court observed that most of the federally listed
23 exemptions at § 522(d) are explicitly restricted to the "debtor's
24 aggregate interest" or the "debtor's interest" up to a maximum
25 amount, noting that the federal homestead exemption at that time

26
27 ⁵ In Owen, the judgment lien sought to be avoided was a
28 pre-existing lien. Florida law provided that pre-existing liens
were an exception to Florida's homestead exemption.

1 allowed the debtor to exempt "[t]he debtor's aggregate interest,
2 not to exceed \$7,500 in value, in . . . a residence." Owen, 500
3 U.S. at 310.

4 Of particular importance here is the Court's acknowledgment
5 in Owen that, at least for purposes of impairment of exemptions,
6 federal and state exemptions are to be given equivalent
7 treatment. "Nothing in the text of § 522(f) remotely justifies
8 treating the two categories of exemptions differently." Owen,
9 500 U.S. at 313.

10 In view of the United States Supreme Court's accord of
11 equivalence of treatment to federal and state exemptions, we
12 disagree with the debtors' contention that by claiming a federal
13 residence exemption they were entitled to an "aggregate" interest
14 in the entirety of their residence.

15 To do otherwise would stand the bankruptcy system on its
16 head. The purpose of bankruptcy is the payment of creditors
17 through the marshaling and liquidation of the debtor's nonexempt
18 assets, while providing the debtor with "a fresh start." See
19 Sherwood Partners, Inc. v. Lycos, Inc., 394 F.3d 1198, 1203 (9th
20 Cir. 2005). If the federal residence exemption of § 522(d)(1)
21 were construed to exempt the entirety of the residence few, if
22 any, debtors would ever choose their state's exemption scheme,
23 limited as it likely would be to a specific dollar cap.⁶ The
24 plain meaning of legislation is conclusive, except when literal
25 application "will produce a result demonstrably at odds with the

26
27 ⁶ See Hyman, 967 F.2d at 1319 n.3, for the Ninth
28 Circuit's discussion of the various forms of state homestead
laws.

1 intentions of its drafters.” United States v. Ron Pair Enters.,
2 Inc., 489 U.S. 235, 242 (1989), quoting Griffin v. Oceanic
3 Contractors, Inc., 458 U.S. 564, 571 (1982). We find no
4 significant reason why Congress would have intended that the
5 federal residence exemption be treated differently than that
6 accorded homestead exemptions under state law.

7
8 II

9 Debtors’ approach is also impermissible under controlling
10 Ninth Circuit authorities. Ninth Circuit precedent requires
11 postpetition appreciation in property of the estate to inure to
12 the benefit of the estate. Vu v. Kendall (In re Vu), 245 B.R.
13 644, 647-48 (9th Cir. BAP 2000), citing Alsberg v. Robertson (In
14 re Alsberg), 68 F.3d 312, 314-15 (9th Cir. 1995); Hyman, 967 F.2d
15 at 1321; and Schwaber v. Reed (In re Reed), 940 F.2d 1317, 1323
16 (9th Cir. 1991). In each of these cases the debtors claimed
17 California homestead exemptions.

18 The development of the Ninth Circuit’s analysis of
19 limitations on the homestead exemption began with Reed where the
20 Court held that the filing of a “no asset” report by the trustee
21 did not constitute abandonment of the debtor’s homestead and the
22 resulting revestment in the debtor of the entire residence. The
23 trustee was able to withdraw his “no asset” report, sell the
24 residence and capture postpetition appreciation for the benefit
25 of the estate pursuant to § 541(a)(6). The debtor was limited to
26 an exemption in \$45,000 of the sales proceeds, the amount he had
27 originally scheduled.

28 A year after Reed, and subsequent to the issuance of Taylor

1 by the United States Supreme Court, the Ninth Circuit again
2 addressed the issue in Hyman. There the debtors unsuccessfully
3 asserted they were entitled to an exemption in their entire
4 homestead as the trustee had not objected. Citing Reed the Court
5 observed that this position had already been rejected. The Court
6 noted that while the debtors' schedule of exempt property listed
7 "homestead," it also listed a value of the exemption of \$45,000.

8 It concluded:

9 Based on this information, the Hymans did not
10 sufficiently notify others that they were claiming
11 their entire homestead as exempt property; their
12 schedule only gave notice that they claimed \$45,000 as
13 exempt, which is the proper amount of their homestead
14 allowance Thus, the trustee had no basis for
15 objecting, and could well have suffered the bankruptcy
16 judge's ire had he objected to the \$45,000 exemption to
17 which the Hymans were clearly entitled.

18 Hyman, 967 F.2d at 1319 (citation omitted).

19 Similarly, the Court rejected the debtors' claim for
20 postpetition appreciation of the residence, again citing to Reed
21 and its holding that postpetition appreciation inures to the
22 bankruptcy estate, not the debtor. Hyman, 967 F.2d at 1321,
23 citing Reed, 940 F.2d at 1323.

24 Alsberg consistently followed Hyman, holding that the
25 bankruptcy estate held the interest in the debtor's residence at
26 all times after the filing of the Chapter 11 petition, and
27 concluding that the estate was therefore entitled to any
28 postpetition appreciation in the value of the residence. As was
29 the case in Reed and Hyman, the debtor in Alsberg also claimed
30 the California \$45,000 homestead exemption. Debtor similarly
31 argued that he was entitled to any postpetition appreciation in
32 value. In that case, the residence had a value of \$259,000 as of

1 the petition date, encumbered by a mortgage of \$225,125 as well
2 as tax liens of \$86,000. As a chapter 11 debtor-in-possession,
3 Alsberg entered into an agreement to sell the residence for
4 \$380,000. After conversion of the case to chapter 7, the chapter
5 7 trustee obtained court approval for the sale which resulted in
6 net proceeds of \$115,000. Not until after the sale did the
7 debtor file an exemption schedule claiming an exemption of
8 \$45,000. The debtor moved to compel the trustee to abandon all
9 of the proceeds of sale, arguing, as the debtors do here, that
10 because the mortgage balance and the \$45,000 homestead exemption
11 exceeded the value of the residence at the time of filing, the
12 residence was effectively removed from the bankruptcy estate at
13 the time of filing.

14 The Ninth Circuit affirmed the determination that the estate
15 had an interest in the residence upon filing the bankruptcy and
16 maintained that interest through the time of the sale, stating,
17 "the argument that a homestead exemption operates to remove the
18 residence itself from the bankruptcy estate 'is now deemed
19 foreclosed in this circuit,'" although noting that all cases
20 considering the argument relied upon provisions of the California
21 statutory homestead exemption. Alsberg, 68 F.3d at 314-15 n.2,
22 citing Bernard v. Coyne (In re Bernard), 40 F.3d 1028, 1030 n.2
23 (9th Cir. 1994). Thus the estate was entitled to any
24 appreciation in the value and the debtor was allowed only the
25 \$45,000 homestead exemption.

26 In Vu, a chapter 11 case converted to chapter 7 nearly seven
27 years after filing, the bankruptcy court simultaneously heard the
28 debtors' motion to compel the trustee to abandon their residence

1 and the trustee's motion to sell the residence. While the
2 trustee sought authorization to sell the residence for \$1.9
3 million, the debtors maintained that the value of the property as
4 of the filing date was \$1.1 million, subject to \$1.3 million in
5 encumbrances in addition to a homestead claim of \$75,000. The
6 bankruptcy court granted the trustee's sale motion and denied the
7 debtors' motion to compel abandonment.

8 Citing Alsberg, Hyman and Reed, the Panel in Vu acknowledged
9 that the Ninth Circuit has consistently held without limitation
10 that, under § 541(a)(6), the estate is entitled to postpetition
11 appreciation.

12 Given the clear Ninth Circuit precedent holding without
13 limitation that appreciation inures to the benefit of
14 the estate, we decline to adopt an approach at odds
15 with both that general principle and the purpose behind
16 the strong-arm clause. Thus, under § 541(a)(6),
17 postpetition appreciation is property of the estate
18 without regard to whether there is equity in the
19 property as of the petition date.

20 Vu, 245 B.R. at 649.

21 Notwithstanding that Reed, Hyman and Alsberg were decided by
22 the Ninth Circuit in the context of California homestead
23 exemption law, as we noted in Vu, the estate's entitlement to
24 postpetition appreciation is not premised upon the applicable
25 exemption scheme. Rather, it is based upon § 541(a)(6). Vu, 245
26 B.R. at 647-48, citing, Alsberg, 68 F.3d at 314-15; Hyman, 967
27 F.2d at 1321; and Reed, 940 F.2d at 1323.⁷

28 ⁷ In Alsberg, Hyman, Reed and Vu the debtors claimed the
maximum amount allowable by the California exemption scheme. In
our case, the debtors limited their exemption to the difference
between the value stated and the consensual liens, which was an
(continued...)

1 We are bound by the Ninth Circuit precedent established by
2 Reed, Alsberg and Hyman, as well as our prior decision in Vu.
3 See, e.g., Salomon N. Am. v. Knupfer (In re Wind N' Wave), 328
4 B.R. 176, 181 (9th Cir. BAP 2005) ("we regard ourselves as bound
5 by our prior decisions") and Ball v. Payco-Gen. Am. Credits, Inc.
6 (In re Ball), 185 B.R. 595, 597 (9th Cir. BAP 1995) ("We will not
7 overrule our prior rulings unless a Ninth Circuit Court of
8 Appeals decision, Supreme Court decision or subsequent
9 legislation has undermined those rulings."). This precedent is
10 directly applicable to the facts before this panel, regardless of
11 the fact that the debtors here elected the federal residence
12 exemption.

13 We regard as persuasive two factually similar bankruptcy
14 decisions which applied the reasoning of the Hyman line of cases
15 to federal residence exemption claims under § 522(d)(1). In re
16 Heflin, 215 B.R. 530 (Bankr. W.D. Mich. 1997) and In re Bregni,
17 215 B.R. 850 (Bankr. E.D. Mich. 1997).

18 In both Heflin and Bregni, debtors claimed federal residence
19 exemptions in property which had no equity beyond the value of
20 the claimed exemptions at the time of filing the petitions. In
21 Heflin, debtor's motion to compel abandonment was denied where
22 debtor claimed a federal exemption of \$15,579 and the property
23

24 ⁷(...continued)
25 amount substantially less than the maximum exemption available.
26 While postpetition appreciation in value of property inures to
27 the benefit of the estate, the estate's interest in the
28 appreciation must be limited by the ability of the debtors to
obtain the maximum value of their federal exemptions. As was
conceded by the trustee at oral argument, the debtors are jointly
entitled to up to \$36,900 (plus any available wildcard amount).

1 increased in value postpetition from \$16,000 to \$40,000. The
2 Heflin court noted that while Hyman involved the California
3 homestead exemption as opposed to the federal residence
4 exemption, the general principle was the same: Where the debtor
5 claims a specific dollar amount as exempt, the debtor is bound by
6 that amount and, in absence of an amendment, cannot claim that
7 the entire property is exempt. Heflin, 215 B.R. at 534. Rather,
8 the debtor's residence and catchall exemptions were limited to
9 \$15,579 as explicitly listed in the debtor's Schedule C.⁸

10 In Bregni, the debtors, married but living separately, and
11 having filed separate chapter 7 petitions, each scheduled a
12 jointly owned condominium and claimed respective \$15,000
13 exemptions pursuant to the federal residence exemption provision
14 of § 522(d)(1). Subsequent to sale, Mrs. Bregni moved to compel
15 the trustee to abandon all of the proceeds, reasoning that
16 because the trustee did not object to her exemption claims, he
17 was time-barred from claiming any interest in the proceeds. She
18 also claimed that any increase in the value of the property since
19 the filing belonged to her, not to the estate.

20 The bankruptcy court denied the motion to compel
21 abandonment, observing that "the debtor's property remains
22 property of the estate to the extent its value exceeds the
23 statutory amount which the debtor is permitted to exempt."
24 Bregni, 215 B.R. at 852, quoting First of Am. Bank v. Gaylor (In
25 re Gaylor), 123 B.R. 236, 239 (Bankr. E.D. Mich. 1991). The
26

27 ⁸ In Vu, we cited Heflin with approval. Vu, 245 B.R. at
28 648 n.7.

1 court agreed with the reasoning of both Hyman and Heflin as to
2 the issue of the estate's entitlement to any postpetition
3 appreciation in value, finding that Mrs. Bregni was limited to
4 her \$15,000 exemption claim.⁹

5 We find Bregni and Heflin persuasive in determining the
6 matter before us.

7
8 III

9 The debtors here are in large part the "victims" of their
10 own inaction. Their chapter 7 petition was filed on June 30,
11 2004. The record reveals they took no action to extricate their
12 property from the estate until two years later when the secured
13 creditor sought relief from the automatic stay and the trustee
14 expressed his intent to sell. During this period of a rising
15 market the debtors could have moved for abandonment pursuant to
16

17
18 ⁹ We note that Olson v. Anderson (In re Anderson), 357
19 B.R. 452 (Bankr. W.D. Mich. 2006) declined to follow Heflin and
20 Bregni and precluded the trustee from compelling a sale of
21 hunting land claimed as exempt under § 522(d)(5). In Anderson,
22 the debtors' Schedules A and C both described their asset and
23 their claimed exemption as:

24 1/2 interest in old cabin. The debtors own a 1/2
25 interest in an old cabin that may have a total value of
26 about \$30,000.

27 The debtors [sic] 1/2 interest would be \$15,000.00.

28 Anderson, 357 B.R. at 457.

The facts in Anderson are, therefore, more akin to those of
Taylor in that the debtors sought to exempt their entire interest
in the asset, regardless of its value. On this basis we find
Anderson distinguishable and not inconsistent with our
determination here.

1 § 554(b).¹⁰ Such a motion would either have forced the trustee
2 to sell before he might otherwise have preferred or allowed the
3 debtors to withdraw the property from the estate entirely as
4 being "of inconsequential value and benefit to the estate."¹¹

5
6 ¹⁰ Section 554 provides:

7 (a) After notice and a hearing, the trustee may abandon
8 any property of the estate that is burdensome to the
9 estate or that is of inconsequential value and benefit
10 to the estate.

11 (b) On request of a party in interest and after notice
12 and a hearing, the court may order the trustee to
13 abandon any property of the estate that is burdensome
14 to the estate or that is of inconsequential value and
15 benefit to the estate.

16 (c) Unless the court orders otherwise, any property
17 scheduled under section 521(1) of this title not
18 otherwise administered at the time of the closing of a
19 case is abandoned to the debtor and administered for
20 purposes of section 350 of this title.

21 (d) Unless the court orders otherwise, property of the
22 estate that is not abandoned under this section and
23 that is not administered in the case remains property
24 of the estate.

25 ¹¹ A similar observation was made by the Court in Hyman,
26 967 F.2d at 1321 n.11. See also, Carey v. Pauline (In re
27 Pauline), 119 B.R. 727 (9th Cir. BAP 1990) (upholding trial court
28 order requiring chapter 7 trustee to market residence within 60
days or it would be deemed abandoned); and In re Rolland, 317
B.R. 402, 409 n.11 (Bankr. C.D. Cal. 2004), stating:

Because post-petition appreciation in the value of
estate property accrues to the benefit of the estate, a
motion to compel an abandonment may be an appropriate
remedy for debtors who believe they are being
prejudiced by a trustee's undue delay in administering
estate assets.

(continued...)

1 CONCLUSION

2 There is no issue as to the debtors' entitlement to the
3 claimed residence exemption amount of \$21,511.25, since it is
4 undisputed that the Appellant trustee did not object to the
5 debtors' claimed exemptions. Moreover, the trustee concedes that
6 they jointly were entitled up to \$36,900 (plus any available wild
7 card amount). To the extent the debtors claim an exemption in a
8 greater amount, they did not provide sufficient notice of such
9 claim to the trustee and creditors.

10 The residence became an asset of the bankruptcy estate upon
11 the filing of the petition. Because there was no abandonment and
12 the case has not been closed, the residence remains property of
13 the estate, subject to the unopposed exemption up to the maximum
14 amount permitted by § 522(d). Under well-settled Ninth Circuit
15 law, any postpetition appreciation in value in the residence in
16 excess of the maximum amount permitted by the exemption statute
17 invoked inures to the benefit of the estate. The use of federal
18 exemptions does not work to change that result. Accordingly, the
19 residence remains subject to administration by the trustee.
20 REVERSED and REMANDED for further proceedings consistent with
21 this opinion.

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27 ¹¹(...continued)
28 Rolland, 317 B.R. at 409 n.11, citing Hyman, 967 F.2d at 1321
n.11.