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

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

| | | | | |
|----|---------------------------|---|----------------------|------------------|
| 6 | In re: |) | BAP No. | AZ-06-1139-DKPa |
| | |) | | |
| 7 | PETER MICHAEL KONNOFF and |) | Bk. No. | 05-10845-PHX-RJH |
| | DEBRA EVA KONNOFF, |) | | |
| 8 | |) | | |
| | Debtors. |) | | |
| 9 | |) | | |
| | _____ |) | | |
| 10 | JILL H. FORD, Chapter 7 |) | | |
| | Trustee, |) | | |
| 11 | |) | | |
| | Appellant, |) | | |
| 12 | |) | | |
| | v. |) | O P I N I O N | |
| 13 | |) | | |
| | PETER MICHAEL KONNOFF; |) | | |
| 14 | DEBRA EVA KONNOFF, |) | | |
| | |) | | |
| 15 | Appellees. |) | | |
| 16 | _____ |) | | |

Argued and Submitted on October 19, 2006
at Phoenix, Arizona

Filed - November 14, 2006

Appeal from the United States Bankruptcy Court
for the District of Arizona

Hon. Randolph J. Haines, Bankruptcy Judge, Presiding.

Before: DUNN, KLEIN and PAPPAS, Bankruptcy Judges.

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1 DUNN, Bankruptcy Judge:

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3 The chapter 7 trustee, Jill H. Ford, appeals a final order
4 of the bankruptcy court, entered on June 2, 2006, overruling her
5 objection to certain exemptions claimed by the debtors, Peter and
6 Debra Konnoff (collectively, the "debtors"), under Arizona law.
7 Specifically, the trustee objected to the debtors' claimed
8 exemption in proceeds from the prepetition sale of their
9 residence because the exempt status of the proceeds would expire
10 pursuant to a time limit within the Arizona homestead exemption
11 statute. Relying on the Supreme Court's decision in Owen v.
12 Owen, 500 U.S. 305 (1991), which dealt with lien avoidance under
13 11 U.S.C. § 522(f), the bankruptcy court overruled the objection
14 on the grounds that the time limitation in the Arizona homestead
15 exemption statute was not binding in bankruptcy and that federal
16 law did not permit postpetition changes to the exempt status of
17 property.

18 For the reasons set forth below, we REVERSE.

19
20 I. Facts

21 The facts are undisputed. On October 29, 2004, the debtors
22 sold their home and later divided and deposited the net proceeds
23 from the sale into two separate bank accounts.

24 On June 15, 2005, the debtors filed for bankruptcy relief
25 under chapter 7.¹ In their schedules, the debtors listed the

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¹ Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
(continued...)

1 proceeds as assets and claimed the proceeds in each of the
2 accounts as exempt. On October 11, 2005, the trustee filed an
3 objection to the exemption claimed in the home sale proceeds in
4 the two accounts.

5 On February 6, 2006, the court held a hearing on the
6 trustee's objection. While conceding that the home sale proceeds
7 were exempt as of the petition date, the trustee contended that
8 the debtors' exemption in the sale proceeds would expire shortly
9 because, under A.R.S. § 33-1101(C), the proceeds were only exempt
10 for a period of 18 months after the date of the sale or until the
11 proceeds were reinvested in another home, whichever period was
12 shorter. As the debtors sold their home on October 29, 2004, the
13 exemption in the sale proceeds would expire on or about April 29,
14 2006, allowing the estate to claim the remaining sale proceeds.

15 The debtors contended that postpetition disposition of or
16 changes to the proceeds did not affect the exempt status of the
17 proceeds. Rather, the nature and extent of their exemptions were
18 determined as of the date of the filing of their bankruptcy
19 petition.

20 On March 29, 2006, the bankruptcy court issued a published
21 opinion, In re Konnoff, 341 B.R. 28 (Bankr. D. Ariz. 2006),
22 overruling the trustee's objection and concluding that the
23 proceeds, exempt as of the petition date, remained exempt,
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25 ¹(...continued)
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
27 enacted and promulgated prior to the effective date (October 17,
28 2005) of most of the provisions of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
April 20, 2005, 119 Stat. 23.

1 notwithstanding the time limitation included in the Arizona
2 homestead exemption statute.

3 The trustee timely appealed.

4 5 II. Jurisdiction

6 The bankruptcy court had jurisdiction under 28 U.S.C.
7 §§ 1334 and 157(b)(1) and (b)(2). We have jurisdiction under 28
8 U.S.C. § 158(b)(1).

9 10 III. Issue

11 Whether the bankruptcy court erred in permitting the
12 debtors, who claimed an exemption in proceeds from the pre-
13 petition sale of their residence pursuant to Arizona law, to
14 maintain their claimed exemption over the trustee's objection,
15 notwithstanding the requirement under Arizona law to reinvest the
16 proceeds in another residence within 18 months after the date of
17 the sale in order to maintain the exemption.

18 19 IV. Standard of Review

20 We review questions regarding the right of a debtor to claim
21 exemptions as questions of law subject to de novo review. Arnold
22 v. Gill (In re Arnold), 252 B.R. 778, 784 (9th Cir. BAP 2000).
23 "Whether property is included in a bankruptcy estate is a
24 question of law also subject to de novo review." Cisneros v. Kim
25 (In re Kim), 257 B.R. 680, 684 (9th Cir. BAP 2000).

26 27 V. Discussion

28 The facts of this Arizona exemption dispute are essentially

1 identical to those presented for our decision in Gaughan v. Smith
2 (In re Smith), 342 B.R. 801 (9th Cir. BAP 2006). In Smith, we
3 determined that the Ninth Circuit's decision in England v. Golden
4 (In re Golden), 789 F.2d 698 (9th Cir. 1986), dictated a
5 conclusion that once the 18-month time limit under A.R.S. § 33-
6 1101(C) passed without reinvestment of the sale proceeds in a new
7 homestead property, those proceeds lost their exempt character,
8 and the trustee could claim them for distribution to creditors.

9 The bankruptcy court in this appeal ruled that the Supreme
10 Court decision in Owen v. Owen, 500 U.S. 305 (1991), effectively
11 overruled Golden. That theory was not presented to us in Smith,
12 which was not decided until nine days after the bankruptcy court
13 decided the present case. On appeal, we disagree with the
14 bankruptcy court about the necessary implications of Owen.

15 The bankruptcy court found that the debtors did not have to
16 reinvest the proceeds from the prepetition sale of their
17 residence into another residence and could maintain their claimed
18 exemption in the proceeds, despite an 18-month time limitation
19 under Arizona law. The bankruptcy court reasoned that, under the
20 principles set out in Owen, the debtors' claimed exemption in the
21 proceeds continued postpetition, even if the debtors did not
22 reinvest the proceeds within 18 months, because the "built-in
23 limitation" in Arizona's homestead exemption statute was not
24 binding in bankruptcy, and federal law did not permit
25 postpetition changes to the exempt status of property as of the
26 petition date.

27 The bankruptcy estate consists of all legal and equitable
28 interests of the debtor in property as of the date of the filing

1 of the petition. 11 U.S.C. § 541(a)(1). A debtor may claim
2 certain property as exempt from the claims of creditors. 11
3 U.S.C. § 522(b)(1). The Code has provided a list of certain
4 property exemptions. 11 U.S.C. § 522(d). States may choose,
5 however, not to participate in the federal exemption scheme and
6 to limit their residents to exemptions available under applicable
7 state and non-bankruptcy federal law. 11 U.S.C. § 522(b).

8 Where a state has elected to opt out of the federal
9 exemption scheme, a debtor may exempt any property under state or
10 local law that is applicable on the date of the filing of the
11 petition. 11 U.S.C. § 522(b)(2)(A); Golden, 789 F.2d at 700.
12 The facts of the case and the law, as they exist on the date of
13 the filing of the petition, determine any exemptions claimed.
14 Zibman v. Tow (In re Zibman), 268 F.3d 298, 304 (5th Cir. 2001);
15 In re Combs, 166 B.R. 417, 419 (Bankr. N.D. Cal. 1994).²

16 Arizona has opted out of the federal exemption scheme.
17 A.R.S. § 33-1133(B) (West 2006).³ Under Arizona law, the
18 homestead exemption automatically attaches to a person's interest
19 in identifiable cash proceeds from the voluntary or involuntary
20

21 ² See also the following Bankruptcy Act decisions: Myers v.
22 Matley, 318 U.S. 622, 625 (1943) (stating that "a homestead is
23 exempt if, under the state law, it would be held to be exempt");
24 White v. Stump, 266 U.S. 310, 312 (1924) (stating that the
Bankruptcy Act "makes the state laws existing when the petition
is filed the measure of the [debtor's] right to exemptions").

25 ³ The Arizona homestead exemption statute provides:
26 "Notwithstanding subsection A, in accordance with 11 U.S.C.
27 § 522(b), residents of this state are not entitled to the federal
28 exemptions provided in 11 U.S.C. § 522(d). Nothing in this
section affects the exemptions provided to residents of this
state by the constitution or statutes of this state." A.R.S.
§ 33-1133(B) (West 2006).

1 sale of his or her residence. A.R.S. § 33-1101(C) (West 2006).
2 "The homestead exemption in identifiable cash proceeds continues
3 for eighteen months after the date of the sale of the property or
4 until the person establishes a new homestead with the proceeds,
5 whichever period is shorter." Id. Accordingly, the Arizona
6 homestead statute imposes a time limitation on the exempt status
7 of proceeds from the sale of a residence. In re Elia, 198 B.R.
8 588, 599 (Bankr. D. Ariz. 1996); Gaughan v. Cavan (In re
9 Strasser), 303 B.R. 841, 848 (Bankr. D. Ariz. 2004) (in dicta).

10 The Ninth Circuit has held that where state exemption laws
11 condition or limit the exempt status of property in ways that are
12 more or less generous than the federal exemptions, such
13 conditions or limitations must be respected. Golden, 789 F.2d at
14 700. In Golden, the debtor claimed an exemption in proceeds from
15 the pre-petition sale of his residence pursuant to California
16 law. Applying a plain meaning interpretation of California law,
17 the Ninth Circuit held that the debtor lost his exemption in the
18 proceeds, although exempt as of the petition date, because the
19 California homestead statute required the debtor to reinvest the
20 proceeds in another homestead within six months, which the debtor
21 in Golden had failed to do. The Ninth Circuit stated that
22 "[w]hen a debtor elects to claim an exemption under state law
23 pursuant to 11 U.S.C. § 522, he is required to comply with the
24 state law in effect at the time of the filing of his bankruptcy
25 petition." Id. at 700.⁴

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27 ⁴ At the time when the Ninth Circuit decided Golden,
28 California had a homestead exemption provision similar to that of
(continued...)

1 In Smith, which dealt with the very same time limitation in
2 the Arizona homestead exemption statute at issue here, we
3 recognized the continuing validity of Golden. Smith, 342 B.R. at
4 806-08. The bankruptcy court believed, however, that Owen set
5 forth principles effectively overruling Golden.

6 Owen involved whether the provisions of a state law could
7 limit a debtor's right to avoid a creditor's judicial lien on the
8 debtor's homestead under § 522(f). In Owen, the creditor
9 obtained a judgment against the debtor. At the time the creditor
10 recorded the judgment, the debtor owned no real property. The
11 debtor later purchased a condominium unit, to which the
12 creditor's judgment lien attached. Initially, under Florida law,
13 the condominium did not qualify as a homestead; a year later,
14 Florida amended its homestead exemption statute to include
15 condominiums. The Florida homestead statute provided that
16 judgment liens could not attach to homestead property. However,
17 the statute did not extend its protection to pre-existing liens
18 that had attached to property before it acquired its homestead
19 status. After filing for chapter 7 relief, the debtor moved to
20 avoid the lien pursuant to § 522(f). The bankruptcy court denied
21 the motion, and the district court and court of appeals affirmed
22 that ruling.

23 The Supreme Court in Owen reversed and remanded, concluding

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25 ⁴(...continued)
26 Arizona. Under the California homestead exemption law, in the
27 event that the owner sold his or her homestead, the proceeds of
28 the sale would be exempt for a period of six months after the
sale. Golden, 789 F.2d at 699 (citing Cal. Civ. Code § 1265).
This same homestead exemption is currently codified under Cal.
Civ. Code § 704.960(a) (West 2006).

1 that the debtor could avoid the judgment lien under § 522(f),
2 even though Florida did not extend the protection of its
3 homestead exemption statute to property subject to pre-existing
4 liens. The Supreme Court held that the "built-in limitations" in
5 state exemptions did not restrict the debtor's ability to avoid
6 liens pursuant to the provisions of § 522(f).⁵ However, in
7 dicta, the Supreme Court stated that "[n]othing in subsection
8 [522](b) (or elsewhere in the [Bankruptcy] Code) limits a State's
9 power to restrict the scope of its exemptions; indeed, it could
10 theoretically accord no exemptions at all." Owen, 500 U.S. at
11 308 (emphasis added).

12 Here, the bankruptcy court found that the Supreme Court in
13 Owen "reached two interim conclusions" applicable to the instant
14 case. 341 B.R. at 32. First, "even in an 'opt-out' state, the
15 state's exemptions do not necessarily include all of their
16 'built-in limitations.'" Id. Second, "'exempt property is
17 determined 'on the date of the filing of the petition,' not when
18 the lien fixed.'" Id. (quoting Owen, 500 U.S. at 314 n.6.).

19 Applying these principles to the instant case, the
20 bankruptcy court believed that Owen overruled Golden. The
21 bankruptcy court acknowledged that in opt-out states, when a
22 debtor claims an exemption under state law, the Code provides
23 that the state law, applicable as of the petition date,
24 determines the exemption. The bankruptcy court did not find this
25 dispositive, however, in circumstances where the state law

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27 ⁵ In discussing "built-in limitations" in state exemption
28 law, the relevant footnotes refer only to cases involving lien
avoidance under § 522(f). Owen, 500 U.S. at 310 nn.1-2.

1 provided a time limitation on exemptions subject to postpetition
2 effects, because preemptive federal law prohibits changing the
3 status of exemptions, determined as of the petition date, based
4 on a debtor's postpetition conduct.

5 Although the language of Owen with respect to "built-in
6 limitations" on state exemptions is ambiguous, the Supreme Court
7 is clear that states have the authority to provide limited
8 exemptions or not to provide exemptions at all. Owen, 500 U.S.
9 at 308. States have the authority "'to create whatever
10 exemptions they elect,' even if they are less inclusive (or more
11 restrictive) than the exemptions afforded debtors by the federal
12 exemption scheme." Storer v. French (In re Storer), 58 F.3d
13 1125, 1128 (6th Cir. 1995) (quoting Rhodes v. Stewart, 705 F.2d
14 159, 163 (6th Cir. 1983)). See also Golden, 789 F.2d at 700
15 (stating that federal courts have long recognized that state
16 exemptions may be more or less generous than federal exemptions
17 and that state exemptions need not be identical or comparable to
18 federal exemptions).

19 Of course, states do not have a carte blanche to place
20 unlimited restrictions on exemptions; if the exemptions directly
21 conflict with the Code, then the Code prevails. See Owen, 500
22 U.S. at 309-13 (finding that the Florida homestead exemption
23 directly conflicted with the Code in preventing the debtor from
24 avoiding a preexisting lien pursuant to § 522(f)). But there is
25 nothing in the Code that prohibits a state from imposing a time
26 limitation as a condition to maintaining the exempt status of
27 certain property. Unlike the Florida homestead exemption
28 statute, which prevented the debtor from avoiding a pre-existing

1 judgment lien altogether, though the Code explicitly provided for
2 lien avoidance under § 522(f), the time limitation within the
3 Arizona homestead exemption statute does not conflict with a
4 specific provision of the Code nor does it abridge or abrogate
5 the right of the debtors to claim an exemption. Rather, it
6 requires the debtors to act affirmatively to maintain the
7 exemption as claimed pursuant to the state law applicable as of
8 the petition date. See Smith, 342 B.R. at 806-07.

9 Here, at the time the debtors filed for bankruptcy
10 protection, the debtors had a right to and did, in fact, claim an
11 exemption in their home sale proceeds under the state law
12 applicable as of the petition date. However, Arizona law sets
13 forth conditions to maintain the exemption. See In re Earnest,
14 42 B.R. 395, 399 (Bankr. D. Or. 1984) (finding that the Oregon
15 homestead exemption statute contained a time limitation clearly
16 determinable as of the date of the filing of the petition); see
17 also Combs, 166 B.R. at 420 (finding that the California
18 homestead exemption analyzed in Golden required the debtor to
19 change his circumstances in order to preserve and perfect his
20 right of exemption and required the court to consult facts
21 occurring after the petition date). There is nothing necessarily
22 inconsistent about such conditions with Code requirements.

23 By disregarding and eliminating the temporal limitation
24 within the Arizona homestead exemption statute, the bankruptcy
25 court created, in effect, a new federal common law exemption.⁶

27 ⁶ If the state does not opt out of the federal exemption
28 scheme, under § 522(d)(1), the exemption available for a

(continued...)

1 Under the bankruptcy court's analysis, the time limitation for
2 reinvestment of homestead sale proceeds under the Arizona
3 homestead exemption statute would be eliminated by the debtors'
4 bankruptcy filing. As a result, two different exemption
5 arrangements for Arizona debtors would be available, depending on
6 whether a person files for bankruptcy or not: non-bankruptcy
7 debtors would be required to reinvest the proceeds from the sale
8 of their homestead within 18 months of the sale in order to
9 maintain their exemption, while those debtors who filed for
10 bankruptcy could exempt the proceeds remaining from the sale of
11 their homestead indefinitely. In other words, Arizona debtors in
12 bankruptcy would have the right to retain up to a \$150,000
13 exemption in cash home sale proceeds forever.

14 Such an interpretation appears to be inconsistent with
15 Arizona's right under § 522(b) to opt out of the federal
16 exemption scheme. See Storer, 58 F.3d at 1128-29 (stating that
17 Congress did not intend to preempt state exemption law and,
18 through § 522(b)(1), empowered states to create whatever
19 exemptions they elect, recognizing the concurrent legislative
20 power of states to enact laws governing exemptions); Earnest, 42
21 B.R. at 399 ("This court finds nothing in the Bankruptcy Code
22 that requires or allows it to fragment the state law in this
23 manner to grant a benefit to the debtors they would not have
24 received if they had not filed bankruptcy."). The bankruptcy

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26 ⁶(...continued)
27 homestead would be \$18,450. Under § 522(d)(5), the exemption
28 available for any property would be \$975, plus up to \$9,250 of
any unused amount of the exemption provided under § 522(d)(1).
11 U.S.C. §§ 522(d)(1)-(5).

1 court's interpretation of what the Supreme Court did in Owen
2 gives greater weight to the less than clear phrase "built-in
3 limitations" on state exemptions than that language can bear in
4 the absence of further elaboration by the Supreme Court or the
5 Ninth Circuit. Without such elaboration, we decline to depart
6 from our recent decision in Smith.⁷

8 VI. Conclusion

9 Although the petition date determines the exemption rights
10 of the debtor, where the state has opted out of the federal
11 exemption scheme pursuant to § 522(b), it is the facts of the
12 case and the state law applicable on the petition date that
13 controls a debtor's exemption rights. 11 U.S.C. § 522(b)(2)(A).
14 By allowing them to opt out of the federal exemption scheme,
15 Congress has granted states the prerogative to determine the
16 scope of, and limitations on, the exemptions their residents may
17 claim in a bankruptcy case. Owen, 500 U.S. at 308; Golden, 789
18 F.2d at 700; Storer, 58 F.3d at 1128-29. Nothing in the Code
19 prohibits a state from restricting its exemptions. Owen, 500
20 U.S. at 308. As long as the limitations do not conflict with the
21 Code, such limitations, applicable as of the petition date, must
22 be enforced. Nothing in the Code requires us to "fragment the
23 state law" to allow the debtors a continued exemption in home
24 sale proceeds after the exemption expires under Arizona law.

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27 ⁷ Although we conclude that respect for precedent obliges us
28 to follow Golden and Smith, we do not pretend that the underlying
substantive questions are easy. See Smith, 342 B.R. at 809
(Klein, J., concurring).

1 Earnest, 42 B.R. at 399.

2 Accordingly, we REVERSE.

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4 PAPPAS, Bankruptcy Judge, concurring.

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6 I can join in the result of the majority's decision because
7 this Panel is bound to follow its prior decision in Gaughan v.
8 Smith (In re Smith), 342 B.R. 801 (9th Cir. BAP 2006). See Palm
9 v. Klapperman (In re Cady), 266 B.R. 172, 181 n.8 (9th Cir. BAP
10 2001), aff'd, 315 F.3d 1121 (9th Cir. 2003); Salomon N.A. v.
11 Knupfer (In re Wind N' Wave), 328 B.R. 176, 181 (9th Cir. BAP
12 2005). In Smith, the Panel decided that the very same temporal
13 limitation on the duration of the Arizona homestead exemption at
14 issue here was effective in bankruptcy cases. In coming to that
15 conclusion, Smith relied upon the Ninth Circuit's interpretation
16 of a very similar provision in the California homestead statute
17 in England v. Golden (In re Golden), 789 F.2d 698 (9th Cir.
18 1986). And despite the bankruptcy court's thoughtful decision
19 here, I disagree that Owen v. Owen, 500 U.S. 305 (1991),
20 overruled or otherwise provides a basis to avoid the conclusion
21 reached by the Ninth Circuit in Golden. Thus, I think we are
22 bound to follow Golden and Smith and to reverse the decision of
23 the bankruptcy court.

24 But while I respect binding precedent, for the same reasons
25 expressed by Judge Klein in his concurrence in Smith, 342 B.R. at
26 809, I am troubled that our decision in Smith, and now our
27 conclusion here, is constructed upon a flawed foundation. I
28 think Golden's premise - that state law restrictions on

1 exemptions that arise from facts occurring after the filing of a
2 bankruptcy case are effective - deserves reconsideration.

3 Instead, I adhere to the notion that exemption rights should be
4 determined, finally, based upon the facts existing on the date
5 the bankruptcy petition is filed. To conclude otherwise means
6 the debtor's rights in a bankruptcy case are necessarily in limbo
7 until that case concludes. This in turn may motivate a trustee
8 to postpone closing the case as long as there is any prospect
9 that the debtor's circumstances may change.

10 Here, the debtors sold their homestead prior to bankruptcy,
11 and there is no dispute that on the date they commenced their
12 bankruptcy case, the sale proceeds were exempt. But our holding
13 in Smith nonetheless required the debtors to purchase a new home
14 within the statutory time in order to maintain the exempt status
15 of the proceeds - something they presumably have failed to do.
16 And the trustee kept the debtor's bankruptcy case open to ensure
17 that they did so. It seems inconsistent with the debtor's
18 entitlement to a fresh start that, as here, the debtors must wait
19 over a year after filing for bankruptcy relief to know the extent
20 of their exempt property.

21 Would Golden and Smith prohibit the debtors from using the
22 house sale proceeds before expiration of the 18-month window to,
23 say, pay nondischargeable debts, like taxes? And what about a
24 debtor who desires to sell an exempt homestead shortly after the
25 bankruptcy case is filed to use the funds to pay newly incurred
26 obligations, like medical bills? These are two hard questions

1 raised, but not answered, by Golden and Smith.⁸

2 All sorts of state law exemptions are subject to all sorts
3 of conditions which must be satisfied based upon the facts as
4 they exist when the exemption is claimed, not later. For
5 example, under Arizona law, tools used in a debtor's trade or
6 profession are exempt. A.R.S. § 33-1130 (West 2006) (providing
7 an exemption for "tools and equipment of a debtor used in a
8 commercial activity, trade, business or profession") (emphasis
9 added). Under Golden and Smith, if six, 12 or 24 months after
10 filing for bankruptcy, a debtor changes occupations, can the
11 trustee then seize the formerly exempt tools for liquidation?

12 Congress has allowed the states to limit the exemptions
13 available in bankruptcy to their residents in § 522(b)(1). But
14 in § 522(b)(2)(A), the Code requires that the state law
15 "applicable on the date of the filing of the petition" control in
16 determining what exemptions a debtor may claim in a bankruptcy
17 case. To me, while the former provision allows states to dictate
18 what property is exempt, the latter provision instructs that the

19 _____
20 ⁸ Under the Arizona homestead law, A.R.S. § 33-1101(C), it
21 seems clear that a debtor is entitled to use the proceeds from
22 the sale of an exempt homestead for any purpose, and not just for
23 reinvestment in another homestead, during the 18-month safe
24 harbor period. Assuming a debtor has such an unfettered right on
25 bankruptcy day, could the trustee defeat a debtor's request to
26 have the funds abandoned from the bankruptcy estate? 11 U.S.C.
27 § 554(b) (authorizing bankruptcy court to order the trustee to
28 abandon, upon request of an interested party, any property that
"is of inconsequential value and benefit to the [bankruptcy]
estate"). If the trustee can frustrate the debtor's freedom to
spend these funds, requiring that they be held hostage to
reinvestment only in a homestead to preserve the estate's
"contingent, reversionary interest in the sale proceeds", see
Smith, 342 B.R. at 808, Arizona debtors in bankruptcy are
actually worse off than their non-bankruptcy counterparts.

1 extent of exempt property is to be determined with reference to
2 the facts as they exist on the date of the bankruptcy filing, not
3 some later, unspecified date. That such a determination may give
4 bankruptcy debtors additional rights as compared to those not in
5 bankruptcy is nothing new given the remedial purposes of the
6 bankruptcy laws. Bankruptcy is all about the modification of
7 creditors' state law rights.

8 And so I concur, but out of respect for precedent only.

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