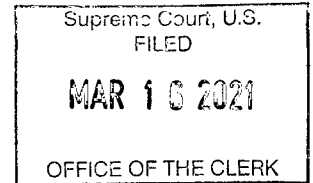


No. 20-1307



IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL B. WHITE
PETITIONER

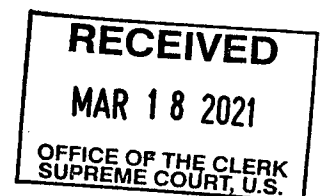
v

DONALD KNAPP, JR. AND KORAL KNAPP
RESPONDENTS

On Petition for Writ of Certiorari to the Michigan Supreme Court.

PETITION FOR WRIT OF CERTIORARI

PETITIONER PRO SE:
Michael B. White, Individual
11255 Block Road
Birch Run, MI 48415
Tel 989-780-2110
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QUESTIONS PRESENTED

"The owner of the land before sale...may effect a constructive severance of a crop, and thus prevent it from passing to the purchaser." *Kroth v Dobson*, 324 Mich 384 at 399 (1949) citing *Ray v Foutch* (Tex.Civ.App.), 50 S.W.2d 380, 381.

QUESTIONS:

1. When a debtor uses 11 USC 522(d)(3) to legally exempt property from the bankruptcy estate and a subsequent state court jurisdiction ownership conflict arises (preemption doctrine), are state courts required to give full faith and credit to bankruptcy law granting debtor's exemptions?
2. Does failure to honor a debtor's exempt property ownership rights violate the federal bankruptcy code, *Law v Siegel*, 571 U.S. ____ (2014), *Schwab v Reilly* 560 U.S. 770 (2010), by extension, preemption, due process, and equal protection rights under the U.S. Constitution, and Michigan Constitution?
3. Did the state courts wrongly deny debtor state court standing to pursue enforcement of debtor's property ownership for items removed from the bankruptcy estate by 11 USC 522(d) exemption?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	1
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
CORPORATE DISCLOSURE STATEMENT.....	9
DOCKET CITATION.....	9
PARTIES TO THE PROCEEDINGS.....	9
PETITION FOR WRIT OF CERTIORARI.....	10
ORDERS BELOW—MICHIGAN.....	10
JURISDICTION.....	11
JURISDICTION—BANKRUPTCY COURT.....	11
SUGGESTION OF ORAL ARGUMENT WAIVER RULES OF THE U.S. SUPREME COURT PRO SE LITIGANT.....	11
CONSTITUTIONAL, STATUTORY PROVISIONS CASE LAW & COURT RULES.....	12
STATEMENT OF THE CASE.....	15
APPLICABLE MICHIGAN LAW.....	24
REASON FOR GRANTING THE WRIT.....	26
CONCLUSION.....	27
APPENDIX.....	29

TABLE OF AUTHORITIES

Cases:

ATF Michigan v State of Michigan, 497 Mich 197 (2015).....	26
Beason v Beason, 435 Mich 791 (1990).....	26
Blough v Steffens, 349 Mich 365 (1957).....	19
In re: Bonner, Bonner v Sicherman, case 04-8101 (6 th Cir. 2005).....	16
Bourne v. Farmers Ins. Exchange, 449 Mich. 193, 197; 534 NW2d 491 (1995).....	24
Brown v O’Keefe, 300 U.S. 598, 602 (1937).....	14, 17
In re: Burke, Jahn v Burke, case 16-6603 (6 th Circuit, 2017).....	14, 17, 27
Corley v. Detroit Bd. Of Educ., 470 Mich. 274, 278 (Mich. 2004).....	26
Cusano v. Klein, 264 F.3d 936 (9 th Cir. 2001).....	17, 27
In re: DeVore, 223 B.R. 193, 197 (B.A.P. 9 th Circuit 1998).....	17
Groth v Stillson, 20 Mich 704 (1969).....	19
Haines v Kerner 404 U.S. 520 (1971).....	12
Hardesty v Haber (In re: Haber), # 17-3323 (6 th Circuit 2017).....	14, 17, 27
Herb v. Pitcairn, 324 U.S. 117, 125–26 (1945).....	27
Hoehn v McIntosh 110 F2d 199, 202 (6 th Circuit, 1940).....	14, 17, 27
Hubscher & Son, Inc v Storey, 228 Mich App 478, 483 (1998).....	18
Jenkins v McKeithen, 395 U.S. 411, 421 (1959).....	12
Klooster v City of Charlevoix, 488 Mich 289, 295 (2011).....	26
In re: Kromer, 202 F3d 268, 2000 WL 32022 at 2 (6 th Cir 2000).....	16
Kroth v Dobson, 324 Mich 384 at 399 (1949).....	18, 19
Law v Siegel, 571 U.S. ____ (2014).....	13, 16, 21, 26

Cases con't:

In re: McGowan, 95 B.R. 104, 106 (Bankr. N.D. Iowa 1998).....	17
Maiden v. Rozwood, 461 Mich. 109, 120; 597 N.W.2d 817 (1999).....	24, 25, 26
Maty v Grasselli Chemical Co., 303 U.S. 197 (1938).....	12
Michigan v. Long, 463 U.S. 1032 (1983).....	15
Mino v. Clio School Dist, 255 Mich. App. 60, 67; 661 N.W. 2d 586 (2003).....	25
In re Mohring, 142 B.R. 389 at 395, (E.D. Ca. 1992).....	16, 17
Neubacher v. Globe Furniture Rentals, 205 Mich. App. 418, 420; 522 N.W.2d 335 (1994).....	25
Payne v Wood, 775 F2d 202, 205-207 (7 th Circuit 1985).....	17
People v Armstrong, 490 Mich 281, 289 (2011).....	26
Quinto v. Cross & Peters Co., 451 Mich. 358, 362; 547 N.W. 2d 314 (1996).....	25
Ray v. Foutch (Tex.Civ.App.), 50 S.W.2d 380, 381.....	1
SSC Associates Ltd Partnership v. General Retirement System, 192 Mich. App. 360, 364; 480 N.W.2d 275 (1991).....	25
St. Helen Shooting Club v Mogle, 234 Mich 60 (1926).....	18, 19
Sanders v. Clark Oil Refining Corp., 57 Mich. App. 687, 689.....	25
Schwab v Reilly 560 U.S. 770 (2010).....	14, 16, 17, 26
SEC v Sloan, 436 U.S. 103 (1978).....	11
Sessions v Romadka, 145 U.S. 29 (1892).....	14, 17
Spiek v. Dep't of Transportation, 456 Mich. 331, 337; 572 N.W. 2d 201 (1998).....	24
Taylor v Freeland & Kronz, 503 U.S. 638, 643-644 (1992).....	14, 26
In re: Wenande, 107 B.R. at 772.....	16

Cases con't:

In re: White, Michael B.& Darla K., case 13-21977-dob,
Bankr ED Mich ND.....passim

White, Michael v Knapp, Donald Jr. and Koral,
Saginaw County 10th Circuit Court, case 18-037070-CH.....10, 22

White, Michael v Knapp, Donald Jr. and Koral, case 346921, Mich COA....10, 25, 26

White, Michael v Knapp, Donald Jr. and Koral, case 161638,
Mich. Supreme Court.....10, 26

In re: Xonics, Inc. 813 F2d 127, 131 (7th Circuit 1987).....14, 17, 27

U.S. Constitution:

Article 1, Section 8, Clause 4.....13

Article 6, Section 2.....13

5th Amendment.....13

14th Amendment.....13

Michigan Constitution:

Article 1, Section 2.....13

Article 1, Section 17.....13

Federal Statute:

11 USC 522(d).....passim

11 USC 522(d)(3).....passim

11 USC 522(d)(5).....23

11 USC 525.....13

11 USC 541(a).....13, 15

11 USC 554.....14, 16, 27

28 USC 157(b).....11

28 USC 451.....12

28 USC 1257(a).....11

28 USC 1334.....11

28 USC 1654.....12

U.S. Supreme Court Rules:

USSC Rule 6.....12

USSC Rule 28.8.....11, 12

USSC Rule 29.6.....9

Federal Rules Bankruptcy Procedure:

FRBP Rule 1009.....	13, 15, 21
FRBP Rule 4003.....	13, 16, 20, 21, 22, 27

Bankruptcy Official Forms:

Schedule C (Official Form B-106C).....	passim
--	--------

Michigan Court Rules:

MCL 2.116(C)(4).....	10, 14, 25
MCL 2.116(C)(10).....	10, 14, 15, 24

Publications:

Black's Law, 5 th ed.....	18, 28
5 Collier on Bankruptcy 554.02[3].....	14

Bankruptcy Docket Citations
Next Page

BANKRUPTCY DOCKET LISTING

Most of the bankruptcy dockets cited contain large amounts of extraneous information which may hinder the clarity and brevity of this petition; thus, most are not attached in the appendix. All are readily available on the government's judicial website: PACER.

To view any specific documents, go to the PACER bankruptcy court section, then to: Eastern District Michigan, then to case 13-21977-dob.

Bankruptcy Docket List:

1
168
252
258
261
270
306
329
351 (contains Purchase Agreement)
358
390
486
515
528
529
567
608
714
817
824
880
887
1005

APPENDIX LIST

1. Michigan Supreme Court decision, case 161638, December 22, 2020
2. Michigan Court of Appeals decision, case 346921, April 23, 2020
3. Saginaw County Circuit Court decision, 18-037070-CH-5, Nov. 2, 2018
4. Saginaw County Cir. Court dec. denying reconsideration, December 5, 2018
5. Amended Exemptions December 2, 2014 (Docket 242), case 13-21977-dob
6. Trustee Objections (Docket 258 & 270) To Debtor's Amended Exemptions Docket 252 & 261. No specific FRBP 4003 objections to Fish In Pond, Crop Profits, Or Fence & Fence Items, case 13-21977
7. Exemption Order Docket 486, February 12, 2016, regarding grant of exemptions Fish In Pond, Fence & Fence Items, Paragraph H right to exceed statutory limits for (d)(3)
8. Opinion & Order Denying Trustee's Motion For Turnover (Docket 306), Dockets 528/529), August 3, 2016
9. Amended Exemption Schedule Docket 608, Page 12 of 22, March 1, 2017 FMV approximately 20 acres perennial pasture and perennial hay crop
10. Trustee's Financial Report Docket 329, April 23, 2015, Pages 1 & 2, Line 1 real estate, Line 21 crop profit à prendre
11. Trustee's Financial Report Docket 515, April 26, 2016 (post-real estate sale) Pages 1 and 2; Line 1 real estate fully-administered, Line 21 crop profit active
12. Quitclaim Deed, August 5, 2015, and Purchase Agreement, June 1, 2015.
13. Affidavit Chapter 7 Trustee Corcoran, August 21, 2018.
14. Affidavit Michael B. White, October 18, 2018
15. Order (Docket 887), Sept. 19, 2019, Clarifying & Correcting Orders (Docket 824 & 880). Michael White's exemption are valid.

CORPORATE DISCLOSURE STATEMENT

Michael White has no U.S. Supreme Court Rule 29.6 corporate disclosures.

DOCKET CITATION

Unless otherwise stated, all ECF docket reference (Docket) is to bankruptcy case 13-21977-dob, Eastern District of Michigan, Northern Division at Bay City. Chapter 11 filed July 30, 2013, converted to Chapter 7 August 22, 2014, the case remains open. All referenced "Dockets" may be viewed in their official filing at the government's website: PACER.

PARTIES TO THE PROCEEDINGS

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PETITION FOR WRIT OF CERTIORARI

Michael White respectfully petitions this Honorable U.S. Supreme Court for a writ of certiorari to review the judgment of the Michigan Supreme Court and its lower courts. State court remedies have been exhausted. White has timely filed this petition for a writ of certiorari within ninety days of the Michigan Supreme Court's judgment.

ORDERS BELOW MICHIGAN

On December 22, 2020, the Michigan Supreme Court denied Petitioner's application for leave to appeal, case 161638. Petitioner's application sought to overturn the April 23, 2020 unpublished per curium Opinion and Order of the Michigan Court of Appeals in *Michael White vs Donald Knapp, Jr. and Koral Knapp*, MiCOA case 346921. The Court of Appeals affirmed the Saginaw County 10th Circuit Court, case 18-037070-CH, which granted of summary disposition in favor of Defendants Knapp per MCL 2.116(C)(4), lack of subject matter jurisdiction, and (C)(10), no genuine issue of matter fact, and denied White's cross-motion for summary disposition per MCL 2.116(C)(10).

Previous to the state circuit court action the bankruptcy code granted and the bankruptcy court issued orders fundamental to the state court action: 11 USC 522(d)(3) exemptions.

JURISDICTION

The U.S. Supreme Court has jurisdiction under 28 U.S.C. 1257(a).

JURISDICTION OF THE BANKRUPTCY COURT

Pursuant to 28 USC 1334 and 28 USC 157(b) the bankruptcy court had jurisdiction to grant 11 USC 522(d)(3) exemptions.

SUGGESTION OF ORAL ARGUMENT WAIVER RULES OF THE U.S. SUPREME COURT PRO SE LITIGANT

Petitioner believes this matter can be decided by this Honorable Court without oral argument as a matter of remand to the state court with instruction for application of applicable preemptive federal bankruptcy law, including 11 USC 522(d) a debtor owns property validly claimed exempt from the bankruptcy estate, back to the beginning, as if no bankruptcy had been filed, and has standing to litigate in state court to protect property ownership rights retained from the bankruptcy estate. Any doubt the exemptions are valid is a matter of fact for which summary disposition is never proper, requiring further state court proceedings.

Samuel Howard Sloan was the last non-lawyer pro se litigant to argue before the United States Supreme Court in 1978, *SEC v Sloan*, 436 U.S. 103 (1978). July 1, 2013, the rules of the U.S. Supreme Court were amended to prevent (non-lawyer) pro se litigants from arguing before the Court. Rule 28.8, "Oral arguments may be

presented only by members of the Bar of this Court. Attorneys who are not members of the Bar of this Court may make a motion to argue pro hac vice under the provisions of Rule 6.”

Perhaps inconsistent with Rule 28.8 is 28 U.S.C. 1654 which states, “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.” 28 USC 451 states, “The term “court of the United States” includes the Supreme Court of the United States....”

Pleadings by pro se litigants are held to a “less stringent standard” than those drafted by attorneys, *Haines v Kerner* 404 U.S. 520 (1971). Pro se pleadings are to be considered without regard to technicality, pro se litigant pleadings are not to be held to the same high standard as standards of perfection as lawyers, *Jenkins v McKeithen*, 395 U.S. 411, 421 (1959). “Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment,” *Maty v Grasselli Chemical Co.*, 303 U.S. 197 (1938).

Petitioner respectfully suggests the Court sua sponte invite amicus participants to argue on behalf of Petitioner. At Court invitation, Petitioner will present a Rule 6 motion for waiver of Rule 28.8 regarding oral argument.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED AND SELECTED CASE LAW AND COURT RULES

Article 1, Section 8, Clause 4 of the United States Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies throughout the United States." See Title 11 of the U.S. Code.

Article 6 Section 2 federal bankruptcy law is preemptive to state law.

The rights of the honest but unfortunate debtor are protected by the 5th Amendment due process clause, the 14th Amendment equal protection clause of the Constitution. Also see 11 USC 525.

The Michigan Constitution Article 1, Section 17 protects due process identical to the U.S. Constitution. Michigan Constitution Article 1, Section 2 states, "No person shall be denied the equal protection of the laws..."

11 USC 522(d) grants debtors the right to exempt (remove) property from the §541(a) bankruptcy estate, exempt property is owned by the debtor.

Law v Siegel, 571 U.S. ____ (2014) Courts must operate within jurisdiction of the bankruptcy code. Debtor's exemption must be granted unless a FRBP 4003 objection specifically proves the exemption violates the code. Per FRBP 4003 if no objection to an exemption is filed proving the exemption violates the code, the exemption passes to the debtor, as a matter of law, 30 days after filing the exemption. FRBP 1009 a debtor may freely amend their schedules any time before the close of the case.

“Where...it is important...to exempt the full market value of...the asset itself, our decision will encourage the debtor to declare the value...by listing the exempt value as “full fair market value” (FMV)... If trustee fails to object, or if the trustee objects and the objection is overruled, the debtor will be entitled to exclude the full value of the asset,” *Schwab v Reilly*, 130 S. Ct. 2652 (2010).

Trustee who fails to make a timely objection cannot challenge an exemption, *Taylor v Freeland & Kronz*, 503 U.S. 638, 643-644 (1992).

Ownership of property exempted by 11 USC 522(d) or abandoned by 11 USC 554 is retained by debtor, back to the beginning, as if no bankruptcy petition had been filed, *Sessions v Romadka*, 145 U.S. 29 (1892); *Brown v O’Keefe*, 300 U.S. 598, 602 (1937), *In re: Burke, Jahn v Burke*, case 16-6603 (6th Circuit, 2017), citing 5 Collier on Bankruptcy 554.02[3]; *Hoehn v McIntosh* 110 F2d 199, 202 (6th Circuit, 1940).

Once property is abandoned from the bankruptcy estate, either as a matter of law or by court order, the property cannot be taken away from the debtor. Exempt property is not in the bankruptcy estate, not under the jurisdiction of the Chapter 7 trustee, and no longer under the jurisdiction of the bankruptcy court, state jurisdiction resumes, *Hardesty v Haber* (In re: Haber), # 17-3323 (6th Circuit 2017).

“[Bankruptcy] jurisdiction does not follow the property. It lapses when the property leaves the [bankruptcy] estate,” *In re: Xonics, Inc.* 813 F2d 127, 131 (7th Circuit 1987).

State courts improperly applied Michigan summary disposition law. MCL 2.116(C) and (C)(10), lack of subject matter jurisdiction and no genuine issue of

matter fact, respectively, and failed to grant White's motion for summary disposition against Knapp per MCL 2.116(C)(10).

Michigan v Long, 463 U.S. 1032 (1983), it is essential for purposes of review by the Supreme Court that it appear from the record that a federal question was presented, that the disposition of that question was necessary to the determination of the case, that the federal question was actually decided or that the judgment could not have been rendered without deciding it. The Court has adopted a presumption that when a state court decision fairly appears to rest on federal law or to be interwoven with federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion the Court will accept as the most reasonable explanation that the state court decided the case as it did because it believed that federal law required it to do so. If the state court wishes to avoid the presumption it must make clear by a plain statement in its judgment or opinion that discussed federal law did not compel the result, that state law was dispositive.

STATEMENT OF THE CASE

On date of bankruptcy petition, 11 USC 541(a) creates a bankruptcy estate comprising all of the debtor's property. Also, on date of petition, or any time thereafter, a Chapter 7 debtor files Schedule C (Official Form B-106C) to claim 11 USC 522(d) exemptions removing selected property from the estate. FRBP 1009 grants debtors the right to freely amend their Schedule C at any time before the case is closed. (Property can also be abandoned from the bankruptcy estate back to

debtor via §554, this case doesn't involve that section.) Regardless of the impact it may have on the bankruptcy estate, the debtor has the sole decision as to what property to exempt.

If possible, a debtor is to list an approximate property amount, *In re: Wenande*, 107 B.R. at 772. Trustee filed Trustee's Motion For Turnover (Docket 306) on March 30, 2015. Less than a month later, on April 26, 2015, Trustee officially severed the crop from the real estate, Trustee's financial report (Docket 329, Line 21), crop value \$100. On April 26, 2016, Trustee changed the amount to \$5,000 (Docket 515, Line 21) also noting Debtor's value was \$16,250. However, Debtor's value \$16,250 FMV, Full Fair Market Value. See *Schwab*.

After a debtor files Schedule C, FRBP 4003 grants a party in interest 30 days to file objections, otherwise the property returns to debtor as a matter of law. A debtor's exemption cannot be denied unless the objecting party proves the exemption violates the bankruptcy code, *Law v Siegel*. For valid exemptions, debtor may keep the actual property when the value is within the code's allowance or at Full Fair Market Value (FMV) when notated, *Schwab v Reilly* 560 U.S. 770 (2010).

When claiming an exemption, "[T]here are no bright-line rules...what is required is reasonable particularization under the circumstances," *In re: Kromer*, 202 F3d 268, 2000 WL 32022 at 2 (6th Cir 2000) quoting *In re Mohring*, 142 B.R. 389 at 395, (E.D. Ca. 1992). In *In re: Bonner, Bonner v Sicherman*, case 04-8101 (6th Cir. 2005), quoted *Mohring; Kromer; and Cusano*. "...every bankrupt must do enough itemizing to enable the trustee to determine whether or not to investigate further," *In re:*

Mohring quoting Payne v Wood, 775 F2d 202, 205-207 (7th Circuit 1985). Cusano v. Klein, 264 F.3d 936 (9th Cir. 2001), “Cusano’s listing was not so defective that it would forestall a proper investigation of the asset...which provided inquiry notice to affected parties to seek further detail if they required it.”

Ownership of property exempted by 11 USC 522(d) or abandoned by 11 USC 554 is retained by debtor, back to the beginning, as if no bankruptcy petition had been filed, *Sessions v Romadka; Brown v O’Keefe; In re: Burke, Jahn v Burke*; 5 Collier on Bankruptcy 554.02[3]; *Hoehn v McIntosh*. Once an exemption is granted, as a matter of law or by court order, the property cannot be taken from the debtor, *In re: McGowan*, 95 B.R. 104, 106 (Bankr. N.D. Iowa 1998) and *In re: DeVore*, 223 B.R. 193, 197 (B.A.P. 9th Circuit 1998). Exempt property is not in the bankruptcy estate, not under the jurisdiction of the Chapter 7 trustee, and is no longer under the jurisdiction of the bankruptcy court. State jurisdiction resumes. *Hardesty v Haber*. “[Bankruptcy] jurisdiction does not follow the property, it lapses when the property leaves the [bankruptcy] estate,” *In re: Xonics, Inc*).

Debtors may exceed the code allowance. “Where...it is important...to exempt the full market value of...the asset itself, our decision will encourage the debtor to declare the value...by listing the exempt value as “full fair market value” (FMV)... If trustee fails to object, or if the trustee objects and the objection is overruled, the debtor will be entitled to exclude the full value of the asset,” *Schwab v Reilly*.

There are many sub-sections to §522(d), this matter only involves (d)(3) personal property, wrongly but colloquially called “household items,” (d)(3) includes crops

and animals. Black's Law includes pasture as crops. A relevant (d)(3) requirement is the property be "held primarily for the personal, family, or household use of the debtor..." This case involves approximately 20 acres of perennial pasture and perennial hay crop, fish in pond profits, and fence and fence items.

Bankruptcy courts must follow substantive state law. Michigan profit à prendre case law is well-established, the actual contract is intangible, the "fruits" of the profit are tangible, both are personal property. A profit is independent from the fee title of the land. "The owner of the land...may effect a constructive severance... preventing it from passing to the purchaser," *Kroth v Dobson*, 324 Mich 384 at 399 (1949). "A profit à prendre may be segregated from the fee of the land and conveyed in gross to one who has no interest in the ownership in the fee, when so conveyed it is assignable and inheritable... A profit à prendre is the right to acquire, by severance or removal from another's land, something previously constituting part of the land," *Hubscher & Son, Inc v Storey*, 228 Mich App 478, 483 (1998).

Black's Law recognizes "free fishery" as an exclusive franchise (not regarded as land) distinct from the soil and without right to the soil. In this case, Debtor's retention of the fish in pond profit is similar to waterfowl hunting rights which, in Michigan, are a profit à prendre, involving access to land to take something from it, above it, or from its water, *St. Helen Shooting Club v Mogle*, 234 Mich 60 (1926). In *St. Helen*, the Michigan Supreme Court found that a landowner who owns all the shore around an inland lake is the owner of the land under the water, had the exclusive right to hunt on the water, and had the exclusive right to convey these

rights to others, separating the rights from the land ownership.” Petitioner correctly followed *St. Helen Shooting Club* to claim a (d)(3) fish in pond exemption.

Under Michigan law, crops, including multi-year crops, are fruit of industry, are personal property, severable from the land, even by oral agreement, access to the land is granted by law for their care and maintenance, *Kroth v Dobson*, 324 Mich. 384 at 387 (1949). Crop profits can be transferred by oral agreement, without violating the statute of frauds or parol evidence rule. *Blough v Steffens*, 349 Mich 365 (1957). Multi-year crops can be separated from the fee title and transferred separately by unrecorded agreement, *Groth v Stillson*, 20 Mich 704 (1969). The “deed operated on the real estate only and not on the personal property,” *Blough*.

Consistent with the code the exemptions were in writing and filed with the bankruptcy court. Bankruptcy documents and County Register of Deeds filings are available for public view. Also, before bankruptcy, March 8, 2013, Whites filed a Notice of Farm Operation with Saginaw County Register of Deeds, Liber 2715 Page 499, including the legal description of 11085 Block Road. This put interested real estate sale bidders on notice Debtor had a crop interest.

Debtor filed Chapter 11 on July 30, 2013 (Docket 1), claiming 11 USC 522(d) Schedule C exemptions for crops and animals. In Chapter 11 exemptions go to minimum plan funding. August 22, 2014, the case was converted to Chapter 7 (Docket 168). Consistent with FRBP 1009, Debtor amended Schedule C, December 2, 2014 (Docket 252), and again on December 23, 2014 (Docket 261) to add serial

numbers. Debtor specifically exempted approximately 20 acres of perennial pasture and hay crop, fish in pond profits, fence and fence items.

Trustee filed exemption objections, Docket 258 and 270, December 8, 2014 and January 6, 2015. Trustee alleged Debtor's hay crop was not primarily personal but a commercial operation. Trustee did not object to the fish in pond profit or fence and fence items, per FRBP 4003, as a matter of law, the fish in pond profit and fence and fence items reverted to Debtor January 1, 2015.

On April 23, 2015, before the sale of the real estate, Trustee recognized the crop severance from the real estate in her financial report (Docket 329) treating them as independent assets, the real estate is Line 1, the crop profit is Line 21. Before the sale of the land, Debtor filed motion to harvest hay on July 17, 2015 (Docket 390) it was rolled into Trustee's Motion For Turnover (Docket 306). Before either motion was heard, Trustee sold the 11085 Block Road real estate, August 5, 2015, issuing a Quitclaim Deed removing it from the jurisdiction of the bankruptcy court. Previous to the deed, the bankruptcy court approved the sale (Docket 358) based on the Purchase Agreement which was AS IS, No Warranty, No Guaranty, buyer to perform all due diligence.

401 days after Debtor claimed the crop exemption, a hearing was held on Trustee's objections, January 28, 2016. Trustee stipulated to exemption of all non-crop (d)(3) items and stipulated (d)(3) could exceed statutory limits (Order Docket 486, Paragraph H). The matter of whether the crop was commercial or primarily personal in nature was held over for Trustee's Motion For Turnover (Docket 306).

On January 28, 2016, the exemption was not granted, it was not denied it was merely held over for further hearing on Trustee's Motion For Turnover (Docket 306) based on Trustee's theory the crop was not personal, but commercial.

Co-debtor Darla died January 1, 2015. March 30, 2015, Trustee filed Trustee's Motion For Turnover (Docket 306) alleging Debtor must turnover Darla's term-life insurance benefits, her accumulated social security disability benefits, her food assistance benefits, and the hay crop because it was commercial, as stated above Trustee failed to prove a violation of the bankruptcy code, her motion was denied in its entirety, Opinion/Order Dockets 528/529, August 3, 2016.

As Debtor was not required to turn over the crop, the crop exemption was valid, *Law v Siegel*. In Order Docket 486 (paragraph H) Trustee stipulated (d)(3) could exceed code allowance, did Order Docket 529 make this applicable to crops? Pursuant FRBP 1009, Debtor filed amended exemption Schedule C claiming Full Fair Market Value (FMV) for approximately 20 acres perennial pasture and perennial hay crop, Docket 608, March 3, 2017. Trustee did not file FRBP 4003 objection to the FMV value of the pasture and hay crop, per FRBP 4003 as a matter of law the exemption became effective April 1, 2017. (Trustee did object to matters not involved in this litigation.) On April 26, 2016, Trustee amended her Line 21 crop value to \$5,000 as her value and \$16,250 as Debtor's value (Docket 515, Line 21).

At this point in the bankruptcy proceedings in this matter should be done. However, after Darla's death her bankruptcy matters were represented by an attorney. The attorney did not represent Michael White. On August 8, 2017, Darla's

attorney filed amended exemptions on behalf of Darla (Docket 714). The exemptions were for Darla only, no amended exemptions for Michael White were filed. Despite the facts, Trustee filed Rule 4003 objections against Michael White's non-existent amended exemption filing, now claiming the crop exemptions was invalid.

Not only were there no exemptions filed by Michael, the ones filed by Darla's attorney were withdrawn on May 14, 2018 (Docket 817). Despite the fact there were no exemptions before the court, the bankruptcy court issued an order denying "all" of Michael's exemptions, Order Docket 824, July 31, 2018. The court attempted to correct the erroneous Order Docket 824 but made further errors, Order Docket 880, August 1, 2019. Trustee was quick to exploit the court's error based on her inappropriate FRBP 4003 objection to non-existent exemptions.

Petitioner filed suit against Respondents Knapp in Saginaw County (Michigan) Circuit Court, case 18-037070-CH, on July 27, 2018. On August 21, 2018, Trustee issued an Affidavit for the benefit of Respondents Knapp, Trustee stated Debtor retained no rights to real estate that was sold to Knapp and the bankruptcy court denied the exemptions in Docket 824.

Trustee's affidavit was silent as to the profits à prendre for fish in pond and fence and fence items. Though alleged in the complaint Knapp did not deny the allegations and did not preserve any argument on these items in the state courts. Trustee's affidavit did not mention her former attorney stipulated that all non-crop (d)(3) exemptions were valid and stipulated to (d)(3) exceeding the statutory limits (Docket 486, paragraph H). Trustee did not state she failed to Rule 4003 object to

the FMV crop exemption in Docket 608. Trustee “nuanced” her affidavit to state the crop exemptions were “not granted” in Docket 486 and not listed in Abandonment Order Docket 567. She did not mention crop were held over for her Motion For Turnover and it was denied in its entirety, and crops did not have to be turned over. Her affidavit ignored mentioning on April 23, 2015, before the sale, she severed the crop from the real estate in her financial reports (Docket 329, Line 21).

Any reference to the December 19, 2016 ORDER ALLOWING ABANDONMENT OF SPECIFIC ITEMS TO THE DEBTOR (Docket 567) is a red herring. As the title states it is only for specific items and is not all inclusive. If necessary, see clarification notes for the December 2014 exemption filings Dockets 252 and 261, where debtor made a “mind numbing” list of items. The Order (Docket 567) was drafted by Trustee omitting numerous items including at least one vehicle. As another example of omissions Trustee’s April 26, 2016 financial report Docket 515, Line 2, Column 5 lists \$5,250 rent though it is a substantial amount of money it is not listed in Docket 567, either under Trustee’s continued administration or abandoned to Debtor. On February 9, 2021, the bankruptcy court ordered this property returned to Debtor via §522(d)(5) exemption, Order (Docket 1005).

On October 18, 2008, Michael White issued an affidavit countering the lack of accuracy of Trustee’s affidavit. Two conflicting affidavits create a question of fact which under Michigan law summary disposition is never proper.

The circuit court issued summary disposition to Defendants, denied Plaintiff’s cross-motion for summary, and denied Plaintiff’s motion for reconsideration. The

case was in the Michigan Court of Appeals when on September 19, 2019, the bankruptcy court issued ORDER (DOCKET 887) FOR CLARIFICATION AND CORRECTION OF COURT ORDERS AT DOCKET 824 AND DOCKET 880:

The Court now corrects and clarifies the following: Docket 714 contained amended exemptions for Darla K. White, deceased, the filing was for her only, it did not contain any amended exemptions for co-debtor Michael White. Docket 714 was filed by her attorney George Jacobs who represented only Darla K. White, deceased. Mr. Jacobs did not represent Debtor Michael White. Michael White is the personal representative of the Estate of Darla K. White, deceased. On inspection of Docket 714, the Court notes the amended exemptions in that docket are for only Darla K. White, deceased. Mr. Jacobs, nor anyone else, filed any amended exemptions for Michael White in Docket 714. Docket 714 was withdrawn by Mr. Jacobs on May 14, 2018 (Docket 817). That withdrawal closed all issues regarding amended exemptions in Docket 714. On July 31, 2018, the Court made an oversight error regarding any ruling on any matter in Docket 714. The Order at Docket 824 is moot in its entirety.

1. On his behalf, Michael White did not intend to file or authorize any amended exemptions on August 8, 2017, Docket 714, thus there was nothing for this Court to address in Docket 714 regarding this topic.
2. On May 14, 2018, Docket 817, Darla K. White, deceased, via her attorney Mr. Jacobs, withdrew her amended exemption schedule filed at Docket 714, as such there was nothing for this Court to rule upon in Docket 714.
3. All valid and granted exemptions of Michael White remain unaffected by Docket 824.

Petitioner White provided judicial notice to the Michigan Court of Appeals.

APPLICABLE MICHIGAN LAW

Michigan Court Rule 2.116(C)(10) only provides for summary disposition where there is no genuine issue as to any material fact. A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v. Rozwood*, 461 Mich. 109, 120; 597 N.W.2d 817 (1999); *Spiek v. Dep't of Transportation*, 456 Mich. 331, 337;

572 N.W. 2d 201 (1998); *Mino v. Clio School Dist*, 255 Mich. App. 60, 67; 661 N.W. 2d 586 (2003). The trial court must also consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Maiden*, supra at 120; *Quinto v. Cross & Peters Co.*, 451 Mich. 358, 362; 547 N.W. 2d 314 (1996). The trial court must grant the benefit of all reasonable doubt to the nonmoving party. *Bourne v. Farmers Ins. Exchange*, 449 Mich. 193, 197; 534 NW2d 491 (1995).

Summary disposition law for MCL2.116(C)(4) is similar.

In presenting a motion for summary disposition, the initial burden of factually supporting the motion through affidavits, depositions, admissions or other documentary evidence rests with the moving party. *Neubacher v. Globe Furniture Rentals*, 205 Mich. App. 418, 420; 522 N.W.2d 335 (1994); *SSC Associates Ltd Partnership v. General Retirement System*, 192 Mich. App. 360, 364; 480 N.W.2d 275 (1991). The burden then shifts to the opposing party to establish that a genuine issue of fact does indeed exist. *Neubacher* supra at 420.

The Michigan Court Appeals states, “The test which the court should apply in considering motions under is whether plaintiff’s claim, on the pleadings, is so clearly unenforceable as a matter of law that no factual development can possibly justify a right to recovery,” and that “[w]here the resolution of the legal issue may depend greatly upon the factual context, summary judgment on the pleadings is never proper,” *Sanders v. Clark Oil Refining Corp.*, 57 Mich. App. 687, 689 (Mich. Ct. App. 1975). In evaluating such a motion, a court considers the entire record “in

the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties.” *Corley v. Detroit Bd. of Educ.*, 470 Mich. 274, 278 (Mich. 2004). These standards are very well settled and should be properly applied to the case at hand to determine whether the claim can go forward.”

The standard of review by the Michigan Court of Appeals and Michigan Supreme Court review of a state circuit court order of summary disposition is de novo. Where a finding is derived from an erroneous application of law to facts and where the trial judge's factual findings may have been influenced by an incorrect view of the law, *Beason v Beason*, 435 Mich 791 (1990). Michigan summary dispositions are viewed de novo, *Maiden v Rozwood*, 461 Mich 109 (1999). Questions of law are reviewed de novo, *ATF Michigan v State of Michigan*, 497 Mich 197 (2015). Statutory interpretation is reviewed de novo, *Klooster v City of Charlevoix*, 488 Mich 289, 295 (2011), as are constitutional issues, *People v Armstrong*, 490 Mich 281, 289 (2011).

REASON FOR GRANTING THE WRIT

When state courts fail to yield to the preemptive nature of bankruptcy law and debtors’ rights to remove property from the bankruptcy estate, a whole class of Americans are severely injured at a time when they can least financially afford it. When state court fail to give full faith and credit to the decisions of this Supreme Court, justice and uniformity erode. This Supreme Court should accept the Writ to enforce its decisions in *Law v Siegel*, *Schwab v Reilly*, and *Taylor v Freeland & Kronz* and more general exemptions rights contained within the code.

This writ is an excellent opportunity for this Court to bring uniformity across the country by clarifying that ownership of property exempted by 11 USC 522(d) or abandoned by 11 USC 554, whether as a FRBP 4003 matter of law or by court order, is retained by debtor, back to the moment at or BEFORE the petition was filed, as if no bankruptcy petition had been filed. This would elevate the results of such cases as *In re: Burke; Hoehn v McIntosh; Hardesty v Haber*; and *In re: Xonics* to a single nation uniform standard.

“Our [the U.S. Supreme Court] only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments...” *Herb v. Pitcairn*, 324 U.S. 117, 125–26 (1945).

The administration of bankruptcy cases relies on clear, uniform law with trust the law will be applied fairly and equally. When this Court speaks, the nation’s laws become more uniform. Enforcing this Court’s earlier decisions will strengthen the work this Court has already done.

CONCLUSION

In December 2014, Petitioner correctly and legally claimed exemptions for fish in pond, approximately 20 acres perennial pasture and perennial hay crop profits and fence and fence items. Per *Cusano* and related cases, if Trustee did not have sufficient knowledge of Debtor’s intent, she had the right to inquire further. She did not inquire because there was no need, on April 23, 2015, Trustee recognized the profits being severed from the fee title of the real estate and she separated the

profit from the real estate in her financial report (Docket 329) listing the real estate at Line 1 and crop profit at Line 21.

Whether Trustee informed the real estate purchase is unknown, but not relevant to Debtor's ownership. Even if Trustee had been successful in having the bankruptcy court determine the crop profit was commercial, not (d)(3) primarily personal, it is the bankruptcy estate that would have gained, not the real estate purchaser, because Trustee acknowledged severance before the sale. Nor would a commercial crop court decision have affected the fish in pond profit, or fence and fence items exemption which the Trustee, via her former attorney, stipulated to in Docket 486. Nothing in the Purchase Agreement or Quitclaim Deed specifically suggest any profit à prendre transfer. Black's Law is clear pasture is a crop, Michigan profit law is clear a severance can be made any time before the land sale. The Michigan courts failed to honor Debtor's federal bankruptcy rights. Summary disposition should never have been granted to the real estate purchaser. Debtor's cross-motion for summary should have been granted, or at a minimum remanded to the circuit court for further proceedings.

Respectfully submitted,



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