

## Florida Supreme Court Clarifies “Wildcard” Exemption

By Camille J. Iurillo and Sabrina C. Beavens

As we all know, homeowners in Florida enjoy a generous homestead exemption granted by the Florida Constitution. During the real estate boom, the homestead exemption greatly benefitted Florida debtor homeowners, but debtors who rented their homes could not receive the same level of asset exemption. In response, the legislature enacted section 222.24(4), Florida Statutes, which exempts a debtor’s interest in personal property up to \$4,000.00 “if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution.”

With the dramatic decline in real estate values, many homeowner bankruptcy debtors opted to claim the wildcard exemption in lieu of the homestead exemption. In response, several bankruptcy trustees argued that even though the debtors did not affirmatively claim the homestead exemption, the debtors were benefitting from the exemption by remaining in the property and/or indicating their intent to reaffirm the mortgage. Therefore, the trustees argued the debtors were not entitled to the additional exemption. In deciding the issue, a divide among bankruptcy judges developed as to the meaning of “if the debtor does not claim or receive the benefits of a homestead exemption” and the issue was certified by the Eleventh Circuit to the Florida Supreme Court in *Osborne v. Dumoulin*, 55 So.3d 577 (Fla. 2011).

Noting Florida’s liberal history in favor of protecting citizens’ homes, the Court held that the “benefit” of the homestead exemption is the protection from creditors other than the three exceptions set forth in art. X, § 4, Fla. Const. *Id.* at \*8. Further, the Court explained that a debtor in bankruptcy may choose whether or not to exempt the homestead from the bankruptcy estate and therefore receive the benefit of the exemption. *Id.* at \*9. If the debtor chooses not to claim the homestead exemption in their bankruptcy, the “debtor effectively surrenders the homestead to the trustee for administration.” *Id.* In answering the certified question in the negative, the Court held “that where a debtor in bankruptcy elects not to claim the article X, section 4, homestead exemption and the trustee’s administration of the bankruptcy estate is not otherwise obstructed by the existence of the homestead exemption, the debtor does not receive the benefits of the homestead exemption and may claim the section 222.25(4) personal property exemption of \$4,000.00.” *Id.* at \*11.

In sum, the *Osborne* opinion is a victory for debtors who need the wildcard exemption and whose homestead is unlikely to be administered by the bankruptcy trustee. However, the holding does not have a one-size-fits-all application and careful analysis of the facts of each case must be performed to determine whether the debtors may actually be receiving the benefit of the homestead exemption even though they did not claim it.

**Iurillo & Associates, P.A.**, located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder, **Gina M. Pellegrino**, Associate, and **Sabrina C. Beavens**, Associate. The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation, Debtors’ and Creditors’ Rights, and Foreclosures/Workouts.