

Clarifying the Florida Personal Property Exemption Statute: Was the "Right" Question Certified to the Florida Supreme Court?

by Kathleen L. DiSanto¹

"Sometimes the questions are complicated and the answers are simple." ~ Dr. Seuss

Determining the proper interpretation and application of Florida Statutes, section 222.25(4) ("Section 4" or the "wildcard exemption") has precipitated much litigation throughout bankruptcy courts across the state since its enactment in July 2007. While some Section 4 issues are fairly well settled based on existing case law, courts remain divided over what it means to "receive the benefits of a homestead exemption."² These seven words have been the primary source of the continued debate over the proper interpretation and application of Section 4.³

Two narrow issues seem to have crystallized from the central question: first, whether ultimately indicating an intent to surrender the homestead is sufficient to allow a debtor to claim the wildcard exemption, and second, whether a debtor is entitled to the wildcard exemption if the debtor has no equity in the homestead, does not claim the homestead exempt, but indicates an intent to reaffirm the mortgage(s) on the property. The first question was certified to the Florida Supreme Court by the Eleventh Circuit in the *Dumoulin* case.⁴ Unfortunately, the second question, which is equally

critical to establishing a uniform interpretation of Section 4, may remain unanswered.

This article will briefly recount the historical background leading to the enactment of Section 4 and summarize the body of case law attempting to determine what it means to "receive the benefits of a homestead exemption." Next, the article will analyze the wildcard exemption cases addressing how and when a debtor must surrender homestead property and claim exemptions to maintain eligibility under Section 4. Then, the article will turn to the most recent decisions interpreting Section 4, focusing on the latest debate over whether a debtor is entitled to the additional personal property exemption when the debtor intends to reaffirm obligations on a homestead property lacking equity. Finally, the article will explore the benefits of a broad answer to the question certified to the Florida Supreme Court by the Eleventh Circuit.

A Historical Background of Section 4: From Here to There, From There to Here⁵

In 1993, the Florida legislature enacted Florida's Personal Property Exemption Statute.⁶ Section 4, which provides debtors with a \$4,000 personal property exemption if they do not receive the benefits of a homestead exemption, was not added until July 7, 2007.⁷ Legislative history indicates that Section 4 was adopted "to give a debtor who lacks homestead protections some extra personal exemptions."⁸

In defining what it means to "receive the benefits of a homestead exemption," courts have remained divided over two basic factual situations. One concerns debtors

continued on p. 4

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² Several interpretation issues are fairly well settled. For example, courts have consistently held that debtors are permitted to "stack" the wildcard exemption and with other exemptions. See *In re Mootosammy*, 387 B.R. 291 (Bankr. M.D. Fla. 2008) (debtor may stack motor vehicle exemption, \$1,000 constitutional personal property exemption, and wildcard exemption); *In re Hafner*, 383 B.R. 350 (Bankr. N.D. Fla. 2008) (debtor permitted to stack wildcard exemption with \$1,000 motor vehicle exemption). Another resolved issue is whether debtors with non-filing spouses who claimed the homestead exempt as tenancy by the entireties property are entitled to the wildcard exemption. *In re Ellis*, 395 B.R. 751 (Bankr. M.D. Fla. 2009); *In re Hernandez*, No. 07-16379-BKC-RAM, 2008 WL 1711528 (Bankr. S.D. Fla. Apr. 10, 2008). *In re Franzese*, 383 B.R. 197 (Bankr. M.D. Fla. 2008). All three opinions addressing whether a debtor who owns a mobile home on leased land and claims the modular home exemption is entitled the wildcard exemption have held that the debtor is entitled to the additional personal property exemption. *In re Heckman*, 395 B.R. 737 (Bankr. N.D. Fla. 2008); *In re Lisowski*, 395 B.R. 771 (Bankr. M.D. Fla. 2008); *In re Munao*, No. 8:07-bk-11729-PMG, 2008 WL 4602352 (Bankr. M.D. Fla. Sept. 23, 2008).

³ *In re Archer*, 416 B.R. 900 (Bankr. S.D. Fla. 2009); *In re Kent*, 411 B.R. 743 (Bankr. M.D. Fla. 2009); *In re Abbott*, 408 B.R. 903 (Bankr. S.D. Fla. 2009); *In re Brown*, 406 B.R. 568 (Bankr. M.D. Fla. 2009); *In re Bennett*, 395 B.R. 781 (Bankr. M.D. Fla. 2008); *In re Oliver*, 395 B.R. 792 (Bankr. S.D. Fla. 2008); *In re Rogers*, 396 B.R. 100 (Bankr. M.D. Fla. 2008); *In re Guiddas*, 393 B.R. 251 (Bankr. M.D. Fla. 2008); *In re Magelitz*, 386 B.R. 879 (Bankr. N.D. Fla. 2008); *In re Martias*, No. 07-20488-BKC-PGH, 2008 WL 906776 (Bankr. S.D. Fla. Apr. 3, 2008); *In re Shoopman*, No. 07-19450-BKC-PGH, 2008 WL 817109 (Bankr. S.D. Fla. Mar. 25, 2008); *In re Morales*, 381 B.R. 197 (Bankr. S.D. Fla. 2008); *In re Gatto*, 380 B.R. 88 (Bankr. M.D. Fla. 2008).

⁴ *Osborne v. Dumoulin* (*In re Dumoulin*), 326 Fed. Appx. 498 (11th Cir. 2009).

⁵ Dr. Seuss, *One Fish Two Fish Red Fish Blue Fish* (Random House 1960).

⁶ Fla. Stat. § 222.25 (2007).

⁷ *Id.*

⁸ *In re Rogers*, 396 B.R. at 102 (citing Proposed Amendment to Personal Property Exemption Statute Fla. Stat. § 222.25, Bankruptcy/UCC Comm. Business and Law Section, Florida Bar (August 6, 2008)).

Clarifying Exemption Statute

continued from p. 3

who ultimately do not claim their homestead exempt and indicate an intent to surrender the property, but lived in the property on the petition date. This factual situation is addressed by the *Gatto*, *Morales*, *Shoopman*, *Martias*, and *Guididas* opinions, in addition to the *Dumoulin*⁹ case. The other factual situation involves debtors who do not claim their homestead exempt, indicate an intent to reaffirm the mortgages on the property, but lack equity in the property. *Magelitz*, *Rogers*, *Oliver*, *Brown*, *Abbott*, *Kent*, and *Archer* are the opinions that discuss the latter factual situation.¹⁰ *Bennett*, a consolidated opinion, is the lone decision that encompasses both factual situations.¹¹ Courts' responses to the issues raised by these factual situations are contingent upon their analysis and interpretation of Section 4. Some courts have taken the position that a debtor cannot receive the benefits of a homestead exemption without claiming it or either directly or indirectly benefiting from the homestead exemption,¹² while other courts have required the debtor to express an intent to surrender the property.¹³

***Gatto* and Its Progeny: The More That You Read, the More Things You Will Know¹⁴**

In December 2007, Judge Williamson's opinion in the *Gatto* case became the first of many decisions interpreting what it means to receive the benefits of a

homestead exemption.¹⁵ *Gatto* was a consolidated opinion, consisting of three cases involving debtors who did not claim the homestead exemption and indicated an intent to surrender their homestead property on their initial Schedule C and Statement of Intention, but lived in the residence on the petition date.¹⁶ Judge Williamson held that the debtors were entitled to the wildcard exemption because they did not claim their homestead exempt, nor were they receiving the benefits of a homestead exemption.¹⁷

Morales was the next case to address the surrender issue.¹⁸ The debtor never claimed the homestead exempt but subsequently amended his Statement of Intention from reaffirming both obligations on the property to surrendering the property to the larger mortgagee and reaffirming the other mortgage.¹⁹ Focusing on the fact that the debtor had claimed the homestead exemption on the date the petition was filed, Judge Ray held that the debtor was not entitled to the wildcard exemption because he had received the benefits of the homestead exemption.²⁰ Unfortunately, the *Morales* opinion creates the illusion that its holding was consistent with *Gatto*, but the case actually advanced a different interpretation of Section 4.²¹

Shoopman and *Martias* decisions expanded *Gatto*'s holding to debtors who potentially qualified for the wildcard exemption based on amendments to their schedules and statements of intention.²² The *Shoopman* debtors never claimed the homestead property exempt

continued on p. 5

⁹ *Osborne v. Dumoulin* (*In re Dumoulin*), 326 Fed. Appx. 498; *In re Guididas*, 393 B.R. 251 (Bankr. M.D. Fla. 2008); *In re Martias*, No. 07-20488-BKC-PGH, 2008 WL 906776 (Bankr. S.D. Fla. Apr. 3, 2008); *In re Shoopman*, No. 07-19450-BKC-PGH, 2008 WL 817109 (Bankr. S.D. Fla. Mar. 25, 2008); *In re Morales*, 381 B.R. 197 (Bankr. S.D. Fla. 2008); *In re Gatto*, 380 B.R. 88 (Bankr. M.D. Fla. 2008).

¹⁰ *In re Archer*, 416 B.R. 900 (Bankr. S.D. Fla. 2009); *In re Kent*, 411 B.R. 743 (Bankr. M.D. Fla. 2008); *In re Abbott*, 408 B.R. 903 (Bankr. S.D. Fla. 2009); *In re Brown*, 406 B.R. 568 (Bankr. M.D. Fla. 2009); *In re Oliver*, 395 B.R. 792 (Bankr. S.D. Fla. 2008); *In re Rogers*, 396 B.R. 100 (Bankr. M.D. Fla. 2008); *In re Magelitz*, 386 B.R. 879 (Bankr. N.D. Fla. 2008).

¹¹ *In re Bennett*, 395 B.R. 781 (Bankr. M.D. Fla. 2008).

¹² *Id.*; *In re Abbott*, 408 B.R. 903; *In re Martias*, No. 07-20488-BKC-PGH, 2008 WL 906776; *In re Shoopman*, No. 07-19450-BKC-PGH, 2008 WL 817109; *In re Gatto*, 380 B.R. 88.

¹³ *In re Archer*, 416 B.R. 900; *In re Kent*, 411 B.R. 743; *In re Abbott*, 408 B.R. 903; *In re Brown*, 406 B.R. 568; *In re Oliver*, 395 B.R. 792; *In re Rogers*, 396 B.R. 100; *In re Magelitz*, 386 B.R. 879; *In re Guididas*, 393 B.R. 251; *In re Morales*, 381 B.R. 197.

¹⁴ Dr. Suess, *I Can Read with My Eyes Shut* (Random House 1978).

¹⁵ *In re Gatto*, 380 B.R. 88 (Bankr. M.D. Fla. 2008).

¹⁶ *Id.* at 90.

¹⁷ *Id.* at 95.

¹⁸ *In re Morales*, 381 B.R. 917.

¹⁹ *Id.* at 919.

²⁰ *Id.*

²¹ *In re Morales*, 381 B.R. at 922; *In re Gatto*, 380 B.R. at 93.

²² *In re Martias*, No. 07-20488-BKC-PGH, 2008 WL 906776 (Bankr. S.D. Fla. Apr. 3, 2008); *In re Shoopman*, No. 07-19450-BKC-PGH, 2008 WL 817109 (Bankr. S.D. Fla. Mar. 25, 2008).

Clarifying Exemption Statute

continued from p. 4

but initially indicated an intent to reaffirm the mortgage debt and later amended their Statement of Intention to surrender the property.²³ In the *Martias* case, the debtor initially planned to reaffirm and claimed the homestead property exempt, but later filed an Amended Schedule C removing the homestead exemption and claiming the wildcard exemption, in addition to an Amended Statement of Intention surrendering the property.²⁴ In both cases, Chief Judge Hyman held that debtors who ultimately did not claim their homestead exempt and indicated an intent to surrender the property were entitled to the wildcard exemption because mere occupation of the homestead property does not equate to receiving the benefits of a homestead exemption.²⁵

Judge Paskay reached an opposite conclusion in the *Guididas* case.²⁶ In *Guididas*, the debtor initially claimed the homestead exemption and expressed an intent to reaffirm the debt but later filed amended schedules that did not claim the homestead exempt, but claimed the wildcard exemption, and indicated the property would be surrendered.²⁷ Focusing on petition date as the relevant time for determining eligibility for the wildcard exemption, Judge Paskay determined that the debtor was not entitled to the wildcard exemption based on the belated surrender of the homestead property.²⁸ Published in June 2008, the *Guididas* opinion is the last decision to exclusively address whether debtors who do not claim their homestead exempt, indicate an intent to surrender the property, but lived in the property on the petition date are entitled to the wildcard exemption.²⁹

continued on p. 7

²³ *In re Shoopman*, No. 07-19450-BKC-PGH, 2008 WL 817109 at *1.

²⁴ *In re Martias*, No. 07-20488-BKC-PGH, 2008 WL 806776 at *1.

²⁵ *Id.* at *3; *In re Shoopman*, No. 07-19450-BKC-PGH, 2008 WL 817109 at *2, 4.

²⁶ *In re Guididas*, 393 B.R. 251 (Bankr. M.D. Fla. 2008).

²⁷ *Id.* at 252-253.

²⁸ *Id.* at 256.

²⁹ *Id.* *Bennett*, a consolidated opinion that addresses both the surrender and reaffirmation issue, is the only opinion that addresses the surrender issue post-*Guididas*.

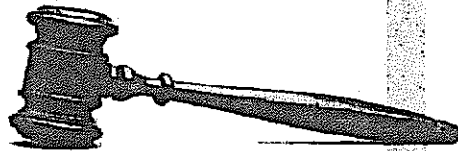
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Clarifying Exemption Statute

continued from p. 5

The Second Question: The More That You Learn, the More Places You'll Go³⁰

The issue of whether debtors who do not claim their homestead exempt, indicate an intent to reaffirm the obligations on the property, but lack equity in the property are entitled to the wildcard exemption has been more enduring. The *Gatto* court seemed to anticipate this factual situation, as the analysis subtly focused on the importance of a debtor claiming the homestead exemption under Article X, section 4 of the Florida Constitution by describing the consequences of not claiming the exemption.³⁰ However, Chief Judge Killian's decision in *Magelitz* was the first to squarely address these facts.³¹ The *Magelitz* debtor lacked equity in the homestead property, did not claim the property exempt, but stated he intended to retain the homestead and continue to make payments, essentially expressing an intent to reaffirm the mortgage.³² Chief Judge Killian held the debtor was not entitled to the wildcard exemption.³³ *Magelitz* focuses on whether the homestead exemption is self-executing, and Chief Judge Killian concluded that homestead status arises upon the fulfillment of certain constitutional requirements, independent of whether a debtor claims the homestead exemption or a trustee abandons the property.³⁴ The *Magelitz* opinion represents the majority published position, as the *Rogers*, *Oliver*, *Brown*, *Kent*, and *Archer* courts reached the same conclusions in cases with similar facts.³⁵

Bennett and *Abbott* are the sole published opinions in which courts allowed the debtors to claim the wildcard

exemption while reaffirming mortgages on property that is fully encumbered. *Bennett* is a consolidated opinion of three cases and is the only decision to address both issues that have emerged in interpreting what it means to receive the benefits of a homestead exemption.³⁷ The facts of the *Browning* and *Roesler* cases reflect the first scenario where a debtor ultimately surrenders the homestead property, but the *Bennett* debtors sought to reaffirm the obligations on the fully encumbered homestead property and claim the wildcard exemption.³⁸ In holding that all of the debtors were entitled to the wildcard exemption, Judge Williamson concluded that failure to claim the homestead exempt, thereby exposing the property to administration by the trustee was sufficient, and surrender of the property was not necessary.³⁹

In the *Abbott* decision, Chief Judge Hyman adopted *Bennett's* conclusions, holding that a debtor could be eligible for the wildcard exemption without surrendering the property.⁴⁰ Recalling the intent behind the enactment of Section 4, Chief Judge Hyman acknowledged the importance of allowing debtors lacking equity in their homestead to claim the wildcard exemption, noting that 1.3 million Florida mortgagors were "underwater" during the fourth quarter of 2008.⁴¹ Further, Chief Judge Hyman indicated that a debtor was not receiving the benefits of a homestead exemption if no equity was being protected, and the potential for future equity in the homestead property did not render the debtor ineligible for the wildcard exemption.⁴²

Published after the *Bennett* decision, the *Brown*, *Kent*, and *Archer* opinions responded to the proposition that a debtor who does not claim the homestead exemption to protect "underwater" property is still entitled to the

continued on p. 8

³⁰ Dr. Seuss, *I Can Read with My Eyes Shut* (Random House 1978).

³¹ *In re Gatto*, 380 B.R. 86, 93 (Bankr. M.D. Fla. 2008).

³² *In re Magelitz*, 386 B.R. 879 (Bankr. N.D. Fla. 2008).

³³ *Id.* at 881.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*; *In re Archer*, 416 B.R. 900 (Bankr. M.D. Fla. 2009); *In re Kent*, 411 B.R. 743 (Bankr. M.D. Fla. 2009); *In re Brown*, 406 B.R. 568 (Bankr. M.D. Fla. 2009); *In re Oliver*, 395 B.R. 792 (Bankr. S.D. Fla. 2008); *In re Rogers*, 396 B.R. 100 (Bankr. M.D. Fla. 2008).

³⁷ *In re Abbott*, 408 B.R. 903 (Bankr. S.D. Fla. 2009); *In re Bennett*, 395 B.R. 781, 790 (Bankr. M.D. Fla. 2008).

³⁸ *In re Bennett*, 395 B.R. at 784-85.

³⁹ *Id.* at 790.

⁴⁰ *In re Abbott*, 408 B.R. at 908-09.

⁴¹ *Id.* at 911-12.

⁴² *Id.* at 910.

Clarifying Exemption Statute

continued from p. 7

wildcard exemption because the property is exposed to administration by the trustee.⁴³ All three courts held that the debtors were not entitled to the wildcard exemption because the debtors retained possession of the property, and subjecting the over-encumbered property to administration by the trustee was "meaningless" as abandonment by the trustee is probable.⁴⁴ These cases anticipate the next progression of Section 4 litigation: whether a trustee can establish that abandonment is not appropriate because the fully encumbered property can benefit the bankruptcy estate in some way.

Clarifying the Wildcard Exemption: I Meant What I Said and I Said What I Meant⁴⁵

Unfortunately for bankruptcy courts and practitioners, the *Dumoulin* facts represent the only one of the challenging factual scenarios confronted by bankruptcy courts in their efforts to interpret Section 4. In the *Dumoulin* case, the debtor expressed an intention to surrender the property from the petition date, but initially claimed the homestead property exempt on Schedule C.⁴⁶ The property was in foreclosure, and the debtor planned to rent it from the purchaser until the sale fell through.⁴⁷ After the sale fell through, the debtor amended Schedule C, replacing the homestead exemption with the wildcard exemption.⁴⁸

Turning to existing case law, most courts would agree that the debtor is entitled to the wildcard exemption under the facts in the *Dumoulin* case, because the debtor ultimately did not claim the homestead exemption and consistently indicated an intent to surrender the property from the date the petition was filed.⁴⁹

The limitations imposed by *Dumoulin's* facts perhaps could have been overcome if a broader question had been certified to the Florida Supreme Court. The exact question certified asks, "Whether a debtor who elects not to claim a homestead exemption and indicates an intent to surrender the property is entitled to the additional exemptions for personal property under Fla. Stat. § 222.25(4)."⁵⁰ An answer to the certified question may not completely resolve the interpretation issues surrounding Section 4. If the Florida Supreme Court answers the question with a "no," indicating Florida's homestead exemption is self-executing and an intention to surrender is insufficient, then courts and practitioners will know that the property must be abandoned as of the petition date for a debtor to be eligible for the wildcard exemption, and the second question concerning debtors who reaffirm the obligations on their homestead property is moot. However, if the Florida Supreme Court answers the certified question affirmatively, courts and practitioners may still grapple with whether a debtor who does not claim the homestead exemption but reaffirms the obligation on fully encumbered property is entitled to the wildcard exemption.

If the certified question had been broader in scope, the probability of receiving a more comprehensive response from the Florida Supreme Court could have been increased. If the question had instead been "Whether a debtor must indicate an intent to surrender the property to be entitled to the additional exemptions for personal property under Fla. Stat. § 222.25(4)," perhaps bankruptcy courts and practitioners would have had a better chance of receiving their long awaited answers to the interpretation questions plaguing Section 4. The broader question would frame the surrender issue, in addition to the issue of whether debtors who do not claim their homestead exempt, indicate an intent to reaffirm

continued on p. 9

43 *In re Archer*, 416 B.R. 900 (Bankr. S.D. Fla. 2009); *In re Kent*, 411 B.R. 743 (Bankr. M.D. Fla. 2009); *In re Brown*, 406 B.R. 568 (Bankr. M.D. Fla. 2009).

44 *In re Archer*, 416 B.R. at 902; *In re Kent*, 411 B.R. at 751; *In re Brown*, 406 B.R. at 570-571. Chief Judge Glenn further suggests that not only is a trustee likely to abandon "underwater" property, but that a trustee has a duty to abandon property that lacks equity for the estate. See *In re Kent*, 411 B.R. at 755 citing *In re Integrated Agri, Inc.*, 313 B.R. 419, 425 (Bankr. C.D. Ill. 2004); *In re Rambo*, 297 B.R. 418, 433 (Bankr. E.D. Pa. 2003); *In re Buchanan*, 270 B.R. 689, 693 (Bankr. N.D. Ohio 2001); *In re Feinstein Family P'ship*, 247 B.R. 502, 507-09 (Bankr. M.D. Fla. 2000).

45 Dr. Suess, *Horton Hears a Hoo* (Random House 1954).

46 *Osborne v. Dumoulin (In re Dumoulin)*, 326 Fed. Appx. 498, 499 (11th Cir. 2009).

47 *Id.*

48 *Id.*

49 *In re Martias*, No. 07-20488-BKC-PGH, 2008 WL 906776 (Bankr. S.D. Apr. 3, 2008); *In re Shoopman*, No. 07-19450-BKC-PGH, 2008 WL 817108 (Bankr. S.D. Fla. Mar. 25, 2008); *In re Gatto*, 380 B.R. 98 (Bankr. M.D. Fla. 2008); but see *In re Guididas*, 393 B.R. 251 (Bankr. M.D. Fla. 2008); *In re Morales*, 381 B.R. 197 (Bankr. S.D. Fla. 2008). While the issue of timeliness was not squarely before the *Franzese* court, as the case focused on whether a debtor who has a non-filing spouse and has claimed the property as an exempt tenancy by the entireties property is receiving the benefits of the homestead protection, Judge Jennemann indicated a debtor must state an intent to surrender the property on the date the petition is filed to lose the benefit of the homestead exemption. *In re Franzese*, 383 B.R. 197, 206 (Bankr. M.D. Fla. 2008).

50 *Osborne v. Dumoulin (In re Dumoulin)*, 326 Fed. Appx. at 502.

Clarifying Exemption Statute

continued from p. 8

the mortgages on the property, but lack equity in the property are entitled to the wildcard exemption.

While an assessment of published opinions suggests that a majority position has also developed on the latter issue, courts are more sharply divided than it appears, so an answer to the question of whether a debtor who does not claim the homestead exemption and reaffirms obligations on "underwater" property is entitled to the wildcard exemption is critical to clarifying Section 4.⁵¹ For example, in the Tampa Division alone, Judges McEwen and Delano have not yet published their decisions (although written opinions are forthcoming) in cases concerning debtors who do not claim the homestead property exempt and seek to reaffirm the obligations on the fully encumbered property, but both have ruled on the matter, allowing the debtor to claim the wildcard exemption.⁵² Also, the development of a majority position may be suspended as at least one bankruptcy court has abated ruling on matters concerning the wildcard exemption in anticipation of the Florida Supreme Court's answer.⁵³

In spite of the specific question certified, the Florida Supreme Court may decide to give bankruptcy courts and practitioners some much needed clarification in interpreting Section 4, as the latest Section 4 decisions focus on the whether debtors who do not claim their homestead exempt but indicate an intent to reaffirm the obligations on the fully encumbered property are entitled to the wildcard exemption, while no opinions have been issued exclusively on the surrender question certified to the Florida Supreme Court since *Guididas* in June 2008.⁵⁴ In the final paragraph of its opinion certifying the question to the Supreme Court, the Eleventh Circuit states, "we do not intend to restrict the issues considered by the state court and note that discretion to examine this issue and other relevant issues lies with the Florida Supreme Court."⁵⁵ Hopefully, the Supreme Court will not merely interpret the certified question to address only the issues surrounding the timeliness of the debtor's exemption election and, in light of the trends developing in wildcard exemption case law, consider giving a broad answer to resolve the lingering questions of statutory interpretation surrounding Section 4.

⁵¹ *In re Archer*, 416 B.R. 900 (Bankr. S.D. Fla. 2009); *In re Kent*, 411 B.R. 743 (Bankr. M.D. Fla. 2009); *In re Brown*, 406 B.R. 568 (Bankr. M.D. Fla. 2009); *In re Oliver*, 395 B.R. 792 (Bankr. S.D. Fla. 2008); *In re Rogers*, 396 B.R. 100 (Bankr. M.D. Fla. 2008); *In re Magelitz*, 386 B.R. 879 (Bankr. N.D. Fla. 2008); *but see In re Abbott*, 408 B.R. 903 (Bankr. S.D. Fla. 2009); *In re Bennett*, 395 B.R. 781 (Bankr. M.D. Fla. 2008).

⁵² *In re Luliano*, No. 8:09-bk-04904-CED (Bankr. M.D. Fla. Sept. 23, 2009 hearing); *In re Radford*, No. 8:09-bk-04014-CPM (Bankr. M.D. Fla. Aug. 24, 2009 hearing); *In re Rohlehr*, No. 8:09-bk-04905-CPM (Bankr. M.D. Fla. Aug. 24, 2009 hearing).

⁵³ *In re Burpee*, 415 B.R. 870 (Bankr. M.D. Fla. 2009).

⁵⁴ See *In re Kent*, 411 B.R. 743; *In re Brown*, 406 B.R. 568.

⁵⁵ *Osborne v. Dumoulin* (*In re Dumoulin*), 326 Fed. Appx. at 502.