



Spring 3-1-1982

## iii. Bankruptcy Law

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### Recommended Citation

*iii. Bankruptcy Law*, 39 Wash. & Lee L. Rev. 469 (1982).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol39/iss2/13>

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The LHWCA, and judicial supervision by the Supreme Court under the general right to review judgments of state courts, however, satisfies the federal interest in uniform compensation systems for longshoremen.<sup>60</sup> As a result, state law should continue to control litigation resulting from land-based torts.

In *Sea-Land*, the Fourth Circuit has charted an uncertain course for admiralty jurisdiction. Future courts in the Fourth Circuit must determine not only whether the alleged tort occurred on navigable waters but also whether the tort bears a significant relationship to a traditional maritime activity.<sup>61</sup> The district courts in the Fourth Circuit will have broad discretion in resolving whether an alleged tort occurred on land or water. This broad discretion, coupled with the possibility of disparate fact situations, may lead to anomalous decisions in the future.<sup>62</sup>

JOHN DAVID PADGETT

### III. BANKRUPTCY LAW

#### A. Multiple Homestead Exemptions

The exemption provisions of the Federal Bankruptcy Reform Act of 1978<sup>1</sup> permit a debtor to protect certain property from creditors'

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ment of trade by increasing the confidence of merchants in their ability to conduct business successfully. See *Federalism and the Admiralty*, *supra* note 58, at 160. The interest in the free flow of commerce appears to be the touchstone of the federal interest in uniform maritime principles. See *Uniformity in the Maritime Law*, *supra*, at 133; *accord*, THE FEDERALIST NO. 80, at 478 (Rossiter ed. 1961) (A. Hamilton).

<sup>60</sup> See *Kossick v. United Fruit Co.*, 365 U.S. 731, 739 (1961). The LHWCA furthers the federal interest in providing uniform and certain recovery for employment-related injuries of longshoremen. See GILMORE & BLACK, *supra* note 1, at § 6-26, at 410; MARITIME INJURIES, *supra* note 15, § 55. The Supreme Court initiated the process of judicial review of state court decisions to promote a unified application of the law, treaties, and Constitution of the United States in *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat) 304, 362 (1816).

<sup>61</sup> See note 31 *supra*. The Fourth Circuit has reflected a discretionary approach in determining when to assert admiralty jurisdiction. See *White v. Johns-Manville Corp.*, 662 F.2d 234, 239-40 (4th Cir. 1981). The *Johns-Manville* court held that the installation of asbestos products on vessels constitutes a significant relationship to a traditional maritime activity. *Id.* at 239-40. The Fourth Circuit noted that if a manufacturer designed, marketed, and advertised a product as maritime in nature, admiralty jurisdiction is proper. *Id.* at 240.

<sup>62</sup> See text accompanying notes 36-42 *supra*.

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<sup>1</sup> 11 U.S.C. § 522 (1979). Under § 541 of the Bankruptcy Reform Act of 1978, the commencement of bankruptcy proceedings creates an estate comprised of the debtor's legal and equitable interests at the time the debtor files a petition in bankruptcy with the bankruptcy court. *Id.* § 541(a)(1). Section 522 permits the debtor to exempt certain property of the estate from forced sale for payment to creditors. *Id.* § 522.

claims.<sup>2</sup> Section 522(b)(1) of the Act, however, allows states to prohibit resident debtors from claiming exemptions under the federal homestead statute.<sup>3</sup> Consequently, the Virginia legislature enacted a state homestead

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<sup>2</sup> Vukowich, *Debtor's Exemption Rights*, 62 GEO. L. J. 779, 779 (1974) [hereinafter cited as Vukowich]. The first exemption laws in the United States paralleled exemptions recognized under early English common law. *Id.* at 782. England's laws forbade creditors from taking a debtor's clothing, bedding, tools of trade or other essentials of life. *Id.* Subsequent exemption laws worked to alleviate the effects of the 18th and 19th century economic depressions when families of all economic classes lost their homes and possessions. *Id.* at 783. The purpose of current exemption laws is to provide the debtor with basic necessities to protect the debtor and his family from destitution and to prevent them from becoming a public charge. See H. R. REP. NO. 595, 95th Cong., 1st Sess. 126, 126, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 5963, 6087 [hereinafter cited as House Report]. By leaving a debtor with sufficient property to maintain economic independence, exemption laws encourage a debtor to earn income to pay his creditors. Ulrich, *Virginia's Exemption Statutes—The Need for Reform and a Proposed Revision*, 37 WASH. & LEE L. REV. 127, 129-30 (1980) [hereinafter cited as Ulrich].

The House Report indicates that Congress designed the exemptions of the Bankruptcy Reform Act to leave a debtor with adequate property to begin a new life free from creditor harassment and excessive debt. House Report, *supra*, at 125-26, [1978] U.S. CODE CONG. & AD. NEWS at 6086-87. The House Report expressed concern that many state exemption laws fail to leave a debtor in bankruptcy with sufficient assets to begin a life free from debt. *Id.* at 126, [1978] U.S. CODE CONG. & AD. NEWS at 6087. Both the House and the Senate, however, recognized the states' interest in regulating credit and agreed to permit states to set exemption levels appropriate to different parts of the country. *Id.*; S. REP. NO. 989, 95th Cong., 2nd Sess. 6, reprinted in [1978] U.S. CODE CONG. & AD. NEWS 5787, 5792 [hereinafter cited as Senate Report]; see text accompanying note 47 *infra*. The House bill, therefore, suggested a \$10,000 homestead exemption and allowed a debtor to choose between state and federal exemptions. H.R. 8200, 95th Cong., 1st Sess. 86 (1977). The Senate rejected the provision permitting the debtor to choose exemptions. Senate Report, *supra*, at 6, [1978] U.S. CODE CONG. & AD. NEWS at 5792. The Senate declined to permit a couple in a joint bankruptcy case to retain the substantial amount of property the couple could accumulate if a husband chose state exemptions and the wife chose the federal exemptions. *Id.* The exemptions in § 522 of the Bankruptcy Reform Act provide a compromise between the House and Senate bills. 124 CONG. REC. S. 17412 (daily ed. Oct. 6, 1978). Section 522(d) grants a homestead exemption of \$7500, but under § 522(b)(1) states may forbid residents from choosing exemptions under § 522(d). 11 U.S.C. § 522 (1979); see text accompanying note 47 *infra*. By permitting states to disregard federal exemptions and enact state exemption statutes that reflect different standards of living throughout the country, Congress arguably is undermining the uniformity Congress sought in enacting the federal homestead exemption. Duncan, *Through the Trap Door Darkly; Nebraska Exemption Policy and the Bankruptcy Reform Act of 1978*, 60 NEBR. L. REV. 219, 224 n.27 (1981).

<sup>3</sup> 11 U.S.C. § 522(b)(1) (1979). According to § 522(b) of the Act, a debtor may exempt property under either § 522(d) of the Bankruptcy Reform Act or under the applicable state's exemption statute. *Id.* A state may preclude resident debtors from choosing the exemptions under § 522(d). *Id.* If the state prohibits debtors from choosing exemptions under § 522(d), the debtor may claim the applicable state exemptions, plus nonbankruptcy federal exemptions. *Id.* § 522(b)(2)(A). Nonbankruptcy federal exemptions include 46 U.S.C.A. § 601 (Cum. Supp. 1981) (wages of fishermen, seamen, and apprentices exempt from attachment); 5 U.S.C. § 8346 (1980) (civil service retirement benefits exempt from legal process); 38 U.S.C. § 3101 (1979) (veterans' benefits exempt from legal process); 33 U.S.C. § 916 (1976) (Longshoremen's and Harbor Workers' Compensation Act death and disability benefits exempt from legal process); 45 U.S.C. § 352(3) (1976) (Railroad Retirement Act annuities, pensions, and benefits exempt from legal process).

exemption statute,<sup>4</sup> which required Virginia residents to exempt property under the Virginia statute and precluded debtors from exempting property under the federal homestead provisions.<sup>5</sup> The Virginia homestead exemption permits any householder or head of a family to exempt \$5000<sup>6</sup> of real or personal property from the claims of creditors.<sup>7</sup> Under the Virginia statute, any married or unmarried individual who maintains a separate residence, whether or not the individual supports any dependents living with him, qualifies as a householder.<sup>8</sup> The Fourth Circuit

<sup>4</sup> VA. CODE § 34 (1976 & Cum. Supp. 1981). The current Virginia homestead statute allows any householder or head of a family to choose \$5000 worth of his real or personal property to exempt from lien, distress, garnishment, or sale. *Id.* § 34-4 (Cum. Supp. 1981). Although state homestead statutes traditionally discriminate in favor of homeowners, the Virginia statute allows renters to select personal property to protect from the claims of creditors. *Id.*; see Ulrich, *supra* note 2, at 138-39. Federal exemptions also permit renters to retain personal property. 11 U.S.C. § 522(d)(1) (1979).

<sup>5</sup> VA. CODE § 34-3.1 (Cum. Supp. 1981). When the United States Congress designed the Bankruptcy Reform Act of 1978, the drafters expressed concern that many states had not revised their exemption statutes in this century. House Report, *supra* note 2, at 126, [1978] U.S. CODE CONG. & AD. NEWS at 6087. The Virginia legislature, however, has raised the dollar amount of the exemption several times and has expanded the definition of householder to include single, separated, and divorced individuals. Compare VA. CODE § 34-4 (1976) (householder may exempt \$3500 real or personal property) with VA. CODE § 34-4 (Cum. Supp. 1981) (householder may exempt \$5000 real or personal property); compare VA. CODE § 34-1 (1976) (householder must support dependents living with him) with VA. CODE § 34-1 (Cum. Supp. 1981) (householder may claim homestead exemptions whether or not he supports dependents living with him).

<sup>6</sup> VA. CODE § 34-4 (Cum. Supp. 1981). The original Virginia homestead statute allowed debtors to protect \$1200 worth of property from debtors' claims. Act of the General Assembly 1866-67, at 962. In 1975, the Virginia legislature raised the exemption from \$2000 to \$3500. VA. CODE § 34-4 (1976). In 1977 the exemption increased to \$5000. VA. CODE § 34-4 (Cum. Supp. 1979). Some commentators suggest that the legislature should link the dollar amount of the homestead exemption to an index that fluctuates with the purchasing power of the dollar. Ulrich, *supra* note 2, at 141; Comment, 26 CALIF. L. REV. 466, 471 (1938). The dollar amount of property protected would then adjust to meet the current cost of living. 26 CALIF. L. REV. at 471.

<sup>7</sup> VA. CODE § 34-4 (Cum. Supp. 1981); see text accompanying note 4 *supra*.

<sup>8</sup> VA. CODE § 34-1 (Cum. Supp. 1981). Virginia courts originally interpreted the term householder in the homestead exemption to signify an individual supporting dependents living with him. See, e.g., *Richardson v. Woodward*, 104 F. 873, 879 (4th Cir. 1900) (married woman who manages family business and is regarded as head of family by dependents is householder although husband lives with her); *Epperty v. Holley*, 3 Va. L. Reg. (n.s.) 27 (1917) (unmarried infant who lives with and supports dependent mother is householder); *Oppenheim v. Myers*, 99 Va. 582, 587, 39 S.E. 218, 219 (1901) (married woman who lives alone is not householder); *Calhoun v. Williams*, 73 Va. (32 Gratt.) 18, 23 (1879) (unmarried man with no children or other dependents living with him is not householder). But cf. *Wilkerson v. Merrill*, 87 Va. 513, 519-20, 12 S.E. 1015, 1016-17 (1891). In *Wilkerson*, the Virginia Appeals Court granted a grandfather the exemption despite the death of his grandson, the grandfather's only dependent. *Id.* at 519, 12 S.E. at 1015. The court arguably granted the grandfather the homestead exemption in response to substantial proof that a creditor murdered the grandson to deprive the grandfather of the exemption. *Id.* at 514-15, 12 S.E. at 1015. A 1978 amendment to the Virginia homestead statute eliminated the requirement that a householder support dependents living with him. VA. CODE § 34-1 (Cum. Supp. 1979); see *In re Doan*, No. 80-01365, slip op. at 3 n.1 (E.D. Va. June 22, 1981); *In re Thompson*, 4 B.R. 823, 825 (E.D. Va. 1980).

Court of Appeals recently construed Virginia's homestead statute to grant householder status to both a husband and wife who lived together.<sup>9</sup>

In *Cheeseman v. Nachman*,<sup>10</sup> Oliver and Isabelle Cheeseman lived together in the home they owned as tenants by the entirety.<sup>11</sup> Both Mr. and Mrs. Cheeseman held jobs,<sup>12</sup> and both contributed funds to their household.<sup>13</sup> In June of 1980 the Cheesemans filed a joint petition in voluntary bankruptcy.<sup>14</sup> Although the Cheesemans filed a joint homestead deed,<sup>15</sup> each independently claimed a homestead exemption equal to each spouse's one-half interest in the property they held by the entireties.<sup>16</sup> The trustee in bankruptcy challenged Mrs. Cheeseman's exemp-

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<sup>9</sup> See *Cheeseman v. Nachman* (*In re Cheeseman*), 656 F.2d 60, 64 (4th Cir. 1981). Before *Cheeseman*, Virginia courts interpreted the Virginia homestead statute to grant one homestead exemption to a husband and wife who lived together. See *In re Thompson*, 4 B.R. 823, 825 (E.D. Va. 1980). Before 1978 the exemption statute defined householder as equivalent to "head of a family," and required the householder to financially support dependents who live with him. VA. CODE § 34-1 (1976). The terms "householder" and "head of a family" generally connoted a husband who earned wages to support dependents. *Dickens v. Snellings* (*In re Snellings*), 10 B.R. 949, 952-53 (W.D. Va. 1981). In *Snellings*, however, the bankruptcy court granted a homestead exemption to both a husband and wife who lived together in their jointly owned home. *Id.* at 954. The *Snellings* court found that in modern society the terms "householder" and "head of a family" no longer refer only to a husband. *Id.* at 953. Although the Virginia legislature eliminated the requirement that a householder occupy a separate residence, the crucial factor for householder status arguably is an individual's status as a wage earner. See Brief for Appellant at 9-12, *Cheeseman v. Nachman*, 656 F.2d 60 (4th Cir. 1981) [hereinafter cited as Brief for Appellant]; text accompanying note 77 *infra*.

<sup>10</sup> 656 F.2d 60 (4th Cir. 1981).

<sup>11</sup> *Id.* at 61; see text accompanying note 16 *infra*.

<sup>12</sup> 656 F.2d at 61. Before the Cheesemans filed for bankruptcy, Mr. Cheeseman was temporarily unemployed due to a strike. Brief for Appellant, *supra* note 9, at 5. During the strike only Mrs. Cheeseman worked outside the home to support the family. *Id.*; see text accompanying note 44 *infra*.

<sup>13</sup> 656 F.2d at 61.

<sup>14</sup> *Id.* A debtor commences voluntary bankruptcy proceedings by filing a petition in bankruptcy with the bankruptcy court. 11 U.S.C. § 301 (1979). When a debtor and the debtor's spouse file a single petition with the bankruptcy court and declare themselves jointly bankrupt, the court considers the petitioners joint debtors and consolidates the debtors' estates. 11 U.S.C. § 302 (1979). See also 2 COLLIER ON BANKRUPTCY, ¶ 302.01 & .02 (15th ed. 1981).

<sup>15</sup> Brief for Appellant, *supra* note 9, at 5.

<sup>16</sup> 656 F.2d at 61 n.2. The Cheesemans had \$4700 of equity in their family home when they filed for bankruptcy. See Appendix at 18, *Cheeseman v. Nachman*, 656 F.2d 60 (4th Cir. 1981) [hereinafter cited as Appendix]; text accompanying notes 67-69 *infra*. The Cheesemans also jointly owned a savings account and several state and federal income tax refunds. Appendix, *supra*, at 18. Mr. and Mrs. Cheeseman each claimed \$2813 as one-half interest in all of the jointly held property. *Id.*

The Cheesemans owned their residence, savings account, and income tax refunds as tenants by the entirety. *Id.* The Bankruptcy Reform Act exempts property held by the entireties if the state exempts entireties property from creditors' claims. 11 U.S.C. § 522(b)(2)(B) (1979). Virginia law, however, permits creditors to claim entireties property to satisfy claims against a husband and wife who are jointly liable for their debts. *Vasilion v.*

tion<sup>17</sup> and argued that since together the Cheesemans occupied only one household,<sup>18</sup> Mrs. Cheeseman did not qualify as a householder under the statute.<sup>19</sup> The bankruptcy judge held that Mrs. Cheeseman failed to qualify as a householder or head of a family under Virginia law and denied her the homestead exemption.<sup>20</sup>

On appeal to the Fourth Circuit the Cheesemans contested the refusal of the bankruptcy judge to grant householder status to Mrs. Cheeseman.<sup>21</sup> The Cheesemans advanced two arguments to refute the bankruptcy court's decision to limit them to one homestead exemption.<sup>22</sup> First, the Cheesemans emphasized that the Virginia homestead statute grants exemptions to a householder rather than to a household.<sup>23</sup> The Cheesemans reasoned that the Virginia legislature sought to expand the definition of householder to include all individuals who earn wages.<sup>24</sup>

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Vasilion, 192 Va. 735, 740, 66 S.E.2d 599, 602 (1951). The Cheesemans could not have exempted their entireties property since they were jointly liable on many of their debts. Appendix, *supra*, at 8-10.

<sup>17</sup> 656 F.2d at 62. The trustee in bankruptcy challenged only Mrs. Cheeseman's qualifications as a householder or head of a family. *Id.* The Cheesemans argued that an interpretation of the term householder which precluded the possibility of a household containing two or more householders violated the equal protection clause of the fourteenth amendment by discriminating against wives. See U.S. CONST. amend. XIV; Brief for Appellant, *supra* note 9, at 17-18. The Cheesemans apparently assumed that if the Fourth Circuit decided to grant a married couple a single homestead exemption, the court would grant the homestead exemption to the spouse who earned more wages. After asking the court to take judicial notice that in most families the husband earns more wages, the Cheesemans argued that granting the homestead exemption to the spouse who earned more wages discriminated against wives. *Id.* at 18.

<sup>18</sup> 656 F.2d at 61.

<sup>19</sup> See Brief for Appellee at 5, *Cheeseman v. Nachman*, 656 F.2d 60 (4th Cir. 1981) [hereinafter cited as Brief for Appellee]. In *Cheeseman*, the trustee in bankruptcy relied on *In re Thompson*, 4 B.R. 823 (E.D. Va. 1980), to support his assertion that the Virginia homestead statute granted a single exemption to a husband and wife who occupied the same residence. Brief for Appellee, *supra*, at 5. The *Thompson* court held that the statute's separate residence language precluded a married couple living together from claiming two homestead exemptions. *In re Thompson*, 4 B.R. 823, 825 (E.D. Va. 1980). In *Cheeseman*, the Fourth Circuit declined to follow the decision in *Thompson*, since the *Thompson* court relied exclusively on state law. 656 F.2d at 62 n.4; see text accompanying note 25 *infra*. The Fourth Circuit in *Cheeseman* instead relied on the Bankruptcy Reform Act as well as state law in granting the Cheesemans two homestead exemptions. 656 F.2d at 63.

<sup>20</sup> 656 F.2d at 62.

<sup>21</sup> *Id.*

<sup>22</sup> Brief for Appellant, *supra* note 9, at 7-17.

<sup>23</sup> *Id.* at 7-9; Ulrich, *supra* note 2, at 138-39.

<sup>24</sup> Brief for Appellant, *supra* note 9, at 8. The Cheesemans contended that the Virginia legislature used the terms "householder," "laboring person," and "individual" interchangeably in the Virginia homestead exemption statute. *Id.* Section 34-29 of the Virginia exemption statute limits the amount of a debtor's wages a creditor may garnish in a Virginia court to 25% of an individual's weekly wages or the amount by which his earnings exceed 30 times the minimum wage, whichever is less. VA. CODE § 34-29 (1976). Section 34-32 permits a creditor to institute proceedings in a foreign court against a laboring person or a householder only for the amount specified in § 34-29. *Id.* § 34-32 (1976). Although the Virginia

Second, the Cheesemans contended that the Federal Bankruptcy Reform Act required the court to grant Mrs. Cheeseman the homestead exemption.<sup>25</sup> The Cheesemans argued that while states may preclude debtors from claiming exemptions under section 522(d) of the Act,<sup>26</sup> states must comply with the other provisions of section 522.<sup>27</sup> Section 522(b)(2)(B) of the Act exempts property held by the entireties from creditors' claims to the extent that state law protects entireties property.<sup>28</sup> Under Virginia law, creditors may not reach property held by the entireties to satisfy claims against a husband or wife individually.<sup>29</sup> In addition, section 522(m) of the Act makes the exemption provisions applicable to each individual debtor in a joint bankruptcy.<sup>30</sup> The Cheesemans concluded,

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garnishment statutes protect an individual's wages in a Virginia court and a householder or laboring person's wages in a foreign court, the Cheesemans reasoned that the legislature intended to protect all individuals who earn wages. See Brief for Appellant, *supra* note 9, at 8. Since the homestead statute grants an exemption to a householder, the Cheesemans sought to extend the interpretation of householder derived from the garnishment statute to the homestead statute. See Brief for Appellee, *supra* note 19, at 4. The trustee in bankruptcy opposed extending the definition of householder to include all wage earners and stressed that the homestead and garnishment statutes remained separate exemptions. *Id.* Despite three amendments to the homestead statute during the past decade, the legislature has not expanded the householder definition to include individuals. *Id.*

<sup>25</sup> See Brief for Appellant, *supra* note 9, at 14-16. The Cheesemans argued that the United States Constitution empowers Congress to establish uniform laws on bankruptcy throughout the United States. *Id.*, U.S. CONST. art. I, § 8, cl. 4. Since Congress enacted a specific provision for exemptions in § 522 of the Bankruptcy Reform Act, the Cheesemans urged the court to interpret Virginia's homestead exemption law as consistent with the provisions of the Bankruptcy Reform Act. Brief for Appellant, *supra* note 9, at 14-15; see 656 F.2d at 63. See also *International Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929) (states may not pass or enforce laws that interfere with Congressional bankruptcy regulations).

<sup>26</sup> 11 U.S.C. § 522(b)(1) (1979).

<sup>27</sup> Brief for Appellant, *supra* note 9, at 14, 16; *Dickens v. Snellings (In re Snellings)*, 10 B.R. 949, 954 (W.D. Va. 1981). In *Snellings*, the bankruptcy court decided that although Congress permitted states to replace the exemptions specified in § 522(d) of the Act with state exemptions, states still must give effect to § 522(a)-(c) and (e)-(m). *Id.* The *Snellings* court interpreted § 522(f) of the Bankruptcy Reform Act to permit debtors to avoid a lien to the extent that the lien impaired their homestead exemption. *Id.* at 955. Correspondingly, under § 522(b)(2)(B) of the Bankruptcy Reform Act, the Cheesemans could exempt their property held by the entireties if Virginia law protected property held by the entireties from creditors' claims. See text accompanying note 29 *infra* (entireties property exempt from claims against one spouse alone). But see text accompanying note 16 *supra* (entireties property not exempt if spouses are jointly liable for debts); text accompanying notes 36 & 37 *infra* (state law did not protect Cheesemans' jointly held property).

<sup>28</sup> 11 U.S.C. § 522(b)(2) (1979).

<sup>29</sup> Brief for Appellant, *supra* note 9, at 16. Virginia law immunizes property held by the entireties from claims of creditors against either the husband or wife alone. *Vasilion v. Vasilion*, 192 Va. 735, 740, 66 S.E.2d 599, 602 (1951). Since § 522(m) of the Act grants exemptions to each individual debtor in a joint case, the Cheesemans alleged that the Act exempted their jointly held property. Brief for Appellant, *supra* note 9, at 16-17. See also *In re Thacker*, 5 B.R. 592, 596 (W.D. Va. 1980) (debtor need not be householder to claim entireties exemption).

<sup>30</sup> 11 U.S.C. § 522(m) (1976).

therefore, that their jointly held property was exempt from creditors' claims under sections 522(b)(2)(B) and 522(m) of the Act, regardless of the Virginia exemption statute.<sup>31</sup>

The trustee in bankruptcy stressed that the Cheesemans' bankruptcy petition designated exemptions only under the laws of Virginia.<sup>32</sup> The trustee urged the Fourth Circuit to examine only Virginia law to determine whether the Cheesemans were entitled to two homestead exemptions.<sup>33</sup> When the Virginia legislature amended the homestead exemption statute in 1979, the legislature declined to grant the exemption to any individual, but required instead that a householder maintain a separate residence to receive a separate exemption.<sup>34</sup> The trustee contended that the legislature's amendment eliminated the possibility of a household containing more than one householder and thus limited each household and all of its occupants to a single \$5000 exemption.<sup>35</sup> The trustee also refuted the Cheesemans' argument that the Bankruptcy Reform Act shields property held by the entireties from creditors' claims.<sup>36</sup> When a husband and wife are jointly liable on their debts, Virginia law permits a creditor to reach any jointly held property to satisfy claims against both spouses.<sup>37</sup>

The trustee failed to persuade the Fourth Circuit to deny Mrs. Cheeseman householder status and thus limit the Cheesemans to a single homestead exemption.<sup>38</sup> The *Cheeseman* court noted ambiguity in the language of the Virginia exemption statute<sup>39</sup> and therefore adopted

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<sup>31</sup> See Brief for Appellant, *supra* note 9, at 17; text accompanying notes 27-30 *supra*.

<sup>32</sup> See Brief for Appellee, *supra* note 19, at 8. On their bankruptcy petition the Cheesemans exempted property pursuant to the laws of Virginia. See Appendix, *supra* note 16, at 15. The Cheesemans each claimed exemptions under Virginia Code § 34-29. See VA. CODE § 34-29 (Cum. Supp. 1981) (maximum portion of wages subject to garnishment); *Id.* § 34-26 (poor debtor's exemptions); *Id.* § 34-4 (homestead exemption of householder).

<sup>33</sup> Brief for Appellee, *supra* note 19, at 7.

<sup>34</sup> VA. CODE § 34-1 (Cum. Supp. 1979).

<sup>35</sup> Brief for Appellee, *supra* note 19, at 5-6.

<sup>36</sup> *Id.* at 9-10. Virginia law restrains creditors from reaching jointly held property to satisfy claims against a husband or wife individually. *Vasilion v. Vasilion*, 192 Va. 735, 740, 66 S.E.2d 599, 602 (1951). A creditor may, however, reach jointly held property under Virginia law to satisfy claims against both spouses. *Id.*; see *Ragsdale v. Genesco*, 7 B.C.D. 574 (E.D. Va. 1981) (trustee may reach entireties property of joint debtors). Since the Cheesemans were jointly liable on their debts, state law did not protect their jointly held property. See Brief for Appellee, *supra* note 19, at 9-10.

<sup>37</sup> *Vasilion v. Vasilion*, 192 Va. 735, 740, 66 S.E.2d 599, 602 (1951); see text accompanying note 36 *supra*.

<sup>38</sup> 656 F.2d at 62.

<sup>39</sup> *Id.* at 63. The Fourth Circuit in *Cheeseman* discussed two possible interpretations of the Virginia homestead exemption statute. *Id.* One interpretation of the statute grants householder status to one person in each residence since the others in the household do not maintain other separate residences. *Id.* Another interpretation of the statute permits any individual who contributes to the maintenance of the household to claim the homestead exemption. *Id.* The *Cheeseman* court noted that under the second interpretation the court would regard both a husband and wife who lived together, but apart from their parents, as maintaining separate residences. *Id.*

the Virginia policy of construing exemption statutes liberally in favor of debtors.<sup>40</sup> Since the purpose of exemption laws is to preserve the family home,<sup>41</sup> the court favored the interpretation of the statute most likely to permit the Cheesemans to retain their home.<sup>42</sup> The Fourth Circuit also noted that a construction of the statute which demanded that householders maintain separate residences would encourage couples with financial difficulties to separate to claim exemptions.<sup>43</sup> The *Cheeseman* court decided that granting a homestead exemption for each spouse who contributed to the maintenance of the home<sup>44</sup> would encourage couples to stay together during financial trouble and allow them to retain their equity in the family home after bankruptcy.<sup>45</sup>

The language and policies of the Bankruptcy Reform Act also influenced the Fourth Circuit to grant the Cheesemans two homestead exemptions.<sup>46</sup> The *Cheeseman* court decided that although section 522(b)(1) of the Act permits a state to preclude residents from invoking the federal exemptions,<sup>47</sup> section 522(m) specifies that the provisions of the Act apply to each debtor in a joint bankruptcy.<sup>48</sup> Thus, according to the

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<sup>40</sup> *Id.* Although the Virginia legislature originally enacted the homestead exemption statute to protect the debtor's immediate family from destitution, Virginia courts generally interpret the statute liberally to aid both individual debtors and their dependents. Compare *Calhoun v. Williams*, 73 Va. (32 Gratt.) 18, 21 (1879) (homestead exemption exists solely for family's benefit) with *In re Wilkes*, 2 B.C.D. 957, 957 (W.D. Va. 1976) (grandfather who felt morally obligated to support grandchildren is householder although he lived apart from them) and *Wilkinson v. Merrill*, 87 Va. 513, 519-20, 12 S.E. 1015, 1016-17 (1891) (householder may claim exemption despite death of all dependents).

<sup>41</sup> 656 F.2d at 63. Since homestead exemption laws are designed to permit families to protect their homes from creditors' claims, most states draft homestead exemption laws to grant the exemption to the homestead. See, e.g., KAN. STAT. ANN. § 60-2301 (Cum. Supp. 1980) (homestead of 160 acres of farmland or one acre in city exempted from forced sale under process of law); ARIZ. REV. STAT. ANN. § 33-1101 (Cum. Supp. 1981) (homestead worth up to \$20,000 exempted from forced sale).

<sup>42</sup> 656 F.2d at 63. But see text accompanying notes 67-69 *infra* (single homestead exemption would permit Cheesemans to keep their equity in their home).

<sup>43</sup> 656 F.2d at 63; see *In re Thompson*, 5 B.C.D. 1302, 1303 (E.D. Va. 1980), *rev'd*, 4 B.R. 823 (E.D. Va. 1980). In *Thompson* the bankruptcy judge decided that couples who sought double exemptions to protect their homes might stay in a rented room or at a friend's home for a day to fulfill the separate residence requirement. *Id.* The question remains whether staying with a friend for a day qualifies as "maintaining" separate residence. See text accompanying notes 67-69 *infra*.

<sup>44</sup> 656 F.2d at 63. The Fourth Circuit in *Cheeseman* emphasized that each spouse contributed to the maintenance of the home. *Id.* Mrs. Cheeseman's status as a wage earner is the only factor that distinguishes *Cheeseman* from *In re Thompson*, 4 B.R. 823 (E.D. Va. 1980). In *Thompson*, the trustee objected to Mrs. Thompson's claimed exemption because she was not gainfully employed. *In re Thompson*, 5 B.C.D. 1302, 1302 (E.D. Va. 1980), *rev'd*, 4 B.R. 823 (E.D. Va. 1980). The district court held that Mrs. Thompson failed to qualify as a householder and denied her the exemption. 4 B.R. at 826.

<sup>45</sup> 656 F.2d at 63; see text accompanying note 43 *supra*.

<sup>46</sup> 656 F.2d at 63; see text accompanying notes 2 & 30 *supra*.

<sup>47</sup> 11 U.S.C. § 522(b)(1) (1979); see text accompanying note 2 *supra*.

<sup>48</sup> 11 U.S.C. § 522(m) (1979); see text accompanying note 30 *supra*.

*Cheeseman* decision, while state law determines the amount of property a debtor may exempt, section 522 of the Act controls who may claim an exemption.<sup>49</sup> The Fourth Circuit held that the Act restricts state legislatures from denying exemptions to husband or wife in a joint bankruptcy.<sup>50</sup>

Other decisions interpreting the Virginia homestead exemption statute focus on the separate residence language in section 34-1 of the Virginia statute as indicative of the Virginia legislature's intent to limit a married couple to a single \$5000 exemption.<sup>51</sup> In *In re Thompson*<sup>52</sup> the United States District Court for the Eastern District of Virginia noted that since Virginia law precludes resident debtors from exempting property under the Bankruptcy Reform Act, the court need examine the debtors' exemptions only under the Virginia exemption statute.<sup>53</sup> The *Thompson* court denied dual exemptions to a married couple who occupied only one home.<sup>54</sup> The *Thompson* court decided that the Virginia legislature adopted the separate residence language to extend the homestead exemption to single, separated, and divorced persons,<sup>55</sup> but not to grant double exemptions where two people lived in a single residence.<sup>56</sup> Since only Mr. Thompson worked outside the home, the court granted him householder status, but denied Mrs. Thompson an exemption.<sup>57</sup>

In *In re Doan*,<sup>58</sup> the bankruptcy court denied the homestead exemption to each of two unmarried debtors residing together in a condominium they owned as joint tenants.<sup>59</sup> The *Doan* court noted that if the couple were married to each other and living in one residence, the homestead statute would entitle them to one exemption.<sup>60</sup> The statute failed, however, to articulate a standard by which the *Doan* court could

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<sup>49</sup> 656 F.2d at 64.

<sup>50</sup> *Id.*; see text accompanying note 30 *supra*.

<sup>51</sup> See, e.g., *In re Doan*, No. 80-01365, slip op. at 4 (E.D. Va. June 22, 1981) (two unmarried debtors residing together fail to qualify as householders); *In re Thompson*, 4 B.R. 823, 825-26 (E.D. Va. 1980) (husband and wife living together in one residence may claim one exemption).

<sup>52</sup> 4 B.R. 823 (E.D. Va. 1980).

<sup>53</sup> *Id.* at 824 n.2; see text accompanying note 19 *supra*.

<sup>54</sup> 4 B.R. at 825-26; see text accompanying notes 19 & 44 *supra*.

<sup>55</sup> 4 B.R. at 825.

<sup>56</sup> *Id.*; see text accompanying note 19 *supra*; text accompanying notes 63 & 65 *infra*.

<sup>57</sup> 4 B.R. at 826; see text accompanying note 44 *supra*.

<sup>58</sup> No. 80-01365, slip op. (E.D. Va. June 22, 1981).

<sup>59</sup> *Id.*, slip op. at 4. In *Doan* the debtors shared a kitchen, dining room, living room, and bath. *Id.*, slip op. at 1. The debtors also maintained a joint checking account and pooled their resources for household expenses. *Id.*, slip op. at 2. Although the debtors asserted that they occupied separate bedrooms, seldom dined together and followed different work schedules, the bankruptcy court denied either debtor the homestead exemption. *Id.*, slip op. at 2 & 4. The *Doan* court found that the debtors failed to meet the separate residence requirement. *Id.* at 4.

<sup>60</sup> No. 80-01365, slip op. at 4.

grant one debtor the exemption but deny the other debtor householder status.<sup>61</sup> Accordingly, the court refused to grant a homestead exemption to either debtor since neither lived in a separate residence.<sup>62</sup>

The *Cheeseman* decision in essence disregards the Virginia legislative proviso that a householder maintain a separate residence.<sup>63</sup> Senator Frederick T. Gray has stated that the separate residence language of the Virginia homestead statute was intended to grant two homestead exemptions only if a divorced or separated husband and wife lived apart and endured separate household expenses.<sup>64</sup> Although the Virginia homestead exemption statute grants an exemption to the householder rather than to the household,<sup>65</sup> the legislature clearly intended to limit a married couple who live together to a single \$5000 exemption.<sup>66</sup> Even if the Fourth Circuit limited the *Cheesemans* to one exemption, the single exemption would have allowed the *Cheesemans* to retain the equity in their family home.<sup>67</sup> The Virginia homestead statute exempts \$5000 of a householder's real or personal property,<sup>68</sup> and the *Cheesemans* had only \$4700 equity in their home.<sup>69</sup>

The Fourth Circuit interpreted section 522(m) of the Act to require the granting of the homestead exemption to both husband and wife who file joint bankruptcy.<sup>70</sup> The *Cheeseman* court emphasized, however, that both Mr. and Mrs. *Cheeseman* earned wages and contributed financially to the maintenance of the household.<sup>71</sup> According to section 522(m), an individual need not earn wages to qualify for the homestead exemption.<sup>72</sup> The exemption provisions apply separately to both husband and wife whenever they file a joint bankruptcy petition, regardless of whether either spouse earns wages.<sup>73</sup>

The Virginia legislature successfully avoided discrimination in favor of homeowners in the state exemption statute by granting the exemption to householders rather than to households, and by permitting the debtor to choose the property he wishes to exempt.<sup>74</sup> However, the Virginia legislature should specify in the statute that when a husband and wife own property jointly and reside in the same household, one

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<sup>61</sup> *Id.*, see text accompanying note 17 *supra*.

<sup>62</sup> No. 80-01365, slip op. at 4.

<sup>63</sup> 656 F.2d at 63.

<sup>64</sup> Interview with Frederick Gray, Virginia State Senator (September 17, 1981).

<sup>65</sup> VA. CODE § 34-4 (Cum. Supp. 1981).

<sup>66</sup> See text accompanying notes 63 & 64 *supra*.

<sup>67</sup> See text accompanying notes 68 & 69 *infra*.

<sup>68</sup> VA. CODE § 34-4 (Cum. Supp. 1981).

<sup>69</sup> 656 F.2d at 61 n.2.

<sup>70</sup> *Id.* at 63.

<sup>71</sup> *Id.*; see text accompanying note 44 *supra*.

<sup>72</sup> See text accompanying note 73 *infra*.

<sup>73</sup> 11 U.S.C. § 522(m) (1979).

<sup>74</sup> VA. CODE § 34-4 (Cum. Supp. 1981) (homestead exemption available to householder who may exempt real or personal property). See also text accompanying note 4 *supra*.