

FEDERAL EXEMPTIONS

If you are married and filing jointly, you may double all of the federal bankruptcy exemptions. For example, you may claim a homestead exemption of \$45,950 (which is double the listed homestead exemption amount of \$22,975).

If a dollar amount does not accompany a listed piece of property, the entire value of the property is exempt.

All code references are to 11 U.S.C. (Title 11 of the United States Code).

Homestead

522(d)(1), (5) - Real property, including mobile homes and co-ops, or burial plots up to \$22,975. Unused portion of homestead, up to \$11,500 may be used for other property.

Personal Property

522(d)(2) - Motor vehicle up to \$3,675.

522(d)(3) - Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$575 per item, and up to \$12,250 total.

522(d)(4) - Jewelry up to \$1,550.

522(d)(9) - Health aids.

522(d)(11)(B) - Wrongful death recovery for person you depended upon.

522(d)(11)(D) - Personal injury recovery up to \$22,975 except for pain and suffering or for pecuniary loss.

522(d)(11)(E) - Lost earnings payments.

Pensions

522(b)(3)(C) - Tax exempt retirement accounts (including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans).

522(b)(3)(C)(n) - IRAs and Roth IRAs to \$1,245,475.

Public Benefits

522(d)(10)(A) - Public assistance, Social Security, Veteran's benefits, Unemployment Compensation.

522(d)(11)(A) - Crime victim's compensation.

Tools of Trade

522(d)(6) - Implements, books and tools of trade, up to \$2,300.

Alimony and Child Support

522(d)(10)(D) - Alimony and child support needed for support.

Insurance

522(d)(7) - Unmatured life insurance policy except credit insurance.

522(d)(8) - Life insurance policy with loan value up to \$12,250.

522(d)(10)(C) - Disability, unemployment or illness benefits.

522(d)(11)(C) - Life insurance payments for a person you depended on, which you need for support.

Wildcard

522(d)(5) - \$1,225 of any property, and unused portion of homestead up to \$11,500.

TEXAS EXEMPTIONS

Prop. 41.001 & Prop. 41.002 - Unlimited amount, but cannot exceed 10 acres in a city, town, or village, or 100 acres (200 acres for family) elsewhere. Sale proceeds are exempt for 6 months after sale.

Personal Property

Prop. 41.001 - Burial plots and health aids; books containing sacred writings of a religion (exempt from the \$60,000 family/\$30,000 single total personal property allowed).

Prop. 42.002 - Home furnishings, including family heirlooms; food; clothing; jewelry up to 25% of the total exemption limit stated below; 2 firearms; athletic & sporting equipment (includes bicycles); 1 motor vehicle for each adult with drivers license or who relies on another to operate a vehicle; 2 horses, mules, or donkeys, with saddle, blanket & bridle for each; 12 head cattle; 60 head other livestock; 120 fowl; food on hand for these animals; and household pets. Total of all items under Property 42.002 (including tools of trade and cash value of life insurance) cannot exceed \$30,000 total (\$60,000 for head of family).

Prop. 42.0021 - Health savings accounts.

Wages

Prop. 42.001 - Earned but unpaid wages; and unpaid commissions for personal services up to 25% of the total limit in Prop. 42.002.

Pensions

11 U.S.C. § 522 - Tax exempt retirement accounts (including 401(k)s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans).

11 U.S.C. § 522(b)(3)(C)(n) - IRAs and Roth IRAs to \$1,245,475.

Govt. 821.005 - Teachers.

Govt. 821.004 - Judges.

Govt. 821.006 - County and district employees.
Govt. 615.005 - Law enforcement officers, firefighters, and emergency medical personnel's survivors.
6243d-1 - Police officers.
6243e - Firefighters.
6243h & Govt. 811.005 - State employees, elected officials, and municipal employees.
Prop. 42.0021- ERISA-qualified church or government benefits, including IRAs and Keoghs; retirement benefits to extent tax-deferred.

Public Benefits

Labor 207.075 - Unemployment compensation.
Labor 408.201 - Workers' compensation.
Crim. Proc. 56.49 - Crime victims' compensation.
Hum-Res. 31.040 - Public assistance.
Hum-Res. 32.036 - Medical assistance.

Tools of Trade

Prop. 42.002 - Tools, books, and equipment, including motor vehicles and boats used in trade or profession; and farming or ranching vehicles and implements. Tools of trade exemptions are included in the total limit listed under Personal Property, above.

Insurance

Insur. 1551.011 - Texas employee uniform group insurance.
Insur. 1575.006 - Texas public school employees group insurance.
Insur. 1601.008 - Texas state college or university employee benefits.
Insur. 885.316 - Fraternal benefit society benefits.
Insur. 1108.051 - Life, health, accident or annuity benefits, policy proceeds, cash values and monies due or already paid to beneficiary or insured.

Miscellaneous

Prop. 42.001 - Alimony and child support.
Educ. 54.709 - Higher education savings plan trust account.
Alco. Bev. Code 11.03 - Liquor permits and licenses.
Educ. 54.639 - Prepaid tuition plans

ARKANSAS EXEMPTIONS

Homestead (Choose A or B, Not Both)

A. 16-66-210 - Married person or head of family may claim: Real or personal property used as a residence; unlimited exemption up to 1/4 acre in a city, town, or village; or up to 80 acres elsewhere. If between 1/4 and 1 acre in city, town, or village, or 80 to 160 acres elsewhere, additional exemption up to \$2,500. No homestead may exceed 1 acre in city, town, or village, or 160 acres elsewhere. Spouses may not double.

B. 16-66-218 - Real or personal property used as a residence, up to \$800 if single or \$1,250 if married.

Wearing Apparel

You can keep all of your clothing under Arkansas law. Ark. Const. art. IX, §§ 1 and 2).

Other Personal Property

While Arkansas does have a bankruptcy exemption statute on the books, which delineates various exemption amounts for certain types of personal property (see Ark. Code Ann. § 16-66-218), in 1990 the Eight Circuit Court of Appeals declared this statute unconstitutional as it relates to personal property. In re Holt, 894 F.2d 1005 (8th Cir. 1990). The court reasoned that because Arkansas has a constitutional provision which allows debtors to exempt up to \$200 of all of their personal property (\$500 if married) (see Ark. Const. art. IX, §§ 1 and 2), this provision acted as a cap. The bankruptcy exemption statute (which allows for more generous exemption amounts) conflicts with the Constitution and is therefore unconstitutional.

These caps apply to all of your personal property. So, for example, if you are single and use \$200 to exempt car equity, you'll have nothing left for your piano.

Public Benefits

11-9-110 - Workers' compensation.

11-10-109 - Unemployment compensation.

16-90-716 - Crime victims' compensation.

Other : Add any applicable Federal Nonbankruptcy Exemptions.

FEDERAL NON Bankruptcy Exemptions

If you select your state's bankruptcy exemptions (in many cases, that is your only option), you may also use a set of additional exemptions called the federal nonbankruptcy exemptions. These exemptions are in addition to the exemptions available in your state system. However, you cannot use the federal nonbankruptcy exemptions if you choose to use the Federal Bankruptcy Exemptions.

Retirement Benefits

5 USC § 8346 - Civil Service employees.
22 USC § 4060 - Foreign service employees.
10 USC § 1440 - Military service employees.
45 USC § 231m - Railroad workers.
42 USC § 407 - Social Security benefits.
38 USC § 3101 - Veteran's benefits.
50 USC § 403 - CIA employees.
38 USC § 1562(c) - Military Medal of Honor Roll pensions.

Survivor's Benefits

10 USC § 1450 - Military service.
28 USC § 376 - Judges, U.S. court directors, judicial center directors, and U.S. Supreme Court Chief Justice's administrative assistants.
33 USC. §775 - Lighthouse workers.

Death and Disability Benefits

5 USC § 8130 - Government employees.
33 USC § 916 - Longshoremen, harbor workers.
42 USC § 1717 - War, risk, hazard, death, or injury compensation.

Misc.

10 USC § 1035 - Military deposits to savings accounts (while on permanent duty outside the U.S.).
15 USC § 1673 - 75% of earned but unpaid wages or 30 times the federal minimum hourly wage; the greater of these two. (Judge may approve more.)
25 USC § 410 - Indian lands or homestead sales or lease proceeds.
25 USC §§ 543 & 545 - Klamath Indian tribe benefits for those living in Oregon; agricultural or grazing lands to \$5,000.
38 USC § 1970(g) - Military group life insurance
45 USC § 352(e) - Railroad workers' unemployment
46 USC § 11110 - Seamen's clothing
46 USC § 11111 - Debts of a seaman incurred while on a voyage
46 USC § 11109 - Seamen's wages (except for spousal or child support)
38 USC §1970(g) - Life insurance benefits for serviceman's Group Life Insurance or Veteran's Group Life Insurance

In re Carol H. and Don L. Ling, 24 CBN 562, 2014 WL 2442151 (Bank. S.D. Texas 5/30/14)

MEMORANDUM OPINION

Background

Mr. and Mrs. Ling were granted a discharge in their chapter 7 bankruptcy case on March 7, 2014. (ECF No. 23). Mr. and Mrs. Ling claimed their entire 37.41 acre property as exempt homestead property on their Schedule C. (ECF No. 1 at 14). The Court held a hearing on the McLaughlins' Objection on March 6, 2014. Mrs. Ling testified that the 37.41 acre property consists of three separate, contiguous tracts of land.1 Exhibit 1 from the hearing is a survey of the boundary lines for each tract owned by the Lings and their neighbors' adjoining properties. The Lings' home is located on a 4.69 acre tract of land, which is adjoined by a 15.07 acre tract of land to the southeast. On the other side of a county road, Jack Rabbit Lane, the Lings own a 17.7 acre tract of land.2 Jack Rabbit Lane separates the Lings' property so that the 15.07 acre tract and the 4.69 acre tract are located to the southeast of the road and the 17.7 acre tract is located to the northwest of the road. In 1994, the Lings purchased the 15.07 acre tract and the 4.69 acre tract. The 15.07 acre tract is in Mr. Ling's name, and the 4.69 acre tract is in Mrs. Ling's name. The Lings' house is located on the 4.69 acre tract. It is undisputed that (i) the Lings are entitled to homestead protection on the 4.69 acre tract and (ii) the 15.07 acre tract is contiguous to the 4.69 acre tract. At the hearing, Mrs. Ling stated that the Lings had a small farming operation on these tracts until 2006. She also testified that they actively hunt deer on these tracts. In 2002, the Lings bought the 17.7 acre tract. Mrs. Ling testified that they picked wild grapes and berries on the 17.7 acre tract. She also stated that they unsuccessfully attempted to farm on some meadow areas located on this tract. Mrs. Ling testified that when they purchased the 17.7 acre tract of land, Robertson County held an easement

over Jackrabbit Lane. According to Mrs. Ling, in 2004 the Lings agreed to expand Robertson County's easement from .192 acres to .5 acres so that the County could build a two-lane bridge on Jackrabbit Lane. The Lings assert that they own the land underneath the road and that Robertson County only possesses an easement. This testimony was not disputed by the McLaughlins.

Standard for Establishing Homestead Exemption

Under Texas law, a claimant may establish homestead rights in his land by showing (i) overt acts of homestead usage and (ii) the intention on the part of the owner to claim the land as a homestead. Once the claimant has made a prima facie case in favor of homestead status, the objecting party has the burden of demonstrating that the homestead rights have been terminated. Fed. R. Bankr. P. 4003. A rural homestead may consist of "not more than 200 acres, which may be in one or more parcels, with the improvements thereon." Tex. Prop. Code Ann. § 41.002(b). When the debtor actually resides on the property, "a court generally need not investigate intent... because that is 'the most satisfactory and convincing evidence of intention.'" *PaineWebber Inc. v. Murray*, 260 B.R. 815, 822-823 (E.D. Tex. 2001). When a party is claiming rural homestead protection on a separate tract of land from where they live, that "uninhabited property must be used in connection with the home tract for the comfort, convenience, or support of the family." *In re Webb*, 263 B.R. 788, 792 (Bankr. W.D. Tex. 2001). However, courts have distinguished separate tracts that are not contiguous from separate tracts that are contiguous. *Painewebber Inc. v. Murray*, 260 B.R. 815, 830 (E.D. Tex. 2001). In *Painewebber*, the court explains the significance of this distinction: "With a contiguous tract, one can logically extend the establishment of a home and the activities pertaining to the home to the outer boundaries of that tract. Only an imaginary line separates the residence tract from the contiguous property. Hence, there is a presumption that such a tract is used for the purposes of a home. With a noncontiguous tract, more than an artificial boundary separates it from the home." *PaineWebber, Inc. v. Murray*, 260 B.R. 815, 830 (E.D. Tex. 2001).

The court in *In re Mitchell* further explains the policy reasons for presuming that contiguous tracts are used for purposes of the home: Although never explicitly stated, there appears to be a presumption that land contiguous to the homestead under Texas law is used for the purposes of a home. The reasoning behind this distinction between contiguous and non-contiguous rural tracts, although not clear and unstated, can easily be seen and justified for policy reasons. First, although homestead laws are to be liberally construed, their purpose is not to protect the claimant's land, but rather his homestead, i.e., his residence. Where the tracts are not adjacent to the residential tract they cannot said to be used "for the purposes of a home" in any immediate sense, so it is additionally required that they further the purposes of the home by being used in a manner consistent with economic needs or for the convenience or comfort of the home. *In re Mitchell*, 132 B.R. 553, 565-66 (Bankr. W.D. Tex. 1991)(internal citations omitted). For determining whether a contiguous tract is eligible for homestead protection, courts have held that supportive acts conducted on one tract are presumptively extended to separate, contiguous tracts. *PaineWebber, Inc. v. Murray*, 260 B.R. 815 (E.D. Tex. 2001). For a noncontiguous tract, a claimant must demonstrate that the tract supports the home. The McLaughlins do not dispute that the Lings are entitled to homestead protection for the 4.69 acre tract where their home is located. The McLaughlins request that the Court sustain their objection to the 15.07 acre tract and the 17.7 acre tract of land. (ECF No. 13 at 4).

Analysis

Before discussing whether the activities on each of the two tracts at issue are sufficient for homestead protection, the Court must first determine whether each tract is contiguous to the 4.69 acre tract where the Lings reside. The McLaughlins do not dispute the Lings' contention that the 15.07 acre tract and the 4.69 acre tract are contiguous. The McLaughlins do argue that 17.7 acre tract is not contiguous to the 4.69 acre tract because they are separated by the county road. For the reasons set forth below, the Court finds that the 17.7 acre tract is also contiguous to the 4.69 acre tract. Accordingly, the Court finds that the homestead character of the 4.69 acre tract presumptively extends to each of these contiguous tracts.

Contiguous Tracts

Contiguous means "touching at a point or along a boundary; adjoining." Black's Law Dictionary (9th ed. 2009). In *In re Schott*, the court stated that for two tracts of land to be contiguous, they must be adjoining, which requires that they touch or have physical contact at some point. *In re Schott*, 449 B.R. 697, 702 (Bankr. W.D. Tex. 2011). If a county road is standing between two tracts of land, that road may constitute an intervening object that prevents the tracts of land from having physical contact with each other, rendering the land not contiguous. *Id.* at 702-03. However, several courts have found parcels of land to be contiguous for purposes of a rural homestead when a road

bisects the land if the county possesses an easement and the property owner holds title to the land underneath the road. *See Int'l & G.N.R. Co. v. Boles*, 161 S.W. 914 (Tex. Civ. App. 1913)(concluding that “because the property owner still held title to the land over which the right of way passed (the county merely possessed an easement), the parcels were, in fact contiguous.”); *See also Youngblood v. Youngblood*, 124 Tex. 184, 76 S.W.2d 759 (Tex.1934)(concluding that land on one side of a road used by the public was contiguous to land on the other side of the road where title to the land over which the road passed was held by the owner of the adjoining lands). The court in *In re Schott* distinguished those cases and held that the property was not contiguous because the debtor did not own the land beneath the road that bisected his property. *In re Schott*, 449 B.R. 697, 703 (Bankr. W.D.Tex. 2011). The Court finds that the 17.7 acre tract is contiguous to the 4.69 acre tract. Mrs. Ling testified that the Lings have always owned the land underneath the road. She explained that when they purchased the 17.7 acre tract of land, Robertson County held an easement across Jackrabbit Lane. In 2004, the Lings merely agreed to expand the width of the easement from .19 acres to .5 acres so that the county could build a bridge. This testimony was not disputed by the McLaughlins. Accordingly, the Court finds that the 17.7 acre tract is contiguous to the 4.69 acre tract.

Eligibility for Rural Homestead Protection

The McLaughlins have not disputed that the Lings are entitled to homestead protection on the 4.69 acre tract where their home is located. Because both of the disputed tracts (the 15 acre tract and the 17.7 acre tract) are contiguous to the 4.69 acre tract, the Court will presume that they are used for purposes of the home. Accordingly, the Lings are entitled to rural homestead protection for the entire 37.41 acre tract. Alternatively, if the two disputed tracts were not contiguous, the Lings have independently established that each tract is eligible for rural homestead protection. For noncontiguous tracts to qualify as part of a rural homestead, one of the tracts must be used as a residence and the other tract(s) must be used for the “comfort, convenience or support of the family.” *See In re Schott*, 449 B.R. 697, 702 (Bankr. W.D. Tex. 2011); *See also In re Perry*, 345 F.3d 303, 318 (5th Cir. 2003)(if part of rural property is noncontiguous to property on which the home is situated, then, to constitute part of the homestead, the separate land must be “used principally for the purposes of a home”); *In re Baker*, 307 B.R. 860, 863 (Bankr.N.D.Tex.2003)(“If the party claiming rural homestead protection resides on a separate tract of land, the uninhabited property must be used in connection with the home tract for the comfort, convenience, or support of the family.”); *In re Webb*, 263 B.R. 788, 792 (Bankr.W.D.Tex.2001) (“Both the express language of § 41.002(b) and the case law make it clear that property separated from the tract where the residence is located, to be included in a rural homestead, must be ‘used for home purposes.’”). Permissible acts of homestead usage that meet the standard of “comfort, convenience, or support of the family” vary. *See In re Schott*, 449 B.R. 697, 702 (Bankr. W.D. Tex. 2011). Most courts have held that activities like cultivating crops, pasturing livestock, or chopping wood are sufficient to show that the land is used to support the family. *Id.* In *Perry*, the Fifth Circuit noted that separate property has been considered as part of the homestead in cases where the owner has indicated use of the land as a pasture, garden, horse lot, or a playground for children in the family, as long as it was used in connection with the residence. *Perry v. Dearing (In re Perry)*, 345 F.3d 303, 318 (5th Cir. Tex. 2003). It is not required that the tract be used to economically support the family. *Painewebber Inc.* 260 B.R. at 828.

Mrs. Ling testified that the Lings have conducted the activities on the 15.07 acre tract including (i) a small farming operation before Mr. Ling got sick in 2006; (ii) hunting deer; (iii) gathering firewood for the house. These activities are for the “comfort, convenience, or support of the family.” Mrs. Ling testified that the Lings have used the 17.7 acre tract to (i) pick wild grapes, berries and pears to turn into jam, (ii) maintain a vegetable garden, (iii) gather firewood, and (iv) farm (unsuccessfully) some meadow areas in the past. These activities are consistent with the requirement that the property be used for the “comfort, convenience, or support of the family.”

“Homesteads are favorites of the law, and are liberally construed by Texas courts.” *In re Perry*, 345 F.3d 303, 316 (5th Cir. 2003). Most Texas courts have held that activities like cultivating crops and chopping wood are sufficient to show that the land is used to support the family. Some courts have even held that using separate property as a pasture, garden, horse lot, or a playground for children is sufficient. The Fifth Circuit in *In re Perry* stated that the Court is “obligated to interpret Texas homestead laws equally broadly in order to effectuate their purpose of protecting the family home...” *In re Perry*, 345 F.3d 303, 316 (5th Cir. 2003). Although the Lings’ current activities on these two tracts are not pervasive, they are minimally sufficient under Texas Homestead law. Accordingly, even if the Court assumes that these two tracts are not contiguous to the 4.69 acre tract, each tract is independently eligible for rural homestead protection.

The McLaughlins' Abandonment Argument

The McLaughlins suggested that the Lings have somehow abandoned their homestead rights on these two tracts because their current use of the land is far more sporadic than in previous years. Once homestead status has been created, it can only be terminated by total abandonment, which can only be satisfied by the owner's death, abandonment or alienation. *In re Schott*, 449 B.R. at 707. Abandonment requires the owner to voluntarily vacate the property with the intent to *never* return. *Id.* In this case, the McLaughlins have not demonstrated that the Lings have abandoned their homestead rights. Although the tracts are no longer used for productive farming, Mrs. Ling testified she currently hunts deer and picks grapes, berries and pears on these tracts. The Lings' sporadic use of these two tracts is insufficient evidence to establish total abandonment. Accordingly, the McLaughlins' Objection is overruled.

Conclusion

The Court will enter an Order consistent with this Memorandum Opinion.
SIGNED **May 30, 2014.**

STERN, EXECUTOR OF THE ESTATE OF MARSHALL v. MARSHALL, EXECUTRIX OF THE ESTATE OF MARSHALL CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10–179. Argued January 18, 2011—Decided June 23, 2011—Article III, §1, of the Constitution mandates that “[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish,” and provides that the judges of those constitutional courts “shall hold their Offices during good Behavior” and “receive for their Services[] a Compensation[] [that] shall not be diminished” during their tenure. The questions presented in this case are whether a bankruptcy court judge who did not enjoy such tenure and salary protections had the authority under 28 U. S. C. §157 and Article III to enter final judgment on a counterclaim filed by Vickie Lynn Marshall (whose estate is the petitioner) against Pierce Marshall (whose estate is the respondent) in Vickie’s bankruptcy proceedings. Vickie married J. Howard Marshall II, Pierce’s father, approximately a year before his death. Shortly before J. Howard died, Vickie filed a suit against Pierce in Texas state court, asserting that J. Howard meant to provide for Vickie through a trust, and Pierce tortiously interfered with that gift. After J. Howard died, Vickie filed for bankruptcy in federal court. Pierce filed a proof of claim in that proceeding, asserting that he should be able to recover damages from Vickie’s bankruptcy estate because Vickie had defamed him by inducing her lawyers to tell the press that he had engaged in fraud in controlling his father’s assets. Vickie responded by filing a counterclaim for tortious interference with the gift she expected from J. Howard. The Bankruptcy Court granted Vickie summary judgment on the defamation claim and eventually awarded her hundreds of millions of dollars in damages on her counterclaim. Pierce objected that the Bankruptcy Court lacked jurisdiction to enter a final judgment on that counterclaim because it was not a “core proceeding” as defined by 28 U. S. C. §157(b)(2)(C). As set forth in §157(a), Congress has divided bankruptcy proceedings into three categories: those that “aris[e] under title 11”; those that “aris[e] in” a Title 11 case; and those that are “related to a case under title 11.” District courts may refer all such proceedings to the bankruptcy judges of their district, and bankruptcy courts may enter final judgments in “all core proceedings arising under title 11, or arising in a case under title 11.” §§157(a), (b)(1). In non-core proceedings, by contrast, a bankruptcy judge may only “submit proposed findings of fact and conclusions of law to the district court.” §157(c)(1). Section 157(b)(2) lists 16 categories of core

proceedings, including “counterclaims by the estate against persons filing claims against the estate.” §157(b)(2)(C).

The Bankruptcy Court concluded that Vickie’s counterclaim was a core proceeding. The District Court reversed, reading this Court’s precedent in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U. S. 50, to “suggest[] that it would be unconstitutional to hold that any and all counterclaims are core.” The court held that Vickie’s counterclaim was not core because it was only somewhat related to Pierce’s claim, and it accordingly treated the Bankruptcy Court’s judgment as proposed, not final. Although the Texas state court had by that time conducted a jury trial on the merits of the par-ties’ dispute and entered a judgment in Pierce’s favor, the District Court went on to decide the matter itself, in Vickie’s favor. The Court of Appeals ultimately reversed. It held that the Bankruptcy Court lacked authority to enter final judgment on Vickie’s counter-claim because the claim was not “so closely related to [Pierce’s] proof of claim that the resolution of the counterclaim is necessary to re-solve the allowance or disallowance of the claim itself.” Because that holding made the Texas probate court’s judgment the earliest final judgment on matters relevant to the case, the Court of Appeals held that the District Court should have given the state judgment preclusive effect.

Held: Although the Bankruptcy Court had the statutory authority to enter judgment on Vickie’s counterclaim, it lacked the constitutional authority to do so. Pp. 6–38.

EXECUTIVE BENEFITS INSURANCE AGENCY v. ARKISON, CHAPTER 7 TRUSTEE OF ESTATE OF BELLINGHAM INSURANCE AGENCY, INC. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12–1200. Argued January 14, 2014—Decided June 9, 2014—Bellingham Insurance Agency, Inc. (BIA), filed a voluntary chapter 7 bankruptcy petition. Respondent Peter Arkison, the bankruptcy trustee, filed a complaint in the Bankruptcy Court against petitioner Executive Benefits Insurance Agency (EBIA) and others alleging the fraudulent conveyance of assets from BIA to EBIA. The Bankruptcy Court granted summary judgment for the trustee. EBIA appealed to the District Court, which affirmed the Bankruptcy Court’s decision after de novo review and entered judgment for the trustee. While EBIA’s appeal to the Ninth Circuit was pending, this Court held that Article III did not permit a Bankruptcy Court to enter final judgment on a counterclaim for tortious interference, even though final adjudication of that claim by the Bankruptcy Court was authorized by statute. *Stern v. Marshall*, 564 U. S. ___, ___. In light of *Stern*, EBIA moved to dismiss its appeal for lack of jurisdiction. The Ninth Circuit rejected EBIA’s motion and affirmed. It acknowledged the trustee’s claims as “*Stern* claims,” i.e., claims designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter. The Court of Appeals nevertheless concluded that EBIA had impliedly consented to jurisdiction. The Court of Appeals also observed that the Bankruptcy Court’s judgment could instead be treated as proposed findings of fact and conclusions of law, subject to de novo review by the District Court.

Held: Under the Bankruptcy Amendments and Federal Judgeship Act of 1984, federal district courts have original jurisdiction in bankruptcy cases and may refer to bankruptcy judges two statutory categories of

proceedings: “core” proceedings and “non-core” proceedings. See generally 28 U. S. C. §157. In core proceedings, a bankruptcy judge “may hear and determine . . . and enter appropriate orders and judgments,” subject to the district court’s traditional appellate review. §157(b)(1). In non-core proceedings—those that are “not . . . core” but are “otherwise related to a case under title 11,” §157(c)(1)—final judgment must be entered by the district court after de novo review of the bankruptcy judge’s proposed findings of fact and conclusions of law, *ibid.*, except that the bankruptcy judge may enter final judgment if the parties consent, §157(c)(2).

In *Stern*, the Court confronted an underlying conflict between the 1984 Act and the requirements of Article III. The Court held that Article III prohibits Congress from vesting a bankruptcy court with the authority to finally adjudicate the “core” claim of tortious interference. The Court did not, however, address how courts should proceed when they encounter a *Stern* claim. Pp. 4–8.

Stern claims may proceed as non-core within the meaning of §157(c). Lower courts have described *Stern* claims as creating a statutory “gap,” since bankruptcy judges are not explicitly authorized to propose findings of fact and conclusions of law in a core proceeding. However, this so-called gap is closed by the Act’s severability provision, which instructs that where a “provision of the Act or [its] application . . . is held invalid, the remainder of th[e] Act . . . is not affected thereby.” 98 Stat. 344. As applicable here, when a court identifies a *Stern* claim, it has “held invalid” the “application” of §157(b), and the “remainder” not affected includes §157(c), which governs non-core proceedings. Accordingly, where a claim otherwise satisfies §157(c)(1), the bankruptcy court should simply treat the *Stern* claim as non-core. This conclusion accords with the Court’s general approach to severability, which is to give effect to the valid portion of a statute so long as it “remains ‘fully operative as a law,’ ” *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 509, and so long as the statutory text and context do not suggest that Congress would have preferred no statute at all, *ibid.* Pp. 8–10.

Section 157(c)(1)’s procedures apply to the fraudulent conveyance claims here. This Court assumes without deciding that these claims are *Stern* claims, which Article III does not permit to be treated as “core” claims under §157(b). But because the claims assert that property of the bankruptcy estate was improperly removed, they are self-evidently “related to a case under title 11.” Accordingly, they fit comfortably within the category of claims governed by §157(c)(1). The Bankruptcy Court would have been permitted to follow that provision’s procedures, i.e., to submit proposed findings of fact and conclusions of law to the District Court for de novo review. Pp. 11–

Here, the District Court’s de novo review of the Bankruptcy Court’s order and entry of its own valid final judgment cured any potential error in the Bankruptcy Court’s entry of judgment. EBIA contends that it was constitutionally entitled to review by an Article III court regardless of whether the parties consented to bankruptcy court adjudication. In the alternative, EBIA asserts that even if such consent were constitutionally permissible, it did not in fact consent. Neither contention need be addressed here, because EBIA received the same review from the District Court that it would have received had the Bankruptcy Court treated the claims as non-core proceedings under §157(c)(1). Pp. 12–13.

702 F. 3d 553, affirmed. THOMAS, J., delivered the opinion for a unanimous Court.