

SUPREME COURT OF FLORIDA

Deborah Chames, et al. v. Henry DeMayo

Chames v. DeMayo, 972 So. 2d 850 (Fla. 2007) · No. SC06-1671, SC06-2187

SUMMARY

The Florida Supreme Court held that a contractual waiver of the homestead exemption from forced sale in an unsecured retainer agreement is unenforceable, reaffirming longstanding precedent under article X, section 4 of the Florida Constitution. The court declined to recede from **Carter’s Adm’rs v. Carter** and **Sherbill v. Miller Mfg. Co.**, ruling that the 1984 constitutional amendment did not alter the exemption’s fundamental purpose and that a valid waiver must be accomplished through a mortgage or other formal conveyance to ensure it is knowing, intelligent, and voluntary. The decision emphasizes that the homestead exemption protects not only the debtor but also the family and the state, and that a general waiver buried in an unsecured contract is contrary to public policy.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Cantero; Lewis; Wells; Anstead; Pariente; Quince; Bell
JURISDICTION	Florida
DOCKET	SC06-1671, SC06-2187
DISPOSITION	approved
PROCEDURAL POSTURE	The Third District Court of Appeal reversed the trial court's imposition of a charging lien on DeMayo's homestead, finding the waiver of homestead exemption invalid, and certified a question of great public importance. The Florida Supreme Court accepted jurisdiction to review the certified question.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	precedential
PARTIES	Deborah Chames, Heller & Chames, P.A. v. Henry DeMayo

TOPICS

- constitutional law
- homestead
- creditor claims
- attorney fees
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Florida Supreme Court should recede from its longstanding precedent holding that the homestead exemption from forced sale cannot be waived in an unsecured agreement.

HOLDINGS

1. The Florida Constitution's homestead exemption from forced sale cannot be waived in an unsecured agreement; a waiver must be accomplished through a mortgage, sale, or gift as prescribed by article X, section 4(c) of the Florida Constitution.

KEY QUOTATIONS

“It is specifically agreed that Heller and Chames, P.A. shall have and is hereby granted all general, possessory and retaining liens and all equitable, special and attorney’s charging liens upon the client’s interests in any and all real and personal property within the jurisdiction of the court for any balance due, owing and unpaid as well as a lien in any recovery whether by settlement or trial; and such lien or liens shall be superior to any other lien subsequent to the date hereof and that the client hereby knowingly, voluntarily and intelligently waives his rights to assert his homestead exemption in the event a charging lien is obtained to secure the balance of attorney’s fees and costs.” (at 2)

“Whether, in light of subsequent precedent in Florida and other jurisdictions, and the textual changes made by the people of the State of Florida in Article X, Section 4 of the Florida Constitution in the general election of November 1984, the holding in Carter’s Adm’rs v. Carter, 20 Fla. 558 (Fla. 1884), followed in Sherbill v. Miller Manufacturing Co., 89 So. 2d 28, 31 (Fla. 1956), that a waiver of the benefit and protection of the exemption found in Article X, Section 4(A) of the Florida Constitution is unenforceable against the claim of a general creditor, should be overruled?” (at 3)

FACTUAL BACKGROUND

Henry DeMayo retained Deborah Chames and her law firm, Heller & Chames, P.A., to modify child support and abate alimony. He signed a retainer agreement that contained a provision waiving his homestead exemption to secure attorney's fees. Chames later withdrew and obtained a charging lien and final judgment against DeMayo for \$33,206.76. The trial court applied the lien to DeMayo's home. DeMayo appealed, arguing the waiver was invalid.

PROCEDURAL HISTORY

The trial court imposed a charging lien on DeMayo's homestead. DeMayo appealed to the Third District Court of Appeal, which reversed the imposition of the lien on the homestead, finding the waiver of homestead exemption invalid, and certified a question of great public importance. The Florida Supreme Court accepted jurisdiction.

DISPOSITION

CASES CITED

- Carter's Adm'rs v. Carter, 20 Fla. 558 (1884)
- Sherbill v. Miller Mfg. Co., 89 So. 2d 28 (Fla. 1956)
- DeMayo v. Chames, 934 So. 2d 548 (Fla. 3d DCA 2006)
- Kelli Snyder, Petitioner, v. Kent W. Davis, etc., Respondent, Snyder v. Davis, 699 So. 2d 999 (Fla. 1997)
- Thomas McKean, et al. v. Peter Warburton, McKean v. Warburton, 919 So. 2d 341 (Fla. 2005)
- Public Health Trust of Dade County v. Lopez, Pub. Health & Trust v. Lopez, 531 So. 2d 946 (Fla. 1988)
- Howard v. Calhoun, 21 So. 2d 361 (Fla. 1945)
- City National Bank of Florida v. Tescher, 578 So. 2d 701 (Fla. 1991)
- Hartwell v. Blasingame, 564 So. 2d 543 (Fla. 2d DCA 1990)
- In re Amendment to the Rules Regulating the Fla. Bar—Rule 4-1.5(f)(4)(B) of the Rules of Prof'l Conduct, 939 So. 2d 1032 (Fla. 2006)
- Havoco of America, Ltd. v. Hill, Havoco of Am., Ltd. v. Hill, 790 So. 2d 1018 (Fla. 2001)
- Tramel v. Stewart, 697 So. 2d 821 (Fla. 1997)
- Butterworth v. Caggiano, 605 So. 2d 56 (Fla. 1992)
- Michael Olesky and Arthur W. Chairsell, Appellants, v. Daniel J. Nicholas, Fred J. Nicholas, Josephine B. Bowerman, Sadie S. Moreno, Amelia E. Nicholas, Adam A. Nicholas and Frieda T. Nicholas, Appellees, Olesky v. Nicholas, 82 So. 2d 510 (Fla. 1955)
- Rotemi Realty, Inc. v. Act Realty Co., Inc., 911 So. 2d 1181 (Fla. 2005)
- Dorsey v. State, 868 So. 2d 1192 (Fla. 2003)
- Holden v. Estate of Gardner, 420 So. 2d 1082 (Fla. 1982)
- Slatcoff v. Dezen, 76 So. 2d 792 (Fla. 1954)
- Fridovich v. Fridovich, 598 So. 2d 65 (Fla. 1992)
- State v. Soto, 423 So. 2d 362 (Fla. 1982)
- Ennist v. Baden, 28 So. 2d 160 (Fla. 1946)
- McEnderfer v. Keefe, 921 So. 2d 597 (Fla. 2006)
- Major League Baseball v. Morsani, 790 So. 2d 1071 (Fla. 2001)
- State v. Perry, 687 So. 2d 831 (Fla. 1987)
- In re Shambow's Estate, 15 So. 2d 837 (Fla. 1943)
- Coastal Caisson Drill Co. v. Am. Cas. Co. of Reading, Pa., 523 So. 2d 791 (Fla. 2d DCA 1988)
- Asbury Arms Dev. Corp. v. Fla. Dep't of Bus. Regulations, 456 So. 2d 1291 (Fla. 2d DCA 1984)
- Faretta v. California, 422 U.S. 806 (1975)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- Larzelere v. State, 676 So. 2d 394 (Fla. 1996)
- Melvin v. State, 645 So. 2d 448 (Fla. 1994)

- Sanchez-Velasco v. State, 702 So. 2d 224 (Fla. 1997)
- State v. Upton, 658 So. 2d 86 (Fla. 1995)
- Lamarca v. State, 931 So. 2d 838 (Fla. 2006)
- Hernandez-Alberto v. State, 889 So. 2d 721 (Fla. 2004)
- State v. Green, 944 So. 2d 208 (Fla. 2006)
- Allstate Indem. Co. v. Ruiz, 899 So. 2d 1121 (Fla. 2005)
- Indus. Loan & Inv. Co. of San Francisco v. Superior Court of Calif., 209 P. 360 (Cal. 1922)
- Weaver v. Lynch, 246 P. 789 (Colo. 1926)
- Tuxis-Ohr's Fuel, Inc. v. Trio Mkt'rs, Inc., 40 Conn. L. Rptr. 203 (Conn. Super. Ct. 2005)
- Maloney v. Newton, 85 Ind. 565 (Ind. 1882)
- Curtis v. O'Brien, 20 Iowa 376 (1866)
- In re Hebert, 301 B.R. 19 (Bankr. N.D. Iowa 2003)
- Celco, Inc. of Am. v. Davis Van Lines, Inc., 598 P.2d 188 (Kan. 1979)
- Moxley v. Ragan, 73 Ky. (10 Bush) 156 (1873)
- Teague v. Weeks, 42 So. 172 (Miss. 1906)
- Anaconda Fed. Credit Union, No. 4401 v. West, 483 P.2d 909 (Mont. 1971)
- Kneettle v. Newcomb, 22 N.Y. 249 (1860)
- Howell v. Roberson, 150 S.E. 32 (N.C. 1929)
- Branch v. Tomlinson, 77 N.C. 388 (1877)
- United States v. Neff, No. 4:05-cv-128, 2007 WL 776532 (D.N.D. March 12, 2007)
- Dennis v. Smith, 180 N.E. 638 (Ohio 1932)
- Mayhugh v. Coon, 331 A.2d 452 (Penn. 1975)
- Sherwin-Williams Co. v. Morris, 156 S.W.2d 350 (Tenn. Ct. App. 1941)
- Bunker v. Coons, 60 P. 549 (Utah 1900)
- Slyfield v. Willard, 86 P. 392 (Wash. 1906)
- Maxwell v. Reed, 7 Wis. 582 (1859)
- Lingle State Bank v. Podolok, 740 P.2d 392 (Wyo. 1987)
- Meyer Bros. Drug Co. v. Bybee, 78 S.W. 579 (Mo. 1904)
- Farmers' & Merchants' Bank v. Hoffman, 96 N.W. 1044 (Neb. 1903)
- Recht v. Kelly, 82 Ill. 147 (1876)
- Powell v. Daily, 45 N.E. 414 (Ill. 1896)
- Lawrence v. Commercial Banking Corp., 169 A. 69 (Md. 1933)
- In re Gordon, 199 B.R. 7 (D. Md. 1996)
- Argonaut Ins. Co. v. Cooper, 261 N.W.2d 743 (Minn. 1978)
- Benning v. Hessler, 175 N.W. 682 (Minn. 1920)
- Broadway v. Household Fin. Corp., 351 So. 2d 1373 (Ala. Civ. App. 1977)
- First State Bank v. Muzio, 666 P.2d 777 (N.M. 1983)

- Rogers v. Great Am. Fed. Sav. & Loan Ass'n, 801 S.W.2d 36 (Ark. 1990)
- Hawkeye Bank & Trust Co. v. Michel, 373 N.W.2d 127 (Iowa 1985)
- Red River State Bank v. Reiersen, 533 N.W.2d 683 (N.D. 1995)
- Weaver v. Weaver, 109 Ill. 225 (1883)
- Kennett v. McKay, 57 N.W.2d 316 (Mich. 1953)
- Shearon v. Goff, 145 N.W. 855 (Neb. 1914)
- In re Estate of Wallace, 648 P.2d 828 (Okla. 1982)
- In re Estate of Moore, 307 P.2d 483 (Or. 1957)
- Schutterle v. Schutterle, 260 N.W.2d 341 (S.D. 1977)
- Ferguson v. Ferguson, 111 S.W.3d 589 (Tex. App. 2003)
- In re Dalton's Estate, 167 P.2d 690 (Utah 1946)
- Schuler v. Wallace, 607 P.2d 411 (Haw. 1980)
- Tibbetts v. Tibbetts, 93 A. 178 (Me. 1915)
- McMillan v. Aru, 773 So. 2d 355 (Miss. Ct. App. 2000)
- I.H. Kent Co. v. Miller, 366 P.2d 520 (Nev. 1961)
- Cameron v. McDonald, 6 S.E.2d 497 (N.C. 1940)
- State v. Avco Fin. Serv. of New York Inc., 406 N.E.2d 1075 (N.Y. 1980)

CITED IN

- Deborah Chames, et al. v. Henry DeMayo, Chames v. DeMayo, 972 So. 2d 850 (Fla. 2007)
- Deborah Chames, et al. v. Henry DeMayo, Chames v. DeMayo, 972 So. 2d 850 (Fla. 2007)