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# The Effect of a Declaration of Homestead on a Pre-Existing Ordinary Debt

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which involves a risk of injury to the user is liable to any person, who without fault on his part, sustains an injury caused by a defect in the design or manufacture of the article, if the injury might have been reasonably anticipated."

Nevertheless, except in cases of fabricator-vendors of food-stuffs, there is no clear picture in Louisiana as to when the vendor will be held liable for damages caused by a defective product.

### *Conclusion*

It is submitted that the courts or the legislature should adopt a workable rule that will guide vendors in protecting themselves. A start in that direction would be to hold any vendor liable who represents himself as the manufacturer of a product which, if defective, involves an unreasonable risk of harm when used for the foreseeable purpose for which it was intended by a consumer. This rule should apply whether or not the vendor had a part in the manufacturing process. *Penn* can be interpreted to establish this rule. Yet, a more explicit and definitive holding on which to base the standard would be desirable.

*John M. Madison, Jr.*

### THE EFFECT OF A DECLARATION OF HOMESTEAD ON A PRE-EXISTING ORDINARY DEBT

Article XI of the Louisiana Constitution exempts from sale and seizure "the homestead, bona fide, owned by the debtor and occupied by him" consisting of lands and other property to the total value of not more than \$4,000.00.<sup>1</sup> It also provides that the exemption exists, without registration, except in cities having a population of more than 250,000.<sup>2</sup>

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1. LA. CONST. art. XI, § 1, *as amended*, La. Acts 1932, No. 142, adopted Nov. 8, 1932; La. Acts 1938, No. 42, adopted Nov. 8, 1938, provides in part: "There shall be exempt from seizure and sale by any process whatever, except as hereinafter provided, the homestead, bona fide, owned by the debtor and occupied by him, consisting of lands, not exceeding one hundred and sixty (160) acres . . . whether rural or urban, of every head of family, or person having . . . a person or persons dependent on him . . . for support; . . . to the total value of not more than Four Thousand Dollars (\$4,000.00)."

2. LA. CONST. art. XI, § 4, *as amended*, La. Acts 1938, No. 42, adopted Nov. 8, 1938; La. Acts 1952, No. 101, adopted Nov. 4, 1952, provides: "The homestead exemptions herein provided shall exist without registration except

Two situations are contemplated by these sections—one in which recording a homestead declaration is unnecessary, and the other in which it is necessary. In considering whether a homestead exemption is superior or inferior to a pre-existing ordinary debt, each of these will be discussed.

In either situation, before a debtor can claim the exemption, he must meet four requirements. As stated in *Engstrom's of Alexandria, Inc. v. Vaughn*,<sup>3</sup>

- "(1) He must be a bona-fide owner of the land;
- (2) He must occupy the premises as a resident;
- (3) He must have a family or person or persons dependent on him for support;
- (4) And the property must not exceed in value \$4,000 . . . ."<sup>4</sup>

The Louisiana Supreme Court dealt with the situation in which no recordation of the exemption is required in *Pouncy v. Gunby's Estate*.<sup>5</sup> There a debt was contracted at a time when the debtor was not entitled to the homestead exemption. He defaulted, and the creditor sued. But before the claim could be reduced to judgment, the debtor married and settled on the land as a homestead. The Supreme Court, in affirming judgment for the debtor, said:

"It is clear that the existence of an ordinary debt, even though it be reduced to judgment, will not, unless the judgment be recorded, operate to prevent the acquisition of a right of homestead which will protect property, occupied and claimed as a homestead, from seizure in satisfaction of such judgments."<sup>6</sup>

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where the property is situated in a city having a population of more than two hundred and fifty thousand (250,000) in which latter event, said exemptions shall not be valid unless recorded in the manner provided by Act 114 of 1880 (now La. R.S. 20:1) or as may be otherwise provided by law."

3. 138 So.2d 672 (La. App. 3d Cir. 1962).

4. *Id.* at 677. See also *Brantley v. Pruitt*, 175 La. 879, 144 So. 604 (1932); *Denis v. Gayle*, 40 La. Ann. 286, 4 So. 3 (1888); *Anderson v. Finley*, 84 So.2d 845 (La. App. 2d Cir. 1956).

5. 138 La. 10, 69 So. 856 (1915).

6. *Id.* at 11, 69 So. at 856; La. Const. art. 244 (1913); *Robert v. Coco*, 25 La. Ann. 199 (1873); *Doughty v. Sheriff*, 27 La. Ann. 355 (1875). La. Const. art. 244 (1913) provided in part: "There shall be exempt from seizure and sale by any process whatever, except as herein provided, and *without registration*, the homestead, owned by the debtor and occupied by him, consisting of lands, not exceeding one hundred and sixty acres . . . to the value of two thousand dollars." (Emphasis added.)

In contrast, the situation requiring recordation of the declaration remains unsettled as the precise issue has never been decided by the Louisiana Supreme Court with reference to the present constitutional provisions. The most recent judicial expression on this question was by the United States Fifth Circuit Court of Appeals in *Holahan v. Nugent*.<sup>7</sup> The issue as stated by the court was

“whether ordinary debts of creditors with no lien, pledge, or title, which are incurred during the period of occupancy of a family home in a Louisiana city of more than 100,000 [presently 250,000] population and before the filing of the declaration of homestead exemption, are enforceable against, or from the proceeds of, property subsequently claimed and perfected as a homestead by the recording of a homestead exemption.”<sup>8</sup>

The court affirmed the district judge's decision “that the homestead exemption was superior to, and should be prior to the payment of the claims of the unsecured creditors.”<sup>9</sup> However, the dissent noted that where recordation is required, the homestead is exempt only as to debts contracted after the recordation of the declaration.

The view that the homestead exemption, once recorded, is superior only to subsequent debts is strongly supported by *Succession of Furniss*.<sup>10</sup> There it was held that under the Constitution of 1879 the exemptions only take effect from the date of registry, as provided by law, and are inoperative against debts contracted prior to such registry. This decision seems clearly to indicate that an exemption recorded as required is inferior to pre-existing ordinary debts, even when not reduced to lien status, such as by recorded judgment. However, there is an important distinction between the homestead provisions in the Constitution of 1879 and that of the present Constitution. The Constitution of 1879 expressly prohibited the waiver of the exemption.<sup>11</sup> Therefore, the court felt it necessary for the protection of the debtor and his securing of credit to hold as it did, allowing him to utilize his entire property as a credit basis by

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7. 198 F.2d 653 (5th Cir. 1952).

8. *Id.* at 654.

9. *Id.*

10. 34 La. Ann. 1013 (1882).

11. La. Const art. 222 (1879) provided in part: “The homestead shall not be susceptible of mortgage . . . nor shall any renunciation or waiver of homestead rights . . . be valid.” (Emphasis added.)

abstaining from registry.<sup>12</sup> However, the present constitution recognizes a right to waive the exemption,<sup>13</sup> thus eliminating any need to follow *Furniss* today.

Other cases allowing recovery on a pre-existing debt can be distinguished on the ground that they had the additional element of a mortgage which had been executed on the property prior to the declaration. The policy of the courts favoring mortgages was established in *Clark v. Natal*<sup>14</sup> and followed in *Williams v. Continental Bank & Trust Co.*,<sup>15</sup> in which the Louisiana Supreme Court declared:

"The jurisprudence is constant and uniform that privileges, mortgages, and real rights attached to the property cannot be disturbed or affected by homesteads which do not exist at the moment they attach."<sup>16</sup>

*Prudential Ins. Co. of America v. Guillory*<sup>17</sup> also held that homestead rights could not prejudice a mortgage claim which attached to property before it became a homestead.

The case which lends strongest support to the conclusion that the homestead exemption, once established, is superior to pre-existing debts not reduced to recorded judgments is *Pouncy v. Gunby's Estate*,<sup>18</sup> discussed previously. Although the case dealt with a situation in which recordation was unnecessary, it would seem that the same policy considerations would dictate its application in those situations in which registry is required.

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12. In *Succession of Furniss*, 34 La. Ann. 1013, 1014 (1882), the court said: "The object of the convention was transparent and, it seems to us, a very wise one. It saw that the effect of the homestead provisions, coupled, as it was, with the prohibition of the conventional waiver thereof, would be to cripple the credit and resources of the beneficiaries, which, under many circumstances would be more injurious than beneficial to them. It, therefore, gave them the option of availing themselves or not of the privilege, as their interests might require. It said to them: if you desire to secure your homestead from the risks and chances of business, you may do so by registering your exemption as required by law. If, on the contrary, you desire to retain your whole property in a situation to serve as a basis of credit, for the purpose of conducting your business operations, we leave you the option of doing so, by simply abstaining from registry."

13. LA. CONST. art. XI, § 3, provides in part: "Any person entitled to a homestead *may waive* same, in whole or in part, by signing a written waiver thereof . . ." (Emphasis added.)

14. 138 La. 1038, 71 So. 149 (1916).

15. 173 La. 354, 137 So. 59 (1931).

16. *Id.* at 355, 137 So. at 60. The court then cited *Coltharp v. West*, 127 La. 430, 53 So. 675 (1910); *Ellis v. Freyhan*, 124 La. 53, 49 So. 975 (1909); *Taylor v. Saloy*, 38 La. Ann. 62 (1886).

17. 175 La. 1058, 145 So. 6 (1932).

18. 138 La. 10, 69 So. 856 (1915).

In *Cloud v. Cloud*,<sup>19</sup> the court set forth these policy considerations:

"The homestead exemption is a law of public policy of this state, the object of which 'is to secure a home beyond the reach of financial misfortune, around which gathers the affection of the family, the greatest incentive to virtue, to honor, and to industry' (59 So. 2d 881, cited below), on the theory that the protection of the family is of at least paramount importance to the state as the payment of debts."<sup>20</sup>

Additionally, in *Poole v. Cook*,<sup>21</sup> an 1882 case, the Louisiana Supreme Court held that although the homestead provision of 1865 applied only to rural property,<sup>22</sup> the one in the Constitution of 1879 applied to both rural and urban property,<sup>23</sup> and the same is true of the present Constitution.<sup>24</sup>

It is submitted that the *Pouncy* rule should apply in *all* homestead exemption cases. There is no valid reason for discriminating between the two situations by holding that where recording is not required the established homestead is superior to prior ordinary debts not reduced to recorded judgments, but where recording is required it is superior only as to subsequent debts. To do so would only result in an unjust discrimination against the urban property owner.

Ronald W. Tweedel

#### LABOR LAW—PRODUCT BOYCOTT CLAUSES AND SECTION 8(e)

Section 8(e) of the National Labor Relations Act<sup>1</sup> provides that it shall be an unfair labor practice for a labor organization and an employer to enter into an agreement under which the employer agrees to refrain from using the products of another employer. Whether product boycott clauses aimed at "work

19. 127 So.2d 560 (La. App. 3d Cir. 1961).

20. *Id.* at 565; *cf.* *Lafayette Bldg. Ass'n v. Spofford*, 221 La. 549, 59 So.2d 880 (1952); *Hammond State Bank & Trust Co. v. Broderick*, 179 La. 693, 154 So. 739 (1934); *Garner v. Freeman*, 118 La. 184, 42 So. 767 (1907); *Hebert v. Mayer*, 48 La. Ann. 938, 20 So. 170 (1896).

21. 34 La. Ann. 333 (1882).

22. La. Acts 1865, No. 33, § 1.

23. La. Const. art. 219 (1879).

24. LA. CONST. art. XI, § 1.

1. National Labor Relations Act (Wagner Act), 49 Stat. 449 (1935), as amended by Labor Management Relations Act (Taft-Hartley Act), 61 Stat. 136 (1947), and Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act), 73 Stat. 519 (1959), 29 U.S.C. §§ 141-187 (1964). N.L.R.A.