**YUKIO M. SHMULL,**
**Appellant,**

**v.**

**CHIUNG-FENG CHEN,**
**Appellee.**

CIVIL APPEAL NO. 08-006
Civil Action No. 01-330

Supreme Court, Appellate Division
Republic of Palau

Decided: October 28, 2009

[1] **Creditor-Debtor**; **Property:** Mortgage

The underlying purpose of an exemption statute is to protect the basic necessities of the debtor against unforeseeable indebtedness and the underlying purpose of secured transactions is to promote financial certainty by allowing creditors to rely on legal rules governing collateral. Thus, the phrase "unless otherwise specified by contract" in 14 PNC § 2110(a) modifies the entire exemption provision. To decide otherwise would create a perverse incentive for debtors to mortgage property they never really intended to use as security for their debt.

[2] **Creditor-Debtor**; **Property:** Mortgage

Although exemption rights are liberally interpreted in favor of the debtor, they are not intended to give the debtor what in common honesty does not belong to him, by exonerating the debtor from the payment of just debts.

[3] **Creditor-Debtor**; **Property:** Mortgage

Exemption laws are not designed to prevent persons from giving liens on whatever property they may see fit. Where such lien is given, it creates security for the debt in the property to which it attaches, from which the debtor cannot be relieved. The lien is not discharged until the debt is paid. Unless there is some provision in the statutes to the contrary, it may be enforced against the property to which it attaches even though the property is exempt under law.

Counsel for Appellant: Pro se[1]

Counsel for Appellee: David Shadel

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

[1] President Johnson Toribiong was Appellant's last counsel of record. Upon his election as President of the Republic, Toribiong withdrew as Counsel on January 13, 2009. Appellant was required to inform the Court of his new counsel by February 12, 2009. Because Appellant failed to do so, we accept it as Appellant's intention to proceed pro se.

Appellant, Yukio M. Shmull ("Appellant"), appeals the Order Denying his Motion to Set Aside Notice of a Judicial Sale of his family dwelling house. The Order was issued by the Trial Division on January 28, 2008.[2] Specifically, Appellant moved to exempt his family dwelling house (also known as Lot No. 40025) from the reach of judgment creditors on the grounds that it should now be considered exempt under RPPL No. 7-11 (hereinafter referred to as 14 PNC § 2110(a)). The Trial Division denied the motion. For the reasons that follow, we AFFIRM the Trial Division's Order.

## BACKGROUND

On March 19, 2000, Appellant and Appellee executed an Agreement whereby Appellant agreed to pay his debt to Appellee. In doing so, Appellant gave Appellee a mortgage on his interest in property located at Lot No. 40025, which consists of six apartments. Appellant leases five of the apartments to other tenants and resides in the sixth. The mortgage on this property was duly recorded on May 19, 2000. When Appellant failed to pay under the Agreement, Appellee sued to collect on the amount owed and to foreclose on the mortgage. On March 4, 2002, the Trial Division issued an Entry of Default and Judgment in the sum of $174,136.45 and in foreclosure of the mortgage

> on all of defendant's rights and interests in and to certain lands described as Lot. No 40025 and all improvements thereat, to any lease which defendant had or may have in or at such Lot. No. 40025 . . . . Such judgment shall be paid within three months hereof, failing which defendant's interests in the above properties may be sold . . . .

Over the past six years, Appellee sought to collect on the judgment. During this time, the Trial Division, as well as the Appellee, devised various methods of repayment, including having the tenants of the property pay their rent directly to Appellee. However, Appellant was still unable to pay his debt to Appellee. Then, on October 19, 2007, Appellee filed, published, and served his Notice of Sale of Appellant's interests in the foreclosed property at Lot No. 40025. Appellant and Appellee set the date of the judicial sale for December 12, 2007. However, Appellant then requested one last chance to postpone the date of the sale because he was allegedly seeking $70,000.00 with which to settle the case. Therefore, Appellant and Appellee stipulated to reset the date of the sale for February 6, 2008. Then, on January 9, 2008, Appellant filed a Motion to Set Aside the Notice of the Judicial Sale, moving that the Trial Division should instead declare that the foreclosed property at Lot No. 40025 was exempt from the judicial sale under 14 PNC § 2110(a).

This argument required some clever maneuvering because 14 PNC § 2110(a) had actually been amended to include this "family dwelling" exemption on August 31, 2005,

[2] This Order shall be considered a final judgment for purposes of this appeal. *See* this Court's October 10, 2008, Order (finding that no danger of multiple appeals exists).

which was three years *after* the issuance of the default judgment in this case. Prior to the amendment, no "family dwelling" exemption existed. Now, with the portions added by the amendment highlighted in **bold**, 14 PNC § 2110(a) reads,

> The following described property shall be exempt from attachment and execution:
>
> (a) Personal and household goods—all necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, **and the principal family dwelling house and one motor vehicle, fair market value of said property not to exceed $150,000, unless otherwise specified by contract**.

In his motion to the Trial Division, Appellant argued that this late-arriving amendment should exempt his "principal family dwelling house" at Lot No. 40025 because, even though the original judgment was issued prior to its enactment, the actual judicial sale was sought after its enactment. Appellant argued in the alternative that the new provision in 14 PNC § 2110(a) should be applied retroactively to his property because the statute was "remedial" in nature. The Trial Division was unconvinced and denied Appellant's Motion to Set Aside Notice of the Judicial Sale. This appeal followed.

## STANDARD OF REVIEW

In its Order, the Trial Division gave no reason for its denial, save for the statement, "no good cause being shown." This raises the question whether the decision was based upon a legal conclusion, such as 14 PNC § 2110(a)'s potential retroactivity, or a factual one, such as whether Appellant's property fits the definition of a "principal family dwelling house" under 14 PNC § 2110(a). It is perhaps because of this uncertainty that neither party correctly cited the standard of review in their respective briefs.[3] Because we AFFIRM the Trial Division's Order based upon a legal interpretation of Palauan statutory law, discussed *infra*, we shall review the Trial Division's decision accordingly and apply the *de novo* standard. *Bandarii v. Ngerusebek Lineage*, 11 ROP 83 (2004) ("Issues of statutory interpretation are reviewed *de novo*.").

## DISCUSSION

Appellant asks this Court to decide whether 14 PNC § 2110(a), which exempts a

[3] The Appellant recited no applicable standard of review and the Appellee recited a standard without any citation to authority. Despite the absence of direction provided by Trial Division's Order, we reemphasize that ROP R. App. P. 28(a)(7) requires all briefs to set forth any matters "necessary to inform the Appellate Division concerning the questions and contentions raised in the appeal." What is more, this Court has plainly stated that the "standard under which the Appellate Division is to review the issues before it is a matter necessary to the questions raised on appeal." *Scott v. Republic of Palau*, 10 ROP 92, 95 (2003). With this in mind, even on hard questions such as this one, we require at the very least that the parties take their best shot.

debtor's "principal family dwelling house" from judicial attachment or execution, is a remedial statute that should be applied retroactively to his judgment. The gist of Appellant's argument is this: Even though the default judgment in this case occurred prior to the enactment of 14 PNC § 2110(a), the law should nevertheless be applied retroactively to exempt Appellant's house from being subject to the judicial sale, because the law is actually a "remedial statute." (Appellant's Br. at 6 (citing *Robin L. Miller Constr. Co. v. Coltran,* 43 P.3d 67, 70-71 (2002) (holding "statutory amendment is retroactive in application if (1) the Legislature clearly intended it to be so in the language of the statue, (2) it is curative, or (3) it is remedial")). Appellant's brief then explains why the "family dwelling" exemption in 14 PNC § 2110(a) should be considered remedial, i.e., because it does not affect a substantial or vested right, because homestead exemptions are traditionally considered remedial, because retroactive application of exemption statutes does not violate the Contracts Clause in the U.S. Constitution.

Unfortunately, Appellant has focused his efforts on an issue that is immaterial to our ultimate determination in this case. Thus, we decline to opine about the remedial nature *vel non* of Palauan statutory law when the genuine issue on appeal is whether any property, which has previously been mortgaged in satisfaction of a debt, is later capable of being claimed as exempt under 14 PNC § 2110(a). For the reasons discussed below, we find that it is not. As we noted earlier, 14 PNC § 2110(a) states,

> The following described property shall be exempt from attachment and execution:
>
> (a) Personal and household goods—all necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, and the principal family dwelling house and one motor vehicle, fair market value of said property not to exceed $150,000, **unless otherwise specified by contract**.

The bolded words in the provision above open and shut this appeal. As Appellee rightly points out, Appellant mortgaged Lot No. 40025 as security for a debt. When he did so, the words "unless otherwise specified by contract," were triggered, and thus the exemption must fail.

**[1-3]** The rebuttal argument to this interpretation is that the phrase "unless otherwise specified by contract" does not modify the entire provision, but only the immediately preceding phrase, which states, "fair market value of said property not to exceed $150,000." This reading makes little sense to us. A word or phrase "gathers meaning from the words around it." *Jarecki v. G.D. Searle & Co*., 81 S. Ct. 1579, 1582 (1961). "[T]he meaning of doubtful words may be determined by reference to their relationship with other associated words or phrases." 2A Norman J. Singer, *Statutes and Statutory Construction* § 47:16 at 265 (6th ed. 2000). Examining the underlying purpose of an exemption statute, i.e., to protect the basic necessities of the debtor against unforeseeable

indebtedness,[4] and examining the underlying purpose of secured transactions, i.e., to promote financial certainty by allowing creditors to rely on legal rules governing collateral,[5] we find that the phrase "unless otherwise specified by contract" modifies the entire exemption provision. To decide otherwise would create a perverse incentive for debtors to mortgage property they never really intended to use as security for their debt.

> Although exemption rights are liberally interpreted in favor of the debtor, they are not intended to give the debtor what in common honesty does not belong to him, by exonerating the debtor from the payment of just debts.

31 Am. Jur. 2d *Exemptions* § 3 (1989). Moreover,

> [e]xemption laws . . . are not designed to prevent persons from giving liens on whatever property they may see fit. Where such lien is given, it creates security for the debt in the property to which it attaches, from which the debtor cannot be relieved. The lien is not discharged until the debt is paid. Unless there is some provision in the statutes to the contrary, it may be enforced against the property to which it attaches even though the property is exempt under law.

31 Am. Jur. 2d *Exemptions* § 276 (1989); *see also D'Avignon v. Graham,* 823 P.2d 929, 935 (N.M. 1991) ("A security interest, when considering exemption defenses, transfers the interest immediately and operates to waive any exemption which might later be asserted."); *In Re Rade*, 205 F. Supp. 336, 339 (D. Colo. 1962) ("Where a mortgage is executed on exempt property, the prevailing view seems to consider the exemption waived by implication.").

Even assuming *arguendo* that 14 PNC § 2110(a) could be applied retroactively to exempt Appellant's dwelling from Appellee's judgment, the fact that Appellant specifically offered that same property as security for his debt triggers the words "unless otherwise specified by contract," in 14 PNC § 2110(a). Thus, Appellant's claimed exemption fails without this Court ever having to reach whether 14 PNC § 2110(a) is a remedial statute that could be applied retroactively to the judgment.

This Court is sensitive that its Opinion today may ultimately effect considerable hardship upon Appellant and his family. However, this Court is bound by the rule of law. Here, the rule of law requires that

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[4] "Exemption statutes preserve for debtors the prime necessities of life and furnish them with a nucleus with which to begin life anew." 31 Am. Jur. 2d *Exemptions* § 3 (1989).

[5] "The fundamental purpose of [secured transactions] is to create certainty and predictability by allowing creditors to rely on specific [rules] that govern collateral . . . ." 68A Am. Jur. 2d *Secured Transactions* 2 (1989).

Appellant be bound by the mortgage that he signed.

## CONCLUSION

For the reasons set forth above, the judgment of the Trial Division is AFFIRMED.