

## Temporary Visa Did Not Bar Homestead Status [Florida]

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Favio came to the U.S. in 2005 after a kidnapping attempt against his son in Venezuela. He rented an apartment, and lived there with his son (a U.S. citizen), and his wife. He then purchased an apartment in 2006 and lived there with his family until his death in 2009.

Favio had borrowed \$500,000 from Eric and Carla. When Favio died, they filed a claim against Favio's estate to be repaid. Favio's estate claimed the apartment was homestead property, and thus could not be reached by Eric and Carla to repay the debt. Presumably, Favio did not have other assets to fully satisfy the debt.

The probate court reviewed numerous cases that provided that an individual in Florida on a temporary visa could not form the requisite intent to make a residence a "permanent residence" so as to qualify for homestead protection against creditors. The court found that since Favio did not have the right to stay here on a permanent basis (he did not have a green card admitting him as a lawful permanent residence nor was he a U.S. citizen), the property was not homestead property.

The 3rd DCA reversed, and held the property was protected homestead. In doing so, they made a number of interesting observations and statements:

a. That the son was a U.S. citizen was an important fact. The court noted that the Florida Constitution does not require the owner to reside on the property – it is enough that the owner's family reside on the property. Thus, the father could in effect piggyback on the son's permanent status.

b. The intent question is to be answered based on the intent of the homesteader and not that of the U.S. Citizenship and Immigration Services. Thus, while Favio did not have the right to remain in the U.S. permanently, that was not controlling.

c. Precedent and rules in the ad valorem tax homestead exemption area do not control in regard to the exemption from forced sale. There is strong precedent in the tax area that temporary immigration status is not sufficient to obtain the ad valorem homestead exemption. That precedent is not controlling because for tax exemption purposes, the statute is to be strictly construed against the taxpayers. However, in the forced sale arena, the rules are to be liberally construed for the benefit of those that the rules are designed to protect.

d. That Favio and his wife had applied for permanent residence status before Favio's death was an important fact that supported homestead status.

In the end, the court noted that based on (a) continued residence at the property since its purchase, (b) possession of a visa that permitted residence here (albeit not on a permanent basis), and (c) the application that had been made for permanent resident status, homestead protection against forced sale was appropriate.

WHERE'S THE VALUE HERE? The court opens the door to homestead protection against forced sale, even when the owner does not have the right to permanently reside in Florida. However, the special facts discussed above in (a)-(c) were key – absent similar compelling facts in other situations, the lack of the ability to permanently reside is still likely to be a significant bar to forced sale homestead protection based on the other cases in this area.

*Estate of Favio Jose Grisolia Sanchez v. Pfeffer*, 36 Fla.L.Weekly D2554 (3rd DCA (November 23, 2011))

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