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**The declared homestead exemption:
Title Trust Deed Serv. Co. v Pearson, 2005
Roger Bernhardt**

“Declared” homestead exemption that predates creditor’s default judgment reduces amount creditor may recover from surplus remaining after sale of debtor’s real property.

Title Trust Deed Serv. Co. v Pearson (2005) 132 CA4th 168, 33 CR3d 311

In October 1997, Heritage Rehabilitation sued Pearson and his mother for money owed for nursing services, alleging that Pearson’s mother had transferred her residence to Pearson in order to avoid paying her debt to Heritage. In December 1997, Pearson obtained a loan subject to a deed of trust secured by the property. Title Trust was the trustee. Pearson failed to repay the loan. In January 1998, Pearson recorded a declaration of homestead on the property under CCP §704.920. In April, Heritage obtained a \$17,514 default judgment against Pearson, and recorded an abstract of judgment. Subsequently, Pearson used the residence as security for bail bonds, issued by Billingslea, for himself and two others who had been arrested. All the parties failed to appear.

On May 5, 2003, Title Trust conducted a nonjudicial foreclosure sale of the property. After payment to the beneficiary, there was a surplus of \$99,667. Several claims were submitted: Pearson claimed entitlement to all the surplus funds; Heritage claimed the amount of its 1998 judgment against Pearson; and Billingslea claimed amounts associated with the three bail bonds. On May 23, Title Trust Deed Service filed an interpleader against the claiming parties and deposited the surplus funds into court. Pearson belatedly asserted his homestead claim and moved to amend his answer to raise the homestead issue. The trial court denied the motion, finding that the proceeds of the sale were not exempt from execution to satisfy the outstanding money judgment under *Spencer v Lowery* (1991) 235 CA3d 1636, 1 CR2d 795. In December, Heritage and Billingslea each filed a motion for summary adjudication, which the trial court granted, entering judgments payable from the surplus fund for over \$29,000 to Heritage and over \$18,000 to Billingslea.

The court of appeal reversed, holding that the trial court erred in denying Pearson’s motion to amend his answer to claim the declared homestead exemption. California has two types of homestead exemptions: automatic *and* recorded or declared. A declared or recorded homestead, under CCP §704.950(c), provides that a judgment lien attaches to a declared homestead in the amount of any surplus over: All liens and encumbrances already on the homestead at the time the abstract of judgment creating the judgment lien is recorded; and The §704.950 homestead exemption.

Here, Heritage’s judgment lien attached to the property in May 1998, several months after Pearson recorded his declaration of homestead (in January 1998). Accordingly, Pearson’s motion for leave to amend his answer should have been granted, the judgment in favor of Heritage must be reversed, and the cause remanded to the trial court with directions to determine the validity and amount of Pearson’s declared homestead.

Whether Heritage or Billingslea were entitled to any portion of the surplus would depend, first, on the trial court's determination of the homestead exemption's validity and, assuming it is valid, then on the determined amount of the exemption. That amount, in turn, would dictate how much surplus amount will remain to satisfy Heritage and Billingslea's claims.

THE EDITOR'S TAKE: I *think* this case holds that when there is a surplus following a trustee sale, junior lienors can reach it without regard to any automatic homestead exemption—but when there is a declared homestead exemption, they can do so only after the exempt amount has been first set aside for the debtor. (I say that I *think* this is the result, because the opinion is so riddled with quotations from other cases that it is almost impossible to keep anything straight.)

The logic for making this distinction appears to be that the automatic homestead, under *Spencer v Lowry* (1991) 235 CA3d 1636, 1 CR2d 795, does not reach surplus proceeds after a trustee sale because there was never any action or judgment against the debtor to trigger its application. On the other hand, under *Smith v James A. Merrill, Inc.* (1998) 64 CA4th 94, 75 CR2d 108, a declared homestead protects that same surplus as against all later filed judgment liens.

Since Billingslea, the bail bondsman, claimed as a trust deed beneficiary rather than a judgment lienor, I wonder why he fit under that analysis at all. Didn't his deeds of trust take priority over the homestead—whether it was automatic or declared—under CCP §704.940? (Of course, if that really is correct, then Billingslea might be prior to Pearson in a declared homestead, while at the same time junior to Heritage—who came first—even though Heritage would be junior to Pearson's declared homestead protection. Neat circular priority!)—*Roger Bernhardt*