

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

In re

ROSALVA LUA,

Debtor.

Case No.: CV 15-04026-CJC

ORDER AFFIRMING THE
BANKRUPTCY COURT'S MAY 1
ORDERS

ROSALVA LUA,

Appellant,

v.

ELISSA MILLER, *Chapter 7 Trustee,*

Appellee.

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1 **I. INTRODUCTION**

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3 This case concerns the Chapter 7 bankruptcy proceedings for Rosalva Lua, which
4 were initiated via voluntary petition in July 2011. *In re Rosalva Lua*, Case No. 2:11-bk-
5 41173 (July 21, 2011) (“Bankr. Dkt.”). Ms. Lua appeals from the May 1 Bankruptcy
6 Court Orders sustaining an objection from Elissa Miller, the Chapter 7 Trustee, to an
7 attempt by Ms. Lua to claim a homestead exemption. (Bankr. Dkt. 103; 104.) For the
8 reasons that follow, the Bankruptcy Court Orders are AFFIRMED.¹

9
10 **II. BACKGROUND**

11
12 Ms. Lua (the “Debtor”) filed a voluntary Chapter 7 petition on July 21, 2011.
13 (Bankr. Dkt. 1.) Elissa Miller (the “Trustee”) was appointed the Chapter 7 trustee. (*See*
14 Bankr. Dkt. 7.) In the original schedules she submitted with her petition, the Debtor
15 indicated that she was married to her non-filing spouse, Rigoberto Lua (the “Husband”),
16 and that they resided at a property located at 2044 Pennywood Pl., Pomona, CA 91767
17 (the “Property”). (Bankr. Dkt. 1 at 15; 32.) Schedule A listed a 30% interest in the
18 Property, describing the Property as the Husband’s property prior to marriage. (*Id.* at 15.)
19 On her original Schedule C, the Debtor claimed a \$75,000 “homestead exemption” in the
20 Property under California Civil Procedure Code section 704.730(a)(1). (*Id.* at 19.)

21
22 At a subsequent creditors’ meeting, the Debtor testified that she did not have a
23 prenuptial agreement with her Husband and that earnings were used to pay mortgage
24 payments on the Property. *In re Lua*, 529 B.R. 766, 768–69 (Bankr. C.D. Cal. 2015).
25 Based on this information, the Trustee concluded that the Debtor had undisclosed assets,

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28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for November 16, 2015 at 3:00 p.m. is hereby vacated and off calendar.

1 including a tax refund. The Trustee continued the creditors' meeting to allow the Debtor
2 to amend her schedules to properly disclose her assets. *Id.*

3
4 On October 13, 2011, the Debtor filed amended schedules indicating that she had
5 no interest in the Property aside from "such community interest as may exist for the
6 purposes of a divorce action." (Bankr. Dkt. 17 at 4.) The Debtor removed the homestead
7 exemption she had previously claimed, instead claiming a "wild card" exemption of other
8 assets under California Civil Procedure Code section 703.140. (*Id.* at 9.)

9
10 After the Debtor withdrew her homestead exemption, the Trustee began to
11 investigate the Property and ultimately concluded that the Debtor *did* have an interest in
12 the Property and that that interest could be monetized, either through a sale or an
13 agreement with the Debtor and the Husband to pay in full the unsecured claims against
14 the estate, which totaled approximately \$10,000. (Bankr. Dkt. 58 ["Trustee Decl.,"] at
15 11.) The Trustee attempted to negotiate an agreement between the Debtor and her
16 Husband that would raise the funds necessary to pay the creditors, but the attempts to
17 reach an agreement were unsuccessful. (*Id.*) As a result, the Trustee filed an adversary
18 proceeding (in bankruptcy court) against the Husband. (*Miller v. Lua*, Case No. 12-ap-
19 01769 (June 6, 2012) ["Adv. Dkt.,"].) In July 2012, default was entered against the
20 Husband in the adversary proceeding, and in September 2012, the bankruptcy court
21 entered a default judgment against the Husband, finding that the Debtor had a community
22 property interest in the Property and ordering the Husband to provide an accounting.
23 (Adv. Dkt. 16.) After more than a year, the Husband had still failed to comply with the
24 judgment, so the Trustee moved the Bankruptcy Court to modify the judgment and
25 declare *all* of the Property to be community property (thereby avoiding the need for an
26 accounting, which the Husband was refusing to perform). (Trustee Decl. at 12; *see also*
27 Adv. Dkt. 19.) The Bankruptcy Court granted the Trustee's motion to modify the
28 judgment on June 2, 2014, finding that the entire Property was community property and

1 ordering the Husband and the Debtor to turn the Property over to the Trustee so that she
2 could administer it for the benefit of the creditors. (Adv. Dkt. 28.)

3
4 In the meantime, the Trustee and the Husband managed to come to an agreement
5 as to the Property. They agreed that the Trustee would sell the Property and that the net
6 proceeds would be divided equally between the estate and the Husband. The Husband
7 and the Trustee also agreed to terms surrounding the sale: the Trustee would employ a
8 broker, and the Husband would “comply with any reasonable request by the broker to
9 view, inspect, and market the Property.” (Bankr. Dkt. 39.) The Debtor did not object to
10 this agreement, and the Bankruptcy Court granted the Trustee’s motion to approve the
11 compromise between the Husband and the Trustee which would enable creditors to
12 monetize the Debtor’s interest in the Property. The Trustee proceeded to employ a
13 broker and attempt to sell the house.

14
15 The Debtor did not comply with the Trustee’s efforts to sell the house. She
16 “refused to cooperate with the marketing efforts and interfered with the actions of the
17 [b]roker,” including by failing to answer calls and thwarting at least nine appointments to
18 show the Property by denying access to it. *In re Lua*, 529 B.R. at 770; (see also Bankr.
19 Dkt. 58 at 15.) Frustrated by the Debtor’s intransigence, the Trustee filed a motion
20 requesting turnover of the Property, which the Bankruptcy Court granted on July 7, 2014.
21 (Bankr. Dkt. 52; 54.) Around the same time, the Debtor vacated the Property, after
22 removing the front door from its hinges. (Bankr. Dkt. 58 at 17.)

23
24 On July 21, 2014—three years to the day from the filing of her voluntary
25 petition—the Debtor filed another set of Amended Schedules. (Bankr. Dkt. 56.) Her
26 Amended Schedule A stated that she had a community property interest in the Property,
27 and her Amended Schedule C claimed a \$100,000 homestead exemption in the Property.
28 (*Id.* at 6; 11.) As the Bankruptcy Court explained, these Amended Schedules had the

1 effect of ensuring that creditors would not be paid. The Debtor chose to protect her
2 personal assets using the wild card exemption in 2011, so the Trustee did not pursue that
3 (exempted) property and instead pursued the Debtor’s interest in the Property, engaging
4 in significant litigation to establish that interest and then to sell the Property. At the last
5 minute, the Debtor modified her Schedules to switch back to the homestead exemption,
6 meaning that the “Debtor’s creditors [stood] to recover nothing from the sale of the
7 Property after the costs of the sale, payment of taxes, and payment to the Husband.” *In re*
8 *Lua*, 529 B.R. at 771. The Trustee filed an objection to the Debtor’s Amended
9 Schedules, asserting bad faith, estoppel, and laches as equitable grounds to disallow the
10 homestead exemption. (Bankr. Dkt. 58.) The Debtor filed an untimely opposition to the
11 objection, which the Bankruptcy Court disregarded. The Bankruptcy Court then ordered
12 supplemental briefing addressing the impact of *Law v. Siegel*, 134 S. Ct. 1188 (2014), on
13 the question of whether the Bankruptcy Court could disallow the homestead exemption
14 under 11 U.S.C.A. § 105(a) or whether it could only do so on state law grounds. After
15 the parties submitted supplemental briefing on *Siegel*, the Bankruptcy Court sustained the
16 Trustee’s objection to the homestead exemption on state law equitable estoppel grounds.
17 (Bankr. Dkt. 103; 104.) The Debtor appealed.

18
19 **III. DISCUSSION**

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21 **1. Issue on Appeal**

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23 The only issue argued by the Debtor in her briefing before this Court is whether the
24 Bankruptcy Court properly sustained the Trustee’s objection to the Debtor’s homestead
25 exemption on the ground of equitable estoppel.

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2. Standard of Review

A district court has jurisdiction to hear appeals from final judgments of the bankruptcy courts. 28 U.S.C. § 158(a)(1); *see also Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In re City of Desert Hot Springs)*, 339 F.3d 782, 787 (9th Cir. 2003). On appeal, a district court must review a bankruptcy court's legal conclusions *de novo* and its factual findings for clear error. *Neilson v. United States (In re Olshan)*, 356 F.3d 1078, 1083 (9th Cir. 2004). A finding of fact is clearly erroneous only where it is "(1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record." *United States v. Pineda-Doval*, 692 F.3d 942, 944 (9th Cir. 2012). Clear error review is deferential, and "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *United States v. Working*, 224 F.3d 1093, 1102 (9th Cir. 2000).

An order denying a debtor's claim of exemption is an appealable final order, and "the right of a debtor to claim an exemption is a question of law . . . review[ed] *de novo*." *In re Elliott*, 523 B.R. 188, 191 (9th Cir. BAP 2014). A debtor's intent, however, is a "question of fact to be reviewed under the clearly erroneous standard." *In re Kelley*, 300 B.R. 11, 16 (9th Cir. BAP 2003).

3. Analysis

Bankruptcy courts may disallow exemptions on state law grounds. *Law v. Siegel*, 134 S. Ct. 1188, 1196–97 (2014) ("It is of course true that when a debtor claims a *state-created* exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption."); *In re Gray*, 523 B.R. 170, 175 (9th Cir. BAP 2014) (remanding for the bankruptcy court to consider

1 whether Arizona equitable considerations could be used to deny an exemption).² Here,
 2 the Bankruptcy Court disallowed the Debtor’s homestead exemption on the ground of
 3 equitable estoppel. The Debtor does not challenge that equitable doctrines of estoppel
 4 apply to homestead claims or exemptions. *See, e.g., Jefferson v. Tom*, 52 Cal. App. 2d
 5 432, 436–37 (Cal. Ct. App. 1942) (denying homestead claim on grounds of estoppel and
 6 laches); *In re Moore*, 269 B.R. 864, 869 (Bankr. D. Idaho 2001) (applying judicial
 7 estoppel to homestead exemption); *In re Steward*, 227 B.R. 895, 899 (9th Cir. BAP 1998)
 8 (applying estoppel principles to homestead exemption and concluding homeowner was
 9 not estopped from claiming homestead exemption). Instead, the Debtor argues that the
 10 Bankruptcy Court incorrectly applied the elements of equitable estoppel to these facts.

11
 12 To invoke equitable estoppel under California law, a party must show: “(a) a
 13 representation or concealment of material facts; (b) made with knowledge, actual or
 14 virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with
 15 the intention, actual or virtual, that the ignorant party act on it; and (e) that party was
 16 induced to act on it.” *Simmons v. Ghaderi*, 44 Cal. 4th 570, 584 (2008).

17
 18 **a. Representation or Concealment of Material Fact**

19
 20 The party against whom equitable estoppel is sought must have represented or
 21 concealed a material fact. *Young Horizon West, Inc.*, 220 Cal. App. 4th 1122, 1131–32
 22 (Cal. Ct. App. 2013). Here, the Debtor’s First Amended Schedules—submitted to the
 23 Court under a penalty of perjury in October 2011—qualify as a “representation” that the
 24 Debtor was not claiming a homestead exemption in the Property. This representation

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 26
 27 ² Prior to *Law*, bankruptcy courts routinely used their discretion under 11 U.S.C.A. § 105(a) to deny
 28 exemptions based on bad faith or prejudice. *Law* held that “federal law provides no authority for
 bankruptcy courts to deny an exemption on a ground not specified in the Code,” and because the Code
 did not specify bad faith or prejudice, bankruptcy courts were limited to invoking state law in order to
 deny exemptions on those grounds, and not § 105(a). *Law*, 134 S. Ct. at 1197.

1 alone meets the element for equitable estoppel. Additionally, the Debtor’s silence in the
2 face of *years* of efforts by the Trustee to extract value from the Property in order to pay
3 creditors qualifies as a “concealment” for the purposes of equitable estoppel. The Debtor
4 concealed from the Trustee and the Bankruptcy Court the fact that she would amend her
5 Schedules as soon as the sale of the Property produced value. It is also beyond dispute
6 that these representations and concealments involve material facts. The Debtor’s assets
7 were very limited, and the Trustee was essentially left to pursue any assets tied up in the
8 Property. The value of the Property—and especially whether the Debtor would claim
9 that value as exempt—was clearly material to this litigation. This element of equitable
10 estoppel is therefore met.

11
12 **b. Made with Knowledge of the Facts**

13
14 The party against whom estoppel is sought must also have had knowledge of the
15 facts, although “ignorance or mistake will not prevent an estoppel” when a party makes
16 an affirmative statement of facts rather than remains silent. *City of Long Beach v.*
17 *Mansell*, 3 Cal. 3d 462, 491 & n.28 (1970). Here, the Debtor knew she had a right to
18 claim a homestead exemption in the Property; that is exactly what she did when she filed
19 her initial bankruptcy petition. She now claims that she came to believe that she had
20 extinguished any community property interest she may have had in the Property by
21 granting a deed to the Husband several years before these proceedings began, and that is
22 why she withdrew her homestead exemption. Once the Bankruptcy Court declared the
23 Property to be community property, the Debtor argues, she was entitled to once again
24 claim an exemption. But accepting this argument would simply shift the costs of the
25 Debtor’s mistake to the Trustee and creditors. The Debtor made the strategic decision to
26 forgo a possible homestead exemption in favor of protecting personal property. She
27 cannot now backtrack, after considerable effort and litigation by the Trustee to establish
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1 the Debtor's interest in the property, and claim that her mistake regarding the character of
2 the Property permits her to pull the rug out from under her creditors.

3
4 Even crediting the Debtor's assertion that she misunderstood the character of the
5 Property, however, the Bankruptcy Court ruled in September 2012 that the Debtor had
6 *some* community property interest in the Property, (Adv. Dkt. 16), and still the Debtor
7 remained silent for *almost two years* despite knowing—at that point—that she could
8 claim an exemption protecting her share of the community property interest, whatever it
9 may be. She cannot now claim that she was ignorant of the fact that she had an interest in
10 the Property until the Trustee—despite the Debtor's best efforts—successfully sold the
11 Property and settled with the Husband. The fact of the matter is that the Debtor has
12 understood since at least June 2012, when the adversary proceeding against the Husband
13 was filed, that the Trustee was pursuing the Debtor's interest in the Property. The Debtor
14 never objected to the settlement with the Husband, to the sale of the Property, or to the
15 Trustee's Turnover Motion. She had more than adequate knowledge of the fact that she
16 had an interest in the Property, but she led the Trustee and the Bankruptcy Court along by
17 waiting until the last minute to assert her homestead exemption. The “knowledge of the
18 facts” element of equitable estoppel is met.

19
20 **c. To a Party Ignorant of the Truth**

21
22 To successfully invoke equitable estoppel against the Debtor, the Trustee must also
23 demonstrate that it was “ignorant, actually and permissibly, of the truth.” *Simmons*, 44
24 Cal. 4th at 584. The Trustee has done so. The Trustee testified that “[a]t no point after
25 Debtor amended her schedules in 2011 was I ever aware that Debtor intended to claim a
26 homestead exemption in the Property.” (Trustee Decl. at 13 ¶ 21.) Indeed, there is no
27 reason for the Trustee to have been aware. The Debtor had not opposed to the motion for
28 approval of the settlement between the Trustee and the Husband, had not opposed the

1 Turnover Motion, had not opposed the motion to employ a broker to sell the Property,
2 and had—as the Bankruptcy Court observes—“given no signal for nearly three years that
3 she was going to file new schedules and claim a homestead exemption.” *Lua*, 529 B.R. at
4 777. The Trustee had diligently pursued the Debtor’s interest in the Property in an
5 attempt to pay creditors. There is no reason to say that the Trustee should have known of
6 the Debtor’s plan.

7
8 **d. With the Intention That the Party Act on It**
9

10 Equitable estoppel requires a finding of intent. *Mansell*, 3 Cal. 3d at 490. Intent is
11 a question of fact that this Court reviews for clear error. *Kelley*, 300 B.R. at 16. Here,
12 the Bankruptcy Court did not clearly err in determining that the Debtor intended the
13 Trustee to act on her representation that she would not claim a homestead exemption.
14 The Debtor took the wild card exemption instead of the homestead exemption, clearly
15 putting the Property up for grabs and intending that the Trustee take her best shot at the
16 Property, and not her personal property. She now claims that the Court’s finding that the
17 Property was community property was “unanticipated and unnecessary,” and that the
18 Trustee got “greedy and creative” leading to the Debtor’s modified Schedules. (Dkt. 15
19 at 9.) These arguments defy reason. The Debtor announced that she was not taking a
20 homestead exemption, watched the Trustee spend three years and considerable resources
21 trying to extract value from the Debtor’s only non-exempt assets, and now claims that the
22 Trustee should not have acted on the Debtor’s assertion that she was not taking a
23 homestead exemption. The Bankruptcy Court did not clearly err in finding the requisite
24 intent.

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1 **e. That Party Was Induced to Act on It**

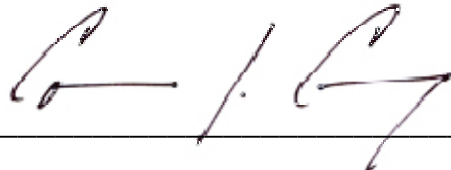
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3 The element of reliance requires that the party asserting equitable estoppel change
4 her position in reliance on something said or done by the other party, resulting in
5 detriment or prejudice to the party asserting equitable estoppel. *State Comp. Ins. Fund v.*
6 *Workers' Comp. Appeals Bd.*, 40 Cal. 3d 5, 16 (1985). Here, the Trustee—relying on the
7 Debtor's representation that she was not going to claim a homestead exemption—
8 initiated litigation to establish the Debtor's interest in the Property, entered a settlement
9 with the Husband, employed a broker, and sold the Property in an effort to compensate
10 creditors. As the Bankruptcy Court explained, "Because of the Debtor's actions in
11 claiming a homestead exemption in the Second Amended Schedules, creditors of the
12 estate are clearly prejudiced because there will now be no funds available for distribution
13 to unsecured creditors. Had the Trustee known of the Debtor's intention, she would not
14 have entered into the [s]ettlement with the Husband to give up 50% of the net sale
15 proceeds from the Property." *Lua*, 529 B.R. at 778. The Debtor's affirmative
16 representation that she would not take a homestead exemption and subsequent silence in
17 the face of efforts by the Trustee to obtain funds for creditors plainly induced the Trustee
18 to act as it did. And there can be little question that the estate has been prejudiced as a
19 result. As a result, each of the elements of equitable estoppel has been met here.

20
21 The California Supreme Court has held that equitable estoppel "rests firmly upon a
22 foundation of conscience and fair dealing." *Mansell*, 3 Cal. 3d at 462. It cannot be
23 disputed that the Debtor did not deal fairly with the Trustee. She remained silent for
24 three years despite knowing that the Trustee was pursuing the Property in an attempt to
25 compensate creditors, then amended her schedules at the last minute to nullify the
26 Trustee's significant efforts and reap a windfall for herself and the marital community.
27 Because of this significant inequity, and because the elements of equitable estoppel are
28 met, the Bankruptcy Court's denial of the Debtor's homestead exemption is AFFIRMED.

1 **IV. CONCLUSION**

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3 For the foregoing reasons, the Bankruptcy Court's May 1 Orders are AFFIRMED.
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8 DATED: November 10, 2015

A handwritten signature in black ink, appearing to read 'C. J. Carney', is written over a horizontal line.

9
10 CORMAC J. CARNEY

11 UNITED STATES DISTRICT JUDGE
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