No. 3:23-cv-05288-WHO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: EVANDER FRANK KANE,

Debtor.

EVANDER FRANK KANE,

Appellant,

v.

FRED HJELMESET, CHAPTER 7 TRUSTEE,

Appellee.

On Appeal from the United States Bankruptcy Court
for the Northern District of California
Bankr. No. 21-50028-SLJ
Hon. Bankruptcy Judge Stephen L. Johnson

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Appellant Evander Kane ("Kane" or the "Debtor") appeals the Bankruptcy Court's order requiring him to turn over the exempt proceeds he received after the bankruptcy trustee's sale of his home. Kane contends that the order was in error because (1) it enforced aspects of the California exemption law even though the Bankruptcy Court previously determined that bankruptcy law trumped California law to deny Kane his full exemption under California law; (2) it refused to recognize Kane's expenditure of the exempt funds for housing and related expenses within six months of his receipt of the funds as a reinvestment of the proceeds; and (3) it failed to toll the six-month period for reinvestment of the exempt proceeds while a dispute over the correct of amount of the exemption was pending on appeal.

The challenged order (the "Turnover Order") granted the motion of Fred Hjelmeset, the Chapter 7 trustee (the "Trustee") of Kane's bankruptcy estate. The Turnover Order required Kane to turn over $170,350 (the "Homestead Proceeds") to the Trustee, which amount was previously paid to Kane by the Trustee on account of Kane's allowed homestead exemption. ER-215–217.

The Trustee contended that the Homestead Proceeds lost their exempt status when Kane failed to "purchase a new residence within six months of his receipt of the Homestead Proceeds." ER-181:23–24, ER-182:4–8. The Bankruptcy Court incorrectly held that the Homestead Proceeds lost their exempt status on April 5, 2022, 180 days after Kane's receipt of the allowed portion of his claimed exemption despite (1) Kane's homestead exemption being limited by § 522(p),[1] which contains no reinvestment requirement; (2) Kane's payments of rent and

[1] Unless specified otherwise, all chapter and code references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

other items after his receipt of the homestead proceeds constituting a reinvestment of the Homestead Proceeds; and (3) the Bankruptcy Court failing to equitably toll the six-month reinvestment period pending resolution of the appeal of its earlier order limiting Kane's homestead exemption under § 522(p). *See* ER-188–201, ER-215–217, ER-218–241.

For the reasons set forth below, Kane respectfully requests that this Court reverse the Bankruptcy Court's Turnover Order; or in the alternative, vacate and remand this matter to the Bankruptcy Court for further findings and conclusions consistent with this Court's decision.

II. JURISDICTIONAL STATEMENT

On September 21, 2023, the Bankruptcy Court entered the *Order Granting Motion for Turnover of Homestead Proceeds* (the "Turnover Order"), granting the Trustee's motion for turnover of the Homestead Proceeds.[2] ER-215–217. The Bankruptcy Court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(B) and (E). A bankruptcy court's order denying an exemption is a final, appealable order. *See Preblich v. Battley*, 181 F.3d 1048, 1056 (9th Cir. 1999).

On October 2, 2023, Kane filed his *Notice of Appeal and Statement of Election* to have the appeal of the Turnover Order heard by the Bankruptcy Appellate Panel ("B.A.P.") for the Ninth Circuit. ER-242–243. On October 3, 2023, the Trustee filed his notice of election under 28 U.S.C. § 158(c)(1)(B) to have this appeal heard by the United States District Court. ER-244–245. This appeal is timely. Fed. R. Bankr. P. 8002(a)(1). This Court has jurisdiction under 28 U.S.C. § 158(a).

[2] The Debtor notes a scrivener's error on the Turnover Order, which incorrectly states the date that the sum of $170,350 was paid to the Debtor by the Trustee was October 6, 2022. The correct date is October 6, 2021.

III. STATEMENT OF THE ISSUES PRESENTED AND STANDARD OF REVIEW

A. Issues Presented

1. Did the Bankruptcy Court err in applying the six-month reinvestment requirement of California Code of Civil Procedure ("C.C.P.") § 704.720(b) when it previously restricted Kane's homestead exemption by applying § 522(p)?

2. Even if the reinvestment requirement of C.C.P. § 704.720(b) does apply, did the Bankruptcy Court err when it found Kane's payment of rent and attorneys' fees in connection with his homestead rights, after his receipt of the homestead proceeds, did not constitute a reinvestment that reduced or eliminated the amount required to be turned over to the Trustee?

3. Even if the reinvestment requirement of C.C.P. § 704.720(b) does apply, did the Bankruptcy Court err by not equitably tolling the six-month reinvestment period during the pendency of Kane's appeal of the Bankruptcy Court's order limiting Kane's homestead exemption to $170,350, given that Kane did purchase a new residence while that appeal was pending?

B. Standard of Review

The District Court's standard of review over the Bankruptcy Court's decision is identical to the standard used by circuit courts reviewing district court decisions. *See Ford v. Baroff (In re Baroff)*, 105 F.3d 439, 441 (9th Cir. 1997). Thus, the District Court reviews the Bankruptcy Court's findings of fact for clear error and its conclusions of law de novo. *See Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1198 (9th Cir. 2012).

Insofar as the issues underpinning the current appeal concern the scope of the statutory homestead exemption and the exempt status of the Homestead Proceeds, they are matters of law subject to de novo review. This Court reviews

questions regarding a debtor's claimed exemption rights de novo. *Kelley v. Locke (In re Kelley)*, 300 B.R. 11, 16 (B.A.P. 9th Cir. 2003); *see also Bloom v. Robinson (In re Bloom)*, 839 F.2d 1376, 1378 (9th Cir. 1988) ("The scope of the statutory exemption is a question of law, which we review de novo."). De novo means this Court considers a matter anew, as if no decision previously had been rendered. *Dawson v. Marshall*, 561 F.3d 930, 933 (9th Cir. 2009).

As to the Bankruptcy Court's denial of equitable tolling, this Court reviews a bankruptcy court's decision that a party could not invoke the doctrine of equitable tolling for abuse of discretion. *See Templeton v. Milby (In re Milby)*, 545 B.R. 613, 619 (B.A.P. 9th Cir. 2016) (citing *Baldwin Cty. Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984) (per curiam)). This Court must determine de novo whether the trial court identified and applied the correct legal rule to the relief requested. *United States v. Hinkson*, 585 F.3d 1247, 1261–62 (9th Cir. 2009). If the trial court failed to do so, it abused its discretion. *Id*. If the trial court identified the correct legal rule, this Court determines whether the trial court applied the correct legal rule in a way that was illogical, implausible, or without support in the record. *Id*.

IV. STATEMENT OF THE CASE

Kane filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on January 9, 2021 (the "Petition Date"). ER-001–073. At the time of the bankruptcy filing, Kane, a professional hockey player, lived with his wife and their newborn daughter at their residence located at 2301 Richland Avenue, San Jose, California (the "San Jose Residence"). ER-094, ER-102. Kane claimed a homestead exemption in the San Jose Residence in the amount of $600,000 under the recently amended C.C.P. § 704.730. ER-017.

A creditor, Zions Bancorporation ("Zions") objected to Kane's homestead exemption, asserting, among other things, that his exemption should be denied in full, or that § 522(p) limited his exemption to $170,350. ER-104–125. On July 9,

2021, the Bankruptcy Court entered the *Order on Zions Bancorporation's Objection to Debtor's Homestead Exemption* (the "Homestead Order"), sustaining in part and overruling in part Zions' objection, and holding, in relevant part, § 522(p) applied in California and limited Kane's homestead exemption to $170,350, rather than the $600,000 provided by California law. ER-126–154. However, the Bankruptcy Court overruled Zions' objections to deny Kane's homestead exemption entirely. *Id*. On July 23, 2021, Kane timely appealed the Homestead Order on several grounds. ER-155–157. If successful on appeal, Kane's exemption could have been increased to either $415,350 or $600,000.

Meanwhile, on September 23, 2021, the Bankruptcy Court authorized the Trustee to sell the San Jose Residence for $3,430,000, pay from the sale proceeds Kane's allowed homestead exemption of $170,350, and hold in reserve the sum of $429,650 pending resolution of Kane's appeal of the Homestead Order. ER-158–162. The sale of the San Jose Residence closed on or about October 6, 2021, and Kane received $170,350 from the Trustee. ER-163–165, ER-186:25–187:3.

On or about March 16, 2022, the Trustee's counsel, Mr. Kleiner, contacted the Debtor's counsel and took the position that the six-month reinvestment deadline prescribed by C.C.P. § 704.720(b) would run on April 5, 2022. ER-187:4–10. However, without prejudice to either side's position, the Trustee and Kane agreed to table the homestead reinvestment issue until the appeal of the Homestead Order was resolved. *Id*. As part of a subsequent settlement with Zions resolving several disputes, Kane agreed to dismiss the appeal of the Homestead Order.[3] The appeal was dismissed on February 28, 2023. ER-166–179.

[3] The Trustee was not a party to the appeal as Zions (rather than the Trustee) had objected to Kane's homestead exemption. Zions was the appellee in the appeal of the Homestead Order.

After Kane vacated his San Jose Residence, he first rented a home in Menlo Park, California, from the period of September 2021 through January 2022 at a monthly rent of $14,500, plus a security deposit of $14,500. ER-202–203. In January 2022, Kane signed a new contract to play out the balance of the season with the Edmonton Oilers. *Id*. He then rented a home in Edmonton, Alberta, Canada, from February 2022 through July 2022 at a monthly rate of $15,000 CAD, which is equivalent to $11,250 USD. *Id*. Kane then rented a home in Los Angeles, California, for August 2022 for $20,000. *Id*. Kane eventually closed on the purchase of a home in Edmonton in September 2022, with a down payment of approximately $210,000 USD. *Id*.

On August 1, 2023, the Trustee filed the *Motion for Turnover of Homestead Proceeds* (the "Turnover Motion"), pursuant to § 542(a) and C.C.P. § 704.720(b), arguing the Homestead Proceeds had lost their exempt status on April 5, 2022, because the Debtor did not *purchase* a new residence within six months of the receipt of the reduced proceeds. ER-180–185.[4] Kane filed an opposition to the Turnover Motion on August 15, 2023. ER-188–201. The Trustee filed a reply to Kane's opposition on August 22, 2023. ER-204–212.

The Bankruptcy Court held a hearing on the Turnover Motion on August 29, 2023, and took the matter under advisement. On September 15, 2023, the Bankruptcy Court issued an oral ruling on the Turnover Motion, holding that (1) the reinvestment requirement in C.C.P. § 704.720(b) applied even when a debtor's exemption is limited by § 522(p); (2) Kane's payment of rent and attorneys' fees in

[4] Section § 704.720(b) of the C.C.P. provides that "[t]he proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor s spouse during that period, the proceeds thereafter are not exempt."

connection with his homestead rights, after his receipt of the homestead proceeds, did not qualify as reinvestment in a new homestead; and (3) equitable tolling to extend the time for Kane to purchase a new home was inappropriate in this case. ER-218-241. On September 21, 2023, the Court entered the Turnover Order directing Kane to deliver to the Trustee $170,350. ER-215–217.

V. SUMMARY OF THE ARGUMENT

The Bankruptcy Court erred in holding the reinvestment provision of C.C.P. § 704.720(b) required Kane to reinvest the Homestead Proceeds in another homestead within six months of receipt or the funds lose their exempt status. There is a paucity of cases considering the conflict between § 522(p) with California's recently increased homestead exemption.[5] The Bankruptcy Court's reliance on the holdings of *England v. Golden (In re Golden)*, 789 F.2d 698 (9th Cir. 1986), and *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193 (9th Cir. 2012), was misplaced because neither considered the application of California's homestead exemption provisions in a bankruptcy proceeding with the limiting cap of § 522(p). C.C.P. § 704.720(b) provides for an exemption amount that is entirely circumvented by the federal exemption cap in § 522(p). Unlike California law, however, § 522 does not require a debtor to reinvest the homestead proceeds once capped.

Even if the reinvestment requirement of C.C.P. § 704.720(b) does apply, California's homestead law provides that *any* interest of the Debtor in a property in which he continuously resides—whether it is a leasehold, equitable or beneficial interest, or mere possessory interest—qualifies for the automatic homestead exemption. As such, Kane's use of the homestead proceeds within six months of his receipt meets the reinvestment requirement of California law. There is no

[5] Prior to 2021, California's maximum homestead exemption was $175,000, so § 522(p) was not an issue in California bankruptcy cases.

requirement for Kane to have *purchased* a new residence within six months of the receipt of the Homestead Proceeds. His payments of rents, deposit, and attorneys' fees to defend his homestead rights, in excess of the $170,350 that the Trustee sought to recover, were an integral part of Kane's homestead interest to keep a roof over his and his family's heads, and Ninth Circuit law agrees they should be exempted.

Finally, assuming the reinvestment requirement of C.C.P. § 704.720(b) controls, the Bankruptcy Court erred by failing to apply California equitable law to toll Kane's reinvestment period. Because Kane received only a portion of his homestead exemption as capped by § 522(p), the six-month reinvestment period should not have commenced until his appeal of the Homestead Order was resolved. If the reinvestment period was tolled, then Kane's purchase of a new home prior to the resolution of the appeal would have also satisfied the reinvestment requirement.

VI. ARGUMENT

A. Debtor's Homestead Exemption Was Preempted by § 522(p), and Federal Bankruptcy Law Does Not Include a Reinvestment Requirement.

1. The Homestead Exemption Scheme.

The filing of a Chapter 7 bankruptcy petition creates a bankruptcy estate. § 541(a). At filing, all of a debtor's assets become property of the estate and may be used to pay creditors, subject to the debtor's ability to reclaim specified property as exempt. *Schwab v. Reilly*, 560 U.S. 770, 774 (2010); § 522. "Exemptions serve to protect and foster a debtor's fresh start from bankruptcy." *In re Rolland*, 317 B.R. 402, 412–13 (Bankr. C.D. Cal. 2004).

The Bankruptcy Code sets forth a list of exemptions at § 522(d) but allows states to opt out of the federal exemptions and define their own exemptions.

California has opted out of the federal exemption scheme. Section 703.130 of the C.C.P. provides: "the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state." As such, and with inapplicable exceptions, someone filing bankruptcy in California must utilize California exemptions. Therefore, "the federal courts decide the merits of state exemptions, . . . the validity of the claimed state exemption is controlled by the applicable state law." *Kelley*, 300 B.R. at 16. Courts liberally construe the "the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor." *Tarlesson v. Broadway Foreclosure Invs., LLC*, 184 Cal. App. 4th 931, 936 (2010); *In re Pladson*, 35 F.3d 462, 465 (9th Cir. 1994).

California provides for two kinds of homestead exemptions: the declared homestead exemption (C.C.P. §§ 704.910–704.995) and the automatic homestead exemption (C.C.P. §§ 704.710–704.850). *See Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 194 (B.A.P. 9th Cir. 2014) (citing *In re Cumberbatch*, 302 B.R. 675, 678 (Bankr. C.D. Cal. 2003)). While the amount of both homestead exemptions is the same, the appropriate context for applying each differs. *Id*. at 194–95 (citing *Katz v. Pike (In re Pike)*, 243 B.R. 66, 69 (B.A.P. 9th Cir. 1999)). The automatic homestead exemption protects a debtor "who resides (or who is related to one who resides) in the homestead property at the time of a forced judicial sale of the dwelling." *In re Anderson*, 824 F.2d 754, 757 (9th Cir. 1987). "The filing of a bankruptcy petition constitutes a forced sale for purposes of the automatic homestead exemption." *In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016).

California's recently amended homestead exemption statute, C.C.P. § 704.730, provides:

> (a) The amount of the homestead exemption is the greater of the following:

> (1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars ($600,000).
>
> (2) Three hundred thousand dollars ($300,000).
>
> (b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

C.C.P. § 704.730 (2021). The new homestead exemption amounts protect home equity equal to the median home price in the county where a debtor resides, not to exceed $600,000, or $300,000, whichever is greater, adjusted annually for inflation. *See id*.

However, Kane was not paid his exemption under the amount set by C.C.P. § 704.730. Kane's homestead exemption claim of $600,000 in the San Jose Residence under C.C.P. § 704.730 was circumscribed by the Bankruptcy Court's application of the federal exemption statute § 522(p). Section 522(p)(1)(A) provides:

> [A]s a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $125,000[6] in value in . . . real or personal property that the debtor or a dependent of the debtor uses as a residence . . . .

[6] Dollar amount is periodically adjusted by the Judicial Conference of the United States. The amount as of the filing of Kane's bankruptcy case was $170,350.

§ 522(p)(1)(A). The Bankruptcy Court's Homestead Order held that § 522(p)(1) applied to limit exemptions even in opt-out states, like California, which permit debtors only the exemptions allowable under state law. ER-126–154. Kane timely appealed the Homestead Order. ER-155–157. On September 29, 2022, this District Court affirmed the Bankruptcy Court's Homestead Order. *Kane v. Zions Bancorporation, N.A.*, 631 F. Supp. 3d 854, 865, 870 (N.D. Cal. 2022) (J. Orrick).[7]

2. The Conflict Between C.C.P. § 704.720(b) and § 522(p).

The Trustee asserted that C.C.P. § 704.720(b) required Kane to reinvest the Homestead Proceeds in another homestead within six months of receipt or the funds would lose their exempt status and became subject to turnover to the Trustee under § 542(a). ER-180–187. Section 704.720(b) of the C.C.P. provides, in relevant part:

> If a homestead is sold under this division . . . the proceeds of sale . . . of the homestead . . . are exempt in the amount of the homestead exemption provided in [C.C.P. §] 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a homestead exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

C.C.P. § 704.720(b).

The Bankruptcy Court agreed that "California law imposes an important condition for those [Homestead Proceeds] to remain exempt." ER-222:1–3. Citing *Golden*, 789 F.2d at 700, the Bankruptcy Court noted, "[w]hen a debtor elects to

[7] Kane appealed the ruling to the Ninth Circuit, but as noted above, as part of Kane's agreement with Zions, the appeal was later dismissed. *See Kane v. Zions Bancorporation, N.A.*, 2023 U.S. App. LEXIS 4874 (9th Cir. Feb. 28, 2023).

claim an exemption under state law pursuant to § 522, he is required to comply with the state law in effect at the time of the filing of his bankruptcy petition." In *Golden*, the debtor sold his residence and shortly after filed for bankruptcy, where he claimed an exemption in the remaining sale proceeds under California's homestead provisions at the time. *Id*. at 699. California law provided the sale proceeds were exempt only if reinvested within six months of the sale. *Id*. at 700. The Ninth Circuit held that if the debtor failed to reinvest the proceeds within the six months from debtor's control of those funds, the proceeds reverted to the trustee. *Id*.

The Bankruptcy Court observed that the Ninth Circuit extended the rule in *Golden* to cases where, as here, a debtor's residence is sold during the bankruptcy case. ER-223:14–16; *see Jacobson*, 676 F.3d at 1199 ("There is no material difference between *Golden* and this case."). In *Jacobson*, the debtors did not reinvest the proceeds from the sale of their residence during bankruptcy within six months of receipt, so the Ninth Circuit held the proceeds lost their exempt status. *Id*. at 1198–99. The Bankruptcy Court read *Jacobson* and C.C.P. § 704.720(b) as creating a "hard and fast rule that . . . the debtor's share of the proceeds are not fully exempt if the debtor does not reinvest the proceeds in a new homestead within six months of receipt." ER-223:22–224:2; *see Jacobson*, 676 F.3d at 1198.

The parties agree that on October 6, 2021, Kane received the portion of his homestead exemption, $170,350, as capped by § 522(p), while the Trustee held the remainder of $429,650 pending Kane's appeal of the Homestead Order. The Bankruptcy Court's decision relied on strict application of *Jacobson* and *Golden* to find that under C.C.P. § 704.720(b), the Homestead Proceeds lost their exempt status and became subject to turnover to the Trustee when Kane did not purchase a new home within six months of receipt. But *Golden* and *Jacobson* are inapposite because they considered only the application of the California homestead

exemption provisions in a bankruptcy proceeding without the limiting cap of § 522(p).

A brief review of the history of § 522(p) is in order. Congress added § 522(p) as part of the 2005 Amendments to the Bankruptcy Code (commonly known as the "BAPCPA") which imposed an inflation-adjusted exemption cap[8] for interests in property acquired within 1215 days preceding the bankruptcy "to close what it perceived was the abuse of exemptions caused, in part, by the varying state laws and overly generous homesteads." *In re Virissimo*, 332 B.R. 201, 207 (D. Nev. 2005). Congress "intended to eliminate some of the anomalies created by the use of state homestead exemptions and create a more uniform, predictable set of exemptions." *Id*. at 206–07. In *In re Oliver*, 649 B.R. 206, 207 (Bankr. E.D. Cal. 2023), the bankruptcy court undertook an extensive analysis of § 522(q), which was added alongside § 522(p) in BAPCPA and imposes the same exemption cap amount for debtors who have engaged in certain kinds of bad acts, and remarked that this cap was effectively "dormant" in California until the state increased its homestead exemption in 2021. Prior to the amendments, a debtor claiming a homestead exemption under this old scheme was almost always entitled to less than the federal exemption cap under § 522(p) and (q).[9] This situation results in an absence of cases considering the interplay of § 522(p) with California's recently increased homestead exemption.

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[8] The applicable cap as of the filing of Kane's bankruptcy case was $170,350.

[9] Prior to January 1, 2021, the amount that could be claimed under California's former homestead exemption depended on a debtor's family status, age, physical and mental ability, and income: (1) $75,000 for a single homeowner; (2) $100,000 for a married couple, and (3) $175,000 for debtors who met certain requirements. *See* C.C.P. § 704.730 (2019).

California's reinvestment provision found in C.C.P. § 704.720(b) is simply incompatible with the federal exemption cap imposed by § 522(p) and cannot be applied after a debtor's homestead exemption is so limited under federal law. As a general rule, bankruptcy law leaves the allocation of property rights in the assets of a bankruptcy estate to the state laws that create and define those property rights. *Butner v. United States*, 440 U.S. 48, 54–55 (1979). However, state laws are suspended in bankruptcy to the extent that they actually conflict with the Bankruptcy Code. *Id*. at 54 n.9.

The plain language of C.C.P. § 704.720(b) expressly states: "the proceeds of sale . . . of the homestead . . . are exempt *in the amount of the homestead exemption provided in [C.C.P. §] 704.730*. . . . for a period of six months after the time the proceeds are actually received by the judgment debtor." (Emphasis added). However, § 522(p)(1)(A) preempted and capped California's recently increased homestead exemption to $170,350 for Kane because he acquired an interest in the San Jose Residence during the 1215-day pre-petition period specified by § 522(p).[10] Thus, the federal exemption cap imposed by § 522(p) circumvents "the amount of the homestead exemption provided in [C.C.P. §] 704.730," here replacing the $600,000 that was "provided in" C.C.P. § 704.730(a)(1) with a federally mandated amount of $170,350. But neither § 522(p) nor any other provision of § 522 requires a debtor to reinvest the proceeds in order to protect them. In other words, Kane did not receive a payment "in the amount of the homestead exemption provided in [C.C.P. §] 704.730"—he received a reduced amount pursuant to § 522(p)—and the six-month reinvestment requirement of C.C.P. § 704.720 no longer applies.

[10] California has no requirement that a residence be owned for any time period before a debtor can utilize the full benefit of California law.

The Bankruptcy Court erred in holding that it could apply the federal statute to override California law as to the amount of the exemption, but then apply a portion of the same California statute to require its reinvestment. Either the state statutory scheme applies, or it does not. *See* ER-227:16–20.

Numerous decisions since *Jacobson* have modified the seemingly rigid holding of that case. In *Barclay v. Boskoski*, the Ninth Circuit noted:

> It is true that, in *In re Jacobson*, we held that bankruptcy exemptions 'must be determined in accordance with the state law applicable on the date of filing,' and that 'it is the entire state law applicable on the filing date that is determinative of whether an exemption applies.' But *Owen* tells us that the Bankruptcy Code's policy of permitting state-defined exemptions is not 'absolute.' Instead, it must be applied 'along with whatever other competing or limiting policies the [Bankruptcy Code] contains.'

52 F.4th 1172, 1177–78 (9th Cir. 2022) (quoting *Jacobson*, 676 F.3d at 1199, and *Owen v. Owen*, 500 U.S. 305, 313 (1991)) (internal citations omitted). Moreover, the Ninth Circuit recognized the criticisms of its *Jacobson* decision and has cautioned that it should be construed narrowly. *See McAllister v. Wells (In re Wells)*, 2021 U.S. App. LEXIS 35736, at *5–8 (9th Cir. Dec. 3, 2021).

In opposition to the Turnover Motion, Kane pointed to *In re Davis*, 647 B.R. 775 (Bankr. W.D. Wash. 2022), and *In re Reicher*, 2023 U.S. Dist. LEXIS 59494 (C.D. Cal. Apr. 4, 2023). Both cases establish that when § 522(p) applies to limit a state exemption, other restrictions or conditions imposed by state law do not apply. In *Davis* and *Reicher*, which have similar facts to one another, joint debtors had their homestead exemption claims capped by § 522(p)(1). However, they utilized § 522(m) to double the amount of the capped exemption, even though Washington and California law, respectively, did not allow such doubling. *See also In re*

Nestlen, 441 B.R. 135 (B.A.P. 10th Cir. 2010) (allowing joint debtors to double the § 522(p)(1) exemption cap even though only one exemption could be claimed under Oklahoma law). "[T]he § 522 cap is purely a federal concept and therefore whether the § 522(p) cap should be doubled for joint debtors is a question of federal law." *Reicher*, 2023 U.S. Dist. LEXIS 59494, at *17 (quoting *Nestlen*, 441 B.R. at 143) (internal quotation marks omitted).

The Bankruptcy Court here read these cases to hold that "when a federal law applicable to debtors, regardless of which scheme they're using, provides for a result that is different than the result under state law, federal law controls." ER-225:19–226:10. The Bankruptcy Court erroneously dismissed this proposition as having little application to this case. ER-226:11–20. On the contrary, federal law (§ 522(p)(1)(A)) provided for a result that is different than the result under state law (C.C.P. § 704.730(a)(1)), and this Court cannot conclude Kane received "the amount of the homestead exemption provided in [C.C.P. §] 704.730" as required by C.C.P. § 704.720(b) as part of the six-month reinvestment condition. As the district court in *Reicher* recognized, the § 522 cap is purely a federal concept. The cap is not provided for in the statute that requires reinvestment—C.C.P. § 704.720(b)—which assumes the debtor's receipt of the exemption amount provided in C.C.P. § 704.730. Whether or when Kane's exemption allowed under § 522(p) must be reinvested in a new homestead is therefore a question of federal law, and § 522(p) imposes no such requirement.

When § 522 is used to override state law exemptions, courts should not apply other aspects of the state exemption provisions. To do so would result in an unfair picking and choosing of state and federal exemptions to the detriment of debtors. Applying the reinvestment requirement of California law is inappropriate in this case where Kane's homestead exemption was limited by federal law, which law does not require a debtor to reinvest the reduced proceeds.

B. The Ninth Circuit Recognizes the "Homestead" Interest That the Exemption Protects Does Not Require a Debtor to Purchase Title Ownership. Kane's Payments of Rents, Deposit, and Attorneys' Fees Were Proper Reinvestments Protected by the Homestead Exemption.

Assuming the reinvestment requirement of C.C.P. § 704.720(b) applies even after a debtor's homestead exemption is circumscribed by § 522(p), Kane nonetheless reinvested the Homestead Proceeds as required by California law.

1. *California's Automatic Homestead Exemption Applies to* Any *Interest of the Debtor in Property, Regardless If the Interest Is a Fee, Leasehold, or Lesser Interest.*

The Bankruptcy Court's interpretation of California's homestead exemption cuts against statutory and decisional law that have repeatedly rejected the argument that title to property is necessary to claim a homestead exemption. The Trustee argued that Kane had to "purchase a new residence within six months of the receipt of his proceeds" or lose his Homestead Proceeds. *See* ER-181:23–24, ER-182:4–8. The Bankruptcy Court erroneously adopted the Trustee's premise that Kane had to *purchase* a new homestead. ER-231:12–16. When interpreting *Golden*, the Bankruptcy Court incorrectly posited that "[u]nder California law . . . [the debtor] was obliged to *purchase* a new homestead within six months of receipt of the funds." ER-222:19–25 (emphasis added). In its decision, the Bankruptcy Court explained, "[t]he critical issue in my estimation is determining the nature of the debtor's exemptible interest. It must be shown that [] the purchased property, whatever it might be, is subject to execution by the creditor if it's going to qualify as a homestead." ER-231:12–16 (cleaned up). This position is incorrect.

The automatic homestead exemption, applicable in this case, is governed by C.C.P. § 704.710 *et seq.*, which defines a homestead as:

> the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2)

> in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

C.C.P. § 704.710(c). Based on the plain language of this statute, the automatic homestead exemption does not require a debtor to continuously *own* a property. *Elliott*, 523 B.R. at 196. The law "requires only that the judgment debtor reside in the property as his or her principal dwelling at the time the judgment creditor's lien attaches and continuously thereafter until the court determines the dwelling is a homestead." *Id.* (quoting *Tarlesson*, 184 Cal. App. 4th at 937). "[C]ontinuous residency, rather than continuous ownership, controls the analysis." *Phillips v. Gilman (In re Gilman)*, 887 F.3d 956, 966 (9th Cir. 2018) (quoting *Elliott*, 523 B.R. at 196) (internal quotation marks omitted).

California's legislature enacted homestead exemption laws "to protect the sanctity of the family home against a loss caused by a forced sale by creditors . . . [and] ensure that insolvent debtors and their families are not rendered homeless by virtue of an involuntary sale of the residential property they occupy. . . ." *In re Nolan*, 618 B.R. 860, 863–64 (Bankr. C.D. Cal. 2020), *aff'd*, 2021 U.S. Dist. LEXIS 27611 (C.D. Cal. Feb. 12, 2021), (citing *Amin v. Khazindar*, 112 Cal. App. 4th 582, 588 (2003)).

To this end, "the automatic homestead exemption applies to *any* interest in the property if the debtor satisfies the continuous residency requirement set forth in [C.C.P.] § 704.710(c)" *Elliott*, 523 B.R. at 196 (emphasis added). The California legislature sought to broaden the interests protected by the automatic homestead exemption as compared to the interests covered by the older declared homestead. *Nolan*, 618 B.R. at 864. The differences between the two statutory exemptions are illustrative of the legislature's intent. For example, the declared homestead (which is not at issue here) is expressly limited to an "interest in real property (whether

present or future, vested or contingent, legal or equitable) that is a 'dwelling' as defined in [C.C.P. §] 704.710, but does not include a leasehold estate with an unexpired term of less than two years or the interest of the beneficiary of a trust." C.C.P. § 704.910(c) (emphasis added). *See Nolan*, 618 B.R. at 864.

The automatic homestead set forth in C.C.P. § 704.710(c) (at issue in this appeal) contains no limitation on leasehold estates or the interests of the beneficiary of a trust, and in fact makes no qualifying statement as to the interests covered under the statutory exemption. *Nolan*, 618 B.R. at 864–65. This is consistent with other provisions of Article 4, which governs the automatic homestead. For example, C.C.P. 704.740 provides:

> (a) Except as provided in subdivision (b), the interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article.
>
> (b) *If the dwelling* is personal property or *is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy*:
>
> > (1) A court order for sale is not required and the procedures provided in this article relating to the court order for sale do not apply.
> >
> > (2) An exemption claim shall be made and determined as provided in Article 2 (commencing with [C.C.P. §] 703.510).[11]

C.C.P. § 704.740 (emphasis added). Furthermore, the Law Revision Commission Comments to C.C.P. § 704.820 state:

[11] Procedures for claiming exemptions after levy.

> [This section] implements the intent of this article [Article 4] not to restrict the interest of the judgment debtor for which a homestead exemption is available. A homestead exemption is available to a judgment debtor regardless of whether the judgment debtor's interest is a fee, leasehold, or lesser interest.

C.C.P. § 704.820 (Deering); *see also Elliott*, 523 B.R. at 196 n.4. In addition, the Legislative Committee Comments to the automatic homestead exemption statute, C.C.P. § 704.720, confirm that *any* interest of a debtor in property is protected by the exemption:

> Unlike the former provisions, [C.C.P. §] 704.720 does not specify the interest that is protected and does not limit the homestead in a leasehold to a long-term lease; *any interest sought to be reached by the judgment creditor in the homestead is subject to the exemption.*

C.C.P. § 704.720 (Deering) (emphasis added); *see also Nolan*, 618 B.R. at 865.

In *Gilman*, the Ninth Circuit evaluated a debtor's entitlement to a homestead exemption under California's statutory scheme. There, the Ninth Circuit recognized "California law rejects [the creditors'] argument that title to the property is necessary to claim a homestead exemption." *Gilman*, 887 F.3d at 965. California's courts have "held that 'judgment debtors who continuously reside in their dwellings retain a sufficient equitable interest in the property to claim a homestead exemption even when they have conveyed title to another.'" *Id.* (quoting *Tarlesson*, 184 Cal. App. 4th at 937); *see also Diaz*, 547 B.R. at 335 ("To determine whether a debtor resides in a property for homestead purposes, courts consider the debtor's physical occupancy of the property and the intent to reside there.").

In *Tarlesson*, a judgment debtor's continuous occupancy of the property, even after conveying title to her home to a related party, was sufficient to retain an

equitable or beneficial interest in it to qualify as a homestead and claim an automatic exemption. *Tarlesson*, 184 Cal. App. 4th at 937–38.

In *In re Donaldson,* 156 B.R. 51, 52 (Bankr. N.D. Cal. 1993), debtors who continuously resided in their home during bankruptcy retained a possessory interest sufficient to establish their right to an automatic exemption despite their loss of title in a pre-petition foreclosure.

In *Hopson v. McBeth (In re Hopson)*, 2019 U.S. Dist. LEXIS 33259, at *7 (C.D. Cal. Feb. 28, 2019), the district court suggested that a debtor who claimed a "non-exclusive, unrecorded life estate" in her daughter's home could qualify for a homestead exemption even if she could not establish all of the legal requirements for a life estate because what was required is merely an "equitable or possessory interest, coupled with residency."

Finally, in *Goodrich v. Fuentes (In re Fuentes)*, 687 F. App'x 542, 544 (9th Cir. 2017) ("*Fuentes II*"), the trustee objected to a homestead exemption on the ground that the debtor had a mere residency interest in the property rather than an ownership interest. The Ninth Circuit affirmed that California law recognizes possessory interests in property and held the debtor satisfied the residency requirements to claim a homestead exemption in his bankruptcy for his possessory interest.

2. *Kane's Possessory, Leasehold Interest in Property That He Rented Qualifies as a Reinvestment in a Homestead.*

Having established that *any* interest of the Debtor—whether it is a leasehold, equitable or beneficial interest, or mere possessory interest—in a property in which he continuously resides qualifies for the automatic homestead exemption, Kane's possessory, leasehold interest in property he rented and in which he continuously

resided qualifies as a homestead for purposes of the reinvestment requirement in C.C.P. § 704.720(b).

In *Bencomo v. Avery (In re Bencomo)*, 2016 Bankr. LEXIS 2901, at *28–29 (B.A.P. 9th Cir. 2016), the Ninth Circuit B.A.P. left open the issue of whether rent payments under a residential lease with a term of less than two years qualified as reinvestment in a homestead for purposes of C.C.P. § 704.720(b). A debtor argued that his acquisition of a leasehold estate during the six-months reinvestment period under C.C.P. § 704.720(b) qualified as a reinvestment in a homestead, but the bankruptcy court did not reach the issue on remand. *Id*. at *26; Order Ruling on Issues Remanded by the Ninth Circuit Bankruptcy Appellate Panel for Determination, Doc. 149, *In re Bencomo*, No. 2:13-bk-11245-BR (Bankr. C.D. Cal. June 9, 2017).

However, in *In re Sain*, 584 B.R. 325, 329 (Bankr. S.D. Cal. 2018), the bankruptcy court concluded that "a leasehold interest must be considered a homestead." There, the debtor reacquired his home from the trustee. *Id*. at 326–27. As part of the transaction, the debtor's father took title to the home and leased the property back to the debtor, and the debtor paid rent to his father and incurred other amounts to obtain his interest and defend his homestead rights. *Id*. at 327–28. Ten months after the debtor received the sale proceeds, the trustee sought turnover, arguing that the debtor did not acquire a new home, dwelling, or homestead. *Id*. at 328. Considering *Bencomo* and California and Ninth Circuit law at length to determine the homestead interest that the exemption is meant to protect, *Sain* determined that the homestead in which a debtor had to have reinvested the proceeds did not require full fee title ownership, but was broad enough to encompass a leasehold interest in a principal dwelling. *Id*. at 329–31. The *Sain* court cited *Gilman* and other Ninth Circuit authority as holding the form of ownership is not the focus of California's homestead exemption statute, but rather

any type of interest that allows a debtor to reside in property that extends to leasehold interests. *Id*. at 329–30 (citing *Gilman*, 887 F.3d 956, and C.C.P. § 704.710(c)).

Sain noted that under *Jacobson*, 676 F.3d at 1199, a debtor had to use the homestead proceeds to reinvest "in a new homestead within six months of receipt." *Sain*, 584 B.R. at 328–29. The debtor in *Sain* provided unrefuted evidence of investments in his residence totaling $90,635.43, which amount was in excess of the $75,000 homestead proceeds subject to the turnover motion. *Id*. at 328. From the $75,000 homestead proceeds itself, the debtor paid $50,000 in attorneys' fees incurred in reacquiring the home and defending the homestead; and the debtor averred he paid more than $25,000 in rent to his father. But the *Sain* court also counted the $33,500 that the debtor "pre-invested" towards the purchase of his residence and a $2,016 rent payment from funds that predated the debtor's receipt of his homestead proceeds. *Id*. at 331, 333–34. The bankruptcy court held that notwithstanding C.C.P. § 704.720(b)'s language that proceeds are exempt for six months "after" they "are actually received by the judgment debtor," the debtor could be reimbursed from the homestead proceeds for deposits that predated his receipt of those proceeds as a proper reinvestment in his home. *Id*. at 333–34. *Sain* correctly understood that the purpose of the reinvestment requirement is "to prevent the debtor from squandering the proceeds for nonexempt purposes." *Id*.; *Jacobson*, 676 F.3d at 1200 (citing *Golden*, 789 F.2d at 700). "*Jacobson* . . . elaborated 'if a debtor does not put his proceeds to proper use, they ought to be used to satisfy creditors' claims.'" *Sain*, 584 B.R. at 333 (quoting *Jacobson*, 676 F.3d at 1200).

The bankruptcy court in *Sain* found that the debtor did not squander his homestead proceeds. 584 B.R. at 333. He invested additional funds into his residence after he received his homestead proceeds, including partially reimbursing

his expenditures of non-estate property. *Id*. Thus, the debtor satisfied both facets of the statute's purpose: the debtor was able to stay in his home, and his homestead proceeds were put to a proper use that was not detrimental to creditors. *Id*.

Like the debtor in *Sain*, Kane provided unrebutted evidence that he invested his Homestead Proceeds toward at least $174,500 for housing.[12]

Rental Month	Residence	Rent
	Menlo Park, California	$14,500 (security deposit)
September 2021	Menlo Park, California	$14,500
October 2021	Menlo Park, California	$14,500
November 2021	Menlo Park, California	$14,500
December 2021	Menlo Park, California	$14,500
January 2022	Menlo Park, California	$14,500
February 2022	Edmonton, Alberta	$11,250[13]
March 2022	Edmonton, Alberta	$11,250
April 2022	Edmonton, Alberta	$11,250
May 2022	Edmonton, Alberta	$11,250
June 2022	Edmonton, Alberta	$11,250
July 2022	Edmonton, Alberta	$11,250
August 2022	Los Angeles, California	$20,000
		$174,500

[12] This is more than the Homestead Proceeds of $170,350 that are subject to the Turnover Motion.

[13] The monthly rent for Kane's residence in Edmonton was $15,000 CAD, which is equivalent to $11,250 USD.

These expenditures primarily included rent and security deposits from the time he vacated his San Jose Residence to allow for the Trustee's sale of the property.[14] *See* ER 203. Kane also provided evidence that he incurred no less than $30,000 in attorneys' fees to preserve his homestead exemption after Zions sought to deny it in its entirety. *Id*.

The record establishes that Kane invested more than what he received from the Trustee towards housing for himself and his family, and satisfied the residency requirements to claim the automatic homestead exemption by the time the Trustee filed his Turnover Motion. Some of these amounts were paid before Kane's receipt of the Homestead Proceeds on October 6, 2021, and others incurred more than six months after Kane received the proceeds. As the bankruptcy court held in *Sain*, Kane's pre-investment in a new residence should be given credit as a proper reinvestment in a new homestead and reimbursable from the Homestead Proceeds. To hold otherwise would place debtors at great risk of homelessness between the time they have to vacate their residence being sold and when they actually receive their homestead proceeds to reinvest in a new home.[15]

This is also not a case where Kane squandered his Homestead Proceeds. Kane provided unrefuted evidence that from the time he vacated his San Jose

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[14] The Trustee made evidentiary objections pursuant to Federal Rule of Evidence 1002 to Kane's statements showing evidence of his expenditures on rent, which the Bankruptcy Court overruled. *See* ER-213–214, ER-219:23–221:14. The Trustee did not offer any contradictory evidence.

[15] The trustee in *Sain* argued the debtor would never become homeless because of his father's financial support, but the trustee offered no evidentiary support and failed to persuade the bankruptcy court. *Sain*, 584 B.R. at 332. The court recognized it had to liberally construe "the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor," which is to protect any debtor from homelessness. *Id*. at 330–31 (quoting *Gilman*, 887 F.3d at 964).

Residence, he rented a home in Menlo Park, Edmonton, and then Los Angeles—places where he intended to live and actually did reside. ER-202–203. Kane's declaration shows he was renting a home in Edmonton in April 2022, when the Homestead Proceeds supposedly lost their exempt status; but Kane continued to reside in and pay rent for his Edmonton home through July 2022. ER-203. He then rented a residence in Los Angeles until he was able to purchase a home in Edmonton. *Id*.

The Bankruptcy Court erred in concluding that Kane's payment of rent and other fees in connection with his homestead rights did not constitute a reinvestment of the Homestead Proceeds. ER-230:18–234:15. Pointing to *Nolan*, the Bankruptcy Court explained that

> [t]he type of interest upon which a homestead exemption can be asserted, must be an interest sought to be reached by the judgment creditor in the homestead. By doing so, the legislature maintained the inherent requirement that a homesteader may exempt only an interest to which a judgment creditor could attach an enforcement lien under California state law.

ER-232:11–23 (quoting *Nolan*, 618 B.R. at 865) (cleaned up). The Bankruptcy Court then could not find any factual evidence in the record demonstrating the precise nature of Kane's interest in the properties he rented that a judgment creditor might reach. ER-233:11–25.

In so ruling, the Bankruptcy Court ignored the line of cases and clear statutory language that hold "*any interest sought to be reached by the judgment creditor in the homestead is subject to the exemption*." C.C.P. § 704.720 (emphasis added). The Ninth Circuit B.A.P. has long held that "the filing of the [bankruptcy] petition serves as both a hypothetical levy and as the operative date of the exemption." *Diaz*, 547 B.R. at 335. In bankruptcy, the trustee stands as a

hypothetical judgment lien creditor. *See* § 544(a). For example, in *Goodrich v. Fuentes (In re Fuentes)*, 2015 U.S. Dist. LEXIS 192763 (C.D. Cal. Sept. 23, 2015) ("*Fuentes I*"), a wife owned a residence in which she and her husband continuously resided. Prior to filing her bankruptcy, the wife conveyed all her right, title, and interest in the residence to her husband. *Id*. at *2. The wife then claimed a $175,000 homestead exemption in the residence. *Id*. The trustee in the wife's bankruptcy case commenced an adversary proceeding against the wife and her husband to avoid the transfer and recover the property for the estate. *Id*. at *3. Separately, the husband filed his own bankruptcy case and claimed a $175,000 homestead exemption in the residence. *Id*. The bankruptcy court voided the grant deed by which the husband acquired title to the residence, but would not disallow the husband's homestead exemption claim because he still held a possessory interest and satisfied the residency requirement. *Id*. at *4, 16. The district court affirmed, holding applicable case law clearly supported the determination that "a possessory interest can be sufficient to establish a debtor's right to an automatic exemption." *Id*. at *16. The Ninth Circuit also affirmed. *Fuentes II*, 687 F. App'x at 544–45.

The Ninth Circuit explained:

> The automatic homestead exemption is not an absolute right to retain the homestead itself. Rather, it is a debtor's right to retain a certain sum of money when the court orders sale of a homestead in order to enforce a money judgment. However, a judgment debtor's homestead can only be sold if a bid is received at a sale of the homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property . . . .

Fuentes, 687 F. App'x at 544 (cleaned up).

In other words, the debtor can claim a homestead exemption in his bankruptcy case for the possessory interest that he holds in property, but this possessory interest can be sold by his creditors unless no bid is received at a sale of that interest that exceeds the amount of the homestead exemption claim plus any additional amount necessary to satisfy the liens and encumbrances on the property. *Id*. Similarly, in a case analyzing Oregon law very similar to California's homestead exemption statute, the Ninth Circuit B.A.P. observed that "[a]bsent an anti-assignment clause in the lease, a tenant could sell and assign his interest under a lease; he would be entitled to the proceeds from the sale or assignment of his leasehold interest." *Sticka v. Casserino (In re Casserino)*, 290 B.R. 735, 740 (B.A.P. 9th Cir. 2003) ("*Casserino I*"), *aff'd*, 379 F.3d 1069 (9th Cir. 2004) ("*Casserino II*").

In *Casserino*, a debtor living in an apartment that he leased on a month-to-month basis claimed a homestead exemption under Oregon law in rent and deposit that he had prepaid pursuant to a rental agreement after the trustee sought turnover of the rent deposit from the landlord. *Casserino II*, 379 F.3d at 1071. The bankruptcy court wanted to be clear whether the debtor was claiming an exemption in the rent and deposit, or in the leased premises. *Casserino I*, 290 B.R. at 737, 739. The parties agreed that the issue was whether a homestead exemption could be claimed in the rent deposits. *Id*. The Ninth Circuit affirmed that the debtor as a residential lessee owned a possessory interest in the leased property, so the leasehold fell within Oregon's homestead exemption. *Casserino II*, 379 F.3d at 1071–74. Finding the rent deposits were an integral part of the debtor's leasehold, the Ninth Circuit agreed they were included in his exempt homestead. *Id*. at 1074–75.

Here, the San Jose Residence constituted a "homestead" as it was Kane's principal dwelling in which he and his family resided on the date of the petition.

When the Trustee sold the San Jose Residence, Kane no longer owned a homestead, but rather an interest in the sale proceeds of the homestead that had to be reinvested within six months of receipt. But like in *Casserino*, when Kane used the Homestead Proceeds to pay rent and deposits to provide a new home for himself and his family, those payments became inextricably tied to his leasehold interest and are protected by California's homestead exemption.

While the trustee in *Casserino* sought turnover of rents and deposits from the debtor's landlord, the same concerns expressed by the Ninth Circuit are equally applicable when, as here, a trustee is seeking turnover of homestead proceeds used for rent and deposits from the debtor. The debtor's payment of rent and deposit was a necessary condition to the debtor's right to obtain possession of the property under the lease agreement. *Casserino II*, 379 F.3d at 1074–75; *Casserino I*, 290 B.R. at 743. If a landlord is required to turn over prepaid rent deposits to the trustee, the debtor tenant would be in material breach of the lease. *Casserino II*, 379 F.3d at 1074–75. Likewise, if a debtor must turn over homestead proceeds that he is using to keep a roof over his and his family's heads, the debtor may find himself without funds to pay rent and facing eviction. *See id*.

The fact that the Trustee in this case is seeking turnover of the Homestead Proceeds that Kane has already spent on rents, deposit, attorneys' fees to defend his homestead rights does not alter these concerns, since a debtor may be unable to come up with new funds. Furthermore, this would put debtors in an inequitable position where they must pay their homestead exemption twice—first to their landlord, and again to the trustee. And if this Court were to accept the Trustee's argument, which the Bankruptcy Court mistakenly followed, that only the purchase of a new residence should count as a reinvestment of homestead proceeds, it will make new law that favors homeowners over renters despite the clear intent of California's legislature to expand the coverage of the automatic homestead

exemption to any interest that keeps a roof over a debtor's head. This would thwart California's policy of protecting insolvent debtors and their families from the risk of being rendered homeless.

C. The Bankruptcy Court Abused Its Discretion by Failing to Equitably Toll the Six-Month Reinvestment Period When Kane's Right to His Full Homestead Had Not Been Determined.

The Ninth Circuit applies a two-part test to determine whether a trial court has abused its discretion. *Hinkson*, 585 F.3d at 1261–62. The first step is to determine de novo if the Bankruptcy Court identified the correct legal rule to apply to the relief requested. *Id*. If not, this Court must conclude the Bankruptcy Court abused its discretion. *Id*.

The Bankruptcy Court committed error in this first step. In its oral ruling, the Bankruptcy Court incorrectly claimed, "Kane does not cite any statute or showing that an extension of California's explicit six-month requirement is allowed." ER-234:24–235:1. However, Kane had cited the recent case of *Dudley*, where a bankruptcy court recognized cases in which "California's six-month reinvestment period has been equitably tolled when, [1] through no fault of their own, exemption claimants lacked possession of or control over homestead proceeds following an involuntary or voluntary sale of the homestead and, as a result, were unable to timely reinvest the proceeds"; and "[2] circumstances beyond the debtor's control prevent the timely reinvestment of the proceeds." *In re Dudley*, 617 B.R. 149, 154 (Bankr. E.D. Cal. 2020) (citing cases). The *Dudley* court applied California equitable law to toll the reinvestment period. *Id*. at 154. The *Dudley* court reiterated the need to liberally construe the law and facts to promote the purpose of the homestead legislation to benefit the debtor and protect California's citizens from losing their homes through a technicality. *Id*. at 154–55.

Even if the Bankruptcy Court identified the correct legal rule, the second step is to determine if it applied the correct legal rule in a way that was illogical, implausible, or without support in the record. *Hinkson*, 585 F.3d at 1262. The Bankruptcy Court's rejection of equitable tolling is based on an illogical interpretation of the record.

The Bankruptcy Court did not find equitable tolling to be appropriate on the facts because "there's no dispute that Mr. Kane received $170,350 on October 6th, 2021, and that he had unrestricted access to those funds subject to the six-month reinvestment period under C.C.P. [§] 704.720(b)." ER-234:20–24. However, Kane did dispute this premise. *See* ER-198–201. Section § 704.720(b) of the C.C.P. states "the proceeds [referring to the amount of the homestead exemption provided in C.C.P. § 704.730] are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor." As discussed above, Kane's homestead exemption claim of $600,000 was restricted by the Homestead Order that Kane timely appealed. ER-126–157. Until Kane's appeal of the Homestead Order was resolved, Kane received only a portion of his homestead exemption, while the Trustee held the remaining $429,650. ER-158–165. Kane did not receive "the amount of the homestead exemption provided in [C.C.P. §] 704.730," and certainly did not have unrestricted access to those funds in dispute that the Trustee continued to hold.

In *In re Marriott*, 427 B.R. 887 (Bankr. D. Idaho 2010), the court considered a trustee's objection to a debtor's homestead exemption claim under Idaho law. The debtor and his former spouse sold their residence pre-petition, with the sale proceeds deposited in the debtor's attorney's trust account pending resolution of the divorce. *Id*. at 893–94. The court recognized the debtor no longer owned a homestead, but rather an interest in the sale proceeds of the homestead, which under Idaho law had to be reinvested within one year of receipt. *Id*. at 893 (except

for allowing one year to reinvest, Idaho's law is essentially identical to California law on this issue). The court equitably tolled the reinvestment period from the sale date because the debtor never had unrestricted access to or control over the proceeds or the opportunity to reinvest the funds toward a new homestead. *Id*. at 895–96. A partial decree in the divorce action directed the proceeds be held in a trust account pending a division of property, the debtor's bankruptcy stayed the divorce action, and when relief from stay had been granted, the trustee's objection to the exemption claim further delayed resolution. *Id*. at 895.

In *In re Bading*, 376 B.R. 143 (Bankr. W.D. Tex. 2007) (cited favorably in both *Marriott* and *Dudley*), the bankruptcy court granted a debtor's motion to toll a six-month reinvestment period. The debtor's homestead consisted of two contiguous parcels. *Id*. at 146. A creditor refused to release an improper lien on one parcel, which ultimately compelled the debtor to sell her homestead in consecutive transactions to the same buyer. *Id*. The debtor sold the first parcel, and once she obtained the release of the lien, she sold the second parcel. *Id*. at 146–47. If the reinvestment period had not been tolled as to the proceeds from the sale of the first parcel, the debtor would have lost her exemption while she was attempting to sell the second. *Id*. at 152–53. The court held that the Debtor's time to reinvest the proceeds of the first parcel was tolled until the sale of both parcels could be completed. *Id*. at 156. The court reasoned that refusing to toll the reinvestment period would have "deprived debtor of the opportunity to enjoy the full benefits of the homestead guaranteed to her under the Texas Constitution." *Id.* at 153.

Here, Kane received only a portion of his claimed homestead exemption from the Trustee, so the period was equitably tolled while his appeal of the Homestead Order was pending. Until that appeal was resolved, Kane could not know the amount of proceeds he would have in his possession or control and need to reinvest. If Kane prevailed in whole or in part in the appeal of the Homestead

Order, he would have had up to the full amount of his claimed homestead exemption to reinvest in a new homestead. While he was not pursuing the sale of two parcels of property like in *Bading*, Kane received only the capped portion of $170,350 while the potential balance of the homestead should be viewed as the "full benefit" of the homestead guaranteed to him under California law. Accepting the Bankruptcy Court's view that Kane had unrestricted access to the $170,350 and had to reinvest that portion within six months leads to the absurd result that Kane would need to purchase two homes if he succeeded on appeal: one to protect the initial $170,350, and another to protect the increased amount allowed. In that sense, the Bankruptcy Court erred in failing to equitably toll the reinvestment of the first portion received until the appeal of the remaining balance of the exemption claim was resolved.[16]

The appeal of the Homestead Order was dismissed on February 28, 2023, at which point it was finally determined that Kane would receive only $170,350 for his homestead exemption. ER-166–179. If this Court were to accept that C.C.P. § 704.720(b) required Kane to use the Homestead Proceeds to purchase a new residence, Kane did buy a home in Edmonton within the six-month reinvestment period if it is properly tolled while the appeal was pending.

The Bankruptcy Court asserted Kane "never sought to stay or file the motion to equitably toll those until the period had long passed." ER-235:12–15. Courts have allowed equitable tolling even in the absence of a motion by the debtor to extend the reinvestment period. Although the debtors in *Bading* and *Dudley* brought motions to extend the reinvestment period, *Marriott* considered the

[16] The fact that Kane ultimately did not receive an increased homestead amount is immaterial. The six months should have been tolled until the amount was finally determined.

equitable tolling issue in the context of a trustee's objection to the debtor's exemption claim *after* the time to reinvest had ostensibly run. Here, the parties agreed to table the homestead reinvestment issue until the appeal of the Homestead Order was resolved. The absence of a motion by the Debtor to extend the reinvestment period was not an impediment to the Bankruptcy Court tolling the six-month countdown until the appeal of the Homestead Order was dismissed.

VII. CONCLUSION

For the reasons set forth above, Kane respectfully requests that this Court reverse the Bankruptcy Court's Turnover Order; or in the alternative, vacate the decision and remand this matter to the Bankruptcy Court for further findings and conclusions consistent with this Court's decision.

Dated January 22, 2024

FINESTONE HAYES LLP

/s/ Stephen D. Finestone
Stephen D. Finestone
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Evander Frank Kane

CERTIFICATION OF COMPLIANCE FOR BRIEFS

No.: 3:23-cv-05288-WHO

Debtor: Evander Frank Kane

The undersigned certifies that this brief contains 10,380 words, excluding the items exempted by Federal Rule of Bankruptcy Procedure 8015(g). This brief complies with the 13,000-word limit of Federal Rule of Bankruptcy Procedure 8015(a)(7)(B)(i). The type size and typeface comply with Federal Rule of Bankruptcy Procedure 8015(a)(5)(A).

Dated January 22, 2024

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