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NOT FOR PUBLICATION

HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. EC-04-1380-MaSP  
)  
LARRY THOMAS WEEDEN; ) Bk. No. 96-30386  
7 BARBARA JEANNE WEEDEN, )  
)  
8 Debtors. )

9 \_\_\_\_\_ )  
)  
10 LARRY THOMAS WEEDEN; )  
11 BARBARA JEANNE WEEDEN, )  
)  
12 Appellants, )

**MEMORANDUM**<sup>1</sup>

13 v. )  
)  
14 NANCY ROWLAND-WONG; )  
15 RICHARD BURTON; JOHN ROBERTS, )  
Chapter 7 Trustee; )  
16 UNITED STATES TRUSTEE, )  
)  
Appellees. )

17 Argued and Submitted on May 20, 2005  
18 at Sacramento, California

19 Filed - September 6, 2005

20 Appeal from the United States Bankruptcy Court  
21 for the Eastern District of California

22 Honorable Jane Dickson McKeag, Bankruptcy Judge, Presiding.

23 \_\_\_\_\_  
24 Before: MARLAR, SMITH and PERRIS, Bankruptcy Judges.  
25

26 \_\_\_\_\_  
27 <sup>1</sup> This disposition is not appropriate for publication and  
28 may not be cited by the courts of this circuit except when  
relevant under the doctrines of law of the case, res judicata, or  
collateral estoppel. See 9th Cir. BAP Rule 8013-1.

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**INTRODUCTION**

In this appeal, the chapter 7<sup>2</sup> debtors seek a reversal of the bankruptcy court's order sustaining the objections of two judgment creditors to the debtors' amended exemption claim in real property. The debtors had already stipulated to a \$75,000 homestead exemption in their personal residence, and the bankruptcy court held that allowing a different exemption in another parcel of real property would prejudice the creditors. Because the amended exemption claim was precluded by judicial doctrines, as well as being prejudicial, we AFFIRM.

**FACTS**

Nancy Rowland-Wong ("Rowland-Wong") and Richard Burton ("Burton") are judgment creditors of debtor Larry Weeden ("Weeden"). They held prepetition liens on his real property in the amounts of \$135,394.30 and \$5,0230, respectively.

Larry and Barbara Weeden ("Debtors") filed a chapter 7 petition in August 1996. In their Schedule C, Debtors claimed an exemption for real property located at 16404 Greenhorn, Grass Valley, California (the "Greenhorn Property").

In October 1996, Debtors filed amended Schedules A and C. Schedule A listed a fee simple interest in 11305 Tracy Drive, Grass Valley, California (the "Tracy Property"), valued at

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<sup>2</sup> Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

1 \$80,000, and encumbered by secured claims totaling \$270,513.  
2 Debtors' Amended Schedule A also listed a fee simple interest in  
3 13382 Curtis Lane, Grass Valley, California (the "Curtis  
4 Property"), valued at \$110,000, and encumbered by secured claims  
5 totaling \$298,739.

6 In their amended Schedule C, Debtors claimed an exemption in  
7 the Tracy Property, but left blank the columns for "Specify Law  
8 Providing Each Exemption" and "Value of Claimed Exemption." No  
9 objections were filed to the exemption at that time.

10 The trustee filed a report of No Distribution on October 4,  
11 1996. In November 1996, Debtors received a discharge, and the  
12 case was closed in April 1998.

13 In the course of an attempted refinancing, Debtors learned  
14 that both judgment liens remained on the Tracy and Curtis  
15 Properties. On February 12, 2003, almost seven years after  
16 Debtors received their discharge, Debtors reopened their  
17 bankruptcy case. In April 2003, Debtors moved to avoid the liens  
18 of Rowland-Wong and Burton on both properties. Debtors sought to  
19 avoid the lien on the Curtis Property by claiming a homestead  
20 exemption under Cal. Civ. Pro. Code § 704.730(a).<sup>3</sup> Rowland-Wong  
21

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22 <sup>3</sup> Debtors' papers referred to an exemption of \$75,000 under  
23 Cal. Civ. Proc. Code § 704.730(a)(2), which provided:

24 (a) The amount of the homestead exemption is one of the  
25 following:

25 . . . .

26 (2) Seventy-five thousand dollars (\$75,000) if the  
27 judgment debtor or spouse of the judgment debtor who  
28 resides in the homestead is at the time of the  
attempted sale of the homestead a member of a family  
(continued...)

1 and Burton objected to the motion.<sup>4</sup>

2 Since the Curtis Property was Debtors' residence, Weeden's  
3 counsel prepared a stipulation with Rowland-Wong and Burton to  
4 avoid their liens in that property. The stipulating parties  
5 recognized Debtors' \$75,000 homestead exemption in the Curtis  
6 Property, although it was not actually claimed exempt on either  
7 Debtors' initial or amended Schedule C.

8 In June 2003, the parties signed the Stipulation for Order  
9 Avoiding Liens of Burton and Rowland-Wong ("Stipulation"). The  
10 stipulated order was signed by the bankruptcy court on June 30,  
11 2003.

12 The hearing went forward on the motion to avoid the liens of  
13 Rowland-Wong and Burton on the Tracy Property, and the bankruptcy  
14 court orally ruled:

15 This [the Tracy Property] is not claimed exempt. There's  
16 no section listed, no value claimed exemptions [sic], so  
it's not claimed exempt to me.

17 . . . That is going to be my ruling. Property is not  
18 claimed exempt. And since it's not claimed exempt, it  
couldn't be allowed as exempt, and 522 doesn't apply.

19 Tr. of Proceedings (August 13, 2003), pp. 6:6-8 and 7:18-22.

20 On September 29, 2003, the bankruptcy court entered an order

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23 <sup>3</sup>(...continued)  
unit, and there is at least one member of the family  
24 unit who owns no interest in the homestead or whose  
only interest in the homestead is a community  
25 property interest with the judgment debtor.

26 Cal. Civ. Proc. Code § 704.730 (1987 & Supp. 2002). See Debtors'  
Motion to Avoid Judicial Liens (February 12, 2003), pp. 2:13-14;  
27 4:25-26; 5:14-15.

28 <sup>4</sup> Burton's objections have not been included in the excerpts  
of record.

1 denying Debtors' motion to avoid any liens on the Tracy Property.  
2 Debtors timely appealed, and on March 15, 2004, the panel affirmed  
3 the bankruptcy court, holding that Debtors failed to articulate a  
4 good-faith basis for the exemption in the Tracy Property and to  
5 satisfy their duty to provide schedules which were accurate and  
6 complete in adequate detail.<sup>5</sup>

7       Thereafter, on May 12, 2004, Debtors filed a second amended  
8 Schedule C, claiming the Tracy Property exempt in the amount of  
9 \$13,288 under Cal. Civ. Pro. Code § 703.140(b)(1).<sup>6</sup> Rowland-Wong  
10 and Burton filed objections to Debtors' second amended claim.

11       The bankruptcy court issued a tentative ruling, on July 13,  
12 2004, in which it found: (1) "The stipulation, drafted by the  
13 Debtors' counsel, recites that Curtis Lane is exempt on Schedule C  
14 as the Debtors' residence and is subject to the Debtors' \$75,000  
15 homestead exemption"; and that (2) Debtors' conduct, in seeking to  
16 correct the deficiencies in their exemption for the Tracy Property  
17 while entering into a Stipulation giving them a homestead  
18 exemption in the Curtis Property, prejudiced the creditors.

19       The court also gave Debtors a choice of exempting the Tracy  
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21       <sup>5</sup> See Memorandum, Weeden v. Rowland-Wong et al. (In re  
22 Weeden), BAP No. EC-03-1453 (March 15, 2004), p. 7.

23       <sup>6</sup> This statute allows a debtor in bankruptcy to exempt  
24       (1) [t]he debtor's aggregate interest, not to exceed  
25       seventeen thousand four hundred twenty-five dollars  
26       (\$17,425) in value, in real property or personal  
27       property that the debtor or a dependent of the debtor  
28       uses as a residence, in a cooperative that owns  
29       property that the debtor or a dependent of the debtor  
30       uses as a residence . . . .

31       Cal. Civ. Pro. Code § 703.140(b)(1).

1 Property in lieu of the Curtis Property, but not both, which offer  
2 Debtors refused. Following a hearing, the court therefore adopted  
3 its tentative ruling and entered judgment on July 14, 2004,  
4 sustaining the objections of Rowland-Wong and Burton. Debtors  
5 timely appealed the order.

6  
7 **ISSUES**  
8

- 9 1. Whether Debtors' exemption claim in the Tracy Property  
10 was barred as a matter of law.<sup>7</sup>  
11  
12 2. Whether the bankruptcy court clearly erred in holding  
13 that Debtors could not exempt the Tracy Property because  
14 of prejudice to Rowland-Wong and Burton.  
15

16 **STANDARD OF REVIEW**  
17

18 The panel reviews legal issues de novo and the bankruptcy  
19 court's factual findings under a clearly erroneous standard. See  
20 Arnold v. Gill (In re Arnold), 252 B.R. 778, 784 (9th Cir. BAP  
21 2000).

22 Questions of contract interpretation are subject to de novo  
23 review, unless extrinsic evidence is introduced on issues such as  
24 intent, in which case the pertinent factual findings are reviewed  
25 for clear error. Captain Blythers, Inc. v. Thompson (In re

26  
27 <sup>7</sup> We may affirm on any basis supported by the record, even  
28 where the issue was not expressly considered by the bankruptcy  
court. O'Rourke v. Seaboard Surety Co. (In re E.R. Fegert, Inc.),  
887 F.2d 955, 957 (9th Cir. 1989).

1 Captain Blythers, Inc.), 311 B.R. 530, 534 (9th Cir. BAP 2004).

2 A bankruptcy court has discretion to deny debtors leave to  
3 amend their exemptions if such amendment is made in bad faith or  
4 is prejudicial to creditors. See Martinson v. Michael (In re  
5 Michael), 163 F.3d 526, 529 (9th Cir. 1998); Arnold, 252 B.R. at  
6 784; Magallanes v. Williams (In re Magallanes), 96 B.R. 253, 256  
7 (9th Cir. BAP 1988). The bankruptcy court's findings on prejudice  
8 or Debtors' intent are reviewed for clear error. Arnold, 252 B.R.  
9 at 784. The ultimate decision to deny leave to amend is reviewed  
10 for an abuse of discretion. See Michael, 163 F.3d at 529.

## 11 DISCUSSION

12  
13  
14 Rule 1009(a) provides that a debtor may amend a voluntary  
15 schedule "as a matter of course at any time before the case is  
16 closed." Fed. R. Bankr. P. 1009(a). "A court may, however, deny  
17 the debtors leave to amend 'on a showing of a debtor's bad faith  
18 or of prejudice to creditors.'" Michael, 163 F.3d at 529. The  
19 same standard applies in a reopened case. Goswami v. MTC Distrib.  
20 (In re Goswami), 304 B.R. 386, 393 (9th Cir. BAP 2003). Here, the  
21 closed case had been reopened to consider Debtors' lien avoidance  
22 motion.

23 Debtors did not initially claim a homestead exemption in  
24 either the Tracy Property or the Curtis Property. In their  
25 amended schedules filed in October 1996, Debtors attempted to  
26 claim the Tracy property exempt. Then, in order to gain Rowland-  
27 Wong's and Burton's agreement to release the liens on the Curtis  
28 Property, in 2003, Debtors represented that they were claiming

1 their \$75,000 homestead exemption in the Curtis Property. At that  
2 time, Debtors also attempted to avoid the liens on the Tracy  
3 Property. The bankruptcy court held, however, that Debtors did  
4 not exempt the Tracy Property properly and therefore the liens  
5 could not be avoided under § 522(f)(1), which states in relevant  
6 part:

7       Notwithstanding any waiver of exemptions . . . the debtor  
8       may avoid the fixing of a lien on an interest of the  
9       debtor in property to the extent that such lien impairs an  
10      exemption to which the debtor would have been entitled  
11      . . . if such lien is --

12               (A) a judicial lien . . . .

13 11 U.S.C. § 522(f)(1).

14       The panel affirmed the bankruptcy court, finding that Debtors  
15 had not established their entitlement to exempt the Tracy  
16 Property.

17       In order to remedy this "error" more than six years after the  
18 case had been closed, Debtors amended their Schedule C a second  
19 time to claim the Tracy Property as exempt, citing Cal. Civ. Pro.  
20 Code § 703.140(b)(1).

21       The bankruptcy court sustained Rowland-Wong's and Burton's  
22 objections to that amendment because Debtors were not entitled to  
23 utilize two different exemption schemes to exempt two different  
24 parcels. In addition, the bankruptcy court held that Debtors  
25 could not exempt the Tracy Property because Rowland-Wong and  
26 Burton were prejudiced by: (1) their reliance on Debtors'  
27 representations in the Stipulation that the Curtis Property was  
28 claimed as the exempt homestead; and (2) their costs of  
successfully defending the new motion as to the Tracy Property,  
including an appeal.



1 California's exemption law provides that debtors in  
2 bankruptcy may elect to exempt their residential real property  
3 under the homestead provision, Cal. Civ. Pro. Code § 704.730, or  
4 may utilize Cal. Civ. Pro. Code § 703.140(b), but not both.

5 Section 703.140(a) provides:

6 (a) In a case under Title 11 of the United States Code,  
7 all of the exemptions provided by this chapter,  
8 including the homestead exemption, other than the  
9 provisions of subdivision (b) are applicable  
10 regardless of whether there is a money judgment  
11 against the debtor or whether a money judgment is  
12 being enforced by execution sale or any other  
13 procedure, but the exemptions provided by subdivision  
14 (b) may be elected in lieu of all other exemptions  
15 provided by this chapter, as follows:

12 (1) If a husband and wife are joined in the  
13 petition, they jointly may elect to  
14 utilize the applicable exemption  
15 provisions of this chapter other than the  
16 provisions of subdivision (b), or to  
17 utilize the applicable exemptions set  
18 forth in subdivision (b), but not both.

16 Cal. Civ. Proc. Code § 703.140(a) (emphasis added).

17 The language in California's exemption scheme, indicating  
18 that debtors who have filed for bankruptcy may elect either the  
19 regular exemptions available to all debtors or the special  
20 California exemptions available only to bankruptcy debtors, "but  
21 not both," is intended to prevent stacking of exemptions in  
22 bankruptcy. Little v. Reaves (In re Reaves), 256 B.R. 306, 311  
23 (9th Cir. BAP 2000), aff'd, 285 F.3d 1152 (9th Cir. 2002).

24 In this appeal, Debtors argue that the terms of the  
25 Stipulation did not condition the release of the liens upon  
26 Debtors' claiming the Curtis Property as their exempt homestead,  
27 nor did the Stipulation require such an amendment to their  
28 Schedule C. Since they allegedly did not make a formal exemption

1 claim under the homestead provision of Cal. Civ. Proc. Code  
2 § 704.730 for the Curtis Property, they therefore maintain that  
3 the judgment creditors were not prejudiced and that the amended  
4 Tracy Property exemption claim was proper.

5 Rowland-Wong and Burton maintain that Debtors intentionally  
6 used one set of exemptions (the homestead exemption under Cal.  
7 Civ. Pro. Code § 704.730(a)(2)) to gain the Stipulation to avoid  
8 the liens against the Curtis Property, and then amended the  
9 schedules to use the other exemption (Cal. Civ. Pro. Code  
10 § 703.140(b)(1)) to claim the Tracy Property exempt as well.

#### 11 12 **A. Applicable Legal Doctrines**

13  
14 Before we address the factual issue of prejudice, we examine  
15 the application of two legal doctrines to the facts of this case,  
16 res judicata, or claim preclusion, and judicial estoppel.

#### 17 18 **1. Debtors Are Bound by the Stipulation**

19  
20 Debtors and Rowland-Wong and Burton entered into a  
21 Stipulation agreeing that Rowland-Wong and Burton would release  
22 their liens on the Curtis Property in exchange for allowing  
23 Debtors a \$75,000 homestead exemption. The bankruptcy court  
24 entered the Stipulation as a signed order.

25 The stipulated order in this case was final and binding.  
26 Under the doctrine of res judicata, "[a] final judgment on the  
27 merits of an action precludes the parties or their privies from  
28 relitigating issues that were or could have been raised in that

1 action." Federated Dep't. Stores, Inc. v. Moitie, 452 U.S. 394,  
2 398 (1981).

3 Moreover, the Ninth Circuit has held that "a litigant can no  
4 more repudiate a compromise agreement than he could disown any  
5 other binding contractual relationship. . . ." Crown Life Ins.  
6 Co. v. Springpark Assocs. (Matter of Springpark Assocs.), 623 F.2d  
7 1377, 1380 (9th Cir. 1980) (citation omitted). Here, the parties  
8 agreed to be bound by the Stipulation as an order of the court.

9 Debtors maintain, nonetheless, that the bankruptcy court  
10 erred in finding that the Stipulation provided that they claimed a  
11 homestead exemption under Cal. Civ. Proc. Code § 704.730 for the  
12 Curtis Property. Therefore, they argue that the exemption claim  
13 for the Tracy Property did not violate the Stipulation.

14 The parties do not dispute that the bankruptcy court had the  
15 authority to review its stipulated order in these proceedings.  
16 The terms of a stipulation are construed according to state law  
17 principles. See United Commercial Ins. Serv., Inc. v. Paymaster  
18 Corp., 962 F.2d 853, 857 (9th Cir. 1992). In California, the  
19 intention of contracting parties is to be ascertained from the  
20 written document, if possible. See Cal. Civ. Proc. Code § 1639.  
21 However, when the language used is ambiguous, parol evidence may  
22 be received to aid the trial court in ascertaining the true intent  
23 of the parties. Rabinowitch v. Cal. West. Gas Co., 257 Cal. App.  
24 2d 150, 156, 65 Cal. Rptr. 1, 5 (Ct. App. 1967). Thus, "[a]  
25 contract may be construed and explained by reference to  
26 surrounding circumstances under which it was made and the matters  
27 to which it relates." Id.; Cal. Civ. Code § 1647 and Cal. Civ.  
28 Proc. Code § 1860. In addition, any ambiguities in a contract are

1 generally construed against the drafter. Captain Blythers, 311  
2 B.R. at 536 (citing Cal. law). Finally, "one phrase of a contract  
3 should not be interpreted so as to render another phrase of the  
4 contract meaningless." C.F. Brookside, Ltd. v. Skyview Memorial  
5 Lawn Cemetery (In re Affordable Housing Dev. Corp.), 175 B.R. 324,  
6 329-30 (9th Cir. BAP 1994).

7 The Stipulation stated, in relevant part:

8 1) The WEEDENS' residence at 13382 Curtis Lane, Grass  
9 Valley, CA was found to be exempt pursuant [to] 11 U.S.C.  
10 Sec. 522, as their residence as shown on their Schedule C,  
11 and the parties agree that its July, 1996 petition date  
12 value minus its secured debt and the priority debts listed  
by Debtors for past due child support, and other items and  
the Debtors' \$75,000.00 leaves no equity in the subject  
property for the liens of Creditors ROWLAND-WONG and  
BURTON . . .

13 2) Given the lack of any attachable equity in 13382  
14 Curtis Lane, Grass Valley, CA, the parties agree and  
15 stipulate that the liens of ROWLAND-WONG, BURTON and  
16 BURTON's Assignee . . . and any other liens are avoidable  
17 by the WEEDENS . . . and each of the parties agrees that  
the entry of an order of this court avoiding the liens  
specified above . . . is appropriate and each party  
requests the entry of this stipulation as an order  
avoiding said liens.

18 Stipulation (June 26, 2003), p. 2 (alteration added).

19 Debtors maintain that the language of the Stipulation is  
20 ambiguous in that it does not clearly state that the \$75,000  
21 deduction, in the equity calculation, is for a claimed homestead  
22 exemption under Cal. Civ. Proc. Code § 704.730(a)(2). Debtors  
23 maintain that the language could have meant that it was exempt  
24 under the Cal. Civ. Proc. Code § 703.140 provisions instead.<sup>8</sup> We

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25  
26 <sup>8</sup> Debtors' reasoning is perplexing. Even if they are  
27 attempting to argue that the Curtis Property was exempted under  
28 § 703.140(b)(1), they still would not be entitled to the  
"wildcard" exemption under subsections (b)(1) and (b)(5), since  
(continued...)

1 do not find this argument persuasive.

2 California's homestead exemption statute sets the amount of  
3 that exemption at \$75,000 for a family unit. See Cal. Civ. Proc.  
4 Code § 704.730(a)(2). Debtors claimed a \$75,000 exemption in the  
5 Stipulation. Furthermore, Debtors had filed a declaration of  
6 homestead as to the Curtis Property, which entitled them to take  
7 advantage of the exemption under § 704.730. See Wolfson v. Watts  
8 (In re Watts), 298 F.3d 1077, 1080 (9th Cir. 2002) (prepetition  
9 recordation of declaration of homestead entitled debtors to  
10 \$75,000 homestead exemption). It would be meaningless, as Debtors  
11 urge, for them to have claimed a \$75,000 exemption yet deny the  
12 authority for such an exemption. Affordable Housing Dev. Corp.,  
13 175 B.R. at 329-30.

14 To the extent that the language of the Stipulation is  
15 ambiguous, the bankruptcy court properly took parole evidence by  
16 way of Rowland-Wong's attorney's declaration, in which he averred  
17 that Rowland-Wong "gave up her lien on Debtors' personal residence

18

19 <sup>8</sup>(...continued)  
20 there would be no unused amount to apply to the Tracy Property  
21 (\$75,000 exceeds \$17,425). The "wildcard" provisions of Cal. Civ.  
22 Proc. Code §§ 703.140(b)(1) and (b)(5) provide:

23 (1) The debtor's aggregate interest, not to exceed  
24 seventeen thousand four hundred twenty-five dollars  
25 (\$17,425) in value, in real property or personal  
26 property that the debtor or a dependent of the  
27 debtor uses as a residence, in a cooperative that  
28 owns property that the debtor or a dependent of the  
debtor uses as a residence, or in a burial plot for  
the debtor or a dependent of the debtor.

26 (5) The debtor's aggregate interest, not to exceed in  
27 value nine hundred twenty-five dollars (\$925) plus  
28 any unused amount of the exemption provided under  
paragraph (1), in any property.

Cal. Civ. Proc. Code § 730.140(b)(1), (b)(5) (emphasis added).

1 based on a claimed homestead exemption under [Cal. Civ. Proc.  
2 Code] § 704.730." Decl. of John D. Maxey (June 9, 2004), p. 2,  
3 ¶ 6. Also put into evidence was a June 12, 2003, letter from  
4 Debtors' attorney, which stated that Debtors were entitled to a  
5 \$75,000 exemption in their personal residence.

6 Moreover, even if Debtors had claimed an exemption for the  
7 Curtis Property under Cal. Civ. Proc. Code § 703.140(b)(1), they  
8 could not thereafter claim the same exemption for the Tracy  
9 Property because that statute only applies to real property "used  
10 as a residence." Id.; Toplitzky v. Hooten (In re Toplitzky), 227  
11 B.R. 300, 304 (9th Cir. BAP 1998) (§ 703.140(b)(1) provides an  
12 exemption in regards to the debtor's residence). Debtors could  
13 not exempt the Tracy Property under that provision when California  
14 law allows only one residence to be exempted and the Stipulation  
15 and stipulated order provided that the Curtis Property was the  
16 exempted residence.

17 The bankruptcy court did not err, therefore, in construing  
18 the Stipulation as a binding agreement to release the Rowland-Wong  
19 and Burton liens because they impaired Debtors' \$75,000 homestead  
20 exemption in the Curtis Property. Because the homestead exemption  
21 in the Curtis Property was res judicata, Debtors were barred from  
22 claiming another exemption under a different exemption scheme for  
23 the Tracy Property.

## 24 25 **2. Judicial Estoppel** 26

27 Judicial estoppel is an equitable doctrine that precludes a  
28 party from gaining an advantage by asserting one position, and

1 then later seeking an advantage by taking a clearly inconsistent  
2 position. Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778,  
3 782 (9th Cir. 2001). We have explained that “[t]here are three  
4 general approaches to judicial estoppel: (1) requiring (like  
5 equitable estoppel) that the party injured by the changed position  
6 have relied on the first position; (2) merely requiring that the  
7 court have relied on, i.e. accepted, the earlier position; and (3)  
8 encompassing unseemly adversary behavior that constitutes ‘playing  
9 fast and loose’ with the court.” An-Tze Cheng v. K & S  
10 Diversified Invs., Inc. (In re An-Tze Cheng), 308 B.R. 448, 453  
11 (9th Cir. BAP 2004) (citation omitted). The Ninth Circuit has  
12 restricted the application of judicial estoppel to cases where the  
13 court relied on, or accepted, the party’s previous inconsistent  
14 position. See Hamilton, 270 F.3d at 783.

15 Thus, there are three factors a court may consider in  
16 determining whether to apply the doctrine of judicial estoppel.  
17 First, a party’s later position must be “clearly inconsistent”  
18 with its earlier position. Second, courts regularly inquire  
19 whether the party has succeeded in persuading a court to accept  
20 that party’s earlier position, so that judicial acceptance of an  
21 inconsistent position in a later proceeding would create the  
22 perception that either the first or the second court was misled.  
23 A third consideration is whether the party seeking to assert an  
24 inconsistent position would derive an unfair advantage or impose  
25 an unfair detriment on the opposing party if not estopped.  
26 Hamilton, 270 F.3d at 782-83 (citing New Hampshire v. Maine, 532  
27 U.S. 742, 750-51 (2001)).

28 First, Debtors clearly asserted inconsistent positions.

1 Debtors entered into a Stipulation claiming a homestead exemption  
2 in the Curtis Property. Debtors then amended their Schedule C to  
3 claim a wild card exemption in the Tracy Property. Debtors could  
4 not "stack" or take the exemptions under Cal. Civ. Pro. Code  
5 § 703.140(b) in addition to the \$75,000 homestead exemption. See  
6 Cal. Civ. Proc. Code § 703.140(a); Little v. Reaves (In re  
7 Reaves), 285 F.3d 1152, 1156 (9th Cir. 2002). The Ninth Circuit  
8 has explained California law as follows:

9           A California debtor in bankruptcy must elect between  
10 two sets of exemptions under California law, one which  
11 applies to debtors generally and the other which applies  
12 to debtors in bankruptcy. CCP § 703.140(a); Farrar v.  
13 McKown (In re McKown), 203 F.3d 1188, 1189 (9th Cir.2000).  
14 The homestead exemption available to judgment debtors, CCP  
15 § 704.730, is more generous than the exemption that  
applies to debtors in bankruptcy, id. § 703.140(b)(1).  
Here, prior to filing for bankruptcy, Debtors recorded a  
declaration of homestead available to judgment debtors,  
thereby entitling Debtors to a \$75,000 homestead  
exemption, id. § 704.730(a), which remained effective  
after they filed their bankruptcy petition. . . .

16 Watts, 298 F.3d at 1080.

17           Second, the bankruptcy court accepted Debtors' first  
18 position, i.e., the homestead exemption of the Curtis Property,  
19 when it approved the Stipulation.

20           Finally, Debtors would derive an unfair advantage if allowed  
21 to exempt two parcels of real property, and such would be an  
22 unfair detriment on Rowland-Wong and Burton because they would  
23 lose their liens on both parcels of property and become unsecured  
24 creditors.

25           Debtors's conduct met all three criteria generally considered  
26 in applying judicial estoppel; therefore, the doctrine of judicial  
27 estoppel prevented Debtors from claiming an exemption in the Tracy  
28 Property.



1 **B. Prejudice to the Judgment Creditors**

2  
3 Rule 1009(a) states that debtors may amend their schedules  
4 "as a matter of course" at any time before the case is closed.  
5 "The rule is liberal, but is subject to some judge-made  
6 exceptions: Amendments are and should be liberally allowed at any  
7 time absent a showing of bad faith or prejudice to third parties."  
8 Arnold, 252 B.R. at 784.

9 "Prejudice to creditors is clearly present where they suffer  
10 an actual economic loss due to a debtor's delay in claiming his  
11 exemption." Id.

12 Rowland-Wong and Burton contend that they agreed to release  
13 their liens on the Curtis Property because they expected to retain  
14 their liens on the non-exempt Tracy Property. They knew that  
15 Debtors were only entitled to claim an exemption in one homestead  
16 and therefore were justified in their expectation that they would  
17 retain their liens on the Tracy Property.

18 Debtors contend that the terms of the Stipulation do not  
19 require, nor do they reflect the judgment creditors'  
20 understanding, that Debtors would amend Schedule C in order to  
21 claim an exemption in the Curtis Property, nor was that ever done.

22 As discussed above, the bankruptcy court did not err in  
23 determining that both parties understood that Debtors were  
24 purporting to claim the homestead exemption in their Curtis  
25 Property residence. In fact, Debtors stated, on p. 2 of their  
26 Motion to Avoid Judicial Liens, Determine Secured Status: "Curtis  
27 Lane was and is the debtors' residence and on July 18, 1990, the  
28 debtors filed a declaration of homestead. The debtors are

1 entitled to an exemption of \$75,000." Moreover, the exemption  
2 amount of \$75,000 is consistent only with the homestead provisions  
3 of § 704.730. The Stipulation concerns the Curtis Property,  
4 states that the Curtis Property is Debtors' residence, and states  
5 that they are entitled to a \$75,000 homestead exemption.

6 The circumstances surrounding the Stipulation were that there  
7 were two properties subject to the liens of Rowland-Wong and  
8 Burton. Rowland-Wong's attorney presented declaration evidence in  
9 which he stated:

10 I did not agree to release the lien against the  
11 rental property [Tracy Property]. However, based on  
12 Debtors' claimed exemption, I, on behalf of Ms. Wong,  
13 agreed to release the lien on the personal residential  
14 knowing there would be no available exemption on the  
15 rental property and Ms. Wong could proceed to collect on  
16 her lien against the rental property.

17 Decl. of John D. Maxey, supra, p. 2, ¶ 5.

18 It is clear that Rowland-Wong and Burton would have acted  
19 differently in regards to the Stipulation had they known Debtors  
20 intended to claim an additional exemption in the Tracy Property.

21 Therefore, when Debtors amended their schedules seven years  
22 later to claim the Tracy Property as exempt, Rowland-Wong and  
23 Burton would have suffered an actual economic loss had the  
24 bankruptcy court allowed the exemption on the Tracy Property.  
25 They had already released their respective liens on the  
26 homesteaded Curtis Property, and would have had no where else to  
27 look to satisfy their judgments.

28 However, "merely showing prejudice' does not automatically  
trigger disallowance of an amendment: the court must balance the  
prejudice to the debtor of disallowing the exemption against the  
prejudice to third parties in allowing the exemption." Arnold,

1 252 B.R. at 785.

2       The prejudice to Rowland-Wong and Burton, had the exemption  
3 in the Tracy Property been allowed, would have been great; they  
4 would have become unsecured creditors, or else they would have had  
5 to incur additional attorneys fees in order to litigate the  
6 legality of the Stipulation. Had Debtors claimed a "wild card"  
7 exemption in the Tracy Property pursuant to § 703.140(b)(1) and  
8 (b)(5), before entering into the Stipulation, Rowland-Wong and  
9 Burton would not have agreed to allow Debtors to claim a \$75,000  
10 homestead exemption in the Curtis Property, and the matter of the  
11 propriety of the dual exemptions would have been sorted out at  
12 that stage. The fact that Debtors never did claim a homestead  
13 exemption in the Curtis Property on Schedule C was their own  
14 failure to act. Moreover, an amended Schedule C was unnecessary  
15 since Debtors had filed a declaration of homestead in regards to  
16 the Curtis Property, asserted the homestead exemption in the  
17 negotiations for avoidance of the liens, and included the \$75,000  
18 homestead exemption as part of the Stipulation.

19       On the other side of the equation, Debtors were not  
20 prejudiced by the bankruptcy court's disallowance of the claimed  
21 exemption in the Tracy Property. They obtained the release of the  
22 liens from their residence. California law allows Debtors to  
23 claim a homestead exemption in only one parcel of real property.  
24 See Cal. Civ. Pro. Code § 703.140(a)(1) and (b)(1). Debtors had  
25 already claimed a homestead exemption in the Curtis Property by  
26 virtue of the court-approved Stipulation, and enjoyed the benefits  
27 of the more generous homestead exemption. Therefore, Debtors were  
28 not prejudiced at all when the bankruptcy court disallowed their

1 claimed exemption in the Tracy Property.

2       When balancing the prejudice to Debtors if the court had  
3 disallowed the exemption in the Tracy Property (none - Debtors  
4 already exempted the Curtis Property) with the prejudice to  
5 Rowland-Wong and Burton if the court had allowed the exemption in  
6 the Tracy Property (great - Rowland-Wong and Burton would have  
7 become unsecured creditors and Debtors would have gained double  
8 exemptions), it is clear that the bankruptcy court did not err in  
9 disallowing the exemption.

10

11

### CONCLUSION

12

13       Debtors are unable to exempt the Tracy Property for multiple  
14 reasons, including the binding Stipulation, res judicata, and  
15 judicial estoppel. In addition, when determining whether to allow  
16 Debtors to amend their exemptions, the bankruptcy court must weigh  
17 the prejudice to the creditors if the exemption is allowed with  
18 the prejudice to Debtors if the exemption is disallowed. Since  
19 Rowland-Wong and Burton would be greatly prejudiced if Debtors  
20 were allowed to claim an exemption in the Tracy Property, and the  
21 Debtors would not be prejudiced by disallowance, the bankruptcy  
22 court did not err in sustaining Rowland-Wong and Burton's  
23 objections to Debtors' amended exemption. Therefore, the  
24 bankruptcy court's order sustaining the objections to the claimed  
25 exemption in the Tracy Property is **AFFIRMED**.

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