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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP Nos.	CC-10-1003-MkHKi
		)		CC-10-1004-MkHKi
6	RAMONA G. FONTAINE,	)		
		)	Bk. No.	LA 08-13012-BR
7	Debtor.	)		
	_____	)	Adv. No.	LA 08-01994-BR
8		)		
	RAMONA G. FONTAINE;	)		
9	CIRILO G. REYES,	)		
		)		
10	Appellants,	)		
		)		
11	v.	)	<b>MEMORANDUM*</b>	
		)		
12	ROBERT L. CONN; CAROLYN DYE,	)		
	Chapter 7 Trustee;	)		
13	MARCUS FONTAINE,	)		
		)		
14	Appellees.	)		
	_____	)		

Argued and Submitted on September 23, 2010  
at Pasadena, California

Filed - November 26, 2010

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Barry Russell, Bankruptcy Judge, Presiding

Appearances: Glenn Ward Calsada appeared for Appellant Ramona G. Fontaine  
Edmundo Espinoza appeared for Appellant Cirilo G. Reyes  
Appellee Robert L. Conn appeared pro se

Before: MARKELL, HOLLOWELL and KIRSCHER, Bankruptcy Judges.

\*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.



1 sister Barbara. In 1991, the Los Angeles County Superior Court  
2 (the "State Court") ruled that Marcus' 1986 purchase constituted  
3 a fraudulent transfer that Marcus had made with the actual  
4 intent to hinder and delay one of his creditors, Morris Fox (who  
5 was represented by Conn). The State Court entered a judgment for  
6 damages and costs in the aggregate amount of \$65,417 in favor of  
7 Fox and against Marcus, Ramona and Barbara (the "1991 Judgment").

8 In 1997, Fox assigned his 1991 Judgment to Conn. Conn  
9 recorded several abstracts of judgment in Los Angeles County,  
10 thereby creating a judgment lien against the Property. Between  
11 1994 and 2002, however, a series of contested acknowledgment of  
12 satisfaction of judgment forms also were recorded, purportedly in  
13 Conn's name and purportedly under his signature (the  
14 "Acknowledgments").

15 On March 4, 2002, Ramona conveyed the Property to her niece  
16 Norma Ruiz ("Ruiz"), who immediately borrowed \$200,000 against  
17 the Property from a commercial lender, SIB Mortgage Corporation.  
18 In addition to executing a deed of trust in favor of SIB  
19 Mortgage, Ruiz executed another deed of trust, this one in favor  
20 of another niece of Ramona's, Laura Ortiz ("Ortiz"), to secure an  
21 alleged debt of \$425,000.

22 In 2003, Conn sued Ramona, Marcus, Ruiz and Ortiz  
23 (collectively, the "2003 Defendants"), as well as SIB Mortgage,  
24 in the State Court for abuse of process, fraudulent conveyance,  
25 conspiracy, cancellation of instrument, quiet title and cloud on  
26 title. In relevant part, Conn alleged that the 2003 Defendants  
27 forged and fraudulently recorded the Acknowledgments in order to  
28 evade the legal effect of Conn's judgment lien and to realize the

1 value of the Property without having to pay off the 1991  
2 Judgment. By way of his First Amended Complaint, Conn sought:  
3 (1) compensatory and punitive damages; (2) avoidance of the  
4 Acknowledgments; (3) avoidance of the conveyance of the Property  
5 from Ramona to Ruiz; (4) a declaration that his judgment lien was  
6 of superior priority to any claim or interest of any of the  
7 defendants; and (5) a determination of the claims and interests  
8 in the Property of each of the defendants. Shortly after the  
9 commencement of his lawsuit, Conn recorded a notice of pending  
10 action, or lis pendens, which referred to the relief he sought  
11 against the defendants with respect to the Property.

12 Ramona and Marcus filed a verified answer to the complaint  
13 in which they admitted that ownership of the Property was  
14 transferred to Ruiz in 2002, and that Ruiz thereafter was the  
15 owner of the Property. In late 2003, the State Court entered an  
16 order striking their answer and entering defaults against Marcus  
17 and Ramona. Neither Ruiz nor Ortiz had ever responded to Conn's  
18 First Amended Complaint, and thus the court also entered their  
19 defaults. Meanwhile, SIB Mortgage and Conn agreed to a  
20 stipulation for entry of judgment. As a result, in 2004, the  
21 State Court entered an Amended Judgment worked out between Conn  
22 and SIB Mortgage (the "2004 Judgment"), in which the State Court  
23 made the following rulings:

- 24 • That all of the Acknowledgments were forgeries and were  
25 void;
- 26 • That all of Conn's abstracts of judgment were valid and  
27 fully enforceable;
- 28 • That, on March 4, 2002, Ramona by grant deed conveyed

1 fee simple title in the Property to Ruiz;

- 2 • That SIB Mortgage was a bona fide encumbrancer, and SIB  
3 Mortgage's deed of trust was senior to Conn's judgment  
4 lien;
- 5 • That Ruiz's purchase of the Property and her execution  
6 of the \$425,000 deed of trust in favor of Ortiz, along  
7 with the recording of the forged Acknowledgments  
8 constituted fraudulent conveyances by the 2003  
9 Defendants, which they made with the actual intent to  
10 hinder, delay and defraud Conn in his attempts to  
11 enforce and collect on the 1991 Judgment;
- 12 • That the \$425,000 deed of trust in favor of Ortiz was  
13 void; and
- 14 • That the 2003 Defendants were jointly and severally  
15 liable to Conn for \$185,000 in compensatory damages,  
16 and all but Ortiz were also liable for \$100,000 in  
17 punitive damages.

18 2004 Judgment at pp. 3-7.

19 In 2007, Ramona, Marcus and Ruiz filed a motion to vacate  
20 the 2004 Judgment. The State Court denied the motion and the  
21 movants appealed. The California Court of Appeal issued an  
22 opinion in 2008, affirming the State Court's order denying the  
23 motion to vacate, in which the Court of Appeal recounted and  
24 elaborated on the history of forgery and fraudulent conveyances  
25 which gave rise to the 2004 Judgment. See Conn v. Fontaine,  
26 2008 WL 1932763 (Cal. Ct. App., May 5, 2008) (unpublished).

27 Meanwhile, Conn obtained a writ of execution, which he  
28 caused the Los Angeles County Sheriff to levy against the

1 Property. The Sheriff set a sale date of August 1, 2007, but on  
2 July 30, 2007, Ramona filed a chapter 13 bankruptcy, which  
3 resulted in the postponement of the sale. In October 2007, Conn  
4 obtained from the bankruptcy court an order granting him relief  
5 from the co-debtor stay under § 1301 permitting him to proceed  
6 with his judgment enforcement efforts against Ramona's  
7 co-obligors under the 2004 Judgment. Additionally, in November  
8 2007, the bankruptcy court entered an order dismissing Ramona's  
9 chapter 13 bankruptcy, with a 180-day bar to refile absent  
10 Ramona's obtaining the prior permission of the court. On appeal  
11 to the BAP, we affirmed the order granting relief from stay and  
12 dismissed as moot the appeal from the case dismissal order.

13 Conn purchased Ruiz's interest in the Property at a  
14 sheriff's sale held on March 12, 2008 (the "Sheriff's Sale").  
15 Two days before, however, on March 10, 2008, Ramona obtained  
16 permission from the bankruptcy court to file a chapter 7  
17 bankruptcy, which she filed that same day. Ramona then sought by  
18 adversary proceeding and motion to have the Sheriff's Sale set  
19 aside as void in violation of the automatic stay in her  
20 bankruptcy case.

21 The bankruptcy court dismissed the adversary proceeding and  
22 denied the motion. The bankruptcy court ruled that the sale  
23 affected only Ruiz's interests, and thus any interest that Ramona  
24 might claim in the Property had not been affected. As a  
25 consequence, the court found that the Sheriff's sale did not  
26 violate Ramona's bankruptcy stay.<sup>3</sup>

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27  
28 <sup>3</sup>The bankruptcy court further noted that Ramona had admitted  
(continued...)

1 On July 15, 2008, Ramona filed amended bankruptcy schedules,  
2 in which she claimed an interest in the Property. According to  
3 her Amended Schedule A, she and her husband Reyes held title to  
4 the Property "as joint tenants on behalf of the Cynthia Paola  
5 Pietro Mendez minor child trust" (the "Minor Child Trust").  
6 According to her Amended Schedule C, she further claimed that her  
7 interest in the Property was the subject of a homestead exemption  
8 under Cal. Civ Proc. Code ("CCP") §§ 704.710, 704.720 and  
9 704.730. Neither the chapter 7 trustee nor Conn filed an  
10 objection to Ramona's homestead exemption claim.

11 Ramona's alleged ownership interest is explained in a  
12 declaration she later filed in the bankruptcy court. According  
13 to Ramona, her 2002 conveyance of the Property to Ruiz was a sham  
14 to obtain credit under false pretenses. Ramona asserted that it  
15 was always understood by Ruiz and SIB Mortgage that Ruiz would  
16 convey the Property back to Ramona as soon as the loan from SIB  
17 Mortgage closed. She then revealed that Ruiz reconveyed the  
18 Property by a Grant Deed dated August 27, 2002, which named  
19 "Ramona G. Fontaine and Cirilo G. Reyes, as Joint tenants, and on  
20 behalf of the [Minor Child Trust]" as grantees. See April 8,  
21 2009, Sworn Declaration of Ramona G. Fontaine at ¶¶ 20-25.

22 The record does not specify when Ramona first revealed to  
23 the world Ruiz's 2002 deed allegedly conveying title back to  
24 Ramona (the "Ruiz Deed"). Ramona did not record the 2002 Ruiz  
25 Deed until December 2006, over four years after Ruiz allegedly

26 \_\_\_\_\_  
27 <sup>3</sup>(...continued)  
28 in open court that Marcus had signed her name on the motion and  
on the pleadings in the adversary proceeding.

1 executed the Ruiz Deed. What is clear, however, is that Ramona  
2 never asserted nor even mentioned her alleged continuing interest  
3 in the Property in Conn's 2003 lawsuit. To the contrary, as  
4 mentioned above, Ramona's verified answer admitted that Ramona  
5 conveyed the Property to Ruiz and that Ruiz owned the Property.  
6 While the State Court later struck Ramona's answer, we note that  
7 it appears impossible to reconcile Ramona's sworn statements  
8 regarding Ruiz's ownership of the Property contained in her  
9 verified 2003 answer with her later claims of ownership made in  
10 her declaration testimony in the bankruptcy court.<sup>4</sup> In any  
11 event, Ramona never alleged in Conn's 2003 lawsuit a continuing  
12 interest in the Property, nor did she reveal the existence of the  
13 2002 Ruiz Deed.

14 Meanwhile, in Ramona's 2008 bankruptcy, Ramona, Marcus and  
15 Reyes (collectively, the "Fontaine Parties") all filed papers  
16 claiming various interests in the Property. Consequently, to  
17 determine the competing interests of the parties and to quiet  
18 title to the Property, the Trustee filed an adversary proceeding  
19 in December 2008, naming the Fontaine Parties and Conn as  
20 defendants (the "BK Quiet Title Action"). The first two causes  
21 of action sought a determination of who owned the Property, and  
22

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23 <sup>4</sup>Compare June 20, 2003, Answer to Complaint (" . . . these  
24 answering defendants admit that Norma Ruiz is the owner of the  
25 [Property]" and ". . . these answering defendants admit that the  
26 [Property] was lawfully transferred to Norma Ruiz on or about  
27 March 4, 2002") with April 8, 2009, Sworn Declaration of Ramona  
28 G. Fontaine at ¶ 9 ("Norma Ruiz did not never own; never had;  
never aspired to have and never held any monetary interest;  
equitable interest; or any other interest whatsoever in [the  
Property] . . . .").



1 the third cause of action, against Reyes only, sought to avoid  
2 and recover for the benefit of the estate the fraudulent transfer  
3 of an interest in the Property from Ruiz to Reyes.

4 The Trustee separately sought and obtained an order for  
5 possession of the Property. Pursuant to the bankruptcy court's  
6 order, the Fontaine Parties eventually were evicted from the  
7 Property.

8 In February 2009, with the BK Quiet Title Action still  
9 pending, the Trustee obtained the bankruptcy court's  
10 authorization to sell any interest that Ramona claimed in the  
11 Property. The Trustee acknowledged that Conn claimed to own the  
12 Property outright as a result of the 2004 Judgment and the 2008  
13 Sheriff's Sale, but Conn separately entered into a settlement  
14 with the Trustee pursuant to which Conn consented to the  
15 bankruptcy sale, without prejudice to his rights as the alleged  
16 owner of the Property.

17 We have previously held that bankruptcy courts must resolve  
18 ownership disputes before authorizing sale of property on behalf  
19 of the bankruptcy estate. See Darby v. Zimmerman (In re Popp),  
20 323 B.R. 260, 268-70 (9th Cir. BAP 2005). However, the  
21 settlement agreement explained that a foreclosure sale of the  
22 Property was imminent and that a bankruptcy sale needed to occur  
23 before the foreclosure in order to preserve any value to the  
24 estate that might be derived from the Property. For his part,  
25 Conn agreed to certain carve outs to pay the Trustee's  
26 administrative expenses, including the costs of preserving,  
27 marketing and selling the Property, and also agreed to the  
28 Trustee holding back \$150,000 to cover Ramona's homestead

1 exemption in the event she prevailed in the BK Quiet Title  
2 Action. Finally, Conn agreed to, and did, provide a quitclaim  
3 deed to the successful bidder at the bankruptcy sale, so that the  
4 bidder could receive clear title to the Property. The sale  
5 yielded proceeds of over \$880,000.<sup>5</sup>

6 Pursuant to the sale order, the following claims and liens  
7 were prioritized for payment in the following order:

- 8 • \$73,843 reimbursement to Conn on account of his payment  
9 of delinquent property taxes;
- 10 • \$4,263 reimbursement to Conn on account of his payment  
11 of property insurance;
- 12 • \$979 reimbursement to the Trustee on account of her  
13 payment of property insurance;
- 14 • \$221,000 payment to the holder of the first deed of  
15 trust;
- 16 • \$613,881 payment to Conn on account of his judgment  
17 liens.

18 Under the terms of the sale order and the Trustee's  
19 settlement with Conn, Conn's payment was subject to a \$185,000  
20 holdback. \$35,000 of the holdback was an agreed-upon surcharge  
21 against the proceeds for administrative expenses already  
22 incurred, or to be incurred, by the estate. The remaining  
23 \$150,000 of the holdback was reserved to pay Ramona's homestead  
24 exemption in the event she prevailed in the BK Quiet Title  
25 Action. Finally, Conn's share of the proceeds also was subject

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26  
27 <sup>5</sup>The sale order states the amount of sale proceeds as both  
28 \$843,500 and \$883,000, but the record suggests that \$883,000 is  
the correct number.

1 to payment by the Trustee of closing costs and a broker's  
2 commission. In a critical lapse for their case here, the  
3 Fontaine Parties did not timely appeal the sale order or the  
4 order approving the settlement between Conn and the Trustee.<sup>6</sup>

5 In April 2009, Conn filed a motion for summary judgment in  
6 the BK Quiet Title Action. Conn asserted there could be no  
7 factual or legal dispute that he became the sole and absolute  
8 owner of the Property as result of the 2008 Sheriff's Sale. This  
9 assertion was based on the legal conclusion that the 2002 Ruiz  
10 Deed, purporting to convey title from Ruiz to Ramona and Reyes as  
11 joint tenants, was void under Cal. Civil Code § 1214 because  
12 neither Ramona nor Reyes recorded that deed until 2006, over  
13 three years after Conn recorded his lis pendens referencing his  
14 2003 lawsuit.<sup>7</sup> According to Conn, based on the effect of  
15 Cal. Civil Code § 1214 and the 2004 Judgment, Ruiz was the only  
16 individual with an ownership interest in the Property at the time  
17 of Ramona's 2008 bankruptcy filing. Since Conn acquired Ruiz's  
18 interest at the 2008 Sheriff's Sale, he thereby became the sole  
19 and absolute owner of the Property.

20 The Trustee contemporaneously filed three separate summary  
21

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22 <sup>6</sup>Ramona and Reyes did file a petition for writ of Mandamus,  
23 which the BAP denied. See Fontaine, et al. V. Bankruptcy Court,  
BAP No. CC-09-1084 (9th Cir. BAP March 23, 2009).

24 <sup>7</sup>Cal. Civil Code § 1214 provides: **Every conveyance of real**  
25 **property** or an estate for years therein, other than a lease for a  
26 term not exceeding one year, **is void** as against any subsequent  
27 purchaser or mortgagee of the same property, or any part thereof,  
in good faith and for a valuable consideration, whose conveyance  
28 is first duly recorded, and **as against any judgment affecting the**  
**title, unless the conveyance shall have been duly recorded prior**  
**to the record of notice of action.** (Emphasis Added.)

1 judgment motions. One of the motions focused on the ownership  
2 claim asserted by Marcus, another focused on Reyes' ownership  
3 claim, and the third focused on the ownership claim of the Minor  
4 Child Trust.

5 The Fontaine Parties opposed the summary judgment motions.  
6 While they filed a host of opposition papers consisting of  
7 hundreds of pages of material, their responses to Conn's summary  
8 judgment motion boiled down to a few key points. Their responses  
9 primarily focused on the fact that no one timely objected to  
10 Ramona's homestead exemption claim. The Fontaine Parties argued  
11 that, under Rule 4003(b) and Taylor v. Freeland & Kronz, 503 U.S.  
12 638 (1992), all parties in interest had waived their right to  
13 object to Ramona's homestead exemption claim, and that the  
14 BK Quiet Title Action amounted to an impermissible attempt to  
15 belatedly object to Ramona's homestead exemption claim. The  
16 Fontaine Parties also argued that Ramona had an interest in the  
17 Property by virtue of the 2002 Ruiz Deed sufficient to support  
18 her homestead exemption, or alternatively, that even a disputed  
19 equitable or contingent interest in the Property was sufficient  
20 to support her homestead exemption.

21 The bankruptcy court first considered all of the summary  
22 judgment motions at a hearing held on May 27, 2009. No  
23 transcript from that hearing has been provided. However, by  
24 order entered July 2, 2009, the bankruptcy court acknowledged in  
25 writing that it had orally granted the Trustee's summary judgment  
26 motions against Marcus and Reyes at the May 27, 2009, hearing and  
27 had scheduled further briefing and argument on Ramona's and  
28 Conn's ownership claims. In addition, the July 2, 2009, order

1 denied the Fontaine Parties' motion for reconsideration of the  
2 court's May 27, 2009, rulings.<sup>8</sup>

3 On December 17, 2009, the bankruptcy court entered judgment  
4 granting Conn's motion for summary judgment (the "2009  
5 Judgment"). The 2009 Judgment quieted title in favor of Conn by  
6 determining that between the date of the 2008 Sheriff's Sale and  
7 the 2009 bankruptcy sale, Conn was the fee simple owner of the  
8 Property. The 2009 Judgment also declared that none of the  
9 Fontaine Parties had any interest in the Property, and  
10 specifically that Ramona had no interest in the Property to which  
11 her claimed homestead exemption could attach. Based on the  
12 above, the judgment directed payment to Conn of the \$150,000 held  
13 back by the Trustee. In its concurrent Memorandum of Decision,  
14 the bankruptcy court explained: (1) the 2004 Judgment determined  
15 that Ruiz was the fee simple owner of the Property, and (2) the  
16 2002 Ruiz Deed purporting to convey title back to Ramona and  
17 Reyes was void pursuant to Cal. Civil Code § 1214. The court  
18 further explained that Ramona lost any declared homestead she  
19 previously recorded when she voluntarily conveyed the Property to  
20 Ruiz in 2002. Ramona and Reyes both filed timely appeals of the  
21 bankruptcy court's 2009 Judgment.

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22  
23  
24  
25  
26 <sup>8</sup>The Fontaine Parties attempted to immediately appeal the  
27 bankruptcy court's May 27, 2009, rulings, but the BAP denied  
28 leave for an interlocutory appeal and dismissed the appeal for  
lack of jurisdiction. See Fontaine v. Dye (In re Fontaine),  
BAP No. CC-09-1186 (9th Cir. BAP July 20, 2009).



1 reviewed de novo. Spenler v. Siegel (In re Spenler), 212 B.R.  
2 625, 628 (9th Cir. BAP 1997).

3 We also review de novo a bankruptcy court's order granting  
4 summary judgment. Wood v. Stratos Product Dev., LLC (In re Ahaza  
5 Sys., Inc.), 482 F.3d 1118 1123 (9th Cir. 2007) (stating that  
6 both Court of Appeals and BAP apply de novo standard of review to  
7 summary judgment ruling).

#### 8 DISCUSSION

9 **1. Conn did not waive the right to assert his sole and absolute**  
10 **ownership of the Property by not objecting to Ramona's**  
11 **homestead exemption claim.**

12 Section 522(b) of the Bankruptcy Code enables a debtor to  
13 exempt property that otherwise would qualify as property of the  
14 estate. See § 522(b)(1); 4 Collier on Bankruptcy ¶ 522.04[3]  
15 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev. 2010)  
16 (stating that "[s]ection 522(b)(1) allows individual debtors to  
17 claim property as exempt from the bankruptcy estate."). A debtor  
18 makes exemption claims by listing in his or her schedules the  
19 property he or she claims as exempt; unless a party in interest  
20 timely objects, a debtor's listed exemption claims are deemed  
21 allowed. § 522(1); Rule 4003(b); Schwab v. Reilly, 130 S.Ct.  
22 2652, 2658 (2010); Taylor v. Freeland & Kronz, 503 U.S. 638,  
23 643-44 (1992).<sup>10</sup>

24 <sup>10</sup>It is now settled that the absence of a timely objection  
25 does not necessarily resolve questions concerning the scope of an  
26 exemption claim. If a debtor later asserts a greater or  
27 different exemption entitlement than is apparent on the face of  
28 his or her Schedule C list of exemptions, then a party claiming a  
competing interest in the property is not barred from asserting  
its competing interest even if it did not file an exemption  
objection as prescribed in Rule 4003(b). Schwab, 130 S.Ct. at

(continued...)

1  
2           The Fontaine Parties argue that Conn, by not objecting to  
3 Ramona's homestead exemption claim, was barred from asserting his  
4 competing ownership interest in the BK Quiet Title Action to the  
5 extent it undermined her homestead exemption claim. In other  
6 words, according to the Fontaine Parties, Conn forfeited his  
7 ownership interest in the Property (at least up to the amount of  
8 Ramona's homestead exemption) by not following the objection  
9 procedure set forth in Rule 4003(b).

10           We disagree. The Fontaine Parties' interpretations of  
11 Taylor, § 522(1) and Rule 4003(b) are overbroad. Before  
12 bankruptcy exemption statutes and rules can be applied, the  
13 bankruptcy court must first determine whether the subject  
14 property is property of the estate. See Cogliano v. Anderson  
15 (In re Cogliano), 355 B.R. 792, 802 (9th Cir. BAP 2006) (citing  
16 Ehrenberg v. S. Cal. Permanente Med. Group (In re Moses),  
17 167 F.3d 470, 474 (9th Cir. 1999) and Spirtos v. Moreno (In re  
18 Spirtos, 992 F.2d 1004, 1007 (9th Cir. 1993)).

19           In other words, whether a debtor or the bankruptcy estate has  
20 any interest in property claimed as exempt is one of several  
21 threshold issues that are not subject to the time limitation  
22 imposed by § 522(1) and Rule 4003(b). See, e.g., Herrans v.

23 \_\_\_\_\_  
24           <sup>10</sup>(...continued)  
25 2669; see also Preblich v. Battley, 181 F.3d 1048, 1052-54  
26 (9th Cir. 1999); Klein v. Chappell (In re Chappell), 373 B.R. 73,  
27 78-79 (9th Cir. BAP 2007) (holding that bankruptcy trustee was  
28 not time barred from asserting estate's interest in postpetition  
appreciation in debtors' residence, where appreciated value of  
debtor's residence exceeded value of exemption listed on  
debtors' schedules).



1 Mender (In re Barroso-Herrans), 524 F.3d 341, 344 (1st Cir. 2008)  
2 (citing Mercer v. Monzack, 53 F.3d 1, 3-4 (1st Cir. 1995))  
3 (holding that issue of whether debtor actually scheduled as  
4 exempt property claimed by both debtor and trustee was a  
5 threshold issue not subject to time limitation under Rule  
6 4003(b)); Preblich, 181 F.3d 1048, 1052-54 (same); Hovis v.  
7 Wiggins (In re Wiggins), 220 B.R. 262, 270 (Bankr. D. S.C. 1998)  
8 (“[a] determination of whether property [claimed as exempt] is  
9 property of the estate or not is the logical first step, but it  
10 is one which has no time limit.”).

11 In short, an exemption objection is not a prerequisite to  
12 asserting a competing ownership interest in property that the  
13 debtor has claimed as exempt. Rule 7001(2) unequivocally  
14 provides that “a proceeding to determine the validity, priority,  
15 or extent of a lien or other interest in property,” is to be  
16 determined by adversary proceeding. The Ninth Circuit,  
17 furthermore, has held that it is error for the bankruptcy court  
18 to determine a party’s interest in property without an adversary  
19 proceeding. See Brady v. Commercial W. Fin. Corp. (In re  
20 Commercial W. Fin. Corp.), 761 F.2d 1337, 1339 (9th Cir. 1985)  
21 (reversing order confirming chapter 11 plan because plan  
22 proponent attempted to invalidate liens through plan confirmation  
23 process, rather than by filing required adversary proceeding);  
24 see also In re Cogliano, 355 B.R. at 805 (holding that bankruptcy  
25 court lacked authority to determine whether estate had interest  
26 in property as part of contested matter concerning debtor’s  
27 exemption claim); GMAC Mortgage Corp. Salisbury (In re Loloe),  
28 241 B.R. 655, (9th Cir. BAP 1999) (holding that sale order was

1 void to the extent it purported to determine the priority of  
2 creditor's lien because that determination violated Rule 7001(2)  
3 and the creditor's due process rights).

4 Our application of Rule 7001(2) is not at odds with  
5 § 522(1). On its face, § 522(1) only applies to "property that  
6 the debtor claims as exempt under subsection (b) . . . ."  
7 Section 522(b)(1), in turn, only concerns property of the estate.  
8 As noted above, whether the debtor or the estate have any  
9 interest in the subject property is a threshold issue. Here, the  
10 bankruptcy court determined that Ramona had no interest in the  
11 Property at the time of her bankruptcy filing.<sup>11</sup> Thus, the  
12 Property could not have been property of the bankruptcy estate  
13 subject to sections 522(b)(1) and 522(1). See § 541. Simply  
14 put, we hold that § 522(1) does not apply when the court  
15 determines that neither the estate nor the debtor have any  
16 interest in the subject property.

17 To hold otherwise could lead to harsh and bizarre results.  
18 Debtors could create and establish ownership of property actually  
19 owned by others simply by listing that property in their  
20 bankruptcy schedules. Nothing in the Code or Rules indicates  
21 that Congress intended to give such power to debtors.

22 In sum, the absence of an exemption objection cannot  
23 immunize property claimed as exempt from an assertion that  
24 neither the debtor nor the estate own the subject property. To  
25 hold otherwise would undermine Rule 7001(2) and binding Ninth  
26 Circuit authority.

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27 <sup>11</sup>We examine below and uphold this determination of the  
28 bankruptcy court.

1 **2. The bankruptcy court did not err in granting summary**  
2 **judgment in favor of Conn.**

3 Rule 7056 makes summary judgment available in adversary  
4 proceedings. Rule 7056 incorporates Civil Rule 56(c), which  
5 states that summary judgment "should be rendered if the  
6 pleadings, the discovery and disclosure materials on file, and  
7 any affidavits show that there is no genuine issue as to any  
8 material fact and that the movant is entitled to judgment as a  
9 matter of law."

10 The bankruptcy court ruled that Conn was entitled to summary  
11 judgment. The bankruptcy court determined that, as a matter of  
12 law, the 2008 Sheriff's Sale conveyed fee simple ownership of the  
13 Property from Ruiz to Conn. The bankruptcy court further  
14 determined that none of the Fontaine Parties had any interest in  
15 the Property, and specifically that Ramona had no interest in the  
16 Property to which her claimed homestead exemption could attach.

17 **a. The bankruptcy court's application of Cal. Civil Code**  
18 **§ 1214.**

19 In granting summary judgment, the bankruptcy court primarily  
20 relied on the 2004 Judgment, Conn's 2003 notice of pending  
21 action, and Cal. Civil Code § 1214. The bankruptcy court  
22 reasoned that Ramona's asserted interest in the Property depended  
23 on the 2002 Ruiz Deed, but the court pointed out that Ramona did  
24 not record that deed until 2006, and that Conn's 2003 lis pendens  
25 was recorded first. According to the bankruptcy court, the  
26 above-referenced undisputed facts established that the 2002 Ruiz  
27 Deed was void pursuant to Cal. Civil Code § 1214. Thus, the  
28 bankruptcy court concluded that Ramona had no interest in the  
Property to support her exemption claim, and that the \$150,000 in

1 bankruptcy sale proceeds held back by the Trustee should be paid  
2 to Conn.<sup>12</sup>

3 Whether Ramona, or the bankruptcy estate, had any interest  
4 in the Property is governed by state law. See Butner v. United  
5 States, 440 U.S. 48, 55-57 (1979); Gaughan v. Edward Dittlof  
6 Revocable Trust (In re Costas), 555 F.3d 790, 793-94 (9th Cir.  
7 2009). Here, state law dictates the treatment of the 2002 Ruiz  
8 Deed. Cal. Civil Code § 1214 provides that a conveyance of real  
9 property is void "as against a judgment affecting title" when a  
10 lis pendens is recorded before the conveyance is recorded. See  
11 5 Harry D. Miller and Melvin B. Starr, CAL. REAL ESTATE §§ 11:148,  
12 11:152 (3d ed. 2009).

13 The Fontaine Parties argue that Cal. Civil Code § 1214 does  
14 not apply here because the 2004 Judgment did not affect title.  
15 According to the Fontaine Parties, a judgment only affects title  
16 within the meaning of the statute if it results in a  
17 determination or change of title in plaintiff's favor.

18 Their argument lacks merit. No California cases interpret  
19 Cal. Civil Code § 1214 that narrowly. Furthermore, their narrow  
20 interpretation is at odds with the plain meaning of "judgment  
21 affecting title" as used in the statute.

22 Two cases that the Fontaine Parties cite generally support  
23 their contention that Cal. Civil Code § 1214 should be  
24 interpreted narrowly. See Torrez v. Gough, 137 Cal.App.2d 62  
25 (1955); Taylor v. Chapman, 17 Cal.App.2d 31 (1936). However,  
26 neither Torrez nor Chapman limit Cal. Civil Code § 1214 to the

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27 <sup>12</sup>The bankruptcy sale is discussed below, near the  
28 conclusion of this memorandum.

1 extent sought by the Fontaine Parties, and both cases are  
2 factually distinguishable.

3 In Torrez, the plaintiffs, who voluntarily sold certain real  
4 property, sought reformation of their deed based on fraud or  
5 mistake. According to the Torrez plaintiffs, the defendant  
6 purchasers prepared the deed and either intentionally or  
7 unintentionally increased the scope of property conveyed beyond  
8 what the parties had agreed. Id. at 63-66. Before the Torrez  
9 plaintiffs brought suit or recorded their lis pendens, the  
10 defendant purchasers sold the property to a third party who  
11 qualified as a bona fide purchaser. Id. Torrez ruled that  
12 plaintiffs could not invoke Cal. Civil Code § 1214 against the  
13 third party bona fide purchaser, and that the conveyance to that  
14 purchaser was not void. Torrez explained that Cal. Civil Code  
15 § 1214 does not apply when the plaintiff:

16 ". . . has by deed conveyed certain real property to  
17 another, and his said grantee has conveyed said  
18 property to a bona fide purchaser for value, and the  
19 [plaintiff], with knowledge of the conveyance to said  
20 second grantee, commences an action against his  
grantees and the grantees of his grantees seeking to  
reform his deed upon the ground that it described more  
property than was intended . . . ."

21 Id. at 71. Further, Torrez held that Cal. Civil Code § 1214 "has  
22 no application to a judgment which creates a new title in the  
23 judgment holder which before judgment he did not have; or which  
24 merely adjudicates good a title which he got after the unrecorded  
conveyance." Id.

25 By contrast, Conn, here, as the party asserting Cal. Civil  
26 Code § 1214, did not voluntarily convey any interest in the  
27 Property, and the alleged grantee under the deed sought to be  
28

1 declared void, Ramona was not a bona fide purchaser.  
2 Furthermore, the 2004 Judgment quieted title in Ruiz, who was the  
3 owner of record of the Property when Conn filed his 2003 lawsuit  
4 and when he recorded his lis pendens. Finally, there was no  
5 evidence here that Conn had any notice or actual knowledge of the  
6 2002 Ruiz Deed at any time before entry of the 2004 Judgment; to  
7 the contrary, the uncontroverted evidence in the record  
8 establishes that the Fontaine Parties kept secret the 2002 Ruiz  
9 Deed during the pendency of Conn's 2003 lawsuit.

10 In Chapman, a businessman asserted that he purchased the  
11 subject real property at a tax sale conducted by the city  
12 treasurer based on two minor delinquent lighting assessments.  
13 Meanwhile, a single housemaid had purchased the property several  
14 years before from the prior owner and had made a number of tax  
15 payments on the property. Id. at 32-32. However, the housemaid  
16 through ignorance had overlooked the delinquent tax payments, and  
17 had neglected to record her deed until after plaintiff had filed  
18 his quiet title action and recorded his lis pendens. Id. Even  
19 though the businessman had notice of the housemaid's claimed  
20 interest in the property, he never made the housemaid a party to  
21 his quiet title action, but rather only named the prior owner as  
22 defendant. After entry of a stipulated judgment in favor of the  
23 businessman in his quiet title action, the housemaid brought her  
24 own quiet title action. Id. Chapman held that, under the facts  
25 presented there, Cal. Civil Code § 1214 did not void the  
26 housemaid's deed, and the businessman's quiet title action did  
27 not control the result in the housemaid's quiet title action.  
28 The Chapman court explained its reasoning as follows:

1 We are unable to believe that it was the intention of  
2 the legislature to make section 1214 applicable to such  
3 a situation as that here presented where the grantee in  
4 the unrecorded conveyance was not a party to the action  
5 referred to in the notice of lis pendens, and where the  
party securing the judgment obtained any rights he has  
through a tax sale, and not through the affirmative  
acts of the grantee in the unrecorded conveyance or of  
any of his predecessors.

6 Id. at 35-36.

7 Once again, the circumstances in the case before us differ  
8 greatly. Here, Ramona and Marcus were parties to Conn's 2003  
9 quiet title lawsuit.<sup>13</sup> Additionally, Conn had no notice or  
10 knowledge that either Ramona or Reyes claimed any interest in the  
11 Property. Moreover, Conn ultimately obtained ownership of the  
12 Property from Ruiz, and Ruiz's interest in the Property resulted  
13 from Ramona's affirmative, voluntary act of conveying the  
14 Property to Ruiz.

15 We further note that extending either Torrez's or Chapman's  
16 holding to the instant case would undermine the relevant portion  
17

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18 <sup>13</sup>At oral argument, Conn asserted that Reyes was a party to  
19 the 2003 lawsuit, but we have found nothing in the record to  
20 support that assertion. In any event, even if Conn did not name  
21 Reyes as a party to the 2003 lawsuit, Cal. Civil Code § 1214  
22 applies to Reyes' alleged interest in the Property, arising from  
23 the 2002 Ruiz Deed, the same as it applies to Ramona's interest.  
24 Cal. Civil Code § 1214 applies to conveyances - not litigants.  
25 On its face, the statute voids a formerly unrecorded conveyance  
26 (like the Ruiz Deed) regardless of whether the litigant asserting  
27 that conveyance was a party to the judgment affecting title. See  
28 generally CAL. REAL ESTATE, at §§ 11:148, 11:152. (explaining legal  
effect of Cal. Civil Code § 1214). Similarly, Cal. Civil  
Procedure Code § 764.030 renders the 2004 Judgment equally  
binding and conclusive against Reyes as it is against Ramona.  
Furthermore, the circumstances surrounding Reyes' alleged  
acquisition of an interest in the Property are sufficient to  
persuade us that the California courts would not extend Chapman's  
holding to Reyes' benefit.

1 of Cal. Civil Code § 1214 to the point where it would be rendered  
2 virtually meaningless. Indeed, it is hard to imagine a set of  
3 circumstances where application of Cal. Civil Code § 1214 would  
4 be more apt and appropriate than here.

5 In short, none of the California cases that the Fontaine  
6 Parties cite persuade us that Cal. Civil Code § 1214 is  
7 inapplicable here. To the contrary, we concur with the  
8 bankruptcy court's conclusion that the statute applies.<sup>14</sup>

9 Accordingly, the bankruptcy court did not err by declaring  
10 the 2002 Ruiz Deed void under Cal. Civil Code § 1214.

11 **b. Interest requirement for homestead exemptions.**

12 Without any legal or equitable interest in the Property,  
13 Ramona was not entitled to a homestead exemption. A legal or  
14 equitable interest in the property must exist for a homestead  
15 exemption to attach to that property. See Alan M. Ahart,  
16 CALIFORNIA PRACTICE GUIDE: ENFORCING JUDGMENTS & DEBTS ¶ 6:1021.1 (The

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17  
18 <sup>14</sup>Our confidence that the California courts would apply  
19 Cal. Civil Code § 1214 under the facts presented here is  
20 bolstered by California law applying the principles of res  
21 judicata, or claim preclusion. When a litigant fails to  
22 challenge an interest in property in an action concerning that  
23 interest, that litigant is precluded from later challenging that  
24 interest in a second action. See, e.g., Mattz v. Superior Court,  
25 46 Cal.3d 355, 371-72 (1988) (holding that state was barred from  
26 raising challenge to native american fishing rights because state  
27 should have pursued that challenge in prior litigation concerning  
28 those rights); Zaccaria v. Bank of America Nat. Trust and Sav.  
Ass'n, 164 Cal.App.2d 715, 718-19 (1958) (holding that judgment  
in ejectment action conclusively established title to property,  
and that defendants in ejectment action could not later bring  
their own suit challenging title); Smith v. Schuler-Knox Co.,  
85 Cal.App.2d 96, 101 (1948) (holding that judgment in quiet  
title action precluded former owners of property from later  
filing suit claiming an equitable right of redemption in the same  
property).



1 Rutter Group 2010). The Fontaine Parties argue that Ramona  
2 retained sufficient interest in the Property to claim a  
3 homestead, citing, among other cases: Tarlesson v. Broadway  
4 Foreclosure Invs., LLC, 184 Cal.App.4th 931, 936-38 (2010);  
5 Fisch, Spiegler, Ginsburg & Ladner v. Appel, 10 Cal.App.4th 1810,  
6 1812-13 (1992); Putnam Sand & Gravel Co., Inc. v. Albers  
7 14 Cal.App.3d 722, 726 (1971); Breeden v. Smith 120 Cal.App.2d  
8 62, 65-66 (1953); see also Ohanian v. Irwin (In re Irwin),  
9 338 B.R. 839,852-53 (E.D.Cal. 2006); In re Donaldson, 156 B.R.  
10 51, 52 (Bankr. N.D. Cal. 1993); In re Moffat, 107 B.R. 255,  
11 259-60 (Bankr.C.D. Cal. 1989), aff'd, 119 B.R. 201 (9th Cir. BAP  
12 1990).

13 At oral argument, Ramona emphasized her reliance on  
14 Tarlesson and asserted that, under Tarlesson, a judgment debtor  
15 may claim a homestead exemption based on mere possession, even if  
16 the judgment debtor has no legal or equitable interest in the  
17 subject property. See also In re Donaldson, 156 B.R. at 52  
18 (suggesting that so long as the debtor has possession and a  
19 colorable claim to ownership at the time of the bankruptcy  
20 filing, the debtor may assert a homestead exemption).

21 However, the facts in Tarlesson are markedly different than  
22 ours. In Tarlesson, the judgment debtor Tarlesson only  
23 transferred legal title to the subject real property to her  
24 cousin Peola Lane in order to refinance the property, but at all  
25 times Tarlesson retained the beneficial interest in the real  
26 property. 184 Cal. App. 4th at 935, 938. Further, Lane  
27 successfully deeded back the property to Tarlesson several months  
28 later. Id. In contrast, here, the 2004 Judgment conclusively

1 established that Ruiz was the fee simple owner of the Property,  
2 and the 2002 Ruiz Deed was void.<sup>15</sup> Consequently, unlike the  
3 judgment creditor in Tarlesson, Conn was able to obtain sole and  
4 absolute ownership of the Property through a sheriff's sale of  
5 Ruiz's interest, against whom Conn also held a judgment. In  
6 Tarlesson, by contrast, the judgment creditor could not and did  
7 not attempt to levy on Lane's interest in the subject real  
8 property because the judgment creditor did not hold a judgment  
9 against Lane; rather, the judgment creditor's attempts to levy on  
10 the real property depended on Tarlesonn having retained an  
11 interest in the property.

12 Thus, in the cases the Fontaine Parties cite, it either was  
13 undisputed or the court determined that the exemption holder held  
14 some sort of legal or equitable interest in the property claimed  
15 as exempt.<sup>16</sup> Here, Ramona held no such interest. Unlike the  
16 cited cases, the State Court's 2004 Judgment conclusively

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17  
18 <sup>15</sup>See subsection 2.a., supra.

19 <sup>16</sup>To the extent that either Tarlesson or Donaldson suggest  
20 that a judgment debtor is entitled to assert a homestead  
21 exemption based on mere possession, we disagree based on the  
22 facts presented here. Under California's statutory scheme of  
23 exemptions, we do not understand how someone who is essentially a  
24 squatter can acquire a valuable homestead exemption, or how that  
25 exemption right can attach to property in which they have no  
26 legal or equitable interest. Further, interpreting homestead  
27 exemption rights so broadly would seem to undermine California's  
28 definition of property interests as a "right" to possess and use  
the subject property "to the exclusion of others," Cal.Civ.Code  
§ 654, and undermine California law that mere possession without  
any established right to possession does not constitute an  
interest in property. See, e.g., People v. McKinney, 9 Cal.  
App.2d 523, 524 (1935) (stating that "possession may exist  
entirely apart from ownership.").

1 determined that Ruiz was the fee simple owner of the Property.

2       When an individual voluntarily conveys all of his or her  
3 interest in property to another entity or individual, he or she  
4 typically loses any entitlement to claim an exemption in the  
5 property conveyed. See, e.g., Amin v. Khazindar, 112 Cal.App.4th  
6 582, 588-89 (2003); see also Calif. Coastal Com'n v. Allen,  
7 167 Cal.App.4th 322, 328-29 (2008) (holding that individual who  
8 conveyed his interest in his residence to a corporation that he  
9 owned lost his homestead exemption). But see Putnam Sand &  
10 Gravel Co., 14 Cal. App. 3d at 726 (1971) (holding that  
11 fraudulent conveyance of property does not amount to an  
12 abandonment of a homestead exemption, so long as the effect of  
13 the fraudulent conveyance is subject to being unwound). Here,  
14 the State Court entered a final judgment upholding Ramona's  
15 conveyance of the Property in fee simple to Ruiz. This  
16 effectively ended any homestead exemption Ramona held on the  
17 Property.<sup>17</sup>

18       In sum, the bankruptcy court did not err when it ruled that  
19 Ramona had no interest in the Property at the time of her

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20  
21       <sup>17</sup>Ramona's amended schedules indicate that she was claiming  
22 a residential or dwelling exemption in the Property (under C.C.P.  
23 704.710 et seq.) rather than a declared homestead exemption  
24 (under C.C.P. 704.920), but regardless of which she intended to  
25 claim the result is the same. We acknowledge that there are  
26 significant differences in treatment and effect of dwelling  
27 exemptions and declared homestead exemptions. For instance, a  
28 declared homestead exemption will continue in proceeds after a  
voluntary sale for up to six months, and a residence purchased  
within that time period with the proceeds will be subject to the  
same declared homestead exemption. See Amin, 112 Cal.App.4th at  
588-89. However, neither type of exemption continues in property  
that is voluntarily conveyed after the conveyance is completed.  
See id.

1 bankruptcy filing to which her exemption claim could attach, that  
2 Conn obtained fee simple ownership of the Property from Ruiz as a  
3 result of the 2008 Sheriff's Sale, and that Conn was entitled to  
4 the \$150,000 in bankruptcy sale proceeds held back by the  
5 Trustee.

6 **3. The Fontaine Parties' remaining arguments are either**  
7 **irrelevant, unpersuasive or meritless.**

8 In hundreds of pages of briefing on appeal, the Fontaine  
9 Parties make numerous arguments why they should prevail. Above,  
10 we have addressed a handful of their contentions and have  
11 concluded that they are either unpersuasive or meritless. Their  
12 remaining arguments are equally unpersuasive and/or meritless, or  
13 are irrelevant because they do not overcome the bankruptcy  
14 court's correct application of Cal. Civil Code § 1214 or the  
15 bankruptcy court's correct conclusion that Ramona had no interest  
16 in the Property at the time of her bankruptcy filing.

17 For example, the Fontaine Parties complain about the  
18 bankruptcy sale of the Property in early 2009. They first argue  
19 that the sale was in error because the bankruptcy court should  
20 have first determined the parties' respective interests in the  
21 Property. At the time of sale, ownership of the Property had not  
22 yet been addressed by the bankruptcy court, but the court later  
23 determined in its resolution of the BK Quiet Title Action that  
24 Conn acquired from Ruiz sole and absolute ownership of the  
25 Property and that neither Ramona nor her bankruptcy estate had  
26 any interest in the Property at the time of her bankruptcy  
27 filing. It is quite possible that the court erred in authorizing  
28 the sale before it addressed ownership of the Property. See

1 In re Popp, 323 B.R. at 268-70. However, the bankruptcy court's  
2 sale order is beyond the scope of this appeal, as no party timely  
3 appealed the sale order. Therefore, it is beyond our  
4 jurisdiction to address it here. See generally United Student  
5 Aid Funds, Inc. v. Espinosa (In re Espinosa), 130 S.Ct. 1367,  
6 1380 (2010) (holding that appellant's failure to timely oppose in  
7 bankruptcy court, or to timely appeal, objectionable provision of  
8 chapter 13 plan barred appellant's later challenge to that plan  
9 provision).<sup>18</sup>

10 The Fontaine Parties alternately contend that, by virtue of  
11 the bankruptcy sale, the Trustee and Conn are estopped or  
12 otherwise precluded from attacking either Ramona's or the  
13 estate's interest in the Property. We disagree. The bankruptcy  
14 court did not purport to address ownership of the Property by way  
15 of the sale order. Moreover, the Trustee's moving papers, and  
16 Conn's response to the sale motion, made clear that Conn claimed  
17 sole and absolute ownership of the Property. Thus, we perceive  
18 no basis for any estoppel or preclusion against Conn arising from  
19 the sale order.

20 Simply put, we reject the remainder of the Fontaine Parties'  
21 arguments as unpersuasive, meritless or irrelevant.

22  
23 <sup>18</sup>Even if we were to determine that the sale order was  
24 jurisdictionally defective because the estate had no interest in  
25 the Property at the time of the bankruptcy sale, this would not  
26 help the Fontaine Parties' cause. If the bankruptcy court lacked  
27 jurisdiction to issue the sale order, it is because Conn was the  
28 sole and absolute owner of the Property. If Conn was the sole  
and absolute owner of the Property, then there is no effective  
relief that this court could grant to the Fontaine Parties, and  
thus these appeals would be moot.

**CONCLUSION**

For all of the foregoing reasons, we AFFIRM the bankruptcy court's order granting summary judgment in favor of Conn. To the extent either Ramona or Reyes also challenge the bankruptcy court's summary judgment rulings in favor of the Trustee, that portion of their appeals is DISMISSED as moot.