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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NOT FOR PUBLICATION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 No. NC-15-1031-DJuTa
6	BOOKER THEODORE WADE, JR.,)	Bk. No. 13-50376
7	Debtor.)	
8	_____)	
9	BOOKER THEODORE WADE, JR.,)	
10	Appellant,)	
11	vs.)	M E M O R A N D U M¹
12	ARLENE STEVENS,)	
13	Appellee.)	

Submitted Without Argument
on October 23, 2015

Filed - November 3, 2015

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

Honorable Stephen L. Johnson, Bankruptcy Judge, Presiding

Appearances: Appellant Booker Theodore Wade, Jr. pro se on brief;
David Hamerslough of ROSSI, HAMERSLOUGH, REISCHL &
CHUCK on brief for Appellee Arlene Stevens.

Before: DUNN, JURY, and TAYLOR, Bankruptcy Judges.

¹ 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 8024-1.

1 The chapter 7² debtor in a no-asset case sought an order from
2 the bankruptcy court awarding him an exemption in his residence
3 property. The bankruptcy court determined that the relief it could
4 award was limited to an order recognizing that the claimed exemption
5 was valid for purposes of the bankruptcy case only. The debtor
6 appealed, asserting that the bankruptcy court erred when it did not
7 determine that the "allowed" exemption was effective in state court
8 proceedings in which a judgment creditor was seeking to exercise
9 rights against the subject property.

10 For the reasons stated below, we AFFIRM.

11 **I. FACTUAL BACKGROUND**

12 Since 2007, Appellant Booker Theodore Wade, Jr. and Appellee
13 Arlene Stevens have been in litigation to resolve disputes, both
14 personal and business in nature, stemming from the termination of
15 their personal relationship. They reached a judicially-supervised
16 settlement ("Settlement") for the division of their interests in
17 property in 2009. This appeal relates specifically to a parcel of
18 real property ("Property") in Palo Alto, California, as to which the
19 Settlement required a sale and division of proceeds 60% to
20 Ms. Stevens and 40% to Mr. Wade.

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22 ² Unless specified otherwise, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
24 "Rule" references are to the Federal Rules of Bankruptcy Procedure,
25 Rules 1001-9037, and any "Local Rule" reference is to the local
26 rules of the Bankruptcy Court for the Northern District of
California. All "Civil Rule" references are to the Federal Rules of
Civil Procedure.

1 In the course of his efforts to prevent Ms. Stevens from
2 realizing on her interest in the Property, Mr. Wade filed a
3 chapter 11 petition on January 22, 2013. Mr. Wade listed the
4 Property in Schedule A with a value of \$710,250. In Schedule D,
5 Mr. Wade included the consensual lien on the Property of Rushmore
6 Loan Management Services, LLC in the amount of \$674,945.³ In
7 Schedule C, Mr. Wade claimed the Property as exempt pursuant to
8 Cal. Code Civ. Proc. § 704.730 in the amount of \$175,000.

9 On September 5, 2013, the bankruptcy court granted Ms. Stevens
10 relief from the automatic stay ("First Stay Relief Order") to return
11 to the Superior Court to request entry of a judgment on the
12 Settlement. The First Stay Relief Order also denied Mr. Wade's
13 motion to reject the Settlement as an executory contract. Mr. Wade
14 did not appeal the First Stay Relief Order. On June 13, 2014, the
15 Superior Court entered a judgment ("Judgment") with respect to
16 enforcement of the Settlement, pursuant to which

17 (1) Mr. Wade's 40% interest in the Property was forfeited to
18 Ms. Stevens because of the additional liability she incurred from
19 Mr. Wade's failure to comply with the terms of the Settlement, and
20 (2) Mr. Wade was to transfer the Property to Ms. Stevens by
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22 ³ The Property also was encumbered by a judgment lien in the
23 amount of \$756,919.10 which was avoided during the course of
24 separate proceedings in the bankruptcy case. In addition, Forest
25 View Homeowners Association filed a proof of claim, asserting a
26 secured claim in the Property based upon unpaid HOA assessments in
that proof of claim is the subject of a separate appeal.

1 quitclaim deed.

2 On July 15, 2014, Mr. Wade's bankruptcy case converted from
3 chapter 11 to chapter 7. On August 19, 2014, the chapter 7 trustee
4 filed a no-asset report. By its order ("Second Stay Relief Order")
5 entered October 10, 2014, the bankruptcy court granted relief from
6 stay to Ms. Stevens to return to the Superior Court to enforce the
7 Judgment. Mr. Wade did not appeal the Second Stay Relief Order.
8 Mr. Wade's chapter 7 discharge was entered on October 21, 2014.

9 On November 4, 2014, Mr. Wade filed the motion that is the
10 subject of this appeal. Specifically, Mr. Wade filed a motion
11 ("Exemption Motion") pursuant to Local Rule 4003-1(a) for the
12 purpose of obtaining an order approving his claimed exemption in the
13 Property. Through the Exemption Motion, Mr. Wade also sought to
14 prohibit Ms. Stevens from collecting her debts against Mr. Wade's
15 exempt interest in the Property.

16 The bankruptcy court granted the Exemption Motion in part. In
17 particular, the bankruptcy court approved the exemption claimed in
18 Schedule C because no party in interest objected to the exemption
19 within 30 days after the conclusion of the meeting of creditors as
20 required by Rule 4003(b)(1).

21 The bankruptcy court, however, declined to make any
22 determination of the effect of the allowed exemption either on the
23 Settlement or the Judgment because such a determination was beyond
24 the scope of a Local Rule 4003-1(a) proceeding. The bankruptcy
25 court further declined to order additional relief Mr. Wade sought
26 through the Exemption Motion, such as a bar precluding Ms. Stevens

1 from collecting debts against the Property in light of the allowed
2 exemption. Finally, the bankruptcy court observed that whether the
3 exemption ultimately had any value or validity aside from removing
4 the Property from the bankruptcy estate was to be decided in
5 proceedings in the Superior Court if and when necessary or
6 appropriate.

7 The order granting the Exemption Motion was entered on January
8 15, 2015, and this timely appeal followed.

9 **II. JURISDICTION**

10 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
11 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C. § 158.

12 **III. ISSUES**

13 Whether the bankruptcy court erred when it refused to rule that
14 the exemption it had allowed in the Property retained its validity
15 in state court proceedings.

16 Whether the bankruptcy court erred in refusing to determine
17 that the Settlement and Judgment were void under state law.

18 **IV. STANDARDS OF REVIEW**

19 The right of a debtor to claim an exemption is a question of
20 law we review de novo. Elliott v. Weil (In re Elliott), 523 B.R.
21 188, 191-92 (9th Cir. BAP 2014).

22 We may affirm the bankruptcy court's orders on any basis
23 supported by the record. See ASARCO, LLC v. Union Pac. R. Co.,
24 765 F.3d 999, 1004 (9th Cir. 2014); Shanks v. Dressel, 540 F.3d
25 1082, 1086 (9th Cir. 2008).

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1 **V. DISCUSSION**

2 A. An Exemption "Approved" By the Bankruptcy Court Only
3 Establishes a Debtor's Right To Assert the Exemption in the
4 Bankruptcy Case.

5 This appeal stems from Mr. Wade's failure to understand that
6 the term "exemption" within a bankruptcy case has a different and
7 more limited effect than does the term in a state court context.
8 This appeal concerns whether the bankruptcy court committed error in
9 its application of § 522(b) and Local Rule 4003-1. Local
10 Rule 4003-1 provides in relevant part:

11 Rule 4003-1. Exempt Property.

12 (a) Orders Setting Apart Exemptions.

13 If no objection to a claim of exemption has been made in a
14 Chapter 7 case within the time provided in Bankruptcy Rule
15 4003(b), the Court may, at any time, without a hearing and
16 without reopening the case, enter an order approving the
17 exemptions as claimed.

18 In reliance on this rule, Mr. Wade filed a motion requesting that
19 the bankruptcy court approve his exemption in the Property in all
20 contexts, but specifically in connection with Ms. Stevens' efforts
21 to exercise her state court rights as to the Property.

22 The bankruptcy court articulated carefully the "law governing
23 exemptions **in bankruptcy cases.**" We restate it more generally here.
24 Pursuant to § 541, the filing of the bankruptcy petition creates an
25 estate, which is comprised of all of a debtor's assets. The debtor
26 then has the right to claim either state law or federal bankruptcy
law exemptions, as appropriate under state law, in the assets that
now constitute the bankruptcy estate. If no timely objection is
made to the debtor's claim of exemption in a particular asset, the

1 exemption is allowed for bankruptcy purposes. The effect of an
2 allowed bankruptcy exemption is to withdraw from the bankruptcy
3 estate property with respect to which the exemption is claimed and
4 to revest in the debtor any interest he might have in that property.
5 See Taylor v. Freeland & Kronz, 503 U.S. 638, 642-43 (1992).

6 To be clear, the sum and substance of the allowance of the
7 claim of an exemption is to declare that the exempt property will
8 not be used to satisfy, **in the bankruptcy case**, the claims of
9 creditors. See § 522(b)(1) ("Notwithstanding section 541 of this
10 title, an individual debtor may exempt **from property of the estate**
11"). Nothing in § 522 purports to govern the effect of any
12 claim of exemption outside of the bankruptcy case.

13 B. The Dispute Between Mr. Wade and Ms. Stevens No Longer Was
14 Within the Scope of the Bankruptcy Court's Jurisdiction At
the Time the Exemption Motion Was Filed.

15 The First Stay Relief Order was entered October 5, 2013, and
16 included a denial of Mr. Wade's motion to reject the Settlement as
17 an executory contract. The First Stay Relief Order authorized
18 Ms. Stevens to return to state court specifically to enforce the
19 Settlement. After further proceedings, the state court entered the
20 Judgment which divested Mr. Wade of his interest in the Property.⁴

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22 ⁴ A review of the docket reflects that after the Judgment was
23 entered, Mr. Wade made a concerted effort to attack it in the
24 bankruptcy court. For instance, he filed an ex parte motion to
25 declare it void for the reason that the entry of the Judgment
26 exceeded the scope of the stay relief that had been granted. The
bankruptcy court denied the ex parte motion both because it was not
accompanied by a notice and because Mr. Wade provided no authority

(continued...)

1 The Second Stay Relief Order was entered October 15, 2014, and
2 specifically included relief to allow Ms. Stevens to exercise her
3 rights, as described in the Judgment, as to the Property.

4 None of the prior orders of the bankruptcy court were appealed.

5 In his final effort to block Ms. Stevens from enforcing the
6 Judgment, Mr. Wade filed the Exemption Motion. Through the
7 Exemption Motion, Mr. Wade reargued that both the Settlement and the
8 Judgment were not enforceable against him.

9 The bankruptcy court properly ruled that any matter relating to
10 these issues was beyond the scope of the relief allowed in Local
11 Rule 4003-1, the authority upon which the Exemption Motion was
12 based. The primary thrust of Mr. Wade's arguments on appeal relates
13 to the bankruptcy court's failure to determine that the allowed
14 exemption in the Property trumps Ms. Stevens' rights under the
15 Settlement and the Judgment.

16 Bankruptcy courts are courts of limited jurisdiction. See
17 Stern v. Marshall, 546 U.S. 2 (2011). The bankruptcy court had core
18 jurisdiction under 28 U.S.C. § 157(b)(2) with respect to "allowance
19 or disallowance of . . . exemptions from property of the estate."
20 That jurisdictional provision does not extend to determining an
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22 ⁴(...continued)
23 for ex parte relief of the type sought. Mr. Wade also filed an
24 adversary proceeding in the bankruptcy court seeking to reinstate
25 the automatic stay and to determine that attempted enforcement of
26 the Judgment by Ms. Stevens violated the automatic stay. The
complaint was dismissed summarily for failure to prosecute after
Mr. Wade did not pay the filing fee within the time allowed.

1 exemption that a debtor might claim in state court proceedings.
2 Further, the bankruptcy court previously had been divested of
3 jurisdiction entirely over the dispute between Mr. Wade and
4 Ms. Stevens as a direct result of the entry of the First Stay Relief
5 Order and the Second Stay Relief Order. Any remaining issues
6 between the parties are solely within the jurisdiction of the state
7 court. The bankruptcy court's recognition of the limits on its
8 jurisdiction in the dispute was not error.

9 **VI. CONCLUSION**

10 The bankruptcy court entered an order that assured that
11 Mr. Wade's exemption was honored in the bankruptcy case. In light
12 of both the limited purpose of an exemption in bankruptcy
13 proceedings and the bankruptcy court's lack of jurisdiction over the
14 fundamental dispute between Mr. Wade and Ms. Stevens, the bankruptcy
15 court did not err in denying Mr. Wade's request to determine that
16 the bankruptcy exemption trumped Ms. Stevens' rights in and to the
17 Property in state court proceedings to enforce the Judgment.

18 We AFFIRM.

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