

JAN 28 2016

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

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-15-1127-DKiG
)		
EDWARD E. ELLIOTT,)	Bk. No.	SV 11-23855-VK
)		
Debtor.)		
_____)		
)		
EDWARD E. ELLIOTT,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
DIANE C. WEIL,)		
Chapter 7 Trustee,)		
)		
Appellee.)		
_____)		

Submitted on January 21, 2016
at Pasadena, California

Filed - January 28, 2016

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

Hon. Victoria S. Kaufman, Bankruptcy Judge, Presiding

Appearances: Andrew Edward Smyth argued for appellant.
John N Tedford, IV, Danning, Gill, Diamond &
Kollitz, LLP argued for appellee.

Before: DUNN, KIRSCHER AND GAN,¹ Bankruptcy Judges.

¹ Hon. Scott H. Gan, United States Bankruptcy Judge for the
District of Arizona, sitting by designation.

1 DUNN, Bankruptcy Judge:

2
3 The Debtor Edward E. Elliott ("Mr. Elliott") appeals the
4 bankruptcy court's order following remand sustaining the chapter
5 7² trustee's ("Trustee") objection to his homestead exemption
6 claim. We AFFIRM.

7 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

8 This is Mr. Elliott's third appearance before this Panel.
9 While detailed factual background information was included in our
10 two published Opinions in Elliott v. Weil (In re Elliott), 523
11 B.R. 188 (9th Cir. BAP 2014) ("Elliott I"), and Elliott v. Weil
12 (In re Elliott), 529 B.R. 747 (9th Cir. BAP 2015) ("Elliott II"),
13 we include some of that factual background here to provide
14 context for the current decision.³

15 1. Events in the Main Case through Elliott I

16 Mr. Elliott filed for relief in chapter 7 on December 1,
17 2011. In his petition and schedules, signed under penalty of
18 perjury, he stated his address as Hiawatha Street in Granada
19 Hills, California; he did not list any real property in which he
20

21 ² Unless otherwise indicated, all chapter and section
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

23 ³ The parties have provided a limited record on appeal. We
24 have exercised our discretion to review additional documents
25 filed in the electronic records of Mr. Elliott's main case, Case
26 No. SV 11-23855-VK ("Main Case"), and the related adversary
27 proceeding, Case No. SV 13-01118-VK ("Adversary Proceeding").
28 See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887
F.2d 955, 957-58 (9th Cir. 1988); Atwood v. Chase Manhattan
Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP
2003).

1 had an interest or in which creditors held secured claims; he did
2 not claim entitlement to a homestead exemption on Schedule C; he
3 did not disclose any ownership interest in a corporation on
4 Schedule B; and he did not list creditors ("Judgment Creditors")
5 who had obtained a judgment against him in 2006 for fraud and
6 negligent misrepresentation or any secured creditors.

7 At his § 341(a) meeting of creditors, Mr. Elliott confirmed
8 his address as Hiawatha Street, and he testified under oath that
9 he had read his bankruptcy papers before he had signed them and
10 that they were true and complete to the best of his knowledge.
11 He also testified that he had listed everything of value that he
12 owned and that he had listed everyone he owed money to in his
13 schedules. He further testified that he did not own any real
14 property and that he had not sold, transferred or given away
15 anything of value in the last four years.

16 Based on the information disclosed by Mr. Elliott in his
17 schedules and in his testimony at the § 341(a) meeting, the
18 Trustee filed a "No Distribution" report, Mr. Elliott received
19 his discharge, and the case was closed on March 13, 2012. Less
20 than two weeks later, Lee Wong Investments, Inc. ("LWI")
21 transferred a residential real property in Los Angeles,
22 California (the "Buckingham Property") to Mr. Elliott by
23 quitclaim deed "as a gift." LWI is a Nevada corporation that Mr.
24 Elliott does not dispute he organized prepetition and controls.
25 Shortly thereafter, Mr. Elliott sent a letter to counsel for the
26 Judgment Creditors stating that he had acquired the Buckingham
27 Property after his bankruptcy and demanding that their judgment
28 liens be removed. His letter caused the Judgment Creditors to

1 investigate the history of title transactions with respect to the
2 Buckingham Property.

3 As detailed in Elliott I, since 2006, Mr. Elliott had
4 maintained a continuous interest in the Buckingham Property that
5 was disguised through a series of transfers. On the date of his
6 bankruptcy filing, Mr. Elliott owned the Buckingham Property
7 through his wholly-owned corporation, LWI. However, as noted
8 above, Mr. Elliott did not disclose any ownership interest in
9 either the Buckingham Property or LWI in his schedules and did
10 not even disclose his judgment debt to the Judgment Creditors.
11 So, the title manipulations as to the Buckingham Property
12 remained undetected until after Mr. Elliott received his
13 discharge and his bankruptcy case was closed.

14 The Judgment Creditors moved to reopen Mr. Elliott's
15 bankruptcy case, which motion was granted, and the Trustee was
16 reappointed to serve in the reopened case. Mr. Elliott did not
17 amend his schedules to disclose his interest in the Buckingham
18 Property until nearly a year later. In his amended schedules,
19 Mr. Elliott included the Buckingham Property in his amended
20 Schedule A, valued at \$360,000, and stated that Bank of America
21 held a \$120,826 secured claim against it. He also claimed a
22 \$175,000 homestead exemption in the Buckingham Property in his
23 amended Schedule C under Cal. Code Civ. P. § 704.730(a)(3). He
24 neglected to list over \$100,000 in outstanding real property
25 taxes assessed against the Buckingham Property. Based on Mr.
26 Elliott's valuation of the Buckingham Property, if his homestead
27 exemption claim were allowed, there would be nothing for his
28 bankruptcy estate.

1 The Trustee filed a timely objection to Mr. Elliott's
2 claimed homestead exemption in the Buckingham Property on the
3 basis of bad faith, and the bankruptcy court sustained the
4 objection. Mr. Elliott appealed the denial of his exemption
5 claim to this Panel, and while the appeal was pending, the
6 Supreme Court issued its decision in Law v. Siegel, 571 U.S. ____,
7 134 S.Ct. 1188 (2014).

8 Based on our conclusion that Law v. Siegel precluded
9 bankruptcy courts from denying claimed exemptions or amendments
10 to claimed exemptions based on a debtor's bad faith as a matter
11 of equity, the Panel vacated the bankruptcy court's order denying
12 Mr. Elliott's homestead exemption claim as to the Buckingham
13 Property but remanded for the bankruptcy court to determine if
14 Mr. Elliott's homestead exemption claim could be denied on some
15 other basis under federal bankruptcy or California state law.
16 See Elliott I, 523 B.R. at 193-98.

17 2. Events in the Adversary Proceeding through Elliott II

18 Meanwhile, the Trustee had filed the Adversary Proceeding to
19 revoke Mr. Elliott's discharge and to require that the Buckingham
20 Property be turned over to the Trustee on behalf of the
21 bankruptcy estate under § 542(a). The Trustee also conducted a
22 continued § 341(a) meeting at which Mr. Elliott admitted that he
23 lived at the Buckingham Property when he filed his bankruptcy
24 petition, that he considered it to be his home, and that he had
25 purchased it in 1989.

26 After filing a motion for an order setting aside his
27 default, Mr. Elliott filed an answer to the Adversary Proceeding
28 complaint in pro se that did not assert any affirmative defenses.

1 After obtaining counsel, he filed an amended answer asserting as
2 his only affirmative defense that any "mistakes on the schedules
3 were the result of debtor's attorney's mistakes."

4 In January 2014, the Trustee filed a motion for summary
5 judgment ("Summary Judgment Motion") in the Adversary Proceeding
6 seeking revocation of Mr. Elliott's discharge under § 727(d)(1)
7 and turnover of the Buckingham Property. Mr. Elliott opposed the
8 Summary Judgment Motion. The bankruptcy court held a hearing on
9 the Summary Judgment Motion on March 19, 2014, at which the
10 parties appeared through counsel and argued their positions. On
11 April 7, 2014, the bankruptcy court granted the Summary Judgment
12 Motion and entered a "Judgment Vesting Property in Trustee and
13 Revocation of Discharge." Mr. Elliott appealed.

14 On appeal, the Panel vacated the judgment. It concluded
15 that the Trustee's discharge revocation claim was barred by the
16 running of the limitations period in § 727(e)(1) and had to be
17 remanded for dismissal. The turnover portion of the judgment
18 likewise was vacated and remanded, in light of the Panel's prior
19 determination in Elliott I that denial of Mr. Elliott's homestead
20 exemption claim on bad faith grounds was inappropriate, for the
21 bankruptcy court to make findings as to whether the Buckingham
22 Property was "of inconsequential value or benefit to the estate,"
23 as required under § 542(a). See Elliott II, 529 B.R. at 754-55.

24 3. Events in the Adversary Proceeding Following Remand

25 Following remand of the Adversary Proceeding, the bankruptcy
26 court dismissed the Trustee's claim to revoke Mr. Elliott's
27 discharge and established a schedule for the parties to submit
28 legal memoranda and evidence as to whether the estate's interest

1 in the Buckingham Property was sufficiently consequential to
2 warrant turnover.

3 The Trustee submitted a brief ("Valuation Brief") supported
4 by the declarations of the Trustee, her counsel Aaron E. De
5 Leest, and appraiser David S. Serber. The Trustee had obtained
6 appraisals of the Buckingham Property as of April 7, 2014
7 (\$580,000) and as of June 15, 2015 (\$600,000). Unpaid real
8 property taxes and associated penalties as of June 24, 2015, for
9 2006 through 2011 and 2013 through 2015 totaled \$107,495.05.

10 The Community Development Department of the City of Los
11 Angeles ("CDD") had a deed of trust recorded against the
12 Buckingham Property on January 10, 1986, securing an indebtedness
13 of \$25,000. Bank of America, N.A. ("B of A") had a deed of trust
14 recorded against the Buckingham Property on November 12, 2004,
15 securing an indebtedness of \$120,360.77 as of June 15, 2015. The
16 Trustee did not contest the validity or priority of the CDD and B
17 of A trust deed liens.

18 A deed of trust in favor of Hollywood Damage Control &
19 Recovery ("HDCR") to secure an indebtedness in the amount of
20 \$800,000 was recorded on October 31, 2005. However, the Trustee
21 had avoided and preserved the HDCR trust deed lien for the
22 benefit of the estate. Los Angeles County (the "County") had
23 recorded a personal property tax lien against the Buckingham
24 Property in the amount of \$1,449.75 on June 9, 2005. For
25 purposes of the Adversary Proceeding, the Trustee assumed the
26 validity of the County's lien.

27 A judgment in the amount of \$127,134.00 in favor of the
28 Inglewood Family Corporation ("IFC") had been entered on May 13,

1 2005, against Mr. Elliott and another entity and had been
2 recorded as a judgment lien against the Buckingham Property.
3 However, the judgment was not renewed by IFC within 10 years
4 after it was entered. Accordingly, under Cal. Code Civ. P.
5 § 683.020, the judgment was no longer enforceable, and the
6 judgment lien was extinguished. The Judgment Creditors also had
7 obtained judgment liens against the Buckingham Property, but by
8 stipulation with the Trustee approved by the bankruptcy court,
9 the Judgment Creditors had agreed that the Buckingham Property
10 could be sold free and clear of their judgment liens, and their
11 claims would be treated as nonpriority unsecured claims in the
12 Main Case. Finally, the Trustee projected 8% costs of sale
13 (including a 6% real estate commission) with respect to the
14 Buckingham Property.

15 The Trustee recognized that she bore the burden of proof to
16 establish that the estate was entitled to turnover of the
17 Buckingham Property, but argued that Mr. Elliott had the burden
18 to establish that the property had no consequential value or
19 benefit for the estate. Then, through various calculations, the
20 Trustee ultimately presented a demonstration that if the
21 Buckingham Property were valued at \$600,000, after payment of
22 priority liens, the net value for the estate would be \$297,694.43
23 (allowing for payment of the County's personal property tax lien)
24 or \$299,144.18 (if the County's personal property tax lien were
25 treated as subordinate). In either event, the Trustee argued
26 that the Buckingham Property had "consequential value and benefit
27 to the estate."

28 Mr. Elliott opposed ("Opposition"). He had obtained an

1 appraisal for the Buckingham Property as of April 15, 2014
2 valuing it at \$450,000. Deducting costs of sale and the
3 uncontested liens of CDD, B of A and for real property taxes,
4 totaling approximately \$252,856, would leave a balance of
5 approximately \$197,144. Ignoring the Trustee's argument that she
6 stepped into the shoes of the avoided HDCR trust deed lien, Mr.
7 Elliott argued that if he prevailed on his homestead exemption
8 claim, there would be no significant payout to unsecured
9 creditors. He further requested a continuance to obtain a
10 current appraisal of the Buckingham Property.

11 The bankruptcy court heard the issue as to whether
12 consequential value to the estate supported turnover as claimed
13 by the Trustee at a hearing ("Turnover Hearing") on July 22,
14 2015. At the Turnover Hearing, counsel for Mr. Elliott requested
15 time to obtain an update of his appraisal of the Buckingham
16 Property, agreeing with counsel for the Trustee that the
17 bankruptcy court should make its determination based on the
18 current value of the property as at June 15, 2015. That request
19 was granted, but ultimately, Mr. Elliott agreed with the
20 Trustee's \$600,000 valuation for the property.

21 Following the Turnover Hearing, the bankruptcy court issued
22 written findings of fact and conclusions of law ("Findings") on
23 August 13, 2015. In its Findings, the bankruptcy court found
24 that the lien for unpaid real property taxes and the trust deed
25 liens of CDD and B of A amounted to \$107,495.05, \$25,000, and
26 \$120,360.77, respectively, for a total of approximately
27 \$252,855.82 as of June 15, 2015. At the Turnover Hearing,
28 counsel for Mr. Elliott represented that nothing was owed to HDCR

1 and that Mr. Elliott had obtained a reconveyance of HDCR's trust
2 deed. For purposes of determining whether the Buckingham
3 Property was of inconsequential value or benefit to the estate,
4 the bankruptcy court assigned a value of \$0.00 to the HDCR trust
5 deed lien. Based on the absence of evidence other than as
6 reflected in the Trustee's preliminary title report for the
7 Buckingham Property dated June 15, 2015, the bankruptcy court
8 valued the County's personal property tax lien at \$1,449.75. As
9 for IFC's judgment lien, since it was unenforceable under
10 California law, the bankruptcy court assigned it a value of
11 \$0.00. Because of the Trustee's approved stipulation with the
12 Judgment Creditors, the bankruptcy court assigned a value of
13 \$0.00 to their judgment liens.

14 Based on the record of evidence and arguments made by the
15 parties, the bankruptcy court determined the net value of the
16 Buckingham Property for the benefit of the estate, exclusive of
17 Mr. Elliott's homestead exemption claim, as \$297,694.43,
18 calculated as follows:

19	Value	\$600,000.00
	Less:	
20	Estimated costs of sale (8% of gross value)	\$ 48,000.00
	Real property taxes and penalties	107,495.05
21	CDD lien	25,000.00
	B of A lien	120,360.77
22	HDCR lien	0.00
	County personal property tax lien	1,449.75
23	IFC judgment lien	0.00
	Judgment Creditors judgment liens	0.00
24		
25	Total Net Value	\$297,694.43

26 Recognizing that Mr. Elliott still was pursuing a homestead
27 exemption claim for \$175,000, the bankruptcy court found that
28 even if Mr. Elliott prevailed on his homestead exemption claim,

1 subtracting \$175,000 from \$297,694.43 would leave \$122,694.43 of
2 net value available to the estate. Accordingly, with or without
3 allowing a homestead exemption, the Buckingham Property was not
4 of "inconsequential value or benefit to the estate." The
5 bankruptcy court noted that this Panel's decision in Elliott II
6 had not disturbed its prior determinations that 1) the Buckingham
7 Property was property of Mr. Elliott's bankruptcy estate;
8 2) title to the Buckingham Property was vested in the Trustee;
9 and 3) the Buckingham Property could be used, sold or leased by
10 the Trustee under § 363. Accordingly, the bankruptcy court would
11 enter a judgment requiring Mr. Elliott to turn over the
12 Buckingham Property to the Trustee.

13 One day later, on August 14, 2015, the bankruptcy court
14 entered a judgment ("Turnover Judgment") on the Trustee's
15 § 542(a) claim consistent with its Findings, determining that the
16 Buckingham Property was property of Mr. Elliott's bankruptcy
17 estate, vested in the Trustee, and requiring that Mr. Elliott
18 "immediately deliver and turn over possession of the Buckingham
19 Property to the Trustee." The Turnover Judgment was not
20 appealed.

21 4. Events in the Main Case following remand

22 Following remand in the Main Case under Elliott I, the
23 bankruptcy court established a briefing schedule for the parties
24 to submit further legal memoranda and supporting evidence on the
25 issues as to whether the Trustee's objection to Mr. Elliott's
26 claimed homestead exemption could be sustained 1) under
27 § 522(g)(1), or 2) based on Mr. Elliott's failure to satisfy the
28 California state law requirement for an "automatic Article 4"

1 homestead exemption, i.e., that Mr. Elliott have resided at the
2 Buckingham Property continuously from the time a judgment
3 creditor's lien attached to the property until the court could
4 determine that the subject dwelling was in fact a homestead.

5 On February 13, 2015, the Trustee filed her memorandum in
6 support of Trustee's objection to Mr. Elliott's claimed homestead
7 exemption ("Trustee Memorandum"), supported by Mr. Elliott's
8 petition filed in the Main Case; transcripts of his testimony
9 under oath at the original and subsequent § 341(a) meetings; a
10 transcript of Mr. Elliott's deposition testimony; and a copy of
11 the declaration of Juanita Jehdian, Mr. Elliott's fiancée. The
12 Trustee began her argument with respect to the application of
13 § 522(g)(1) by quoting the relevant provisions of the statute:

14 Notwithstanding sections 550 and 551 of this title, the
15 debtor may exempt under subsection (b) of this section
16 property that the trustee recovers under section
17 510(c)(2), 542, 543, 550, 551, or 553 of this title, to
18 the extent that the debtor could have exempted such
19 property under subsection (b) of this section if such
20 property had not been transferred, if -
21 (1)(A) such transfer was not a voluntary transfer
22 of such property by the debtor; and
23 (B) the debtor did not conceal such property

24 The Trustee then posited that it was clear that Mr. Elliott
25 concealed the Buckingham Property both from the Trustee and from
26 the bankruptcy court, relying on a portion of the analysis from
27 this Panel in Elliott I:

28 The essence of Elliott's appeal in utilizing Law v. Siegel to shield his misconduct from functioning as lawful grounds to deny his homestead exemption has led to, as Trustee bluntly but accurately asserts, Elliott practically admitting he concealed the asset and acted in bad faith. Indeed, Elliott does not dispute that he failed to disclose his interest in the Buckingham Property in his original schedules. He admits claiming Hiawatha Street as his "street address" on his petition

1 even though he knew he did not live there. Elliott
2 further acknowledges that at the § 341(a) meeting he
3 claimed his forms were true and complete, all the while
4 knowing the bankruptcy court had no knowledge of the
5 Buckingham Property he allegedly resides in and
6 controlled through LWI.

7 Accordingly, we conclude that § 522(g)(1) is
8 applicable and an important limitation on Elliott's
9 claimed homestead exemption for the bankruptcy court to
10 consider on remand.

11 Elliott I, 523 B.R. at 198.

12 With respect to Mr. Elliott's automatic homestead claim
13 under California law, the Trustee admitted that "continuous
14 residency, rather than continuous ownership, controls the Article
15 4 analysis." The Trustee then surveyed the available evidence
16 from Mr. Elliott's petition and schedules; his § 341(a) meeting
17 testimony; his deposition testimony; and the declaration of
18 Juanita Jehdian. The Trustee noted that from the outset of the
19 Main Case, Mr. Elliott asserted that his address was on Hiawatha
20 Street; he did not disclose any interest in the Buckingham
21 Property or the corporation that nominally held title to the
22 Buckingham Property; and he asserted without qualification that
23 his bankruptcy papers were true and complete. Only after the
24 Main Case was reopened at the behest of the Judgment Creditors
25 did he begin to temporize. Following reopening, Mr. Elliott
26 amended his schedules to include the Buckingham Property and
27 assert a homestead exemption in it, and he testified at the
28 second § 341(a) meeting that he lived there; he considered it his
home; and he purchased it in 1989. However, when the Trustee
asked him about the Hiawatha Property, Mr. Elliott testified,
"That was a uh place where my fiancé [sic] and her son and I was,
would come over there quite a bit." At his deposition, Mr.

1 Elliott was asked and answered the following questions:

2 Q. "[Y]ou said you were living in and out of the Hiawatha
3 Street; is that correct?"

4 A. "That's correct."

5 Q. "How long did you live there before moving back to
6 Buckingham [Property]?"

7 A. "It was not a permanent address for me."

8 In her declaration, Ms. Jehdian stated that she had been a
9 frequent visitor to the Buckingham Property and that she knew
10 that Mr. Elliott resided there in December 2011.

11 The Trustee recognized that claimed exemptions are
12 presumptively valid, and the objecting party bears the burden of
13 proving that an exemption is not properly claimed. See, e.g.,
14 Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029-30 n.3
15 (9th Cir. 1999). However, once the Trustee produces evidence to
16 rebut the presumption, the burden shifts to Mr. Elliott to
17 present "unequivocal evidence to demonstrate the exemption is
18 proper." Id. The Trustee's analysis of the evidence in Mr.
19 Elliott's case was that the bankruptcy court was "clearly placed
20 in a vexed position to decide which of [Mr. Elliott's] lies are
21 to be believed and how to determine credibility of his
22 inconsistent statements and filings." In these circumstances,
23 the Trustee argued that Mr. Elliott simply could not present
24 unequivocal evidence to establish that his homestead exemption
25 claim in the Buckingham Property was appropriate, and her
26 objection to the claimed homestead exemption should be sustained.

27 In his opposing response ("Response"), Mr. Elliott argued
28 that § 522(g)(1) simply was not applicable because "[t]here is no

1 Court order in this case setting aside a transfer." He also
2 submitted his own supporting declaration with evidence that he
3 continuously resided at the Buckingham Property and was living
4 there on the petition date.

5 The bankruptcy court heard the matter at a hearing on March
6 19, 2015 ("Exemption Objection Hearing"). The bankruptcy court
7 posted a tentative ruling in advance of the Exemption Objection
8 Hearing sustaining the Trustee's objection to Mr. Elliott's
9 homestead exemption claim based on the application of
10 § 522(g)(1). The tentative ruling was not included in Mr.
11 Elliott's excerpts of record, but it is included as item number
12 94 on the Main Case docket, and we have reviewed it. At the
13 Exemption Objection Hearing itself, after hearing arguments from
14 counsel, the bankruptcy court announced its ruling denying a
15 homestead exemption to Mr. Elliott applying § 522(g)(1) based on
16 the following analysis:

17 [The Buckingham Property] was property of the estate
18 subject to turnover. The residence was subject to
19 turnover because [Mr. Elliott] held it in a wholly-
20 owned corporation which he didn't disclose in his
21 schedules or at his 341(a). He concealed that that's
22 where he lived. He didn't put it on his petition. He
23 didn't inform the [Trustee] during his 341(a) that's
24 where he lived. He didn't list his interest in the
25 corporation that held the property. He then three
26 weeks after he got his discharge . . . transferred the
27 property back to himself in his own name, and then
28 wrote a letter to creditors about how their liens
against the property weren't good because it was after
acquired and he had gotten a discharge. So, they
couldn't have liens against this property that he had
always held in his own corporation and hadn't disclosed
as his residence.

. . . .

So, I mean, the point is that he - I mean, he doesn't even
dispute that he concealed it. He's just saying that, well,
that the turnover action isn't sufficient to satisfy

1 522(g)(1), but, I mean, 542 satisfies, and we have a
2 judgment. And I guess if it gets reversed then we'll have
3 to revisit it, but it's not reversed yet, and we're going to
say he doesn't get a homestead exemption based on 11 U.S.C.
Section 522(g)(1).

4 March 19, 2015 Hr'g Tr., at 9:21-10:23.

5 Counsel for the Trustee submitted an order ("Exemption
6 Denial Order") consistent with the bankruptcy court's oral ruling
7 sustaining the Trustee's objection to Mr. Elliott's homestead
8 exemption claim that the bankruptcy court signed and entered on
9 April 8, 2015. Mr. Elliott filed a timely appeal.

10 II. JURISDICTION

11 The bankruptcy court had jurisdiction under 28 U.S.C.
12 §§ 1334 and 157(b)(2)(B). An order denying a debtor's exemption
13 claim is a final order. Preblich v. Battley, 181 F.3d 1048, 1056
14 (9th Cir. 1999). We have jurisdiction under 28 U.S.C. § 158.

15 III. ISSUES

16 1. Did the bankruptcy court err in denying Mr. Elliott's
17 claimed homestead exemption under § 522(g)(1), by its terms or as
18 a result of the Supreme Court's decision in Law v. Siegel?

19 2. Did the bankruptcy court err in failing to rule on Mr.
20 Elliott's entitlement to a homestead exemption claim under
21 California law?

22 IV. STANDARDS OF REVIEW

23 The denial of a debtor's exemption claim presents questions
24 of law that we review de novo. Kelley v. Locke (In re Kelley),
25 300 B.R. 11, 16 (9th Cir. BAP 2003). De novo review means that
26 we review a matter anew, as if no decision previously had been
27 rendered. Dawson v. Marshall, 561 F.3d 930, 933 (9th Cir. 2009).

28 We review the bankruptcy court's fact findings underlying

1 its legal conclusions for clear error. Bronitsky v. Bea (In re
2 Bea), 533 B.R. 283, 285 (9th Cir. BAP 2015). We must affirm the
3 bankruptcy court's fact findings unless we determine that those
4 findings are "(1) 'illogical,' (2) 'implausible,' or (3) without
5 'support in inferences that may be drawn from the facts in the
6 record.'" United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir.
7 2009) (en banc), quoting Anderson v. City of Bessemer City, N.C.,
8 470 U.S. 564, 577 (1985).

9 We may affirm the decision of the bankruptcy court on any
10 basis supported by the record. ASARCO, LLC v. Union Pac. R.R.
11 Co., 765 F.3d 999, 1004 (9th Cir. 2014); Shanks v. Dressel, 540
12 F.3d 1082, 1086 (9th Cir. 2008).

13 V. DISCUSSION

14 As in Elliott I, Mr. Elliott brandishes the Supreme Court's
15 decision in Law v. Siegel as a talisman to ward off the Trustee's
16 objection to his homestead claim in the Buckingham Property. So
17 we commence our analysis by considering exactly what the Supreme
18 Court decided and did in Law v. Siegel and what it did not do.

19 A. Law v. Siegel and its implications in this appeal

20 Stephen Law filed a chapter 7 case and claimed a homestead
21 exemption in his residence property ("Residence"). The trustee
22 did not object, and Mr. Law's homestead exemption was allowed.
23 Mr. Law also listed two liens against the Residence: a first deed
24 of trust for \$146,156.52 in favor of Washington Mutual Bank and a
25 second deed of trust for \$156,929.04 in favor of "Lin's Mortgage
26 & Associates," securing an alleged debt to a person named "Lili
27 Lin." After lengthy and expensive litigation over a period of
28 years, the bankruptcy court found that "no person named Lili Lin

1 ever made a loan to [Mr. Law] in exchange for the disputed deed
2 of trust," and "the loan was a fiction, meant to preserve [Mr.
3 Law's] equity in his residence beyond what he was entitled to
4 exempt" by perpetrating "a fraud on his creditors and the court."
5 Law v. Siegel, 134 S.Ct. 1188, 1193 (2014). Consistent with
6 applicable Ninth Circuit law at the time, see Latman v. Burdette,
7 366 F.3d 774 (2004), the bankruptcy court "surcharged" Mr. Law's
8 homestead exemption to pay a portion of the trustee's attorney's
9 fees.

10 Mr. Law appealed, and this Panel and the Ninth Circuit
11 affirmed the bankruptcy court, but the Supreme Court granted
12 certiorari and reversed. It concluded that although bankruptcy
13 courts have authority under § 105(a) to "issue any order,
14 process, or judgment that is necessary or appropriate to carry
15 out the provisions" of the Bankruptcy Code, § 105(a) "does not
16 allow the bankruptcy court to override explicit mandates of other
17 sections of the Bankruptcy Code." Id. at 1194, quoting 2 Collier
18 on Bankruptcy ¶ 105.01[2], p. 105-06 (16th ed. 2013).

19 Specifically, in Mr. Law's case, the Supreme Court held that
20 surcharging Mr. Law's homestead exemption under § 105(a) or under
21 the bankruptcy court's inherent sanctioning authority was invalid
22 in light of § 522(k)'s specific directive that property that a
23 debtor properly exempts generally "is not liable for payment of
24 any administrative expense." Law v. Siegel, 134 S.Ct. at 1195.

25 The Supreme Court did not stop there in Law v. Siegel.
26 Underlining its larger point that "whatever equitable powers
27 remain in the bankruptcy courts must and can only be exercised
28 within the confines of" the Bankruptcy Code, id. at 1194, quoting

1 Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206 (1988), the
2 Supreme Court went on to state that “§ 522 does not give courts
3 discretion to grant or withhold exemptions based on whatever
4 considerations they deem appropriate.” Law v. Siegel, 134 S.Ct.
5 at 1196. It concluded that the Bankruptcy Code does not confer
6 on bankruptcy courts “a general, equitable power . . . to deny
7 exemptions based on a debtor’s bad-faith conduct.” Id. We
8 listened, and that was the basis for our decision to vacate and
9 remand in Elliott I, founded on our conclusion that Law v. Siegel
10 “abrogated our authority to deny exemptions or amendments to
11 exemptions based on a debtor’s bad faith.” Elliott I, 523 B.R.
12 at 193.

13 However, the Supreme Court also recognized that “§ 522 sets
14 forth a number of carefully calibrated exceptions and limitations
15 [to debtors’ exemptions], some of which relate to the debtor’s
16 misconduct.” Id. Law v. Siegel does not evince any overweening
17 affection or solicitude for dishonest debtors in bankruptcy by
18 the Supreme Court. In fact, the Supreme Court has repeatedly
19 emphasized that “[t]he principal purpose of the Bankruptcy Code
20 is to grant a ‘fresh start’ to the ‘**honest** but unfortunate
21 debtor.’” Marrama v. Citizens Bank of Mass., 549 U.S. 365, 367
22 (2007), quoting Grogan v. Garner, 498 U.S. 279, 286 (1991), and
23 Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (emphasis
24 added). But, the Supreme Court in Law v. Siegel sent a clear
25 message: “The Code’s meticulous – not to say mind-numbingly
26 detailed – enumeration of exemptions and exceptions to those
27 exemptions confirms that courts are not authorized to create
28 additional exceptions.” Law v. Siegel, 134 S.Ct. at 1196, citing

1 Hillman v. Maretta, 133 S.Ct. 1943, 1953 (2013); and TRW Inc. v.
2 Andrews, 534 U.S. 19, 28-29 (2001).

3 Among those detailed exceptions is § 522(g)(1). We noted in
4 Elliott I that § 522(g)(1) might apply to support denial of Mr.
5 Elliott's homestead exemption claim in the Buckingham Property,
6 see Elliott I, 523 B.R. at 197-98, and the bankruptcy court in
7 fact based its decision to deny Mr. Elliott's homestead exemption
8 claim following remand on § 522(g)(1). Accordingly, we proceed
9 to review application of § 522(g)(1) in this case.

10 B. Section 522(g)(1) - its terms and application

11 Section 522(g)(1), in relevant part, provides:

12 [T]he debtor may exempt under subsection (b) of this
13 section property that the trustee recovers under
14 section 510(c)(2), 542, 543, 550, 551, or 553 of this
15 title, to the extent that the debtor could have
16 exempted such property under subsection (b) of this
17 section if such property had not been transferred, if -

18 (1)(A) such transfer was not a voluntary transfer
19 of such property by the debtor; and

20 (B) the debtor did not conceal such property

21 We begin our analysis by focusing, as we must, on the
22 operative terms of the statute. "The starting point in
23 discerning congressional intent is the existing statutory text."
24 Lamie v. United States Trustee, 540 U.S. 526, 534 (2004), citing
25 Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1999). "It
26 is well established that 'when the statute's language is plain,
27 the sole function of the courts - at least where the disposition
28 required by the text is not absurd - is to enforce it according
to its terms.'" Lamie v. United States Trustee, 540 U.S. at 534,
quoting Hartford Underwriters Ins. Co. v. Union Planters Bank,
N.A., 530 U.S. 1, 6 (2000).

As stated in Collier's, § 522(g) "allows the debtor to

1 exempt property that the trustee recovers under [various sections
2 of the Bankruptcy Code, § 542 being relevant in this case] as
3 long as the transfer was **involuntary** and the property was **not**
4 **concealed** by the debtor." 4 Collier on Bankruptcy ¶ 522.12[1]
5 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed.) (hereinafter
6 cited as Collier on Bankruptcy) (emphasis in original). There is
7 no real dispute here about concealment. "The debtor might be
8 found to have concealed the property if the debtor takes
9 affirmative action to mislead creditors about whether particular
10 property existed." 4 Collier on Bankruptcy ¶ 522.12[2][b].

11 When Mr. Elliott filed his bankruptcy petition and
12 schedules, he stated under penalty of perjury that he had no
13 interest in the Buckingham Property or the corporation that held
14 title to the Buckingham Property. He further did not schedule
15 any secured or judgment lien creditors whose lien claims might
16 have alerted the Trustee to Mr. Elliott's connection to the
17 Buckingham Property.

18 While Mr. Elliott quibbles in his opening brief that he
19 included the Hiawatha Street address as his "street address"
20 rather than his "residence" in his petition and never stated at
21 the initial § 341(a) meeting that he resided at Hiawatha Street,
22 he concedes that he failed to disclose in his schedules: 1) his
23 ownership interest in the Buckingham Property; 2) his ownership
24 interests in two corporations that he controlled and owned; and
25 3) the claim of at least one judgment creditor. He further
26 concedes that he stated under oath at his § 341(a) meeting that
27 he did not own any real property and that he did not sell or give
28 away anything of value in the previous four years. Appellant's

1 Opening Brief, at 9-10. At the Exemption Objection Hearing, Mr.
2 Elliott's counsel conceded that Mr. Elliott "did not disclose the
3 company. He did not disclose the property." We conclude that
4 the bankruptcy court did not err in finding that Mr. Elliott
5 concealed his interest in the Buckingham Property for purposes of
6 § 522(g)(1)(B).

7 The bankruptcy court found that the Trustee's judgment in
8 his § 542(a) turnover action constituted a recovery under § 542
9 for purposes of § 522(g).⁴ This Panel previously considered the
10 meaning of the term "recover" in the context of § 522(g) in Hitt
11 v. Glass (In re Glass), 164 B.R. 759, 763 (9th Cir. BAP 1994),
12 aff'd, 60 F.3d 565 (9th Cir. 1995):

13 As to everyday usage, Webster's defines "recover" as
14 "to get back" or "to regain." Webster's New World
15 Dictionary 1122 (3d ed. 1988). In the legal context,
16 "recover" is defined as above, but is also defined as
17 "to be successful in a suit, to collect or obtain
18 amount, to have judgment, to obtain favorable or final
19 judgment, to obtain in any legal manner in contrast to
20 voluntary payment." Black's Law Dictionary 1147 (5th
21 ed. 1979).

22 In the Exemption Denial Order, the bankruptcy court made the
23 following specific findings:

24 On June 4, 2013, Trustee filed a turnover action
25 against [Debtor] for the . . . [Buckingham] Property
26 under § 542. Trustee has succeeded in that action.
27 Hence, this constitutes a "recovery" as contemplated by
28 § 522(g), which then brings the . . . Property within
the scope of the § 522(g)(1) limitation on [Mr.
Elliott's] right to claim an exemption in property he
voluntarily transferred and concealed.

⁴ The judgment that existed at the time the bankruptcy
court made that finding subsequently was vacated in Elliott II.
However, following remand and further proceedings in the
Adversary Proceeding, the corresponding Turnover Judgment was
entered, was not appealed and is final.

1 Exemption Denial Order, at 5.

2 Mr. Elliott does not contest that the Trustee made a
3 "recovery" under § 542 in the Adversary Proceeding. He could not
4 do so credibly. Mr. Elliott opposed the Trustee's claim for
5 turnover of the Buckingham Property at every stage of the
6 Adversary Proceeding up to the entry of the Turnover Judgment.
7 His apparent defense was based on the argument that unpaid real
8 property taxes coupled with consensual liens, with or without his
9 claimed homestead exemption, ate up the entire value of the
10 Buckingham Property, leaving nothing for the bankruptcy estate.
11 The bankruptcy court ultimately rejected that argument, finding
12 total value of the Buckingham Property net of tax liens and
13 allowable consensual liens to be \$297,694.43. Even if Mr.
14 Elliott prevailed on his \$175,000 homestead exemption claim,
15 \$122,694.43 of "consequential" net value would remain for the
16 estate. As noted above, the Turnover Judgment based on these
17 findings was not appealed.⁵

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20 ⁵ Interestingly, as late as the Exemption Objection
21 Hearing, Mr. Elliott's counsel asserted that the \$800,000 HDCR
22 trust deed lien, which "the [Trustee] says it's phony," was "way
23 too old to get rid of, therefore there [is] no equity." Yet, in
24 the Opposition to the Trustee's Valuation Brief, Mr. Elliott did
25 not even mention the HDCR trust deed lien. And, in its Findings,
26 the bankruptcy court noted that counsel for Mr. Elliott
27 represented at the Turnover Hearing that nothing was actually
28 owed to HDCR, and Mr. Elliott had obtained a reconveyance of
HDCR's trust deed. On this record, one might reasonably conclude
that HDCR was Mr. Elliott's "Lili Lin." Fortunately, we do not
have to consider this matter further in the disposition of this
appeal.

1 Mr. Elliott does argue that § 522(g)(1) is inapplicable to
2 deny his homestead exemption claim because the Trustee did not
3 recover property that was "transferred" for the benefit of the
4 estate in his § 542 action, and "the reference to Section 542 [in
5 § 522(g)(1)] describes one of the mechanisms for recovering a
6 transfer." We disagree with Mr. Elliott's argument for the
7 following reasons.

8 First, in § 522(g) itself, there is no explicit link between
9 the language "property that the trustee recovers under section
10 . . . 542" and "to the extent that the debtor could have exempted
11 such property . . . if such property had not been transferred."
12 The statute by its terms does not require that the recovery be of
13 or from a transfer.

14 Section 542(a), pursuant to which the Trustee obtained the
15 Turnover Judgment, provides in relevant part:

16 [A]n entity . . . in possession, custody, or control,
17 during the case, of property that the trustee may use,
18 sell, or lease under section 363 of this title, or that
19 the debtor may exempt under section 522 of this title
20 shall deliver to the trustee, and account for, such
property or the value of such property, unless such
property is of inconsequential value or benefit to the
estate.

21 "Possession, custody or control" is not a defined term in the
22 Bankruptcy Code, but the statute requires that the subject
23 property must have been in the possession, custody or control of
24 a third party "during the case." 5 Collier on Bankruptcy
25 ¶ 542.02[1]. "'During the case' has been held to include the
26 pendency of the overall bankruptcy case and not just the
27 adversary proceeding seeking turnover." Id. See Beaman v.
28 Vandeventer Black, LLP (In re Shearin), 224 F.3d 353, 356 (4th

1 Cir. 2000), cert. denied, 531 U.S. 1149 (2001); and Boyer v.
2 Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (In re USA
3 Diversified Prods., Inc.), 100 F.3d 53, 55-56 (7th Cir. 1996).

4 There is no dispute that on the petition date, LWI rather than
5 Mr. Elliott held title to the Buckingham Property.

6 In the Exemption Denial Order, the bankruptcy court made the
7 following findings:

8 Debtor [Mr. Elliott] voluntarily transferred title to
9 the [Buckingham] Property to a corporation owned by the
10 son of Debtor's business partner. Later, Debtor again
11 transferred the Property to a corporation that was
12 wholly owned by Debtor. In his bankruptcy petition and
schedules and during his § 341(a) meeting of creditors,
Debtor concealed these transfers and his interest in
the Property. After he received his discharge, Debtor
transferred the Property back into his name.

13 Exemption Denial Order, at 5. Mr. Elliott does not dispute those
14 findings. So, on the petition date, the transfer to LWI was
15 still in effect. Based on the schedules Mr. Elliott filed, he
16 could not claim an exemption in the Buckingham Property because
17 he affirmed under penalty of perjury that he did not have an
18 exemptible interest in the property. "If the exempt property is
19 transferred, the debtor has in essence waived the
20 exemption" Fox v. Smoker (In re Noblit), 72 F.3d 757,
21 758 (9th Cir. 1995). And as Mr. Elliott admits, exemptions are
22 determined as of the petition date. See § 522(b)(3)(A);
23 4 Collier on Bankruptcy ¶ 522.05[1]; Wolfe v. Jacobson (In re
24 Jacobson), 676 F.3d 1193, 1199 (9th Cir. 2012), citing White v.
25 Stump, 266 U.S. 310, 313 (1924); In re Dore, 124 B.R. 94, 98
26 (Bankr. S.D. Cal. 1991).

27 This Panel and the Ninth Circuit faced a similar situation
28 in Glass v. Hitt (In re Glass), 164 B.R. 759 (9th Cir. BAP 1994),

1 aff'd, 60 F.3d 565 (9th Cir. 1995). In Glass, prior to filing
2 his chapter 7 bankruptcy petition, the debtor ("Mr. Glass") had
3 transferred title to his residence to his son for "love and
4 affection." Mr. Glass did not list the residence as an asset in
5 his schedules and did not disclose the transfer in his statement
6 of financial affairs. He further did not claim a homestead
7 exemption in the residence. Glass, 60 F.3d at 567. At the
8 § 341(a) meeting of creditors, a creditor told the trustee about
9 the prepetition transfer of the residence property. Id.
10 Thereafter, Mr. Glass amended his schedules to list a fee
11 interest in the residence and claimed a homestead exemption. Id.

12 The trustee objected to Mr. Glass' homestead exemption
13 claim, contending that since Mr. Glass did not claim any interest
14 in the residence in his original schedules and had voluntarily
15 conveyed the residence to his son for no consideration, § 522(g)
16 "precluded [Mr. Glass] from relying on the homestead exemption
17 authorized by § 522(b)." Glass, 164 B.R. at 760-61. In
18 addition, in the objection, the trustee stated his intent to seek
19 avoidance of the conveyance as a fraudulent transfer under § 548.
20 Id. at 761. Before such an adversary proceeding was filed (and
21 even before a demand for turnover had been made), Mr. Glass' son
22 reconveyed the residence to Mr. Glass, again in consideration of
23 "love and affection."

24 The bankruptcy court overruled the trustee's objection
25 "holding [Mr.] Glass was entitled to claim the homestead
26 exemption under section 522(b) because the trustee did not direct
27 any action against the transferee son to achieve reconveyance of
28 the residence to the estate, and thus, the trustee did not

1 'recover' any property." Glass, 60 F.3d at 567. This Panel
2 reversed, and the Ninth Circuit affirmed the reversal, quoting
3 with approval this Panel's holding that, "The purpose of § 522(g)
4 is to prevent a debtor from claiming an exemption in recovered
5 property which was transferred in a manner giving rise to the
6 trustee's avoiding powers, where the transfer was voluntary or
7 where the transfer or property interest was concealed." Id. at
8 568-69. See also Greenwood v. Clark (In re Greenwood), 593 F.
9 App'x 680 (Feb. 13, 2015).

10 In this case, the Trustee recovered the Buckingham Property
11 under § 542(a) through the Turnover Judgment in the Adversary
12 Proceeding. Mr. Elliott could have exempted the Buckingham
13 Property in his original schedules on the petition date if he had
14 disclosed it as real property in which he claimed an interest,
15 despite its transfer to LWI, but he did not disclose an
16 exemptible interest in the property. Mr. Elliott's transfers of
17 the Buckingham Property were voluntary, and he concealed his
18 interest in the Buckingham Property in his petition and schedules
19 and in his testimony at the § 341(a) meeting. On this record, we
20 conclude that the bankruptcy court did not err in sustaining the
21 Trustee's objection to Mr. Elliott's claimed homestead exemption
22 in the Buckingham Property under § 522(g)(1).

23 C. No need to rule on California exemption law

24 Mr. Elliott argues that the bankruptcy court erred in
25 failing to analyze whether Mr. Elliott's misconduct warranted
26 denial of his homestead exemption claim under California state
27 law. Since the bankruptcy court appropriately denied Mr.
28 Elliott's claimed homestead exemption under an applicable

1 Bankruptcy Code provision, § 522(g)(1), it fully resolved the
2 Trustee's objection and was not required to proceed further to
3 analyze Mr. Elliott's homestead exemption claim under state law.

4 CONCLUSION

5 Based on the foregoing analysis and conclusions, we AFFIRM.
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