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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. NV-15-1307-DFB
)
 WALLACE E. BLOCK,) Bk. No. 14-51415-BTB
)
 Debtor.)
)
 _____)
 SAMUEL KORNHAUSER,)
)
 Appellant,)
)
 v.) **MEMORANDUM**¹
)
 WALLACE E. BLOCK; CHRISTINE)
 LOVATO, Chapter 7 Trustee,)
)
 Appellees.)
 _____)

Argued and Submitted on May 19, 2016
at Las Vegas, Nevada

Filed - June 3, 2016

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce T. Beesley, Chief Bankruptcy Judge, Presiding

Appearances: Gayle A. Kern argued for Appellant; Kevin Darby
argued for Appellee Wallace E. Block.

Before: DUNN, FARIS, and BARASH,² 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.

² Hon. Martin R. Barash, United States Bankruptcy Judge for the Central District of California, sitting by designation.

1 The bankruptcy court overruled the objections of the
2 chapter 7³ trustee and a judgment creditor to the Nevada state
3 law exemption that debtor claimed in his stock in two
4 closely-held corporations to the extent those objections were
5 based on debtor's alleged misconduct, debtor's allegedly improper
6 amendment to his bankruptcy documents, judicial estoppel, or
7 equitable estoppel. The judgment creditor appealed.

8 We AFFIRM.

9 **I. FACTUAL BACKGROUND**

10 A. Pre-Bankruptcy Facts.

11 1. The Valentine Litigation.

12 By written contract entered into on or about September 22,
13 2002, Wallace E. Block and his corporation, Life Enhancement
14 Products, Inc. ("LEPI"), hired attorney Samuel Kornhauser to
15 recover a 50% ownership interest in LEPI, which Mr. Block had
16 gifted to Gayle Valentine, his former girlfriend, plus \$70,000
17 Ms. Valentine had taken from LEPI. On March 25, 2005, to induce
18 Mr. Kornhauser to continue providing legal services, Mr. Block
19 and LEPI executed a promissory note ("Note") and pledge agreement
20 in favor of Mr. Kornhauser, committing \$450,000 in LEPI stock as
21 security for payment of the Note.

22 Mr. Kornhauser successfully obtained the return to Mr. Block
23 of Ms. Valentine's LEPI stock, a monetary award in favor of
24 Mr. Block, and a complete defense to all of Ms. Valentine's

25
26 ³ Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 claims against Mr. Block and LEPI. The litigation ("Valentine
2 Litigation") took seven years to complete and required two jury
3 trials and an appeal.

4 2. The Formation of SNF.

5 In 2006, while the Valentine Litigation was pending,
6 Mr. Block incorporated Scientific Nutritional Formulations, LLC
7 ("SNF"),⁴ designating himself as SNF's sole officer and director.
8 Mr. Block continued to be identified as SNF's sole officer and
9 director in filings with the Nevada Secretary of State until
10 February 2, 2011, when "Will Block" was substituted.⁵ On June 8,
11 2012, SNF acquired commercial property ("Property") in Minden,
12 Nevada consisting of a 16,800 square foot building on two acres.
13 SNF leases the Property to LEPI.

14 3. The Kornhauser Litigation.

15 At the conclusion of the Valentine Litigation, Mr. Block and
16 LEPI owed Mr. Kornhauser \$750,000 for attorney's fees and
17 \$100,000 for costs Mr. Kornhauser had advanced. During the seven
18 years of litigation, Mr. Block and LEPI made ongoing promises to
19 pay the attorney's fees and costs that were accruing. However,
20 after the Valentine Litigation concluded, Mr. Block and LEPI sued
21 Mr. Kornhauser for legal malpractice, breach of contract, and
22 breach of fiduciary duty, and Mr. Kornhauser asserted cross-
23 claims against them for breach of contract, negligent
24

25
26 ⁴ In spite of the confusion of SNF's "LLC" name and the
27 subsequent evidence as to how Mr. Block treated it, SNF in fact
28 was incorporated as a Nevada corporation.

⁵ Will Block appears to be an alias used by Mr. Block.

1 misrepresentation, fraud, quantum meruit, constructive trust and
2 account stated (collectively, "Kornhauser Litigation"). Four
3 years later, a jury denied all claims against Mr. Kornhauser and
4 awarded Mr. Kornhauser \$1,085,157 in damages, plus punitive
5 damages and attorney's fees and costs. The following morning,
6 before the judgment was entered against him, Mr. Block filed a
7 petition under chapter 7 of the Bankruptcy Code.⁶

8 B. Post-Bankruptcy Proceedings.

9 On his Schedule B-Personal Property ("Initial Schedule B"),
10 Mr. Block disclosed that he held stock in LEPI and SNF. He
11 valued his interest in the stock of both entities at \$0. On his
12 Schedule C-Property Claimed as Exempt ("Initial Schedule C"),
13 Mr. Block asserted that his interest in the LEPI stock was exempt
14 under Nevada Revised Statutes ("NRS") 21.090(1)(bb),⁷ and that
15 both the value of his claimed exemption and the current value of
16 the stock were \$0.

18 ⁶ Judgment against LEPI only was entered a week later in
19 the amount of \$1,989,396.32. LEPI then filed its own bankruptcy
20 case (Case No. 14-51572-btb7) in the District of Nevada.
21 Mr. Kornhauser subsequently obtained relief from the automatic
22 stay to seek a determination of the attorney's fees and costs to
23 be included in the judgment. The new judgment amount was
24 \$2,422,063. Mr. Kornhauser filed a claim in LEPI's bankruptcy
25 case (Case No. 14-51572-btb7), also pending in the District of
26 Nevada, in the amount of \$2,592,961.50.

27 ⁷ Pursuant to § 522(b)(2), Nevada has opted out of the
28 federal exemptions. See NRS 21.090(3); Rowe v. Jackson
(In re Rowe), 236 B.R. 11, 13 (9th Cir. BAP 1999). This panel
thus looks to Nevada state law rather than federal law to
determine the allowance of Mr. Block's claimed exemption in
stock. By its basic terms, NRS 21.090(1)(bb) provides that stock
of a closely-held corporation is exempt from execution.

1 Mr. Kornhauser timely filed an objection ("Kornhauser
2 Objection") to the exemption Mr. Block claimed in his LEPI stock
3 for two reasons. First, Mr. Kornhauser asserted that Mr. Block
4 could exempt no more than the value of the stock he claimed on
5 the Initial Schedule B, which was \$0. Second, Mr. Kornhauser
6 asserted that even if Mr. Block otherwise could exempt the full
7 value of his LEPI stock, he should be estopped from doing so
8 because Mr. Block made a false oath in his schedules when he
9 asserted that the LEPI stock had no value. The LEPI bankruptcy
10 documents, filed five days after Mr. Block filed his Initial
11 Schedule B, disclosed that LEPI had gross sales through its 2014
12 petition date of \$2.6 million and liabilities estimated at
13 \$1.9 million.

14 In response to the Kornhauser Objection, Mr. Block amended
15 the Initial Schedule B to reflect that the value of the LEPI
16 stock was "Unknown" rather than \$0 and the Initial Schedule C to
17 claim an exemption in 100% of the fair market value of the LEPI
18 stock, the current value of which he stated was "Unknown."

19 Before resolution of the Kornhauser Objection, the chapter 7
20 trustee ("Trustee") obtained an extension from the bankruptcy
21 court to file her own objection to Mr. Block's claimed
22 exemptions. As part of discovery into the basis for filing an
23 objection, the Trustee, through counsel, requested tax
24 information for SNF from Mr. Block, including its tax returns for
25 the tax years 2012 and 2013, its taxpayer identification number,
26 and a copy of the subchapter S election that had been filed with
27 the IRS.

28 Four days later, in response to the Trustee's request,

1 Mr. Block again amended his Schedule B, this time to change the
2 value of the SNF stock from \$0 to "Unknown." Mr. Block also
3 amended his Schedule C to include for the first time a claim for
4 exemption in his SNF stock pursuant to NRS 21.090(1)(bb).

5 Ultimately, the Trustee objected ("Trustee Objection") only
6 to Mr. Block's claim of exemption in SNF. The Trustee asserted
7 that Mr. Block should be judicially and equitably estopped from
8 claiming that he is entitled to an exemption under
9 NRS 21.090(1)(bb) with respect to his equity interest in SNF for
10 the reason that, from its inception, Mr. Block treated SNF not as
11 a corporation but as an LLC. The Trustee asserted that SNF "did
12 not operate as a corporation perpetually, has not adhered to the
13 formalities of a corporation, and has not filed corporate tax
14 returns." Significantly, Mr. Block claimed the rents and
15 deductions of and from the Property on Schedule E of his personal
16 tax returns, and he represented in every iteration of his
17 bankruptcy documents that SNF was an LLC.

18 With respect to the Kornhauser Objection, the bankruptcy
19 court determined that because Rule 1009(a) liberally allows a
20 debtor to amend his bankruptcy documents "as a matter of course
21 at any time before the case is closed," Mr. Block was not bound
22 by his \$0 valuation of his interest in LEPI stock in the Initial
23 Schedule B and the Initial Schedule C. The bankruptcy court
24 further ruled that it had no equitable power to deny or disallow
25 Mr. Block's exemption in the LEPI stock based on Mr. Block's
26 alleged bad faith conduct in light of the Supreme Court's
27 decision in Law v. Siegel, ___ U.S. ___, 134 S.Ct. 1188 (2014).

28 With respect to the Trustee Objection, the bankruptcy court

1 determined (1) that judicial estoppel did not apply where the
2 court had not "issued any rulings that were dependent upon the
3 now-amended claim of exemption," and (2) that the state of Nevada
4 has no procedure for allowing the denial or limitation of
5 exemptions for bad faith. Finally, with regard to the issue of
6 whether Mr. Block was entitled to claim an exemption in the stock
7 of SNF because he treated SNF as a limited liability company and
8 not as a true corporation required an adversary proceeding for a
9 determination that SNF was the alter ego of Mr. Block.

10 The bankruptcy court entered its order overruling the
11 Kornhauser Objection and the Trustee Objection on August 26,
12 2015.⁸ Mr. Kornhauser filed a timely notice of appeal.

13 **II. JURISDICTION**

14 The bankruptcy court had jurisdiction under 28 U.S.C.
15 §§ 1334 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C.
16 § 158.

17 **III. ISSUES**

18 Whether the bankruptcy court erred when it determined that
19 Mr. Block's claimed exemption in LEPI stock was not limited to
20 the \$0 value initially listed on Schedule C.

21 Whether the bankruptcy court erred when it interpreted Law
22 v. Siegel to hold that it had no equitable power to deny
23 Mr. Block's claimed exemption in the LEPI and SNF stock based on
24 Mr. Block's bad faith conduct, where Mr. Block's exemption was
25 claimed under state law, not § 522.

26
27 ⁸ The order authorized both Mr. Kornhauser and the trustee
28 to file an adversary proceeding for a determination whether SNF
and LEPI were the alter egos of Mr. Block.

1 Whether the bankruptcy court erred when it ruled that
2 Mr. Block had not waived the right to claim an exemption under
3 NRS 21.090(1)(bb) in the SNF stock by treating SNF as a limited
4 liability company rather than as a corporation.

5 **IV. STANDARDS OF REVIEW**

6 Application of basic rules of procedure and construction of
7 the Bankruptcy Code present questions of law that we review de
8 novo. All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R.
9 84, 87 (9th Cir. BAP 2007).

10 The right of a debtor to claim an exemption is a question of
11 law that we review de novo. Elliott v. Weil (In re Elliott),
12 523 B.R. 188, 191-92 (9th Cir. BAP 2014). We review a bankruptcy
13 court's interpretation of state exemption law and the Bankruptcy
14 Code de novo. Hopkins v. Cerchione (In re Cerchione), 414 B.R.
15 540, 545 (9th Cir. BAP 2009). De novo review requires that "we
16 consider a matter anew, as if no decision had been rendered
17 previously." Mele v. Mele (In re Mele), 501 B.R. 357, 362 (9th
18 Cir. BAP 2013).

19 **V. DISCUSSION**

20 A. The Bankruptcy Court Applied the Correct Law In Overruling
21 the Kornhauser Objection and the Trustee Objection.

22 As a preliminary matter, we set in context the claim of an
23 exemption in a bankruptcy case. The Bankruptcy Code requires a
24 debtor to file a schedule of assets and liabilities.
25 § 521(a)(1)(B)(ii). Rule 1007(b)(1)(A) directs that a chapter 7
26 debtor shall file schedules of assets and liabilities "prepared
27 as prescribed by the appropriate Official Forms." At the time
28 Mr. Block filed his bankruptcy case, Official Form 6B "Schedule B

1 - Personal Property" was the required form to use to schedule
2 personal property assets. Using the Official Form 6B, Mr. Block
3 filed his Initial Schedule B.

4 The Bankruptcy Code also permits an individual debtor to
5 exempt property from property of the estate as defined by § 541.
6 See § 522(b)(1). At the time Mr. Block filed his bankruptcy
7 case, Official Form 6C "Schedule C - Property Claimed as Exempt"
8 was the required form to use to claim an exemption from property
9 of the bankruptcy estate. Using Official Form 6C, Mr. Block
10 filed his Initial Schedule C.

11 The bankruptcy schedules provide important means by which
12 disclosures are made regarding a debtor's affairs. As noted by
13 the bankruptcy court, Rule 1009(a) provides that "[a] . . .
14 schedule . . . may be amended by the debtor as a matter of course
15 at any time before the case is closed."

16 Applying Rule 1009(a), the bankruptcy court correctly
17 determined that Mr. Block could amend both his Initial Schedule B
18 and his Initial Schedule C to claim an exemption greater than \$0
19 in his stock.

20 However, as the Ninth Circuit previously has stated,
21 "allowing an amendment claiming an exemption is different from
22 allowing the exemption itself." Martinson v. Michael
23 (In re Michael), 163 F.3d 526, 529 (1998) (quoting
24 In re Sandoval, 103 F.3d 20, 22 (5th Cir. 1997)). We turn now to
25 Mr. Kornhauser's issues regarding allowance of the claimed
26 exemption.

27 **NRS 21.090(1)(bb)**

28 Mr. Kornhauser asserts that under NRS 21.090(1)(bb),

1 Mr. Block's exemption in the LEPI stock is limited to the amount
2 claimed on his Initial Schedule C. NRS 21.090(1)(bb) simply
3 provides an exemption in "[s]tock of a corporation described in
4 subsection 2 of NRS 78.746 except as set forth in that section."
5 NRS 78.746 provides the process pursuant to which a judgment
6 creditor may obtain a charging order against stock held by a
7 judgment debtor. NRS 78.746 incorporates the provisions of
8 NRS 78.747, which defines when a stockholder acts as the alter
9 ego of a corporation and provides that "[t]he question of whether
10 a stockholder . . . acts as the alter ego of a corporation must
11 be determined by the court as a matter of law."

12 Under Nevada law, exemption statutes must be liberally
13 construed in favor of debtors. Christensen v. Pack, 149 P.3d 40,
14 43 (Nev. 2006). However, in this case, there is nothing for us
15 to construe on this issue. Notably, nothing in any of the
16 foregoing statutes provides any support to Mr. Kornhauser's
17 position that NRS 21.090(1)(bb) somehow applies to limit
18 Mr. Block's ability to amend his schedules to alter the amount of
19 the exemption he is claiming in his stock.

20 **Schwab v. Reilly**

21 Mr. Kornhauser asserts that under Schwab v. Reilly, 560 U.S.
22 770, 792-94 (2010), Mr. Block's exemption in the LEPI stock is
23 limited to the amount claimed on the Initial Schedule C. In
24 Schwab v. Reilly, the debtor scheduled "equipment" with a value
25 of \$10,718 as a personal property asset on her Schedule B. She
26 then claimed the full amount of that value exempt under § 522(d)
27 on her Schedule C, but using two exemptions, each of which
28 carried a dollar amount that statutorily could not be exceeded:

1 the tools of the trade exemption under § 522(b)(6) was limited to
2 property within that category with an aggregate value not to
3 exceed \$1,850, and a "wildcard" exemption under § 522(b)(5)
4 limited to property not to exceed \$10,225 in value. The debtor
5 claimed the full \$1,850 value under § 522(b)(6) and the balance
6 of the \$10,718 value of the equipment or \$8,868 under
7 § 522(b)(5). The trustee did not object to the debtor's
8 exemptions claimed in the equipment. The trustee did, however,
9 seek permission from the bankruptcy court to auction the
10 equipment after obtaining an appraisal that showed that the value
11 of the equipment was \$17,200. The debtor opposed, asserting that
12 because she had equated the value of the exemptions with her
13 estimate of the market value of the equipment, she had put
14 creditors on notice of her intent to exempt the full value of the
15 exemptions, even if the value turned out to be more than she had
16 estimated. The debtor asserted that the estate had forfeited its
17 right to any value that exceeded the amount of the claimed
18 exemptions because the trustee did not timely object to her
19 exemptions. The Supreme Court determined that the trustee was
20 not required to object to the exemptions in order to preserve the
21 bankruptcy estate's right to retain any value in the equipment
22 beyond the value of the claimed exempt interest.

23 Schwab v. Reilly does not support the proposition asserted
24 by Mr. Kornhauser in two important ways. First, the exemption
25 provided by NRS 21.090(1)(bb) is not limited in amount. Second,
26 and more importantly, nothing in Schwab v. Reilly suggests that
27 Mr. Block was not allowed to amend his Schedule C to change the
28 amount claimed exempt from \$0.

1 Law v. Siegel

2 In Law v. Siegel, the Supreme Court determined broadly that
3 the Bankruptcy Code does not provide bankruptcy courts with a
4 general, equitable power to deny exemptions based on a debtor's
5 bad faith conduct. In Elliott v. Weil (In re Elliott), 523 B.R.
6 188, 194 (9th Cir. BAP 2014), this panel interpreted Law v.
7 Siegel to instruct that bankruptcy courts "can no longer deny
8 claimed exemptions **or bar amendments to exemptions** on the ground
9 that the debtor acted in bad faith, when no statutory basis
10 exists for doing so." (Emphasis added.)

11 Mr. Kornhauser asserts that the bankruptcy court erred when
12 it applied Law v. Siegel in determining that it could not
13 preclude Mr. Block from asserting an exemption based on any bad
14 faith conduct, because the exemption at issue was claimed under
15 Nevada law, not under § 522(d). "It is of course true that when
16 a debtor claims a *state-created* exemption, the exemption's scope
17 is determined by state law, **which may provide that certain types**
18 **of debtor misconduct warrant denial of the exemption.**" Law v.
19 Siegel, 134 S.Ct. at 1196-97 (italic emphasis in original; bold
20 emphasis added). We observe that Mr. Kornhauser appears to have
21 overlooked our emphasized language from the Supreme Court quote.
22 As determined by the bankruptcy court, and as discussed above,
23 nothing in the Nevada statutory scheme appears to preclude a
24 claim of exemption under NRS 21.090(1)(bb) based upon bad faith
25 conduct of Mr. Block.

26 Mr. Kornhauser asserts that Nevada law equitably estops a
27 debtor with unclean hands from seeking the aid of a court to
28 claim an exemption, citing Las Vegas Fetish & Fantasy Halloween

1 Ball, Inc. v. Ahern Rentals, Inc., 182 P.3d 764, 766-67 (Nev.
2 2008). However, in Ahern Rentals, a case involving a contract
3 dispute, the Nevada Supreme Court emphasized that the unclean
4 hands doctrine is not a per se rule in Nevada. Id. at 276.

5 Mr. Kornhauser has cited no Nevada case which explicitly
6 makes the unclean hands doctrine applicable to claims of
7 exemption. To the contrary, the Nevada Supreme Court has held in
8 the exemption context that the plain language of the statute
9 controls. Weinstein v. Fox (In re Fox), 302 P.3d 1137, 1140
10 (Nev. 2013) (in construing exemption statute the court must
11 neither depart from the statutory language nor extend the
12 legislative grant). Here, the language of NRS 21.090(1)(bb) does
13 not include any exception to the right to claim the exemption
14 based on the claimant's "bad faith."

15 Therefore, in light of Ahern Rentals and Fox, we determine
16 that equitable doctrines do not apply to limit claims to the
17 exemption allowed in NRS 21.090(1)(bb).

18 **Alter ego**

19 Mr. Kornhauser's final issue on appeal is that the
20 bankruptcy court erred when it ruled that Mr. Block had not
21 waived the right to claim an exemption under NRS 21.090(1)(bb) in
22 the SNF stock by treating SNF as a limited liability company
23 rather than as a corporation. We do not reach this issue.

24 In his opening brief, Mr. Kornhauser acknowledged that the
25 bankruptcy court had preserved his right and that of the trustee
26 to file and proceed with an adversary proceeding to determine
27 whether LEPI and SNF are alter egos of Mr. Block under
28 NRS 78.747, which would warrant disallowance in whole or in part

1 of Mr. Block's claim of exemption in stock under
2 NRS 21.090(1)(bb). "Kornhauser does not object to, or appeal
3 from, that portion of the Bankruptcy Court Decision." Opening
4 Brief at 1:7-8.

5 **VI. CONCLUSION**

6 The bankruptcy court correctly determined that Mr. Block
7 could amend his bankruptcy schedules as a matter of course to
8 alter the value of the stock he claimed exempt under
9 NRS 21.090(1)(bb). Accordingly, the bankruptcy court did not err
10 when it determined that the amount of Mr. Block's exemption was
11 not limited to \$0. Further, the bankruptcy court did not err
12 when it refused to preclude Mr. Block from claiming an exemption
13 greater than \$0 in the stock where Law v. Siegel makes clear the
14 bankruptcy court has no general equitable authority to do so and
15 where Nevada state law does not so provide.

16 We AFFIRM the bankruptcy court's order overruling the
17 Kornhauser Objection and the Trustee Objection.