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NOT FOR PUBLICATION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

5	In re:	)	BAP No.	CC-15-1336-TaLKi
6	YAN SUI,	)	Bk. No.	8:11-bk-20448-CB
7	Debtor.	)		
8	_____	)		
9	YAN SUI,	)		
10	Appellant,	)		
11	v.	)	<b>MEMORANDUM*</b>	
12	RICHARD A. MARSHACK,	)		
13	Chapter 7 Trustee,	)		
14	Appellee.	)		
	_____	)		

Argued and Submitted on May 19, 2016  
at Pasadena, California

Filed - June 6, 2016

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

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: Appellant Yan Sui argued pro se; Chad V. Haes of  
Marshack Hays LLP argued for appellee.

Before: TAYLOR, LANDIS,\*\* 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 8024-1(c)(2).

\*\* The Honorable August B. Landis, United States Bankruptcy  
Judge for the District of Nevada, sitting by designation.

1 **INTRODUCTION**

2 Yan Sui appeals from an order sustaining the chapter 7<sup>1</sup>  
3 trustee's objection to his claimed homestead exemption.

4 We AFFIRM the bankruptcy court.

5 **FACTS<sup>2</sup>**

6 Prepetition, the Debtor transferred his interest in real  
7 property located in Costa Mesa, California (the "Property") to  
8 Pei-Yu Yang.<sup>3</sup> The Debtor neither listed nor claimed an  
9 exemption in the Property on his bankruptcy schedules.

10 The Trustee promptly commenced an adversary proceeding and  
11 obtained an order (the "Avoidance Order") that, among other  
12 things, avoided the transfer as a fraudulent conveyance and  
13 authorized the Trustee to recover and administer the estate's  
14 interest in the Property for the benefit of creditors. The  
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17 <sup>1</sup> Unless otherwise indicated, all chapter and section  
18 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
19 All "Rule" references are to the Federal Rules of Bankruptcy  
20 Procedure.

21 <sup>2</sup> The Debtor filed three requests for judicial notice.  
22 After the first request was filed, a BAP motions panel waived  
23 the required filing of excerpts of record and deferred the  
24 request for judicial notice to the merits panel.

25 Having reviewed the documents, we note that many are  
26 documents required by Rule 8009(a)(4) as part of the record on  
27 appeal. Thus, judicial notice of those documents is  
28 appropriate. We, however, do not take judicial notice of  
documents unrelated to the issue on appeal; namely, transcripts  
of oral arguments before this Panel in other appeals or the  
Trustee's answering brief in an appeal pending before the Ninth  
Circuit.

<sup>3</sup> Yang is either his wife, his ex-wife, or his domestic  
partner.

1 Avoidance Order is now final.<sup>4</sup>

2 The Debtor subsequently filed an amended schedule C and  
3 claimed an exemption in the Property pursuant to § 522(b) and an  
4 attached "Declaration of Homestead (Spouses as Declared  
5 Owners)." The Trustee timely objected to the newly claimed  
6 homestead exemption based on § 522(g) (1) and Glass v. Hitt  
7 (In re Glass), 164 B.R. 759 (9th Cir. BAP 1994), aff'd, 60 F.3d  
8 565 (9th Cir. 1995). He requested that the bankruptcy court  
9 sustain his objection to the Debtor's homestead exemption claim  
10 with prejudice and that it deny the Debtor an exemption in any  
11 portion of the Property sale proceeds.

12 In response, the Debtor asserted that he was claiming the  
13 exemption so as to protect his interest in the proceeds from the  
14 sale of the Property; in effect, he sought to collaterally  
15 attack the Avoidance Order.

16 At the hearing, only the Trustee appeared. The bankruptcy  
17 court agreed that the factual circumstances satisfied the  
18 requirements for exemption denial under § 522(g) (1) and  
19 sustained the Trustee's objection. After it entered an order so  
20 providing (the "Exemption Order"), the Debtor timely appealed.

21 **JURISDICTION**

22 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
23 §§ 1334 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C.  
24 § 158.

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26 <sup>4</sup> After Yang appealed from the Avoidance Order, the Ninth  
27 Circuit affirmed. Marshack v. Yang (In re Sui), 582 F. App'x  
28 740 (9th Cir. June 14, 2014), cert. denied sub nom. Yang v.  
Marshack, 135 S. Ct. 869 (2014).

1 **ISSUE**

2 Whether the bankruptcy court erred in sustaining the  
3 Trustee's objection and denying the Debtor's claimed homestead  
4 exemption.

5 **STANDARDS OF REVIEW**

6 We review de novo the bankruptcy court's denial of the  
7 Debtor's exemption claim. Elliot v. Weil (In re Elliot),  
8 544 B.R. 421, 430 (9th Cir. BAP 2016). Factual findings  
9 underlying the bankruptcy court's legal conclusions are reviewed  
10 for clear error. Id. A factual finding is clearly erroneous if  
11 illogical, implausible, or without support in inferences that  
12 may be drawn from the facts in the record. See  
13 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832  
14 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,  
15 1262 (9th Cir. 2009) (en banc)).

16 **DISCUSSION**

17 On appeal, the Debtor largely advances arguments that are  
18 irrelevant or beyond the scope of this appeal. To be clear, the  
19 only issue before the Panel is whether the bankruptcy court  
20 erred in denying the Debtor's claimed homestead exemption.  
21 Thus, we ignore the Debtor's arguments related to the avoidance  
22 action; contrary to the Debtor's arguments, the Avoidance Order  
23 is now final, and it conclusively established that he  
24 fraudulently transferred the Property to Yang, avoided the  
25 transfer pursuant to § 544 and California Civil Code § 3439, and  
26 recovered the Property for the estate pursuant to § 550.

27 Instead, we focus on § 522(g)(1). This statute allows a  
28 debtor to exempt property recovered by the trustee under § 550

1 but only to the extent that the debtor could have exempted such  
2 property under § 522(b) prior to transfer and "as long as the  
3 transfer was involuntary and the property was not concealed by  
4 the debtor." In re Elliott, 544 B.R. at 432 (internal quotation  
5 marks and citation omitted). We have no difficulty concluding  
6 that the bankruptcy court appropriately decided that § 522(g)(1)  
7 barred the Debtor's belated attempt to exempt the Property.

8 The bankruptcy court first found<sup>5</sup> correctly that the Debtor  
9 voluntarily transferred his interest in the Property. The  
10 Avoidance Order conclusively established that the Debtor  
11 transferred the Property to Yang with the intent to hinder,  
12 delay, or defraud a creditor. Indeed, even on appeal, the  
13 Debtor readily acknowledges that he executed the quitclaim deed  
14 in 2009 conveying his interest in the Property to Yang.

15 The bankruptcy court then found that the Debtor failed to  
16 disclose an ownership interest in the Property on his bankruptcy  
17 schedules. Implicitly, it determined that the failure to  
18 schedule the Property constituted concealment. Given the state  
19 of the schedules and the absence of any contrary evidence  
20 regarding concealment, this finding was not clearly erroneous.

21 In sum, the Debtor was not entitled to claim a homestead  
22 exemption after the Trustee recovered the Property because he  
23 voluntarily transferred it prepetition and then concealed the  
24 Property once he filed his bankruptcy case. Section 522(g)(1),  
25 thus, barred his claimed exemption, and the bankruptcy court

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27 <sup>5</sup> The bankruptcy court evidently adopted the Trustee's  
28 proposed factual findings, as set forth in his objection and on  
the record at the hearing.

1 correctly sustained the Trustee's objection.<sup>6</sup>

2 None of the Debtor's arguments to the contrary have merit.

3 First, the bankruptcy court was not required to identify  
4 the recipient of the sale proceeds in the Exemption Order. Such  
5 a determination is neither relevant nor necessary to a  
6 § 522(g)(1) determination, and the lack of this information did  
7 not render the Exemption Order vague, unenforceable, or void.

8 Second, the arguments referencing §§ 326 and 330 are  
9 totally irrelevant because the Trustee did not recover any  
10 professional fees or the claimed exemption for himself or his  
11 counsel through the Exemption Order. Such a recovery is  
12 unnecessary in connection with a § 522(g)(1) denial of  
13 exemption.

14 Third, the Exemption Order does not contravene Elliot v.  
15 Weil (In re Elliott), 523 B.R. 188 (9th Cir. BAP 2014) or Law v.  
16 Siegel, 134 S.Ct. 1188 (2014). Law makes clear that it is  
17 inappropriate to disallow a debtor's claimed homestead exemption  
18 based solely on bad faith conduct and § 105(a). Elliot echoes  
19 this holding. Neither case, however, completely extinguished  
20 the bankruptcy court's ability to deny a debtor's claimed  
21 exemption; instead, they clarified that an express statutory  
22 basis for denial must exist under either the Bankruptcy Code or  
23 state law. Here, that statutory basis was § 522(g)(1), and the

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25 <sup>6</sup> Thus, the Trustee's reliance on In re Glass was  
26 unnecessary. In Glass, the Ninth Circuit held that a trustee  
27 could "recover" property for the purposes of § 522(g) without  
28 actually initiating or completing a formal avoidance proceeding.  
60 F.3d at 570. Here, however, the Trustee actually recovered  
the Property pursuant to § 550 through the Avoidance Order.

1 Debtor's claimed homestead exemption was not surcharged for bad  
2 faith, as the Trustee correctly points out.

3 Fourth, the Debtor's continuous occupation of the Property  
4 prior to his eventual eviction was irrelevant to the bankruptcy  
5 court's decision to deny the claimed exemption under  
6 § 522(g)(1). The bankruptcy court correctly focused on the  
7 voluntary transfer and the concealment of the Property as the  
8 bases for exemption denial.

9 Fifth, the Debtor's due process rights were not violated.  
10 Due process requires "notice `reasonably calculated, under all  
11 the circumstances, to apprise interested parties of the pendency  
12 of the action and afford them an opportunity to present their  
13 objections.'" United Student Aid Funds, Inc. v. Espinosa,  
14 559 U.S. 260, 272 (2010) (quoting Mullane v. Cent. Hanover Bank  
15 & Tr. Co., 339 U.S. 306, 314 (1950)). Here, the Debtor does not  
16 contend that he lacked notice of the Trustee's objection;  
17 indeed, he responded to the objection. Instead, the Debtor  
18 argues that the violation resulted from the bankruptcy judge's  
19 failure to recuse herself from the matter. The Debtor, however,  
20 failed to file a recusal motion prior to entry of the Exemption  
21 Order. And, in any event, the record fails to support that  
22 recusal was appropriate and, in particular, that due process  
23 required recusal.

24 Finally, the Trustee's objection to exemption did not  
25 violate the Debtor's § 524 discharge injunction. This argument  
26 is raised for the first time on appeal and has become a familiar  
27 refrain of the Debtor's. See Sui v. Marshack (In re Sui),  
28 2016 WL 1453054, at \*3 (9th Cir. BAP Apr. 11, 2016). A debtor's

1 discharge injunction does not preclude his trustee from  
2 objecting to an amended exemption claim. Rule 4003(b)(2), in  
3 fact, authorizes a trustee up to one year after the closing of  
4 the bankruptcy case to object to a fraudulently asserted  
5 exemption claim. Here, the Trustee's objection arose in direct  
6 response to the Debtor's amended schedule C filing. The Debtor  
7 is not entitled to continue filing documents in the bankruptcy  
8 case but then to plead the discharge injunction as a defense to  
9 any response. Ultimately, the Debtor's argument lacks merit  
10 because the Trustee acted as expressly allowed by the Bankruptcy  
11 Code and Rule 4003.

12 **CONCLUSION**

13 Based on the foregoing, we AFFIRM the bankruptcy court.  
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