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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NOT FOR PUBLICATION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

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In re:)	BAP No.	CC-15-1231-KiTAL
)		
ROBERT KENNETH ZIEGLER,)	Bk. No.	8:13-bk-20257-CB
)		
Debtor.)		
_____)		
ROBERT KENNETH ZIEGLER,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
THOMAS H. CASEY, Chapter 7)		
Trustee; UNITED STATES)		
TRUSTEE,)		
)		
Appellees.)		
_____)		

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: Richard G. Heston of Heston & Heston argued for
appellant Robert Kenneth Ziegler; Kathleen J.
McCarthy and Steve Burnell of Law Office of Thomas
H. Casey, Inc. argued for appellee Thomas H. Casey,
Chapter 7 Trustee.

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have, it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Before: KIRSCHER, TAYLOR and LANDIS,² Bankruptcy Judges.

2 Chapter 7³ debtor Robert Kenneth Ziegler appeals an order
3 sustaining the trustee's objection to Debtor's amended "wildcard"
4 exemption for what were initially exempted homestead sale proceeds
5 which Debtor failed to reinvest in a new homestead within six
6 months as allowed under CAL. CIV. CODE P. ("CCP") § 704.720(b)⁴ and
7 Wolfe v. Jacobson (In re Jacobson), 676 F.3d 1193 (9th Cir. 2012).
8 The bankruptcy court failed to make sufficient findings to support
9 its decision to disallow the exemption. Nonetheless, because the
10 prior turnover order adjudicated against Debtor the issue of
11 whether he could exempt a portion of the non-reinvested homestead
12 sale proceeds under the wildcard exemption, we AFFIRM.

13 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

14 **A. Debtor first claims sale proceeds exempt under the homestead
15 exemption.**

16 Debtor filed his chapter 7 bankruptcy case on December 30,
17 2013. Thomas H. Casey was appointed as chapter 7 trustee.
18 Debtor's residence, which had significant equity, was days away
19 from foreclosure. Debtor was unemployed at the time and had no

21 ² Hon. August B. Landis, Bankruptcy Judge for the District
22 of Nevada, sitting by designation.

23 ³ Unless specified otherwise, all chapter, code and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

25 ⁴ CCP § 704.720(b) provides, in relevant part:

26 If a homestead is sold under this division . . . the proceeds
27 of sale . . . are exempt in the amount of the homestead
28 exemption provided in Section 704.730. The proceeds are
exempt for a period of six months after the time the proceeds
are actually received by the judgment debtor[.]

1 income. In his Schedule A, Debtor estimated the residence's value
2 at \$485,000, subject to secured liens totaling \$353,279. Debtor
3 initially claimed a homestead exemption of \$100,000, but later
4 filed an amended Schedule C and reduced his exemption in the
5 residence to \$75,000. Trustee did not object to Debtor's \$75,000
6 homestead exemption under CCP § 704.730(a)(1).

7 Trustee sold Debtor's residence for \$495,000. Initially,
8 Trustee had requested, and Debtor opposed, that Trustee be allowed
9 to retain the claimed exempt homestead funds for the statutory six
10 months pending evidence from Debtor that he would use the funds to
11 purchase a new homestead. Trustee ultimately conceded after
12 reviewing applicable legal authorities that Debtor was entitled to
13 receive the funds upon the close of escrow.

14 The order to sell Debtor's residence provided that Trustee
15 had the right to recover the exempt homestead funds in the event
16 Debtor failed to timely reinvest them in a homestead.

17 Debtor received the homestead funds on June 18, 2014. The
18 deadline to reinvest the funds expired on or about December 18,
19 2014.

20 Immediately after the six-month deadline, Trustee requested
21 evidence from Debtor's counsel that the homestead funds were
22 timely reinvested. At a later continued § 341(a) examination, at
23 which Debtor failed to appear, Debtor's counsel could not provide
24 any evidence that Debtor had timely reinvested the funds in a
25 homestead. Thereafter, Trustee emailed Debtor's counsel to
26 determine what date Debtor would be available for a Rule 2004
27 examination regarding the status of the homestead funds. In his
28 response, Debtor's counsel indicated he was withdrawing from the

1 case and that Trustee should contact Debtor directly. In his
2 motion to withdraw, Debtor's counsel stated that despite his
3 repeated advice to Debtor regarding the consequences of not
4 reinvesting the homestead funds in a new homestead, Debtor had
5 failed to reinvest the funds. Counsel had advised Debtor that the
6 funds were no longer exempt and therefore had to be turned over to
7 Trustee.

8 Trustee then moved for an order authorizing a Rule 2004
9 examination of Debtor, which was granted. Just before the
10 examination, Debtor provided Trustee with documents showing that
11 the homestead funds were not reinvested in a homestead and that,
12 as of January 30, 2015, Debtor had only approximately \$29,000
13 remaining of the \$75,000.

14 At his Rule 2004 examination, Debtor testified that he was
15 aware of and understood the language in the sale order concerning
16 the homestead funds, including that Trustee would be entitled to
17 recover the \$75,000 should Debtor fail to reinvest the funds in a
18 homestead. When asked if he had any intention of purchasing a
19 home within the six months after he received the money, Debtor
20 testified that he hoped he might buy a mobile home or trailer,
21 with his parents' help, but admitted that he never looked for a
22 place to buy during the six-month period.

23 Debtor admitted, and the record reflects, that he began
24 spending the funds on things other than a homestead the day after
25 he received them, including: \$11,500 paid to his father for the
26 repayment of a postpetition loan; \$7,000 paid to the new owner of
27 his home for three months rent; \$6,000 paid for a new car; \$5,580
28 paid for rent of a friend's home; buying gifts for his daughter;

1 and paying for various living expenses. Debtor indicated he would
2 turn over the remaining \$29,000 in homestead funds to Trustee if
3 ordered to do so.

4 Trustee then filed a motion requiring Debtor to turn over the
5 \$75,000 in homestead funds, contending the funds had lost their
6 exempt status for Debtor's failure to reinvest them in a homestead
7 and were now property of the estate. On February 20, 2015, the
8 bankruptcy court ordered Debtor to return immediately to Trustee
9 the homestead funds in the full amount of \$75,000. The turnover
10 order was not appealed.

11 On March 2, 2015, Debtor remitted \$25,000 to Trustee, leaving
12 the remaining \$50,000 due and owing under the turnover order.

13 **B. When the sale proceeds are not timely reinvested in a**
14 **homestead Debtor claims the proceeds exempt under the**
wildcard exemption.

15 Debtor subsequently filed an amended Schedule C, now claiming
16 the homestead funds exempt in the amount of \$26,925 under
17 CCP § 703.140(b)(5), the wildcard exemption.

18 In response, Trustee moved for an order to show cause why
19 Debtor should not be held in contempt for failing to comply with
20 the turnover order and sanctioned for \$50,000. Trustee also filed
21 a timely objection to Debtor's amended wildcard exemption for the
22 sale proceeds in the amount of \$26,925. Trustee characterized
23 Debtor's now-claimed wildcard exemption as nothing more than a
24 thinly-veiled attempt to decrease his culpability under the
25 pending OSC motion. Trustee contended that during the six-month
26 period in which Debtor was required to reinvest the homestead
27 funds, the bankruptcy estate held a reversionary, contingent
28 interest in them. Thus, argued Trustee, at the exact moment

1 Debtor failed to reinvest the funds by voluntarily transferring
2 them to pay for his personal expenses, the homestead funds lost
3 their exempt status and became property of the estate.

4 Trustee objected to Debtor's wildcard exemption on five
5 grounds: (1) § 522(g) barred Debtor's attempt to exempt property
6 Trustee had recovered for the bankruptcy estate via the turnover
7 order; (2) federal judicial estoppel; (3) federal equitable
8 estoppel; (4) state law judicial estoppel; and (5) state law
9 equitable estoppel. Trustee's objection to the amended wildcard
10 exemption was set for hearing on the same date as his OSC motion.

11 Debtor conceded that he used the homestead funds to support
12 himself and that he owed Trustee \$23,075 [\$75,000 - \$26,925
13 (wildcard exemption) - \$25,000 (already turned over to Trustee)].
14 Debtor contended the appropriate remedy was to enter judgment
15 against him for the \$23,075. Debtor argued that § 522(g) did not
16 apply because he never "transferred" the homestead funds to a
17 third party, which therefore never triggered Trustee having to
18 "recover" them. Debtor also disputed Trustee's estoppel theories,
19 contending that upon the sale of the residence he was entitled to
20 claim some of the sale proceeds exempt under either the homestead
21 exemption for \$75,000 or the wildcard exemption for \$26,925. By
22 later amending, argued Debtor, he was merely exercising his right
23 to claim some of the proceeds exempt under the wildcard exemption.
24 Further, his testimony at the Rule 2004 examination established
25 that he intended to reinvest the funds in a new homestead. Debtor
26 further contended that his use of the homestead funds to pay his
27 living expenses did not rise to the level of "bad faith"
28 sufficient to punish him with the denial of any exemption

1 whatsoever. He concluded his argument by asserting that, Law v.
2 Siegel, 134 S.Ct. 1188 (2014), precluded such equitable rule-
3 fashioning, and no statutory basis existed for denying him any
4 exemption in this case.

5 In reply, Trustee argued that Debtor's use of the sale
6 proceeds to pay for personal expenses constituted a "transfer" for
7 purposes of § 522(g) because Debtor voluntarily parted with
8 property. In addition, argued Trustee, California law was clear:
9 homestead exemption funds maintained their exempt status only if
10 the funds are reinvested in a new homestead within six months.
11 Debtor had not provided any legal authority creating an exception
12 to this rule and authorizing him to spend the funds on "personal
13 expenses."

14 Trustee contended that Debtor's argument against applying any
15 estoppel doctrine was also wrong because Debtor's conduct clearly
16 showed that he never intended to comply with California law; he
17 immediately began spending the homestead funds on other things.
18 Debtor even admitted to spending the money before he received it
19 from Trustee. Finally, Trustee argued that Debtor's reliance on
20 Law was misplaced. This case was not about surcharging an
21 exemption for administrative expenses as in Law, and Law did not
22 eliminate the court's authority to apply state law estoppel
23 doctrines.

24 **C. The bankruptcy court's ruling on Trustee's objection to**
25 **Debtor's amended wildcard exemption**

26 At the hearing, the bankruptcy court noted that Debtor had
27 acknowledged at a prior hearing that he knew he was not supposed
28 to spend the money. The court then stated that because Debtor did

1 not reinvest the sale proceeds in a new homestead, as he was
2 required to do under state law, that money should have come back
3 to the estate and been distributed to creditors. By Debtor
4 spending the funds on something other than a homestead, his
5 creditors lost out.

6 After hearing argument from the parties, the bankruptcy court
7 announced it was sustaining Trustee's objection and disallowing
8 Debtor's wildcard exemption:

9 On the objection to the wild -- amended wildcard, I am
10 going to grant that. I think it's inappropriate for us to
11 be talking about the homestead for as long as we have and
12 then for the Debtor to now say I don't want the homestead,
13 I want to take the wildcard instead, there's just no -- I
14 see no authority for that.

15 Hr'g Tr. (June 30, 2015) 23:14-19.

16 The bankruptcy court entered an order sustaining Trustee's
17 objection and disallowing Debtor's amended wildcard exemption on
18 July 2, 2015. No additional findings were provided in the order.
19 Debtor timely appealed.

20 **II. JURISDICTION**

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

23 **III. ISSUE**

24 Did the bankruptcy court err in sustaining Trustee's
25 objection and disallowing Debtor's amended wildcard exemption for
26 the homestead sale proceeds?

27 **IV. STANDARDS OF REVIEW**

28 We review questions regarding a debtor's right to claim an
exemption de novo, whereas the issue of a debtor's intent is a
question of fact reviewed under the clearly erroneous standard.

1 Kelley v. Locke (In re Kelley), 300 B.R. 11, 16 (9th Cir. BAP
2 2003). The bankruptcy court's factual findings, for purposes of
3 determining the validity of a claimed exemption, are reviewed
4 under the clearly erroneous standard. Id. Factual findings are
5 clearly erroneous if they are illogical, implausible or without
6 support in the record. Retz v. Samson (In re Retz), 606 F.3d
7 1189, 1196 (9th Cir. 2010).

8 We may affirm on any ground supported by the record,
9 regardless of whether the bankruptcy court relied upon, rejected
10 or even considered that ground. Fresno Motors, LLC v. Mercedes-
11 Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014); Arnot v.
12 Endresen (In re Endresen), 548 B.R. 258, 268 (9th Cir. BAP 2016).

13 V. DISCUSSION

14 A. Rule 4003

15 Under Rule 4003(b) (1), "a party in interest may file an
16 objection to the list of property claimed as exempt within 30 days
17 after the meeting of creditors held under § 341(a) is concluded or
18 within 30 days after any amendment to the list or supplemental
19 schedules is filed, whichever is later." It is undisputed that
20 Trustee's objection to Debtor's amended wildcard exemption was
21 timely filed.

22 Generally, a claimed exemption is presumptively valid.
23 Diener v. McBeth (In re Diener), 483 B.R. 196, 203 (9th Cir. BAP
24 2012). If a party in interest timely objects, "the objecting
25 party has the burden of proving that the exemptions are not
26 properly claimed." Id. (quoting Rule 4003(c)). See also Carter
27 v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir.
28 1999). If the objecting party can produce evidence to rebut the

1 presumption of validity, then the burden of production shifts to
2 the debtor to provide unequivocal evidence demonstrating the
3 exemption is proper. Id. The burden of persuasion, however,
4 always remains with the objecting party. Id.

5 Despite this general rule, we recently held in Diaz v.
6 Kosmala (In re Diaz), 547 B.R. 329, 337 (9th Cir. BAP 2016), that
7 Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15 (2000), requires
8 that courts apply the state law burden of proof for state law
9 exemptions. Thus, in cases where state exemption law specifically
10 allocates the burden of proof to the debtor, Rule 4003(c) does not
11 change that allocation. See also In re Jacobsen, 676 F.3d at 1199
12 (when exemptions are determined by state law, "it is the entire
13 state law applicable on the filing date that is determinative of
14 whether an exemption applies."). California has mandated the use
15 of state exemptions and has placed the burden of proof on the
16 party claiming the objection. In re Diaz, 547 B.R. at 337 (citing
17 CCP §§ 703.580(b) ("the exemption claimant has the burden of
18 proof") and 704.780(a)); In re Tallerico, 532 B.R. 774, 788
19 (Bankr. E.D. Cal. 2015) (burden of proof proscribed by California
20 statute regarding contested claims of exemption is substantive and
21 must be applied by bankruptcy courts). Thus, the burden was on
22 Debtor to show that his amended wildcard exemption for the sale
23 proceeds was proper.

24 **B. The turnover order precluded Debtor from claiming the**
25 **homestead sale proceeds exempt under wildcard exemption.**

26 Debtor asserts very interesting policy arguments for why a
27 debtor should be able to exempt proceeds from the sale of his or
28 her home under the wildcard exemption, if for whatever reason the

1 debtor is unable to reinvest those proceeds in a new homestead
2 within the six month period required under California law, as
3 opposed to forfeiting those funds entirely. Debtor also offers
4 some interesting arguments for why the Ninth Circuit case of
5 In re Jacobson should be overruled. In Jacobson, the Ninth
6 Circuit held that under California law exempt homestead funds lose
7 their exempt status and the debtor loses the ability to exempt
8 those funds, if they are not reinvested in a new homestead within
9 six months. 676 F.3d at 1199-1200. Jacobson, however, did not
10 discuss whether a debtor could alternatively claim non-reinvested
11 homestead sale proceeds exempt under the wildcard exemption after
12 the six-month period has expired.

13 Noticeably absent from Debtor's brief is precisely how the
14 bankruptcy court erred in sustaining Trustee's objection to
15 Debtor's amended wildcard exemption, other than his assertion
16 that, in violation of Law, the court read into the Code an
17 inherent "equitable" power to prohibit a debtor from claiming any
18 exemption whatsoever if the debtor has exceeded the six-month
19 reinvestment term for homestead sale proceeds, but yet is unable
20 to return the funds in excess of the wildcard due to having spent
21 the funds for his own support.

22 With the scant findings and conclusions before us, we cannot
23 determine on what basis the bankruptcy court sustained Trustee's
24 objection and disallowed Debtor's amended wildcard exemption.
25 Despite the bankruptcy court's lack of findings, however, our
26 review of whether Debtor had a right to claim the non-reinvested
27 homestead sale proceeds exempt under the wildcard exemption is de
28 novo. In re Kelley, 300 B.R. at 16. We conclude that the

1 turnover order entered on February 20, 2015, precluded Debtor from
2 thereafter claiming any portion of the proceeds exempt.

3 The turnover order directed Debtor to tender the \$75,000 in
4 homestead sale proceeds to Trustee. It was not appealed and is a
5 final order, which has the status of a money judgment under Civil
6 Rule 58. White v. Brown (In re White), 389 B.R. 693, 698-99 (9th
7 Cir. BAP 2008). Clearly, that order determined Debtor could not
8 subsequently claim the non-reinvested homestead sale proceeds
9 exempt under the wildcard (or any other) exemption under state
10 law; it necessarily subsumed a determination that the \$75,000 was
11 nonexempt property of the estate. Id. at 699. Thus, Debtor's
12 amended claimed exemption, or, in our opinion, his new claimed
13 exemption, for a portion of the non-reinvested homestead sale
14 proceeds under the wildcard exemption constituted nothing more
15 than an improper collateral attack on the turnover order.
16 Accordingly, we AFFIRM the exemption order on that basis.⁵

17 **VI. CONCLUSION**

18 For the foregoing reasons, we AFFIRM.

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28 ⁵ We take no position on the merits of Debtor's arguments
and save our opinions on this important issue for another day.