

AUG 08 2016

NOT FOR PUBLICATION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. CC 15-1442-DKuF
JESUS BENCOMO,)	Bk Case No. 2:13-bk-11245-BR
)	
Debtor.)	
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JESUS BENCOMO,)	
)	
Appellant,)	
v.)	MEMORANDUM¹
WESLEY HOWARD AVERY, Chapter 7)	
Trustee,)	
)	
Appellee.)	
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Submitted on July 28, 2016
at Pasadena, California

Filed - August 8, 2016

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

Honorable Barry Russell, Bankruptcy Judge, Presiding

Appearances: Glenn Ward Calsada argued for Appellant; Georgeann Nicol argued for Appellee.

Before: DUNN, KURTZ, and FARIS, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 to deny him a discharge under § 727(a)(4)(A). That decision has
2 not been appealed and is now final.³ We refer to facts
3 referenced in the Prior Appeal Memorandum only to the extent
4 necessary to provide context for the present appeal.

5 Mr. Bencomo filed his chapter 7 petition on January 6, 2013.
6 Wesley H. Avery, the appellee herein, was duly appointed as the
7 chapter 7 trustee ("Trustee"). In an amended Schedule C,
8 Mr. Bencomo claimed a \$100,000 homestead exemption in the
9 Property under California Code of Civil Procedure ("CCP")
10 §§ 704.710, 704.720 and 704.730. The Trustee never objected to
11 Mr. Bencomo's amended homestead exemption claim.

12 Ultimately, the Trustee noticed a sale of the Property, "as
13 is," free and clear of liens under § 363 for \$345,500.
14 Mr. Bencomo objected to the sale. Following a hearing, the
15 bankruptcy court overruled Mr. Bencomo's objections and approved
16 the sale of the Property as noticed.

17 The Property sale closed, and on November 11, 2014, the
18 Trustee tendered a \$100,000 check for Mr. Bencomo's homestead
19 exemption to Mr. Bencomo's counsel. The check was negotiated on
20 November 20, 2014. There is no dispute between the parties that
21 Mr. Bencomo "actually received" the \$100,000 homestead exemption
22 funds on or about November 20, 2014. Thereafter, Mr. Bencomo
23 spent part or all of the homestead exemption funds for rent under
24

25 ³ We have exercised our discretion to take judicial notice
26 of relevant documents electronically filed in the adversary
27 proceeding and in Mr. Bencomo's main chapter 7 case to the extent
28 not included in Mr. Bencomo's excerpts of record. See, e.g.,
Atwood v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R.
227, 233 n.9 (9th Cir. BAP 2003).

1 a one-year lease and "for necessary living expenses, to pay bills
2 and to invest in his business." Appellant's Opening Brief, at 9.

3 On September 17, 2015, counsel for the Trustee emailed
4 counsel for Mr. Bencomo requesting proof that Mr. Bencomo had
5 invested the \$100,000 homestead exemption funds in a new
6 homestead. If no such investment had been made, Trustee's
7 counsel demanded that the \$100,000 be turned over to the Trustee.
8 Mr. Bencomo's counsel responded by email, arguing that
9 Mr. Bencomo was not required to turn over the \$100,000 homestead
10 exemption funds because in the circumstances of the Property sale
11 under § 363, the Ninth Circuit's decision in Wolfe v. Jacobson
12 (In re Jacobson), 676 F.3d 1193 (9th Cir. 2012), did not apply.
13 Counsel did offer to forward a check for \$17,000 to the Trustee,
14 which he understood would pay the estimated amount required, in
15 addition to the amount previously received from the sale of the
16 Property by the estate, to pay all allowed claims of creditors in
17 full, but not administrative expenses.

18 Mr. Bencomo's counsel followed up his email by filing
19 preemptive Objections to Trustee's Turnover Demand
20 ("Objections"). In the Objections, Mr. Bencomo argued that he
21 was not required to turn over the homestead exemption funds
22 because the Trustee had not sold the Property through an
23 execution sale, as required under CCP § 704.720(b), but rather
24 through a sale under § 363. Therefore, the six-months
25 reinvestment provision under CCP § 704.720(b) did not apply. He
26 further argued that exempt property is not liable for the payment
27 of prepetition debts or administrative expenses under § 522(c)
28 and (k). However, under protest, and without prejudice as to the

1 defenses raised in the Objections, Mr. Bencomo's counsel tendered
2 \$17,000 to the Trustee with a full reservation of rights.
3 Finally, Mr. Bencomo argued that the bankruptcy court's order
4 approving the Property sale contained no reservation of rights to
5 the \$100,000 homestead exemption funds, and the Trustee had not
6 provided any notice that he reserved any such rights when the
7 \$100,000 was tendered to Mr. Bencomo. Further, the bankruptcy
8 court's own local rules did not impose any use or time
9 restrictions on exempt sale proceeds paid directly to the debtor.
10 Accordingly, he argued that the Trustee should be estopped from
11 asserting any estate rights with respect to the \$100,000 now.

12 On October 28, 2015, the Trustee filed his motion for
13 turnover of the \$100,000 ("Turnover Motion"). In the Turnover
14 Motion, the Trustee argued that the decision of the Ninth Circuit
15 in Wolfe v. Jacobson required that if a debtor did not invest
16 exempt proceeds from the forced sale of his or her homestead
17 within six months of receipt, any such proceeds lost their exempt
18 status and should be turned over as estate property.

19 Mr. Bencomo filed a lengthy opposition ("Opposition") to the
20 Turnover Motion. In the Opposition, he reiterated his argument
21 that the six-months homestead reinvestment provision in
22 CCP § 704.720(b) did not apply because the Trustee did not sell
23 the Property at an execution sale "under this division" but under
24 § 363. By its terms, CCP § 720.704(b) did not apply. He further
25 reiterated his argument that proceeds of exempt property are not
26 liable for the payment of a debtor's prepetition debts or for
27 administrative expenses under § 522(c) and (k). He also argued
28 again that the Trustee was estopped from claiming any rights to

1 the \$100,000 homestead exemption funds, as the Property sale
2 order had not reserved any rights to those funds for the estate,
3 and the bankruptcy court's own local rules do not impose any use
4 or time restrictions on exempt sale proceeds. The Opposition did
5 raise one new argument briefly, namely that debtors, such as
6 Mr. Bencomo, who invest exempt homestead sale proceeds in
7 leaseholds are entitled to claim a continuing homestead exemption
8 under CCP §§ 704.740 and 704.820.

9 In his reply ("Reply"), the Trustee argued that, in spite of
10 Mr. Bencomo's protestations, he elected to use the California
11 state statutory scheme, including CCP § 704.720, to claim his
12 homestead exemption, and he admittedly did not reinvest the
13 \$100,000 in a homestead within the required six-months
14 reinvestment period under CCP § 704.720(b). Consequently, the
15 funds lost their exempt status and became property of the estate
16 subject to turnover. The Trustee further argued that Mr. Bencomo
17 opposed the Trustee's sale of the Property "at every turn by his
18 counsel, thus making the sale a forced sale." In such
19 circumstances, under Ninth Circuit authority, the six-months
20 reinvestment requirement following receipt of the homestead sale
21 proceeds applied. The Trustee also argued that he had no
22 obligation to advise Mr. Bencomo of any conditional right to
23 claim the \$100,000 unless and until the funds were not reinvested
24 in a homestead and lost their exempt status. Finally, the
25 Trustee argued that § 522(c) and (k) did not apply because
26 Mr. Bencomo had claimed his homestead exemption under the "opt
27 out" California state law exemption provisions rather than under
28 federal law. The Trustee did not address Mr. Bencomo's argument

1 that the homestead exemption reinvestment requirement, if found
2 to be applicable, should apply to rent payments under his one-
3 year lease.

4 The bankruptcy court heard argument on the Turnover Motion
5 at a hearing ("Hearing") on December 1, 2015. Mr. Bencomo's
6 counsel began his argument by focusing on the point that the
7 Trustee's § 363 sale of the Property was not an execution sale
8 for purposes of CCP § 704.720(b). However, the bankruptcy court
9 reminded him that state law and bankruptcy procedures are not
10 necessarily going to align.

11 THE COURT: Well, by the way, you know, this is - you
12 know, it's never going to be a perfect match. You
13 know, you have that California has opted out of the
14 federal system, so you have the state exemptions, in
15 this, the homestead. And it's not a perfect match
16 because the Trustee gets the rights, basically, of a
17 judgment lien, a creditor. So you're never going to
18 get the exact match because you always have a trustee.
19 You don't have a, you know, a -

20 MR. CALSADA: Yes, your honor. That's true.

21 THE COURT: - creditor doing it.

22 Hr'g Tr. Dec. 1, 2015, at 5:14-23.

23 The bankruptcy court then confirmed that Mr. Bencomo claimed
24 his homestead exemption under California state law and did not
25 object to the Property sale on the basis that it did not satisfy
26 the procedures for an execution sale under California law. While
27 Mr. Bencomo's counsel pressed on, the bankruptcy court did not
28 accept the argument that the Trustee was under any obligation to
advise Mr. Bencomo that the estate claimed a contingent interest
in the \$100,000 if the funds were not reinvested in a homestead
by the statutory deadline. And counsel for Mr. Bencomo agreed
that the purpose of the reinvestment deadline was to give the

1 debtor an opportunity to reinvest in another homestead.
2 Unconvinced by the arguments of Mr. Bencomo's counsel, the
3 bankruptcy court stated its intent to grant the Turnover Motion.

4 At that point, Mr. Bencomo's counsel interjected to assert
5 that the bankruptcy court had not addressed "the issues with
6 respect to whether or not funds that were used for a lease as an
7 acquisition of a homestead within the time frame, or whether or
8 not Section 522(c) and 522(k) applie[d]." Hr'g Tr. Dec. 1, 2015,
9 at 22:1-4. The bankruptcy court responded, "No, I didn't address
10 them because those don't apply whatsoever." Hr'g Tr. Dec. 1,
11 2015, at 22:5-6. The bankruptcy court went on to explain that
12 § 522(c) and (k) do not apply with respect to assets that are no
13 longer exempt. It did not directly address the argument that
14 payments of leasehold rent could qualify as reinvestment in a
15 homestead.

16 Finally, Mr. Bencomo's counsel requested that the bankruptcy
17 court's order granting the Turnover Motion be stayed pending
18 appeal. The bankruptcy court denied the oral stay motion and
19 requested counsel for the trustee to include the denial of stay
20 pending appeal in the order granting the Turnover Motion.

21 The bankruptcy court entered an order ("Turnover Order")
22 granting the Turnover Motion and denying Mr. Bencomo's counsel's
23 oral motion for stay pending appeal on December 15, 2015.
24 Mr. Bencomo filed a timely appeal.

25 Jurisdiction

26 The bankruptcy court had jurisdiction under 28 U.S.C.
27 §§ 1334 and 157(b) (2) (A), (E) and (O). We have jurisdiction
28 under 28 U.S.C. § 158.

1 2003). De novo means that we consider a matter anew, as if no
2 decision previously had been rendered. Dawson v. Marshall,
3 561 F.3d 930, 933 (9th Cir. 2009).

4 The bankruptcy court's fact findings, for purposes of
5 determining the validity or continuing validity of a claimed
6 exemption, are reviewed for clear error. Id. Fact findings are
7 clearly erroneous if they are illogical, implausible or without
8 support in inferences that may be drawn from facts in the record.
9 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th
10 Cir. 2011).

11 We may affirm decisions of the bankruptcy court on any basis
12 supported by the record. Fresno Motors, LLC v. Mercedes-Benz
13 USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014); Arnot v. Endresen
14 (In re Endresen), 548 B.R. 258, 268 (9th Cir. BAP 2016).

15 Discussion

16 I. The bankruptcy court did not err in considering the
17 Turnover Motion.

18 Mr. Bencomo's first argument is that the bankruptcy court
19 erred in even considering the Turnover Motion. "A turnover
20 action under [§ 542] cannot be used to demand assets whose title
21 is in dispute [I]t is not intended as a remedy to
22 determine disputed rights to property." Appellant's Opening
23 Brief, at 13. Mr. Bencomo cites two out-of-circuit bankruptcy
24 court decisions for those propositions. See Hechinger Inv. Co.
25 of Del., Inc. v. Allfirst Bank (In re Hechinger Inv. Co. of Del.,
26 Inc.), 282 B.R. 149, 161-62 (Bankr. D. Del. 2002); and Lauria v.
27 Titan Sec. Ltd. (In re Lauria), 243 B.R. 705, 708 (Bankr. N.D.
28 Ill. 2000). The Hechinger Investment Co. and Lauria cases are

1 clearly distinguishable from this case. But suffice it to say
2 that by raising this argument, Mr. Bencomo lays down a red
3 herring.

4 Section 542(a) provides in relevant part that "an entity
5 . . . in possession, custody, or control, during the case, of
6 property that the trustee may use, sell, or lease under section
7 363 of this title, or that the debtor may exempt under section
8 522 of this title, shall deliver to the trustee, and account for,
9 such property or the value of such property, unless such property
10 is of inconsequential value or benefit to the estate." The term
11 "entity" is defined in § 101(15) to include any "person, estate,
12 trust, governmental unit, and United States trustee." Obviously,
13 "entity" as defined in the Bankruptcy Code is broad enough to
14 encompass an individual chapter 7 debtor, such as Mr. Bencomo.
15 In fact, Rule 7001(1) underlines that point by requiring the
16 filing of an adversary proceeding "to recover money or property,
17 **other than a proceeding to compel the debtor to deliver property**
18 **to the trustee"** (Emphasis added.) Accordingly, a
19 proceeding to require a chapter 7 debtor to turn over property to
20 the trustee for the benefit of the estate is appropriately
21 prosecuted by motion. See Rule 9014(a) ("In a contested matter
22 in a case under the Code not otherwise governed by these rules,
23 relief shall be requested by motion"); White v. Brown
24 (In re White), 389 B.R. 693, 699 (9th Cir. BAP 2008) ("As a
25 matter of procedure, a proceeding to compel the debtor to deliver
26 property to the trustee need not be an adversary proceeding and,
27 instead, may be prosecuted by motion"); and Gaughan v. Smith
28 (In re Smith), 342 B.R. 801, 808 (9th Cir. BAP 2006).

1 Mr. Bencomo does not argue that the subject \$100,000 in this
2 appeal is "of inconsequential value or benefit to the estate."

3 A turnover action "invokes the court's most basic equitable
4 powers to gather and manage property of the estate." Braunstein
5 v. McCabe, 571 F.3d 108, 122 (1st Cir. 2009). Resolution of the
6 Turnover Motion did not require the bankruptcy court to resolve
7 disputed legal title. Cash is not an asset to which one takes
8 "title." The dispute in this case is whether \$100,000 cash
9 proceeds from the sale of a homestead retained or lost their
10 exempt status over time under the Bankruptcy Code and California
11 exemption law.

12 As noted in Collier's, "By its express terms, section 542(a)
13 is self-executing, and does not require that the trustee take any
14 action or commence a proceeding or obtain a court order to compel
15 the turnover." 5 Collier on Bankruptcy ¶ 542.02 (Alan N. Resnick
16 & Henry J. Sommer eds., 16th ed.). However, the multitude of
17 trustee turnover motions that are filed targeting chapter 7
18 debtors confirms that debtors often dispute their obligations to
19 turn over "their" property claimed as estate assets and that
20 disputes, as in this case, arise as to the availability and scope
21 of exemptions claimed by chapter 7 debtors.

22 The Turnover Motion was the appropriate procedural vehicle
23 for the Trustee to pursue his claim that Mr. Bencomo's exemption
24 in the \$100,000 Property sale proceeds terminated when he did not
25 reinvest the funds in a new homestead by the end of the six-
26 months deadline under CCP § 704.720(b). Mr. Bencomo's contrary
27 argument is devoid of merit.

28 ///

1 II. The bankruptcy court did not err in applying the six-
2 months reinvestment requirement under CCP § 704.720(b) to the
3 \$100,000 proceeds from the Property sale received by Mr. Bencomo.

4 Mr. Bencomo argues that the \$100,000 Property sale proceeds
5 that he received retain their exempt status and are not subject
6 to the six-months reinvestment requirement under CCP § 704.720(b)
7 because the Trustee did not sell the Property in an execution
8 sale and did not satisfy the procedural requirements for such a
9 sale under California law. He relies on the terms of the
10 statute:

11 CCP § 704.720(b). **If a homestead is sold under this**
12 **division** or is damaged or destroyed or is acquired for
13 **public use, the proceeds of sale . . .** are exempt in
14 the amount of the homestead exemption provided in
15 Section 704.730. **The proceeds** are exempt for a period
16 of six months after the time the proceeds are actually
17 received by the judgment debtor

18 (Emphases added.) Since the Trustee actually sold the Property
19 pursuant to § 363 rather than pursuant to the California law
20 governing execution sales, Mr. Bencomo argues that the six-months
21 reinvestment provision simply does not apply to the exempt
22 proceeds from the Property sale.

23 Mr. Bencomo misapprehends how the Bankruptcy Code interacts
24 with California exemption law. When a chapter 7 bankruptcy
25 petition is filed, the trustee, as representative of the
26 bankruptcy estate, is vested with the characteristics of a
27 hypothetical judgment lien creditor. Section 544(a)(1) and (2)
28 provide that,

29 The trustee shall have, as of the commencement of the
30 case, and without regard to any knowledge of the
31 trustee or any creditor, the rights and powers of . . .
32 (1) a creditor that extends credit to the debtor
33 at the time of the commencement of the case, and that
34 obtains, at such time and with respect to such credit,
35 a judicial lien on all property on which a creditor on

1 a simple contract could have obtained such a judicial
2 lien, whether or not such a creditor exists;

3 (2) a creditor that extends credit to the debtor
4 at the time of the commencement of the case, and
5 obtains, at such time and with respect to such credit,
6 an execution against the debtor that is returned
7 unsatisfied at such time, whether or not such a
8 creditor exists;

9 Section 101(36) defines "judicial lien" as a "lien obtained by
10 judgment, **levy**, sequestration, **or other legal or equitable**

11 **process or proceeding.**" (Emphasis added.) In accordance with

12 those provisions, exemption disputes are considered in light of a

13 hypothetical execution sale conducted by the trustee as of the

14 petition date. See, e.g., Harris v. Herman (In re Herman),

15 120 B.R. 127, 132 (9th Cir. BAP 1990) ("[T]he existence of

16 exemptions in bankruptcy presupposes a hypothetical attempt by

17 the trustee to levy upon and sell all of the debtor's property

18 upon the filing of the petition.").

19 In other words, with the trustee being presumed

20 hypothetically to have attempted to conduct an execution sale as

21 of the petition date, any actual sale under the Bankruptcy Code

22 thereafter is likewise presumed to have satisfied all of the

23 procedural requirements for such a sale. That conclusion makes

24 sense particularly in light of the trustee's duty to "collect and

25 reduce to money the property of the estate . . . as expeditiously

26 as is compatible with the best interest of parties in interest."

27 § 704(a)(1). The Rules operate with the consistent objective "to

28 secure the just, speedy, and inexpensive determination of every

case and proceeding." Rule 1001. It is difficult to imagine a

process more antithetical to those goals than requiring a chapter

7 trustee to comply with all state law execution procedures

1 before being able to sell property of the estate, particularly
2 with debtors and lien creditors looking over the trustee's
3 shoulder to make sure that each procedural "i" was dotted and
4 each "t" crossed. Congress did not impose such onerous
5 requirements on the trustee's exercise of his or her
6 responsibilities to liquidate estate assets under the Bankruptcy
7 Code. See, e.g., In re Herman, 120 B.R. at 131-32; 5 Collier on
8 Bankruptcy ¶ 544.04 (Alan N. Resnick & Henry J. Sommer, eds.,
9 16th ed.).

10 California recognizes that reality with respect to
11 application of its exemption laws. CCP § 703.140(a) provides:

12 In a case under [the Bankruptcy Code], all of the
13 exemptions provided by this chapter, **including the**
14 **homestead exemption**, . . . are applicable regardless of
15 whether there is a money judgment against the debtor or
16 whether a money judgment is enforced **by execution sale**
17 **or any other procedure**

18 (Emphases added.) As noted by the bankruptcy court in
19 In re Donaldson, 156 B.R. 51, 53-54 (Bankr. N.D. Cal. 1993),

20 The bankruptcy courts can take one of two approaches to
21 adapting state homestead law to bankruptcy proceedings:
22 they can treat a bankruptcy as the equivalent of
23 enforcement of a money judgment under state law, or
24 they can strictly interpret state law and determine
25 that since there is no actual sale by a creditor, there
26 is no applicable exemption. . . . The court in Herman
27 resolved the procedural problems inherent in adapting
28 non-bankruptcy law to bankruptcy situations by making
the filing of a bankruptcy petition the functional
equivalent of a forced sale by a creditor. This
appears to be exactly what the California legislature
intended, and avoids the absurd result that a debtor
forfeits an exemption by filing a bankruptcy petition.

Mr. Bencomo cites two California Court of Appeal decisions,
Spencer v. Lowery, 235 Cal. App. 3d 1636 (1991), and Wells Fargo
Financial Leasing v. DM Cabinets, 177 Cal. App. 4th 59 (2009),

1 for the unremarkable proposition that a nonjudicial foreclosure
2 sale and a sale by a court-appointed receiver do not satisfy the
3 procedural requirements for an execution sale for purposes of
4 interpreting exemption statutes under California law. However,
5 these decisions do not address how California's homestead
6 exemption law is to be interpreted when a bankruptcy intervenes.

7 We recognize as a given that "'it is the **entire** state law
8 applicable on the filing date that is determinative' of whether
9 an exemption applies." Wolfe v. Jacobson, 676 F.3d at 1199,
10 quoting Zibman v. Tow (In re Zibman), 268 F.3d 298, 304 (5th Cir.
11 2001) (emphasis in original). However, following the Ninth
12 Circuit's seminal decision in England v. Golden (In re Golden),
13 789 F.2d 698 (9th Cir. 1986), in which the circuit held that
14 proceeds from the sale of a homestead lost their exempt status
15 under California law if not reinvested in a new homestead within
16 six months following the sale, this Panel has held consistently
17 that "the sale of a residence by a Chapter 7 trustee is a forced
18 sale within the meaning of the California statutory [exemption]
19 scheme." In re Cole, 93 B.R. 707, 709 (9th Cir. BAP 1988). See,
20 e.g., In re Kelley, 300 B.R. at 17 ("The California Constitution,
21 in Art. XX § 1.5, directs the legislature to protect a portion of
22 homesteaded property from a forced sale. We have previously
23 determined that the filing of a bankruptcy petition constitutes
24 such a 'forced sale' for these purposes."); Elliott v. Weil
25 (In re Elliott), 523 B.R. 188, 195 (9th Cir. BAP 2014) ("The
26 filing of a bankruptcy petition constitutes such a 'forced sale'
27 to trigger the application of the automatic homestead
28 exemption."); Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 334

1 (9th Cir. BAP 2016) ("The filing of a bankruptcy petition
2 constitutes a forced sale for purposes of the automatic homestead
3 exemption."). These decisions in effect have safeguarded the
4 rights of debtors in bankruptcy to claim the Article 4
5 "automatic" homestead exemption under California law, subject to
6 its limitations.

7 In Wolfe v. Jacobson, the Ninth Circuit rejected Herman to
8 the extent it could be interpreted as determining that "the
9 debtor's share of the proceeds from the post-petition sale of his
10 homestead should be permanently exempt." 676 F.3d at 1200. But
11 the circuit did not question Herman's legal conclusion that a
12 bankruptcy filing presumes a hypothetical execution sale by the
13 trustee of a chapter 7 debtor's property when the petition is
14 filed. In fact, in Wolfe v. Jacobson, the Ninth Circuit,
15 focusing as we do here on CCP § 704.720(b), reiterated the
16 holding in Golden that the California automatic exemption
17 statutes "'require[] reinvestment in order to prevent the debtor
18 from squandering the proceeds for nonexempt purposes.'" 676 F.3d
19 at 1200, quoting Golden, 789 F.2d at 700. When the Jacobsons did
20 not reinvest the exempt proceeds from the postpetition execution
21 sale of their residence by a creditor within the six-months
22 period prescribed by CCP § 704.720(b), those proceeds lost their
23 exempt status. Wolfe v. Jacobson, 676 F.3d at 1199. "In this
24 case, **the entire state law includes a reinvestment requirement**
25 **for the debtor's share of the homestead sale proceeds.** [CCP]
26 § 704.720(b)." Id. (emphasis added).

27 The Trustee sold the Property postpetition and delivered
28 \$100,000 as exempt proceeds from the sale to Mr. Bencomo. The

1 Trustee later argued that Mr. Bencomo did not invest the proceeds
2 in a new homestead within the following six months as required to
3 maintain their exempt status under CCP § 704.720(b) and moved for
4 turnover of the now nonexempt proceeds. The bankruptcy court
5 determined that the six-months reinvestment requirement applied
6 and so held. Based on our analysis of applicable bankruptcy and
7 California state exemption law, we conclude that the bankruptcy
8 court did not err in that determination.

9 III. Sections 522(c) and (k) do not apply to nonexempt
10 proceeds from the Property sale.

11 Mr. Bencomo argues that the bankruptcy court erred as a
12 matter of law when it determined that § 522(c) and (k) did not
13 apply to the Property sale proceeds that the Trustee seeks to
14 recover from Mr. Bencomo because they were not reinvested in a
15 homestead within the six-months period required under
16 CCP § 704.720(b). Sections 522(c) and (k) provide respectively
17 that a debtor's exempt property cannot be used to pay prepetition
18 debts or administrative expenses of the bankruptcy case.

19 Mr. Bencomo asserts that for Bankruptcy Code purposes, once an
20 asset, such as the \$100,000 Property sale proceeds delivered to
21 Mr. Bencomo, is exempt, it is **permanently** exempt for purposes of
22 § 522 even if such property may later lose its exempt status
23 under state law. See Appellant's Reply Brief, at 10. He cites
24 the First Circuit decision in Pasquina v. Cunningham
25 (In re Cunningham), 513 F.3d 318, 323 (1st Cir. 2008), for that
26 proposition.

27 Mr. Bencomo's argument ignores the fact that the Ninth
28 Circuit, interpreting CCP § 704.720(b) in Wolfe v. Jacobsen,

1 expressly rejected the argument that once homestead sale proceeds
2 attain exempt status, they are permanently exempt for Bankruptcy
3 Code purposes. 676 F.3d at 1200.

4 California has thus determined that if a debtor does
5 not put his proceeds to proper use, they ought to be
6 used to satisfy creditors' claims. Ignoring the
7 reinvestment requirement "would frustrate the objective
8 of the California homestead exemption **and the
9 bankruptcy act itself**, which limits exemptions to
10 [those] provided by state or federal law."

11 Id., quoting Golden, 789 F.2d at 700 (emphasis added).

12 In this case, the bankruptcy court concluded that § 522(c)
13 and (k) did not apply to the extent that the Property sale
14 proceeds delivered to Mr. Bencomo lost their exempt status.
15 Consistent with binding Ninth Circuit precedent, we see no error
16 in the bankruptcy court's conclusion.⁴

17 IV. The Trustee is not estopped to demand turnover of the
18 \$100,000 Property sale proceeds delivered to Mr. Bencomo without
19 reservation of rights or notice of a reserved contingent
20 interest.

21 Mr. Bencomo argues that the Trustee should be estopped from
22 asserting any interest in the \$100,000 Property sale proceeds
23 delivered to Mr. Bencomo as exempt because the sale order did not
24 reserve any contingent rights in the proceeds for the estate, and
25 the bankruptcy court's own local rules do not contain any use or
26 time restrictions on exempt proceeds paid to the debtor by a

27 ⁴ The Trustee points out a further practical problem with
28 Mr. Bencomo's argument. "[T]he Debtor's argument that he does
not wish for the Trustee to pay his pre-petition claims from the
proceeds that he failed to reinvest is particularly nonsensical
since the Debtor lost his discharge due to his false oath and
remains liable on all his prepetition claims." Appellee's
Responsive Brief, at 21.

1 V. It is not clear whether the Trustee or the bankruptcy
2 court addressed Mr. Bencomo's argument that even if the six-
3 months reinvestment requirement applied, his use of exempt
4 Property sale proceeds to pay rent under a one-year lease
5 satisfied the requirement to reinvest in a homestead.

6 At the end of the Opposition, in taking what could be
7 characterized as a "fall back" position, Mr. Bencomo argued that
8 even under Wolfe v. Jacobson, his acquisition of a leasehold
9 estate during the six-months reinvestment period under
10 CCP § 704.720(b) qualified as a reinvestment in a homestead,
11 citing CCP §§ 704.740 and 704.820. CCP § 704.740 provides:

12 (a) Except as provided in subdivision (b), the interest
13 of a natural person in a dwelling may not be sold under
14 this division to enforce a money judgment except
15 pursuant to a court order for sale obtained under this
16 article and the dwelling exemption shall be determined
17 under this article. (b) **If the dwelling is personal
18 property or is real property in which the judgment
19 debtor has a leasehold estate with an unexpired term of
20 less than two years at the time of levy:** (1) A court
21 order for sale is not required and the procedures
22 provided in this article relating to the court order
23 for sale do not apply. (2) An exemption claim shall be
24 made and determined as provided in Article 2
25 (commencing with Section 703.510).

26 (Emphasis added.) CCP § 704.820 provides:

27 If the dwelling is owned by the judgment debtor as a
28 joint tenant or tenant in common or **if the interest of
the judgment debtor in the dwelling is a leasehold or
other interest less than a fee interest:** (a) At an
execution sale of a dwelling, the interest of the
judgment debtor in the dwelling and not the dwelling
shall be sold. If there is more than one judgment
debtor of the judgment creditor, the interests of the
judgment debtors in the dwelling shall be sold together
and each of the judgment debtors entitled to a
homestead exemption is entitled to apply his or her
exemption to his or her own interest. (b) For the
purposes of this section, all references in this
article to the "dwelling" or "homestead" are deemed to
be references to the interest of the judgment debtor in
the dwelling or homestead.

(Emphasis added.) The Trustee did not respond to this argument

1 in his Reply.

2 At the Hearing, Mr. Bencomo's counsel did not raise the
3 issue "with respect to whether or not funds that were used for a
4 lease as an acquisition of a homestead within the [reinvestment]
5 time frame" qualified for homestead exemption protection until
6 the bankruptcy court already had stated that it was prepared to
7 rule in favor of the Trustee. At that time, Mr. Bencomo's
8 counsel also raised his issue about application of § 522(c) and
9 (k). The bankruptcy court responded that "I didn't address
10 [those issues] because those don't apply whatsoever." The
11 bankruptcy court went on to explain its view that § 522(c) and
12 (k) only applied with respect to exempt assets, and the Property
13 sale proceeds received by Mr. Bencomo were no longer exempt.
14 However, the bankruptcy court did not explain its reasoning as to
15 why Mr. Bencomo's use of part of the Property sale proceeds to
16 pay rent for a one-year leasehold in which he resided did not
17 qualify as reinvestment in a homestead.

18 The Ninth Circuit has recognized, at least under Oregon law,
19 that a debtor's prepaid rent and security deposit for a
20 residential leasehold could qualify for homestead exemption
21 protection. See *Sticka v. Casserino (In re Casserino)*, 379 F.3d
22 1069 (2004). There is no similar Ninth Circuit authority
23 interpreting California exemption law.

24 In their briefs in this appeal, the parties cite various
25 statutory provisions from the California Code of Civil Procedure
26 in support of their respective positions but no California
27 appellate decisions that deal directly with the question of
28 whether rent payments under a residential lease with a term of

1 less than two years qualify as reinvestment in a homestead for
2 purposes of CCP § 704.720(b). We conclude that we must vacate
3 the Turnover Order and remand to the bankruptcy court so that it
4 can further consider this particular issue and make findings of
5 fact and conclusions of law that address directly Mr. Bencomo's
6 argument that any payments of rent that he made for a one-year
7 residential leasehold during the reinvestment period qualify for
8 homestead exemption protection under CCP § 704.720(b).

9 Conclusion

10 Based on the foregoing analysis, we VACATE the Turnover
11 Order and REMAND this matter to the bankruptcy court to allow the
12 bankruptcy court to make further findings of fact and conclusions
13 of law on the sole issue of whether Mr. Bencomo's payments of
14 rent for a one-year residential leasehold during the reinvestment
15 period under CCP § 704.720(b) qualify as reinvestment in a
16 homestead. Otherwise, we AFFIRM the rulings of the bankruptcy
17 court on the Trustee's Turnover Motion.