

JAN 31 2017

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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NOT FOR PUBLICATION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

In re:	)	BAP No.	SC-15-1390-FYJu
	)		
WILLIAM GUTHRIE,	)	Bk. No.	15-03397-MM7
	)		
Debtor.	)		
_____	)		
	)		
WILLIAM GUTHRIE,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM*</b>	
	)		
RONALD E. STADTMUELLER,	)		
Chapter 7 Trustee,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on January 19, 2017  
at San Diego, California

Filed - January 31, 2017

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

Honorable Margaret M. Mann, Bankruptcy Judge, Presiding

Appearances: Gregory S. Cilli of The Feldman Law Group argued  
on behalf of Appellant William Guthrie; Ronald E.  
Stadtmueller, Chapter 7 Trustee argued pro se.

Before: FARIS, YUN,\*\* and JURY, 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.

\*\* The Honorable Scott H. Yun, United States Bankruptcy  
Judge for the Central District of California, sitting by  
designation.

1 **INTRODUCTION**

2 Appellant William Guthrie appeals from the bankruptcy  
3 court's order sustaining chapter 7<sup>1</sup> trustee Ronald E.  
4 Stadtmueller's ("Trustee") objection to his claimed homestead  
5 exemption pursuant to § 522(g). The bankruptcy court did not err  
6 in sustaining the objection. Accordingly, we AFFIRM.

7 **FACTUAL BACKGROUND**

8 **A. Prepetition events**

9 Mr. Guthrie and his wife, Christine Guthrie, divorced in  
10 2005 over concerns about his finances. He claimed that one of  
11 the financial concerns was his debt stemming from his failure to  
12 pay taxes in 2004. In 2007, Mr. Guthrie reached a settlement  
13 with the Internal Revenue Service ("IRS"), whereby he agreed to  
14 pay \$152,000 in taxes, penalties, and interest.

15 In May 2012, Mr. Guthrie purchased a home in Vista,  
16 California (the "Property"). Title to the Property was initially  
17 in Mr. Guthrie's name only. However, in December 2012, he  
18 transferred title to the Property to Ms. Guthrie, with whom he  
19 was still living, via quitclaim deed for no consideration. As we  
20 shall see, he has given a wide variety of explanations for this  
21 transfer.

22 After a series of unsuccessful business ventures,  
23 Mr. Guthrie contemplated filing for bankruptcy protection. He  
24 met with a paralegal at a San Diego law firm, who allegedly told  
25

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26 <sup>1</sup> 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 him not to transfer title to the Property back to himself without  
2 first consulting the firm. Mr. Guthrie claimed that, after  
3 speaking to the paralegal, he believed that he still owned the  
4 Property, even though Ms. Guthrie held legal title.

5 **B. The bankruptcy schedules and claimed homestead exemption**

6 Mr. Guthrie filed for bankruptcy pro se because he could not  
7 afford to hire an attorney. He filed a chapter 7 petition,  
8 statements, and schedules on May 21, 2015, which scheduled the  
9 Property as his real property (with a value of \$400,000 and  
10 encumbered by a secured lien of \$191,000), and claimed a "home"  
11 exemption in the amount of \$400,000 and a "homestead" exemption  
12 for \$125,000. He said that he "wanted to make sure the  
13 bankruptcy court knew about my home, and to make sure that it did  
14 not appear that I was trying to hide anything." He neglected to  
15 mention, however, that Ms. Guthrie owned legal title to the  
16 Property.

17 At a § 341(a) meeting of creditors, the Trustee informed  
18 Mr. Guthrie that there were a number of deficiencies in his  
19 filings. In particular, the claimed \$400,000 homestead exemption  
20 exceeded the allowable exemption under state law. The Trustee  
21 continued the meeting of creditors to allow Mr. Guthrie to  
22 provide certain documentation regarding other matters.

23 Shortly thereafter, Mr. Guthrie retained counsel to  
24 represent him in the bankruptcy proceedings. He claimed that  
25 attorney Gregory Cilli advised him "that I should inform the  
26 trustee at the next creditors' meeting that I had transferred the  
27 property to her which I did without giving it any thought."

28 By the second session of the meeting of creditors,

1 Mr. Guthrie had not amended his schedules. The Trustee then  
2 advised Mr. Guthrie and Mr. Cilli that he would object to the  
3 homestead exemption. Mr. Guthrie informed the Trustee that his  
4 ex-wife owned the Property and that he would amend Schedule C to  
5 reflect her ownership. He further told the Trustee that he had  
6 transferred the Property to Ms. Guthrie because he was not good  
7 with finances. The Trustee continued the meeting of creditors  
8 again to permit Mr. Guthrie to amend his schedules.

9 After the second session of the meeting of creditors,  
10 Mr. Guthrie amended his schedules to remove the Property and the  
11 claimed exemption, thus apparently disavowing any interest in the  
12 Property.

13 At the third session of the meeting of creditors, the  
14 Trustee questioned Mr. Guthrie about a number of issues,  
15 including the Property. After Mr. Cilli confirmed that they had  
16 removed the Property and claimed exemption from the schedules,  
17 the Trustee asked about Mr. Guthrie's reasons for transferring  
18 the Property to his ex-wife. Mr. Guthrie said that it was  
19 "because of my I.R.S. debts that I - that I realized I wouldn't  
20 be able to pay quickly enough." He said that he wanted to make  
21 sure that the IRS "wouldn't come after it [the Property] right  
22 away and [to] try to get time so I'd have enough income to do  
23 it." The Trustee pressed Mr. Guthrie:

24 TRUSTEE: Okay. But you transferred the house to  
25 your ex to - to - maybe I'm misunderstanding your  
26 testimony. I thought your testimony was you  
27 transferred the house to your ex-spouse to avoid the  
28 I.R.S. from levying your house or going after your  
house?

MR. GUTHRIE: It - uh - in reality, yes, because -

1 TRUSTEE: Okay.<sup>2</sup>

2 The day after the third session of the meeting of creditors,  
3 the Trustee filed an ex parte application to employ general  
4 counsel.<sup>3</sup> The Trustee stated that he wanted to employ counsel to  
5 pursue avoidance claims, including to regain estate assets:

6 Assist the Trustee in analyzing certain pre and  
7 post-bankruptcy transactions completed by the debtor  
8 regarding possible avoidance claims, and to prosecute  
9 such avoidance claims to the extent they exist.  
10 Counsel may be required to file adversary proceedings  
11 against third parties to regain assets of the estate,  
12 as well as to prepare all necessary documents and court  
13 pleading in support of such proceeding or any other  
14 issues related to the debtor's inappropriate transfers  
15 of estate property[.]

16 The court granted the application to employ Davis & Stadtmueller,  
17 LLP.

18 A few days later, Mr. Guthrie amended his schedules again.  
19 This time, he rescheduled the Property with a value of \$350,000  
20 (reduced from \$400,000). He also amended his Schedule C to claim  
21 a \$9,000 exemption under California Code of Civil Procedure  
22 ("CCP") § 704.730(a)(1) and a \$150,000 exemption under CCP  
23 § 704.730(a)(3).<sup>4</sup>

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24 <sup>2</sup> Later, Mr. Guthrie tried to explain away this testimony.  
25 He said, "I personally have no real fear that the IRS would take  
26 the home because they had not tried once to do so in eight  
27 years." He claimed that he was too nervous or embarrassed to  
28 explain that he had transferred the Property to his ex-wife to  
make her feel more secure.

<sup>3</sup> Mr. Guthrie claimed that his ex-wife attempted to commit  
suicide after she learned that the Trustee filed an application  
to employ general counsel as a precursor to objecting to the  
homestead exemption.

<sup>4</sup> CCP § 704.730(a) provides, in relevant part:

(continued...)

1 On the same day, Mr. Guthrie arranged to transfer the title  
2 to the Property back to himself, "so that [he] would not get in  
3 trouble with the lender for having transferred title, and to  
4 avoid the possibility of the Trustee objecting to [his] homestead  
5 exemption claim . . . ."

6 Four days later, Mr. Guthrie amended his schedules for the  
7 third time to claim a \$175,000 exemption in the Property under  
8 CCP § 704.730(a) (3).

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9  
10 <sup>4</sup>(...continued)

11 (a) The amount of the homestead exemption is one of the  
12 following:

13 (1) Seventy-five thousand dollars (\$75,000) unless  
14 the judgment debtor or spouse of the judgment  
15 debtor who resides in the homestead is a person  
16 described in paragraph (2) or (3).

17 . . . .

18 (3) One hundred seventy-five thousand dollars  
19 (\$175,000) if the judgment debtor or spouse of the  
20 judgment debtor who resides in the homestead is at  
21 the time of the attempted sale of the homestead  
22 any one of the following:

23 (A) A person 65 years of age or older.

24 . . . .

25 (C) A person 55 years of age or older with a  
26 gross annual income of not more than  
27 twenty-five thousand dollars (\$25,000) or, if  
28 the judgment debtor is married, a gross  
annual income, including the gross annual  
income of the judgment debtor's spouse, of  
not more than thirty-five thousand dollars  
(\$35,000) and the sale is an involuntary  
sale.

CCP § 704.730(a).

1 **C. The Trustee's objection to the homestead exemption**

2 The Trustee timely filed his objection ("Objection") to  
3 Mr. Guthrie's claimed homestead exemption pursuant to  
4 § 522(g)(1). He objected to the homestead exemption under § 522  
5 because Mr. Guthrie had no legal interest in the Property on the  
6 date of bankruptcy. He also argued that § 522(g)(1) barred  
7 Mr. Guthrie's exemption claim because he had voluntarily  
8 quitclaimed the Property to his ex-wife to avoid the IRS's  
9 attempt to levy the Property, which constituted a fraudulent  
10 transfer under § 548.

11 In response to the Objection, Mr. Guthrie denied any  
12 fraudulent intent. He claimed that he "transferred the property  
13 to Christine to help her and make her feel better about our  
14 finances and feel like she had something to live for[.]"

15 Prior to the hearing on the Objection, the bankruptcy court  
16 issued a tentative ruling. Regarding avoidance of the transfer  
17 of the Property to Ms. Guthrie, the court stated, "Debtor and  
18 Trustee agree that legal title to the Property was transferred  
19 without receiving reasonably equivalent value, and Debtor  
20 testified at his third 341(a) hearing that he believed he would  
21 be unable to pay his IRS debts as they came due, making the  
22 Transfer at a minimum avoidable under Cal. UFTA § 3439.04(a)(2)  
23 incorporated under § 544."

24 Regarding the Trustee's efforts to recover the Property, the  
25 court said that "it is not clear whether Trustee's actions in  
26 this case constitute recovery [of] the property" under Glass v.  
27 Hitt (In re Glass), 60 F.3d 565 (9th Cir. 1995), because  
28 Mr. Guthrie arguably retained equitable title.

1 The bankruptcy court tentatively concluded that, “[i]f the  
2 transfer is voidable under § 544 and was returned to the estate  
3 as a result of Trustee’s efforts, Debtor is not entitled to  
4 exempt the Property under § 522(g) (1) (A).”

5 **D. Hearing on the Trustee’s Objection**

6 The bankruptcy court held a hearing on the Objection on  
7 October 29, 2015. The court informed the parties that it had  
8 reviewed the facts again and concluded that the Trustee had  
9 recovered the Property because (1) the Trustee filed his  
10 application to employ counsel to pursue avoidance actions;  
11 (2) the Property was reconveyed to Mr. Guthrie eight days later;  
12 and (3) the purpose of the reconveyance was to avoid the  
13 Trustee’s Objection to the homestead exemption.

14 The court said that Mr. Guthrie had a form of equitable  
15 interest in the Property, but lacked legal title. However, the  
16 transfer and recovery of legal title to the Property invoked  
17 § 522(g).

18 On November 10, 2015, the bankruptcy court issued its order  
19 sustaining the Trustee’s Objection. The bankruptcy court said  
20 that there was no triable issue of fact regarding whether legal  
21 title to the Property was returned to the estate as a result of  
22 the Trustee’s efforts pursuant to § 522(g) and Glass. “Transfer  
23 of legal title was sufficient to trigger the transfer provisions  
24 of § 522(g) because legal title was necessary for the Trustee to  
25 transfer the Property without litigation.”

26 Mr. Guthrie timely appealed.

27 **JURISDICTION**

28 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.



1 §§ 1334 and 157(b) (2) (B) and (H). We have jurisdiction under  
2 28 U.S.C. § 158.

### 3 **ISSUES**

4 (1) Whether the bankruptcy court erred in determining that  
5 the Property was returned to the estate as a result of the  
6 Trustee's efforts.

7 (2) Whether the bankruptcy court erred in determining that  
8 Mr. Guthrie was not entitled to claim a homestead exemption,  
9 despite holding an equitable interest in the Property.

### 10 **STANDARDS OF REVIEW**

11 We review legal issues de novo and the bankruptcy court's  
12 factual findings under a clearly erroneous standard. Village  
13 Nurseries v. Gould (In re Baldwin Builders), 232 B.R. 406, 409-10  
14 (9th Cir. BAP 1999). "[Q]uestions regarding the right of a  
15 debtor to claim exemptions are questions of law subject to de  
16 novo review, whereas the issue of a debtor's intent is a question  
17 of fact to be reviewed under the clearly erroneous standard."  
18 Kelley v. Locke (In re Kelley), 300 B.R. 11, 16 (9th Cir. BAP  
19 2003) (citing Coughlin v. Cataldo (In re Cataldo), 224 B.R. 426,  
20 428-29 (9th Cir. BAP 1998)).

21 De novo review means that we review a matter anew, as if no  
22 decision previously had been rendered. Dawson v. Marshall,  
23 561 F.3d 930, 933 (9th Cir. 2009).

24 We must affirm the bankruptcy court's factual findings  
25 unless we determine that those findings are illogical,  
26 implausible, or without support in inferences that may be drawn  
27 from the facts in the record. United States v. Hinkson, 585 F.3d  
28 1247, 1262 (9th Cir. 2009) (en banc).

1 We may affirm the bankruptcy court on any basis supported by  
2 the record. Heilman v. Heilman (In re Heilman), 430 B.R. 213,  
3 216 (9th Cir. BAP 2010).

#### 4 DISCUSSION

5 **A. A trustee may object to the homestead exemption under**  
6 **§ 522(g) where he recovers property that the debtor either**  
7 **transferred voluntarily or concealed.**

8 Section 522(g) provides:

9 (g) Notwithstanding sections 550 and 551 of this title,  
10 the debtor may exempt under subsection (b) of this  
11 section property that the trustee recovers under  
12 section 510(c)(2), 542, 543, 550, 551, or 553 of this  
13 title, to the extent that the debtor could have  
14 exempted such property under subsection (b) of this  
15 section if such property had not been transferred, if -

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

18 (B) the debtor did not conceal such property; or

19 (2) the debtor could have avoided such transfer  
20 under subsection (f)(1)(B) of this section.

21 § 522(g). In other words, § 522(g) "allows the debtor to exempt  
22 property that the trustee recovers under [various sections of the  
23 Bankruptcy Code] as long as the transfer was **involuntary** and the  
24 property was **not concealed** by the debtor." 4 Collier on  
25 Bankruptcy ¶ 522.12[1] (Alan N. Resnick & Henry J. Sommer, eds.,  
26 16th ed.). Conversely, a debtor may not exempt property that the  
27 trustee recovers under one of the enumerated provisions if the  
28 debtor voluntarily transferred the property or if the debtor  
concealed the property.

29 **B. The bankruptcy court properly held that § 522(g) applies.**

30 Mr. Guthrie argues that § 522(g) does not apply to his  
31 claimed exemption in the Property. We disagree.

1           **1. The Trustee was entitled to recover the Property**  
2           **under § 544(b).**

3           The bankruptcy court did not err when it determined that the  
4 Trustee was entitled to recover the Property under § 544(b). The  
5 court noted that the Trustee recovered the Property under § 550,  
6 insofar as, "under § 544, also incorporated into § 522(g) under  
7 § 550, trustees can avoid transfers that are otherwise avoidable  
8 by an unsecured creditor under applicable law." It noted that  
9 California's Uniform Fraudulent Transfer Act ("UFTA")  
10 § 3439.04(a)(1) provides that a transfer is avoidable if it is  
11 made with the actual intent to hinder, delay, or defraud. A  
12 transfer is also avoidable if the debtor made the transfer  
13 without receiving a reasonably equivalent value in exchange for  
14 the transfer and the debtor intended to incur, or believed or  
15 reasonably should have believed, that he would incur debts beyond  
16 his ability to pay as they came due. Because (1) Mr. Guthrie  
17 transferred the Property with the actual intent to hinder, delay,  
18 and defraud and to avoid the IRS's lien; (2) legal title to the  
19 Property was transferred without receiving reasonably equivalent  
20 value; and (3) Mr. Guthrie admitted that he believed that he  
21 would be unable to pay the IRS debts as they came due, the  
22 transfer was avoidable under the California UFTA § 3439.04(a)(2).  
23 We find no error in these decisions.

24           **2. The transfer was voluntary.**

25           There is no dispute that Mr. Guthrie voluntarily transferred  
26 the Property to his ex-wife. As a result, because  
27 §§ 522(g)(1)(A) and (B) are written in the conjunctive, it does  
28 not matter whether Mr. Guthrie also concealed the Property.

1 Mr. Guthrie argues that, because he did not conceal the  
2 Property from the court or the Trustee, sustaining the Objection  
3 did not serve the purpose of § 522(g). While it is true that  
4 Mr. Guthrie listed the Property in his original schedules, he  
5 omitted the crucial fact that he did not have title to the  
6 Property at that point. He then amended his schedules several  
7 times to avoid the Trustee's Objection to his homestead  
8 exemption: (1) after the second session of the meeting of  
9 creditors in which the Trustee questioned his exemption, he  
10 removed the Property entirely from his amended schedules;  
11 (2) after the Trustee continued to question him about the  
12 Property at the third session of the meeting of creditors and he  
13 admitted that he had transferred the Property so that the IRS  
14 "wouldn't come after it [the Property] right away and [he could]  
15 try to get time[,]” he again amended his schedules to include the  
16 Property; and (3) after the Trustee filed an application to  
17 employ counsel to avoid the transfer of the Property, he arranged  
18 to transfer the Property from his ex-wife to himself, admittedly  
19 "to avoid the possibility of the Trustee objecting to [his]  
20 homestead exemption claim . . . .”

21 These are not the actions of a forthright debtor that the  
22 Bankruptcy Code is meant to protect.<sup>5</sup>

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24 <sup>5</sup> Mr. Guthrie also argues that he relied on the advice of  
25 the paralegal (whose firm he did not retain) and his counsel in  
26 deciding what information to disclose. Mr. Guthrie cannot blame  
27 advice from non-retained attorneys and his counsel for his  
28 decision to not disclose the prepetition transfer of the  
Property. See Ehrenberg v. Hidalgo (In re Hidalgo), BAP No.  
CC-06-1399-PaAK, 2007 WL 7540950, at \*8 (9th Cir. BAP July 9,  
(continued...)

1 In any event, Mr. Guthrie's supposed honesty and non-  
2 concealment of the Property alone are not determinative. Section  
3 522(g) provides that an exemption is only valid as to property  
4 recovered by the trustee if "(A) such transfer was not a  
5 voluntary transfer of such property by the debtor; **and** (B) the  
6 debtor did not conceal such property[.]" § 522(g)(1) (emphasis  
7 added). Because these requirements are stated in the  
8 conjunctive, both must be present in order allow the exemption.  
9 Mr. Guthrie's exclusive focus on the latter requirement ignores  
10 the fact that he voluntarily transferred the Property.

11 **3. Glass is controlling; the Trustee recovered the**  
12 **Property within the meaning of § 522(g).**

13 Mr. Guthrie contends that the Trustee did not recover the  
14 Property for the estate because Mr. Guthrie arranged for his ex-  
15 wife to return the Property to him, but not in response to  
16 anything that the Trustee did. We disagree.

17 Both parties rely on this panel's decision in Glass v. Hitt  
18 (In re Glass), 164 B.R. 759 (9th Cir. BAP 1994), which the Ninth  
19 Circuit affirmed, 60 F.3d 565 (9th Cir. 1995). In that case, the  
20 debtor had transferred his residence to his son for "love and  
21 affection." He did not include his house in his schedules or  
22 disclose the transfer, and he did not claim a homestead  
23 exemption. When the trustee discovered the transfer, the debtor  
24 amended his schedules to include the property and assert a claim

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25  
26 <sup>5</sup>(...continued)  
27 2007) (Klein, J., concurring) ("It is worth noting that an advice  
28 of counsel defense is not availing where the debtor either does  
not rely in good faith or is trying to keep an asset out of  
view.").

1 of homestead exemption. 164 B.R. at 760.

2 The trustee objected to the claimed exemption, arguing that  
3 § 522(g) precluded the debtor from claiming a homestead exemption  
4 under § 522(b). Id. at 760-61. The trustee said that he  
5 intended to seek avoidance of the conveyance as a § 548  
6 fraudulent transfer. Id. at 761.

7 Three days after the trustee filed his objection (and before  
8 the trustee commenced any avoidance action), the debtor's son  
9 conveyed the property back to the debtor in consideration of  
10 "love and affection." The debtor again amended his schedules by  
11 listing a fee interest in the residence and claiming the  
12 homestead exemption. Id.

13 The bankruptcy court overruled the trustee's objection  
14 because the trustee had not shown that he had directed any action  
15 against the son in order to achieve reconveyance of the residence  
16 to the estate. Accordingly, the trustee had not "recovered" the  
17 property and could not object under § 522(g). Id.

18 On appeal, the panel noted that "[n]o court has addressed a  
19 situation in which the trustee has not filed a complaint for  
20 avoidance or recovery but has been instrumental in recovery of  
21 the property." It considered the plain meaning of the statute  
22 and said, although a "literal interpretation of the statute . . .  
23 seems to indicate that 'recovery' of the property must be  
24 accomplished pursuant to an action commenced under one of the  
25 enumerated code sections[,] "requiring the Trustee to recover  
26 property through a formal avoidance action would defeat the  
27 drafters' intent of limiting exemptions where a debtor has  
28 voluntarily transferred property in a manner giving rise to the

1 trustee's avoiding powers or has engaged in fraudulent conduct by  
2 failing to disclose the transfer or an interest in the property."

3 Id. at 763. The panel concluded:

4       Accordingly, we hold that where a debtor  
5 voluntarily transfers property in a manner that  
6 triggers the trustee's avoidance powers or the debtor  
7 knowingly conceals a prepetition transfer or an  
8 interest in property, and such property is returned to  
9 the estate as a result of the trustee's actions  
10 directed toward either the debtor or the transferee,  
11 the debtor is not entitled to claim an exemption under  
12 § 522(g)(1). It is not necessary for the trustee to  
13 commence a formal adversary proceeding or obtain a  
14 final judgment to prevail on an objection to a debtor's  
15 claim of exemption pursuant to § 522(g)(1).

16       A trustee, however, must present sufficient facts  
17 upon which a bankruptcy court could reasonably conclude  
18 that a debtor transferred property in such a manner as  
19 to invoke the trustee's avoidance powers under  
20 §§ 510(c)(2), 542, 543, 550, 551 or 553, the transfer  
21 was voluntary or the debtor knowingly concealed the  
22 transfer or an interest in the property, and the  
23 property was returned to the estate as the result of  
24 the trustee's efforts, not limited to actions directed  
25 toward the transferee.

26 Id. at 764-65.

27       The panel held that the bankruptcy court erred in overruling  
28 the objection. It said that the "overwhelming inference" from  
the voluntary transfer of the property for no consideration and  
the debtor's failure to disclose the property or its transfer "is  
that the Debtor was attempting to hide assets from his creditors,  
thus giving rise to a cause of action under § 548(a)(1)." Id. at  
765. Additionally, the trustee's actions

were instrumental in the return of the property to the  
estate. Three days after the Trustee filed his  
Objection, the Debtor's son reconveyed the property to  
the Debtor by quitclaim deed. Since the Debtor and the  
transferee are father and son and the transfer occurred  
on the heels of the Objection, the only reasonable  
inference to be drawn is that the Trustee's promise of  
legal action had a coercive effect on father and son,  
directly resulting in the return of the property to the

1 estate.

2 Id. The panel thus reversed the bankruptcy court's overruling of  
3 the trustee's objection.

4 The debtor appealed to the Ninth Circuit, arguing, in  
5 relevant part, that the panel had misconstrued the term  
6 "recovers." The Ninth Circuit affirmed. It noted that,  
7 "following the debtor's failure to properly disclose the property  
8 transfer there was not only a 'suggestion' by the trustee, but  
9 also a filed objection that contained the threat of use of  
10 avoidance powers." 60 F.3d at 569. It held that "[t]he filing  
11 of the objection containing the threat to use avoidance powers  
12 which resulted in the reconveyance of the property for the estate  
13 was 'some action.'" Id.

14 Glass is nearly on all fours with this case. The Trustee  
15 recovered the Property through "some action" when, after learning  
16 that Mr. Guthrie had transferred the property to his ex-wife to  
17 avoid IRS liens, he filed the application to employ counsel  
18 potentially to file an avoidance claim to recover property to the  
19 estate. We do not think it a coincidence that, roughly a week  
20 after the Trustee sought to employ counsel and gave notice that  
21 he would seek to prosecute avoidance claims, Ms. Guthrie conveyed  
22 the Property back to Mr. Guthrie, and Mr. Guthrie again listed  
23 the Property in his schedules.

24 As in Glass, the Trustee's filing "contained the threat of  
25 use of avoidance powers." See id. We similarly conclude that  
26 "the only reasonable inference to be drawn is that the Trustee's  
27 promise of legal action had a coercive effect on [transferor and  
28 transferee], directly resulting in the return of the property to



1 the estate." See In re Glass, 164 B.R. at 765. Mr. Guthrie  
2 effectively admitted the force of the Trustee's "threat" when he  
3 stated that his ex-wife attempted to commit suicide upon learning  
4 that the Trustee had retained counsel to pursue avoidance claims.

5 Accordingly, the bankruptcy court properly determined that  
6 the Trustee recovered the Property for the estate within the  
7 meaning of § 522(g).

8 **4. Mr. Guthrie's equitable interest in the Property**  
9 **under state law does not overcome § 522(g).**

10 Mr. Guthrie claims, and the bankruptcy court acknowledged,  
11 that he had an equitable interest in the Property. Under  
12 California law, a debtor may claim a homestead exemption in an  
13 equitable interest in estate property, even if he has  
14 fraudulently transferred the property. See Putnam Sand & Gravel  
15 Co. v. Albers, 92 Cal. Rptr. 636, 639 (Cal. Ct. App. 1971)  
16 ("notwithstanding the fraudulent conveyance, the defendants . . .  
17 retained an equitable interest in the property which would enable  
18 them to file a valid claim of homestead before judgment").  
19 Moreover, under California law, a debtor may claim a homestead  
20 exemption in his primary residence, even if he does not own it.  
21 See Elliott v. Weil (In re Elliott), 523 B.R. 188, 195-96 (9th  
22 Cir. BAP 2014) ("Elliott I") (holding that, under California's  
23 automatic exemption in CCP § 704.730, the debtor's conveyance of  
24 the property's "title to a third party does not defeat his right  
25 to an automatic exemption, because continuous residency, rather  
26 than continuous ownership, controls the Article 4  
27 analysis . . .").

28 Mr. Guthrie is also correct that his equitable interest in

1 the Property became part of his bankruptcy estate. Section  
2 541(a) provides that the commencement of a bankruptcy case  
3 creates an estate that is composed of "all legal or equitable  
4 interests of the debtor in property as of the commencement of the  
5 case." § 541(a)(1).

6 Mr. Guthrie argues that, at most, the Trustee recovered only  
7 legal title to the Property. He contends that the bankruptcy  
8 court should have allowed his homestead exemption in the  
9 equitable interest he retained despite his fraudulent transfer.  
10 We disagree.

11 We addressed a similar question in Elliott v. Weil  
12 (In re Elliott), 544 B.R. 421 (9th Cir. BAP 2016)  
13 ("Elliott III"). In that case, the debtor transferred his real  
14 property to his company before he filed his bankruptcy petition,  
15 did not disclose the property in his bankruptcy case, and then  
16 had the company reconvey the property to him after he received  
17 his discharge. The BAP affirmed the bankruptcy court's decisions  
18 that the debtor had concealed his interest in the property for  
19 purposes of § 522(g)(1)(B), and that the court's judgment in the  
20 trustee's § 542(a) turnover action<sup>6</sup> constituted a "recovery" for  
21 purposes of § 522(g). Id. at 433. The BAP then turned to the  
22 debtor's argument that the bankruptcy court erred in not  
23 considering whether California law still permitted his homestead  
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25 <sup>6</sup> The debtor appealed this issue in a second appeal to the  
26 BAP, Elliott v. Weil (In re Elliott), 529 B.R. 747 (9th Cir. BAP  
27 2015) ("Elliott II"). On remand, the court required that the  
28 debtor immediately turn over possession of the property to the  
trustee under § 542(a). The debtor did not appeal that decision  
further.

1 exemption, notwithstanding his misconduct. Id. The BAP  
2 disagreed, holding instead that the court's § 522(g)  
3 determination ended the analysis: "Since the bankruptcy court  
4 appropriately denied [the debtor's] claimed homestead exemption  
5 under an applicable Bankruptcy Code provision, § 522(g)(1), **it**  
6 **fully resolved the Trustee's objection and was not required to**  
7 **proceed further to analyze [the debtor's] homestead exemption**  
8 **claim under state law."** Id. at 436 (emphasis added).<sup>7</sup>

9 We agree with the Elliott III panel's reasoning. Section  
10 522(g) limits a debtor's ability to assert exemption rights in  
11 certain circumstances, even if state law would permit the debtor  
12 to assert an exemption in those very circumstances. Once the  
13 bankruptcy court has determined that § 522(g) applies, a state  
14 exemption law cannot overcome the trustee's objection.

15 Mr. Guthrie relies on the BAP's unpublished disposition in  
16 Gray v. Bova (In re Bova), BAP No. EC-05-1307-NMaPa, 2006 WL  
17 6810940 (9th Cir. BAP Mar. 7, 2006). In that case, the debtor  
18 had five siblings. Their parents transferred certain California  
19 property to the debtor and two of his siblings, but the family  
20 always understood that the property belonged to all six siblings  
21 in equal shares. Thirteen years prior to filing his chapter 7  
22 petition, the debtor transferred his 1/3 legal interest to his  
23 sisters who owned the other 2/3 interest so that the sisters  
24 could refinance the mortgage. Despite this transfer of legal  
25 title, the family still understood that all six siblings,

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28 <sup>7</sup> Elliott III is currently on appeal to the Ninth Circuit,  
9th Cir. No. 16-60020 (Mar. 28, 2016).

1 including the debtor, owned the property in equal shares. When  
2 the debtor filed for bankruptcy, he claimed a homestead exemption  
3 in his 1/6 interest in the amount of \$150,000 pursuant to CCP  
4 § 704.730(a)(3). 2006 WL 6810940 at \*1.

5 The trustee objected to the debtor's claimed exemption,  
6 arguing that it should be disallowed under § 522(g). The  
7 bankruptcy court disagreed, and the BAP affirmed. The BAP held  
8 that the debtor retained an equitable interest in the property  
9 despite the conveyance of legal title to his sisters thirteen  
10 years prior, and that the debtor could claim a homestead  
11 exemption in that equitable interest under California law. The  
12 BAP held that § 522(g) did not apply because there was no  
13 transfer that the trustee could avoid under any of the sections  
14 listed in § 522(g). Id. at \*4.

15 Bova is not binding on us because it is unpublished, and in  
16 any event it is readily distinguishable. In Bova, the trustee  
17 was able to realize for the estate the full value of the debtor's  
18 true interest in the property without invoking any of the  
19 avoiding powers; he could simply sell the debtor's interest in  
20 the property together with the interests of his co-owners under  
21 § 363(h) (which was designated § 363(g) when we decided Bova) and  
22 claim the debtor's share of the proceeds from his sisters, who  
23 held the property in a resulting trust for his benefit. The  
24 trustee did not need to employ any of the statutory powers  
25 enumerated in § 522(g) in order to recover and liquidate the  
26 debtor's interest in the property; the trustee asserted a claim  
27 under § 542(a), but as the panel noted, this was entirely  
28 unnecessary. In this case, however, the Trustee could not have

1 recovered the Property without invoking one of the sections  
2 listed in § 522(g).<sup>8</sup>

3 Section 522(g) might present difficult questions in a case  
4 where the trustee recovered only a limited interest in certain  
5 property.<sup>9</sup> But we need not reach those issues here. We hold  
6 that, where the debtor signs a deed purporting to make a  
7 voluntary, outright transfer of his entire interest in certain  
8 property and the trustee recovers that property by using (or  
9 threatening to use) his avoiding powers under § 544 or § 548,  
10 § 522(g) bars the debtor from claiming any exemption in that  
11 property.

#### 12 CONCLUSION

13 For the reasons set forth above, the bankruptcy court did  
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15 <sup>8</sup> Ehrenberg v. Hidalgo (In re Hidalgo), BAP No.  
16 CC-06-1399-PaAK, 2007 WL 7540950 (9th Cir. BAP July 9, 2007),  
17 which none of the parties cited, is similar to Bova. The debtor  
18 conveyed to his sister his legal interest in property that they  
19 jointly owned. When he filed for bankruptcy without listing the  
20 property in his schedules and later claimed a homestead exemption  
21 in his equitable interest, the trustee objected under § 522(g).  
22 The bankruptcy court overruled the objection, and the BAP agreed  
23 on appeal, noting that the objection was premature because the  
24 trustee had not yet recovered anything. Like Bova, Hidalgo is  
25 unpublished and not binding. It is also distinguishable because,  
26 unlike Hidalgo, the Trustee in this case has recovered the  
27 Property.

28 <sup>9</sup> Most courts considering this issue hold that § 522(g)  
applies even if the only interest that the trustee recovers is a  
lien. See, e.g., Russell v. Kuhnel (In re Kuhnel), 495 F.3d  
1177, 1181 (10th Cir. 2007) (creditor's release of its security  
interest in a truck constituted recovery of property by the  
trustee); In re Lamping, 8 B.R. 709, 711 (Bankr. E.D. Wis. 1981)  
(under § 522(g), "transfers of a security interest are voluntary  
transfers and are not subject to exemption claims by the debtor  
after the property is recovered by the trustee").

1 not err in sustaining the Objection to the homestead exemption.

2 Therefore, we AFFIRM.

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