

AUG 01 2016

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

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:) BAP Nos. 15-1367-DTaJu
FRANCES ELIZABETH PASS,) 15-1378-DTaJu
Debtor.) (related appeals)
Bk. No. 13-16171-B-7

JAMES E. SALVEN, CHAPTER 7
TRUSTEE,
Appellant,

v.

ALADINO JOSEPH GALLI;
FRANCES ELIZABETH PASS,
Appellees.

O P I N I O N

Argued and Submitted on June 23, 2016
at Sacramento, California

Filed - August 1, 2016

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

Honorable W. Richard Lee, Bankruptcy Judge, Presiding

Appearances: Trudi G. Manfredo, argued for Appellant James L. Salven; Appellee Aladino Joseph Galli argued pro se.

Before: DUNN, TAYLOR and JURY, Bankruptcy Judges.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DUNN, Bankruptcy Judge:
2

3 Frances Elizabeth Pass and Aladino Joseph Galli commenced a
4 chapter 13¹ case in 2009, while they were married but intending
5 to separate. In 2002, they had recorded a declaration of
6 homestead as to their residence in Fresno, California. They also
7 claimed their residence as exempt under California's automatic
8 homestead exemption when they filed their bankruptcy case.
9 During the pendency of the case, Pass and Galli terminated their
10 marriage and purported to divide their marital property without
11 seeking relief from the automatic stay. The joint case was
12 severed, Pass converted her case to chapter 7, and Galli allowed
13 his case to be dismissed. After conversion, Pass amended her
14 exemptions to claim a homestead exemption in a different home,
15 while Galli continued to reside in the previously claimed
16 homestead. Over the objection of the chapter 7 trustee James
17 Salven ("Trustee"), Pass' exemption was allowed. The Trustee
18 elected to pursue Galli's home instead through an adversary
19 proceeding, but the bankruptcy court entered an order and
20 judgment declaring, among other things, that Galli's declaration
21 of homestead created an interest in the home that the Trustee
22 could not avoid. The Trustee appeals the order and judgment
23 separately. With respect to both appeals, we AFFIRM on the
24

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 All "Rule" references are to the Federal Rules of Bankruptcy
Procedure. All "Civil Rule" references are to the Federal Rules
of Civil Procedure.

1 alternative basis that Galli has a valid automatic homestead
2 exemption under California law.

3 **I. FACTUAL BACKGROUND**

4 Before they filed their petition, Pass and Galli were
5 married and living together in a home on Manila Avenue in Fresno,
6 California (the "Manila Avenue House"). They had been living
7 there at least since 2002, at which time they filed a declaration
8 of homestead in relation to the Manila Avenue House as allowed by
9 California law ("2002 Homestead Declaration"). See California
10 Code of Civil Procedure ("CCP") § 704.920. Then, in the fall of
11 2009, Pass purchased a house in Coalinga, California (the
12 "Coalinga House") after accepting a position in her employer's
13 Coalinga office. Pass and Galli had decided to end their
14 marriage, and Pass began refurbishing the Coalinga House with the
15 intention of moving into it permanently.

16 Meanwhile, Pass and Galli filed a joint chapter 13 petition
17 on December 30, 2009. In their bankruptcy schedules, as amended
18 in February 2010, they claimed a homestead exemption in the
19 Manila Avenue House pursuant to CCP § 704.730, applicable in
20 bankruptcy by virtue of § 522(b)(3)(A). The stated value of the
21 claimed exemption was \$43,764.64. In 2010, while their joint
22 bankruptcy case was in progress, Pass and Galli obtained a
23 judgment of legal separation in the Superior Court of Fresno
24 County ("Separation Judgment"). Though Pass and Galli did not
25 request or obtain relief from the automatic stay, the Separation
26 Judgment purported to award the Manila Avenue House to Galli as
27 his sole and separate property. Accordingly, Pass changed her
28 address of record with the bankruptcy court to indicate that the

1 Coalinga House was her residence.

2 In December 2011, still without having requested relief from
3 the automatic stay, Pass and Galli executed and recorded a grant
4 deed, purporting to transfer the Manila Avenue House to Pass and
5 Galli as joint tenants ("Grant Deed"). Pass later changed her
6 address of record again, indicating that the Manila Avenue House
7 was her residence. In April 2013, the state court entered a
8 judgment of marital dissolution, which purported to grant Pass
9 and Galli each a one-half interest in the Manila Avenue House
10 ("Dissolution Judgment"). Once again, relief from stay was
11 neither sought nor granted.

12 In September 2013, Pass moved the bankruptcy court to sever
13 the joint chapter 13 case and to convert her case to chapter 7.
14 The court granted both requests. Pass was assigned to a new
15 chapter 7 case, while Galli remained in the original chapter 13
16 case. Pass filed a new amendment to her schedules, now claiming
17 an exemption in the Coalinga House under CCP § 704.730 in the
18 amount of \$75,000. As for Galli, it appears that he stopped
19 making payments under the chapter 13 plan, and his case was
20 dismissed.

21 The Trustee was appointed to administer Pass' chapter 7
22 estate. He objected to Pass' claimed exemption in the Coalinga
23 House, alleging that she was not in fact living at the Coalinga
24 House on the date of the order for relief in the original joint
25 case. The Trustee noted that, on the joint petition and
26 schedules, both Pass and Galli had indicated they resided at the
27 Manila Avenue House.

28 After an evidentiary hearing on the Trustee's objection, the

1 bankruptcy court entered a memorandum decision and an order
2 overruling the objection. The court was persuaded by Pass'
3 testimony that she left the Manila Avenue House and moved into
4 the Coalinga House, with no intention ever to return, hours
5 before the joint petition was filed. The order overruling the
6 Trustee's objection and allowing Pass' exemption in the Coalinga
7 House was entered on November 3, 2014, and was not appealed.

8 Meanwhile, the Trustee had also begun efforts to sell the
9 Manila Avenue House. He made a motion under § 363(f) to sell the
10 Manila Avenue House free and clear of any interest of Galli,
11 notwithstanding a new declaration of homestead Galli had filed in
12 January 2014 ("2014 Homestead Declaration"). Shortly before a
13 hearing on the § 363(f) motion, the Trustee filed an adversary
14 proceeding seeking (i) to avoid the property transfers effected
15 by the Separation Judgment, the 2011 Grant Deed and the
16 Dissolution Judgment, as well as Galli's 2014 Homestead
17 Declaration; (ii) to determine the nature, extent and validity of
18 interests in the Manila Avenue House; and (iii) for authority to
19 sell the Manila Avenue House.

20 The court held its hearing on the § 363(f) motion on May 29,
21 2014. Along with the Trustee's counsel, Pass appeared through
22 counsel in support of the motion. Galli appeared in opposition
23 to the motion, which he aptly characterized as "a motion to take
24 [his] home." At the hearing on the § 363(f) motion, the court
25 commented on the muddled status of the ex-spouses' respective
26 property interests and exemption rights. While acknowledging the
27 Trustee's contention that the postpetition title transfers were
28 void due to the automatic stay, the court concluded that "the

1 status of title right now is there's a co-owner to this house,
2 and you can't sell co-owned property without an adversary
3 proceeding." Thus, the court refused to grant the § 363(f)
4 motion without first resolving the title and exemption issues
5 through the adversary proceeding.

6 In December 2014, the Trustee moved for summary judgment in
7 the adversary proceeding based on stipulated facts agreed to by
8 Galli.² Among other things, they stipulated that the transfers
9 of the Manila Avenue House had been made without relief from the
10 automatic stay and that the Manila Avenue House was community
11 property as of the December 2009 petition date. Based on those
12 stipulations, the Trustee argued that no dispute existed as to
13 any material fact, and he was entitled as a matter of law to
14 judgment on the following points:

15 1. The transfers made in the Separation Judgment, the Grant
16 Deed and the Dissolution Judgment were void, because they were in
17 violation of the automatic stay.

18 2. The transfers made in the Separation Judgment, the Grant
19 Deed and the Dissolution Judgment should be avoided because they
20 were made in violation of Pass and Galli's confirmed chapter 13
21 plan, as well as the bankruptcy court's General Order 05-03,
22 which prohibited such property transfers without the chapter 13
23

24 ² The Trustee failed to include a copy of the motion for
25 summary judgment in his excerpts of the record. We have
26 exercised our discretion to take judicial notice of papers filed
27 with the bankruptcy court. See O'Rourke v. Seaboard Sur. Co. (In
28 re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1988);
Atwood v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R.
227, 233 n.9 (9th Cir. BAP 2003).

1 trustee's consent or court order.

2 3. The transfers made in the Dissolution Judgment and the
3 2014 Homestead Declaration were "void as being post petition
4 transfers."

5 4. The Manila Avenue House was community property and
6 therefore property of the Pass bankruptcy estate.

7 5. Galli had no entitlement to a homestead exemption in the
8 Manila Avenue House.

9 The court set out its findings and conclusions regarding the
10 summary judgment motion in a memorandum decision. Based on the
11 parties' stipulation, the court concluded that there was no
12 dispute as to any issue of material fact. As to the community
13 property issue, the court concluded that Galli had conceded the
14 point, and no dispute remained. But, as to the issue of Galli's
15 claimed homestead exemption, the court concluded that Galli had a
16 valid "homestead interest" that could not be avoided.

17 The bankruptcy court went on to explain that it based its
18 decision on the 2002 Homestead Declaration filed by Pass and
19 Galli. Noting that a declaration of homestead prevents judgment
20 liens from attaching to the declared homestead unless there is
21 sufficient equity to pay the homestead exemption in full, and
22 that the Trustee's liquidation powers "are derived from those of
23 a creditor who holds a judgment lien," the court concluded that
24 the Trustee could not sell the Manila Avenue House without paying
25 Galli the value of his homestead exemption. The court rejected
26 the Trustee's argument that the declaration of homestead cannot
27 prevent an involuntary sale. Instead, the court reasoned that
28 the proposed sale could be analyzed as either voluntary or

1 involuntary, but "[e]ither way, . . . the Trustee will have to
2 pay Galli the value of his Declared Homestead"

3 Based on the conclusions laid out in the memorandum
4 decision, the bankruptcy court entered an order disposing of the
5 summary judgment motion ("Summary Judgment Order"), which
6 provided as follows:

7 IT IS HEREBY ORDERED that the motion for summary
8 judgment is GRANTED in so far as the Trustee seeks a
9 declaration that the [Manila Avenue House] is still
community property of the Galli/Pass marriage and still
property of this bankruptcy estate.

10 IT IS FURTHER ORDERED that the Motion for summary
11 judgment is DENIED with respect to the Trustee's
12 request that the [Manila Avenue House] may be sold free
and clear of Galli's homestead interest with no
compensation to Galli.

13 Two weeks later, the court entered judgment consistent with the
14 Summary Judgment Order ("Judgment"). The Judgment first declared
15 all of the following void: (1) the purported transfer of the
16 Manila Avenue House to Galli as his sole and separate property as
17 part of the Separation Judgment; (2) the Grant Deed executed by
18 Galli purporting to transfer an undivided 50% interest in the
19 Manila Avenue House to Pass; (3) the Dissolution Judgment, to the
20 extent that it purported to grant Pass and Galli each a 50%
21 interest in the Manila Avenue House; and (4) Galli's 2014
22 Homestead Declaration. Accordingly, the Judgment declared that
23 the Manila Avenue House remained both community property and
24 property of the estate. Finally, the Judgment declared that
25 Galli had a "homestead interest" by virtue of the 2002 Homestead
26 Declaration, and the Trustee had no authority to sell the Manila
27 Avenue Property without compensating Galli for his interest.

28 The Trustee appealed separately from the Summary Judgment

1 Order and the Judgment.

2 **II. JURISDICTION**

3 The bankruptcy court had jurisdiction under 28 U.S.C.
4 §§ 1334 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C.
5 § 158.

6 **III. ISSUES**

7 1. Whether the 2002 Homestead Declaration operates to
8 prevent the Trustee from selling the Manila Avenue House without
9 compensating Galli.

10 2. Whether Galli is entitled to an automatic homestead
11 exemption under California law.

12 **IV. STANDARD OF REVIEW**

13 We review de novo the bankruptcy court's decision to grant
14 or deny summary judgment. Heers v. Parsons (In re Heers), 529
15 B.R. 734, 740 (9th Cir. BAP 2015); Khaligh v. Hadaegh (In re
16 Khaligh), 338 B.R. 817, 823 (9th Cir. BAP 2006), aff'd, 506 F.3d
17 956 (9th Cir. 2007). If the appellant is entitled to summary
18 judgment, we may reverse and grant summary judgment in favor of
19 the appellant. Nat'l Motor Freight Traffic Ass'n v. Superior
20 Fast Freight, Inc. (In re Superior Fast Freight, Inc.), 202 B.R.
21 485, 487 (9th Cir. BAP 1996). We likewise apply de novo review
22 to the bankruptcy court's interpretation of state law. Diaz v.
23 Kosmala (In re Diaz), 547 B.R. 329, 333 (9th Cir. BAP 2016).

24 **V. DISCUSSION**

25 We agree with the bankruptcy court that the facts are not in
26 dispute. Thus, the Trustee is entitled to summary judgment only
27 if he can show he is "entitled to judgment as a matter of law."
28 Civil Rule 56(a); Rule 7056; Anderson v. Liberty Lobby, Inc., 477

1 U.S. 242, 249 (1986). The only provisions of the Summary
2 Judgment Order and the Judgment that are challenged on appeal are
3 those concerning Galli's "homestead interest." We limit our
4 review to those issues.

5 The bankruptcy court premised its decision regarding the
6 homestead issue on the protections accorded to declared
7 homesteads, as opposed to the automatic homestead exemption. The
8 Trustee argued before the bankruptcy court and argues on appeal
9 that neither benefit was available to Galli. In the discussion
10 that follows, we are mindful of the imperative under California
11 law to construe exemption statutes liberally in favor of the
12 debtor. Wells Fargo Fin'l Leasing, Inc. v. D & M Cabinets, 177
13 Cal. App. 4th 59, 73 (2009). At the same time, we must not
14 "rewrite the California legislature's scheme for homestead
15 protection." Redwood Empire Production Credit Assoc. v. Anderson
16 (In re Anderson), 824 F.2d 754, 759 (9th Cir. 1987).

17 **A. There are two varieties of homestead protection under**
18 **California law.**

19 We begin our discussion with a brief review of the nature of
20 California homestead law. Under California law, two species of
21 homestead protection are available to judgment debtors, the
22 "automatic" (or Article 4) homestead exemption and the "declared"
23 (or Article 5) homestead protection,³ respectively. These
24 protections are available under different circumstances, they

26 ³ The California statute does not use the word "exemption"
27 to describe the declared homestead protection. Indeed, as
28 discussed below, a declaration of homestead does not create any
exemption directly except in the proceeds of a voluntary sale.

1 serve different purposes and they confer different rights on
2 debtors. “[T]here is **no overlap** between these rights.” Id. at
3 756 (emphasis added). Depending on the circumstances, a given
4 debtor may be entitled to one or the other, or to both, or to
5 neither. Id.

6 **1. The Article 4 automatic homestead exemption**

7 The Article 4 automatic homestead exemption is applicable
8 under California law when a person’s homestead is damaged,
9 destroyed, taken by eminent domain or sold involuntarily in
10 satisfaction of a debt. CCP § 704.720(b). For purposes of
11 bankruptcy law, the creation of the bankruptcy estate upon the
12 filing of the petition is treated as equivalent to an involuntary
13 sale. In re Diaz, 547 B.R. at 334. Thus, the automatic
14 homestead exemption is applicable in bankruptcy cases.

15 This is an “exemption” in the familiar bankruptcy law sense:
16 it prevents the judgment creditor (or the bankruptcy trustee)
17 from forcing a sale of the homestead unless there is sufficient
18 equity to pay the debtor the amount of the exemption. The debtor
19 is entitled to be paid ahead of the judgment creditor or trustee.
20 CCP § 704.850(a)(1)-(4). The exemption protects a “homestead,”
21 defined as a dwelling in which the debtor or the debtor’s spouse
22 resided on the date the judgment creditor’s lien attached (in
23 bankruptcy, the petition date) and has resided continuously until
24 the court’s determination that the dwelling is a homestead. CCP
25 § 704.710(c). Thus, this protection is available in bankruptcy
26 if the debtor was living in the home on the petition date. The
27 exemption is “automatic” in the sense that it requires no
28 affirmative act by the debtor to make it effective; rather, it

1 applies automatically to any dwelling that meets the definition.

2 **2. The Article 5 declaration of homestead**

3 If, however, the debtor chooses to record a declaration of
4 homestead with the county recorder's office, the debtor is
5 entitled to additional protections, including, without
6 limitation, the following:

7 **i. Lien Attachment:** If a debtor is entitled to an
8 automatic homestead exemption, the filing of a declaration of
9 homestead prevents judgment liens from attaching to the portion
10 of the debtor's equity in the homestead covered by the exemption.
11 CCP § 704.950(c). Note that this provision does not
12 independently create an impediment to a forced sale. See CCP
13 § 704.920.⁴ It shields the exempt equity against the future
14 attachment of judgment liens. See Katz v. Pike (In re Pike), 243
15 B.R. 66, 70 (9th Cir. BAP 1999).

16 **ii. Voluntary Sale:** If a homesteader voluntarily sells
17 the declared homestead, the proceeds of that sale are themselves
18 exempt for six months. CCP § 704.960(a). This protects debtors
19 from the danger that eager creditors will pounce as soon as the
20 homestead is reduced to cash. Under this provision, the debtor
21 has six months to reinvest that cash before creditors can reach
22 it.

23 This protection differs from the lien attachment protection
24 in two important ways. First, it creates an actual exemption (in
25

26 ⁴ To the extent the homestead property remains a
27 "dwelling," as defined in CCP § 704.710(a), all Article 4
28 protections in relation to forced sale apply. See CCP
§ 704.970(b).

1 proceeds of a voluntary sale), rather than merely enhancing the
2 automatic exemption. Second, it can exist even if a debtor is
3 not entitled to an automatic exemption, for instance, if the
4 debtor does not satisfy the continuous residency requirement. In
5 re Anderson, 824 F.2d at 757 (after homestead declaration is
6 recorded, "moving away from the homestead does not destroy the
7 [voluntary sale] exemption status").

8 As noted above, the protections pertaining to a declared
9 homestead are separate and distinct from the automatic homestead
10 exemption, though a debtor may enjoy both sets of protections if
11 he or she satisfies the requirements for both. A declaration of
12 homestead by itself generally does not confer protections or
13 rights in relation to a forced sale. Kelley v. Locke (In re
14 Kelley), 300 B.R. 11, 21 (9th Cir. BAP 2003); In re Anderson, 824
15 F.2d at 758.

16 **B. The declared homestead protections in this case**

17 Because the filing of a bankruptcy petition is equivalent to
18 a forced sale, it is typically the automatic exemption, not the
19 declared homestead protection, that applies to sales by
20 bankruptcy trustees. In re Kelley, 300 B.R. at 17. This
21 proposition would seem to render the 2002 Homestead Declaration
22 irrelevant to the summary judgment motion, but the bankruptcy
23 court gave a number of reasons for concluding otherwise.

24 First, the bankruptcy court reasoned that "the Trustee's
25 powers to liquidate estate assets are derived from those of a
26 creditor who holds a judgment lien. § 544." Salvi v. Galli (In
27 re Pass), Adv. No. 14-01056 at 12 (Bankr. E.D.Cal. October 14,
28 2015). Because a homestead declaration shields the homestead

1 from the attachment of judgment liens, the court concluded that
2 the 2002 homestead declaration likewise shielded the Manila
3 Avenue Property from the Trustee's reach. We reject this
4 conclusion. To begin with, although § 544 empowers the Trustee
5 to exercise the rights of prepetition lienholders for some
6 purposes, not all of "the Trustee's powers to liquidate estate
7 assets" are derived in this way. Section 363 permits trustees to
8 use, sell or lease property belonging to the bankruptcy estate,
9 regardless of whether any prepetition creditor could have done
10 so.

11 It is true that, for purposes of allowing or disallowing
12 state law exemptions, courts treat the filing of the bankruptcy
13 petition as the date on which a hypothetical judgment lien
14 attaches. It does not follow that the Trustee's power over
15 estate assets constitutes an actual lien that must "attach"
16 before it can be exercised. The lien attachment restrictions
17 arising from the declaration of homestead do not prevent the
18 Trustee from exercising his sale powers.

19 Second, the bankruptcy court pointed to the following
20 language from CCP § 704.960(b):

21 If the proceeds of a declared homestead are invested in
22 a new dwelling within six months after the date of a
23 voluntary sale **or within six months after proceeds of**
24 **an execution sale** or of insurance or other
25 indemnification for damage or destruction are received,
26 the new dwelling may be selected as a declared
homestead by recording a homestead declaration within
the applicable six-month period. In such a case, the
homestead declaration has the same effect as if it had
been recorded at the time the prior homestead
declaration was recorded.

27 (emphasis added). The bankruptcy court interpreted the
28 emphasized language as "protecting" the proceeds of an

1 involuntary sale, contrary to our statement in Kelley that "the
2 additional benefits conferred in Article 5 would benefit [the
3 debtor] only in the situation of a voluntary sale." In re
4 Kelley, 300 B.R. at 21 (emphasis in original).

5 The "additional benefits" we referred to in Kelley were,
6 primarily, the six-months exemption provided by Article 5 for
7 proceeds of a voluntary sale (and further encompassing extension
8 of protections if the proceeds are timely reinvested in a new
9 homestead). The quoted statutory language does not create an
10 entitlement to proceeds, nor does it create an exemption in
11 proceeds. A comparison of subsections (a) and (b) of CCP
12 § 704.960 makes this conclusion inescapable. Subsection (a)
13 reads: "If a declared homestead is voluntarily sold, the proceeds
14 of sale **are exempt** . . ." (emphasis added). Subsection (b), as
15 quoted above, does not use the word "exempt" at all. Instead, it
16 provides that **if** a declared homestead is sold involuntarily, **and**
17 the debtor for some independent reason is entitled to receive
18 proceeds from that sale (perhaps because he also enjoys an
19 automatic homestead exemption, or perhaps because the sale
20 generates a surplus), **and** the debtor reinvests those proceeds in
21 a new homestead, **and** the debtor records a new homestead
22 declaration, **then** the new declaration will relate back to the
23 date of the original homestead declaration. If the debtor is not
24 otherwise entitled to receive proceeds, this provision does not
25 change that situation.

26 Finally, the bankruptcy court suggested that the Trustee's
27 proposed sale of the Manila Avenue House might alternatively be
28 considered a voluntary sale, because the Manila Avenue House "is

1 property of the estate over which the Trustee is effectively the
2 owner.” Salvi v. Galli (In re Pass), Adv. No. 14-01056 at 10
3 (Bankr. E.D.Cal. October 14, 2015). We must reject this
4 proposition as inconsistent with our previous decisions holding
5 that the filing of the bankruptcy petition itself constitutes a
6 “forced sale” for exemption purposes. In re Diaz, 547 B.R. at
7 334; In re Kelley, 300 B.R. at 21; In re Pike, 243 B.R. at 70.

8 The bankruptcy court declined to decide whether Galli might
9 be entitled to an automatic homestead exemption under Article 4.
10 However, in order to determine whether the undisputed facts
11 entitled the Trustee to judgment as a matter of law, we must turn
12 next to this issue.

13 **C. The automatic homestead exemption is available to Galli.**

14 When Pass and Galli initially filed their joint chapter 13
15 petition, they asserted an entitlement to an automatic homestead
16 exemption in the Manila Avenue House. There is no question that
17 this exemption is available to bankruptcy debtors, and there is
18 no dispute that Galli was entitled to it at the time. Since the
19 filing of the petition, Pass and Galli have divorced, and Galli’s
20 bankruptcy case has been dismissed. Thus, in order to determine
21 whether Galli is entitled to an automatic homestead exemption in
22 the Manila Avenue House, we must answer two questions: First,
23 whether Galli, as a non-debtor, may assert any exemption in
24 property of the Pass bankruptcy estate; and second, whether Galli
25 is entitled to a homestead exemption under California law.

26 **1. Galli’s non-debtor status does not preclude his**
27 **claiming an exemption in estate property.**

28 In answering the first question, we confront a dearth of

1 published decisions involving circumstances analogous to those
2 present here. We decided a related question in Burman v. Homan
3 (In re Homan), 112 B.R. 356 (9th Cir. BAP 1989). There, the non-
4 debtor wife of a chapter 7 debtor attempted to claim a state-law
5 homestead exemption in a home that was property of the bankruptcy
6 estate. The debtor had claimed no exemption in the home and had
7 asserted unrelated federal exemptions instead. We held that the
8 debtor's decision not to claim an exemption "binds" the non-
9 filing spouse. Id. at 359. Because he had elected not to claim
10 the home as exempt, his wife was unable to claim an exemption of
11 her own. Id.

12 What is true of spouses, however, is not necessarily true of
13 ex-spouses. In Homan, we recognized that Congress designed the
14 exemption provisions of the Code "to encourage spouses to file
15 jointly." Id. at 360. We noted that the debtor's wife was
16 seeking "to do as a nondebtor spouse what she would be prohibited
17 from doing as a joint debtor," namely asserting an exemption that
18 was inconsistent with the list of exemptions already asserted by
19 the debtor. Id. This concern is absent here, as Galli is no
20 longer married to Pass. The congressional goal of encouraging
21 joint filings has no applicability to ex-spouses, since ex-
22 spouses are not permitted to file jointly. Also inapplicable to
23 Galli is the community property discharge, which we identified as
24 a counterbalancing advantage to the otherwise "hard result" of
25 denying non-debtor spouses any say in the selection of
26 exemptions. Id. In short, with respect to Galli, we see neither
27 the statutory concern that animated the reasoning of Homan nor
28 the primary factor that mitigated the harshness of its result.

1 We therefore decline to extend Homan beyond the situation to
2 which it was addressed, namely the attempt by a non-filing,
3 current spouse of a debtor to assert exemptions to which he or
4 she would not be entitled as a joint debtor.

5 The mere fact that Galli is not the debtor does not prohibit
6 him from asserting a state law exemption in property of the
7 bankruptcy estate. Instead, we must look to California law to
8 determine whether the undisputed facts entitle Galli to an
9 automatic homestead exemption in the Manila Avenue House.

10 **2. Galli is entitled to an automatic homestead exemption.**

11 Even if Galli's non-debtor status does not prevent him from
12 asserting a homestead exemption, the Trustee nevertheless argues
13 that he is not entitled to exempt the Manila Avenue House. The
14 Trustee correctly points out that a debtor's entitlement to claim
15 exemptions is determined as of the original petition date.

16 Moffatt v. Habber (In re Moffatt), 119 B.R. 201, 204 n.3 (9th
17 Cir. BAP 1990); Cisneros v. Kim (In re Kim), 257 B.R. 680, 685
18 (9th Cir. BAP 2000). Thus, because Pass and Galli were married
19 when they filed their joint petition, the Trustee argues that
20 both of them are limited to the exemption rights they enjoyed as
21 a married couple on the petition date. Since California law
22 prohibits spouses from claiming exemptions in more than one
23 homestead, and since Pass successfully defended her exemption in
24 the Coalinga House, the Trustee asks us to conclude that Galli
25 may not claim an exemption in the Manila Avenue House.

26 Though it has a certain syllogistic plausibility, we must
27 reject this argument. The principle that exemption rights are
28 determined as of the petition date cannot be stretched so far as

1 to require that a debtor's marital status on the petition date is
2 fossilized for the duration of the case. Even less should former
3 joint debtors whose cases have been severed and dismissed be
4 yoked, for state-law exemption purposes, to their ex-spouses who
5 remain in bankruptcy. To hold otherwise would flout the well-
6 established principle that "bankruptcy courts [should] avoid
7 incursions into family law matters" Allen v. Allen (In
8 re Allen), 275 F.3d 1160, 1163 (9th Cir. 2002) (quoting MacDonald
9 v. MacDonald (In re MacDonald), 755 F.2d 715, 717 (9th Cir.
10 1985). We must determine Galli's homestead rights under
11 California law based on his marital status as of the present, not
12 as of the petition date.⁵

13 Under California law, as the Trustee notes, where spouses
14 reside in separate homesteads, only one of the homesteads is
15 exempt. CCP § 704.720(c). If Pass and Galli were still married,
16 this would appear to be dispositive. However, "after the
17 judgment of dissolution or legal separation, each former spouse
18 has the right to declare a homestead on any property in which he
19 or she has an interest and actually resides." 12 W. Scott
20 Shepard and Karl E. Geier, Cal. Real Est. § 43:40 (4th ed. 2016).
21 Moreover, each former spouse "qualif[ies] for the automatic
22 exemption for property on which he or she resides" Id.
23 We agree with the bankruptcy court that there is no dispute that

24
25 ⁵ The Trustee's counsel suggested during oral argument that
26 this approach would permit postpetition exemption planning by
27 spouses, who could obtain a divorce after filing in order to
28 augment their exemptions. We are disinclined to allow such a
speculative concern to drive us to the draconian result the
Trustee seeks, particularly as there is no indication in the
record that Pass and Galli sought their divorce for any collusive
or otherwise improper purpose.

1 Galli was living at the Manila Avenue House on the date the joint
2 petition was filed.⁶ Thus, the bankruptcy court properly
3 concluded that the Trustee may not sell the Manila Avenue House
4 without compensating Galli.

5 The Trustee's final argument is that, if Galli has a
6 "homestead interest," the bankruptcy court was required to
7 determine the dollar value of that interest. As the bankruptcy
8 court correctly noted, however, this relief was not requested in
9 the Trustee's complaint, and it is not necessary to make this
10 determination unless and until the Trustee attempts to sell the
11 Manila Avenue House.

12 VI. CONCLUSION

13 Based upon the foregoing, we conclude that the bankruptcy
14 court erred in concluding that the 2002 Homestead Declaration
15 prevented the Trustee from selling the Manila Avenue House. We
16 conclude, however, that Galli is entitled to an automatic
17 homestead exemption in the Manila Avenue House. Consequently, we
18 AFFIRM both the Summary Judgment Order and the Judgment.

19 _____
20 ⁶ The Trustee's power, if any, to sell the Manila Avenue
21 House arises from the filing of the original joint petition. For
22 purposes of determining a debtor's homestead exemption rights
23 under California law, bankruptcy courts treat the filing of the
24 petition as both the attachment of a hypothetical judgment lien
25 and, simultaneously, as the court determination that the dwelling
26 is a homestead. In re Diaz, 547 B.R. at 335. There appears to
27 be no dispute in this appeal that the same analysis applies to
28 the determination of a non-debtor's exemption rights in estate
property. We assume, without deciding, that this is correct.

The Trustee's counsel further conceded at oral argument that
the Trustee's proposed sale should be treated as involuntary,
hence capable of triggering the automatic homestead exemption.
Again, as the issue is not disputed, we need not decide it and
will treat the proposed sale as an involuntary or forced sale
under California law.