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**NOT FOR PUBLICATION**

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

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

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.	)	<b>MEMORANDUM<sup>1</sup></b>
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.

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<sup>1</sup> 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 The appellant debtor Jesus Bencomo ("Mr. Bencomo") appeals  
2 the bankruptcy court's order granting the chapter 7<sup>2</sup> trustee's  
3 motion for turnover of \$100,000 that Mr. Bencomo received from  
4 the trustee for his homestead exemption but failed to reinvest in  
5 a new homestead within the reinvestment period required under  
6 California law, as argued by the trustee. We AFFIRM in part and  
7 VACATE and REMAND for further findings and conclusions consistent  
8 with this decision.

9 Factual Background

10 This is Mr. Bencomo's second appeal to this Panel. In BAP  
11 No. CC-14-1361-TaPaKi (the "Prior Appeal"), he appealed the  
12 bankruptcy court's judgment denying his discharge under  
13 § 727(a)(4)(A) for having knowingly and fraudulently  
14 misrepresented, i.e., "severely undervalued," his residence  
15 property (the "Property") in his schedules under penalty of  
16 perjury. The Panel vacated the judgment denying Mr. Bencomo's  
17 discharge and remanded the adversary proceeding for the  
18 bankruptcy court to make further findings concerning  
19 Mr. Bencomo's evidentiary objections to the testimony of the  
20 trustee's realtor witness. See Bencomo v. Avery (In re Bencomo),  
21 No. CC-14-1361-TaPaKi, 2015 WL 3451546 (9th Cir. BAP June 1,  
22 2015). Following remand, the bankruptcy court entered further  
23 findings of fact and conclusions of law with respect to  
24 Mr. Bencomo's evidentiary objections and reiterated its decision  
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26 <sup>2</sup> Unless otherwise specified, all chapter and section  
27 references are to the federal Bankruptcy Code, 11 U.S.C.  
28 §§ 101-1532, and all "Rule" references are to the Federal Rules  
of Bankruptcy Procedure, Rules 1001-9037.

1 to deny him a discharge under § 727(a)(4)(A). That decision has  
2 not been appealed and is now final.<sup>3</sup> 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

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25 <sup>3</sup> 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 Issues

2 In his opening brief, Mr. Bencomo articulates twelve issues  
3 for review in this appeal that we distill down to the following  
4 five:

5 1) Whether the bankruptcy court erred procedurally in  
6 considering and granting the Turnover Motion.

7 2) Whether the bankruptcy court erred in applying the six-  
8 months reinvestment requirement in CCP § 704.720(b), applicable  
9 to execution sales.

10 3) Whether the bankruptcy court erred in overruling  
11 Mr. Bencomo's objection that "exempt" sale proceeds are not  
12 liable for prepetition debts or administrative expenses under  
13 § 522(c) and (k) without the debtor's consent.

14 4) Whether the bankruptcy court erred in disregarding  
15 Mr. Bencomo's objections that the Property sale order and the  
16 bankruptcy court's own local rules did not provide for any  
17 reservation of estate rights with respect to sold assets, and the  
18 Trustee never advised Mr. Bencomo that the Trustee claimed any  
19 contingent reversionary interest in the Property sale proceeds.

20 5) Whether the bankruptcy court erred in disregarding as  
21 inapplicable Mr. Bencomo's objection that he reinvested at least  
22 some of the Property sale proceeds in a leasehold interest that  
23 qualified as a homestead.

24 Standards for Review

25 We review conclusions of law de novo and findings of fact  
26 for clear error. Wolfe v. Jaconson, 676 F.3d at 1198. We review  
27 questions regarding a debtor's claimed exemption rights de novo.  
28 Kelley v. Locke (In re Kelley), 300 B.R. 11, 16 (9th Cir. BAP

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  
lien, whether or not such a creditor exists;

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

6 Section 101(36) defines "judicial lien" as a "lien obtained by  
7 judgment, **levy**, sequestration, **or other legal or equitable**  
8 **process or proceeding.**" (Emphasis added.) In accordance with  
9 those provisions, exemption disputes are considered in light of a  
10 hypothetical execution sale conducted by the trustee as of the  
11 petition date. See, e.g., Harris v. Herman (In re Herman),  
12 120 B.R. 127, 132 (9th Cir. BAP 1990) ("[T]he existence of  
13 exemptions in bankruptcy presupposes a hypothetical attempt by  
14 the trustee to levy upon and sell all of the debtor's property  
15 upon the filing of the petition.").

16 In other words, with the trustee being presumed  
17 hypothetically to have attempted to conduct an execution sale as  
18 of the petition date, any actual sale under the Bankruptcy Code  
19 thereafter is likewise presumed to have satisfied all of the  
20 procedural requirements for such a sale. That conclusion makes  
21 sense particularly in light of the trustee's duty to "collect and  
22 reduce to money the property of the estate . . . as expeditiously  
23 as is compatible with the best interest of parties in interest."  
24 § 704(a)(1). The Rules operate with the consistent objective "to  
25 secure the just, speedy, and inexpensive determination of every  
26 case and proceeding." Rule 1001. It is difficult to imagine a  
27 process more antithetical to those goals than requiring a chapter  
28 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.<sup>4</sup>

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

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27 <sup>4</sup> 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 trustee. See LBR Rule 6007-1(h). Further, the Trustee did not  
2 provide any notice to Mr. Bencomo that the estate retained a  
3 conditional reversionary interest in the delivered proceeds. In  
4 these circumstances, Mr. Bencomo argues it would deny his rights  
5 to due process to require turnover of the formerly exempt  
6 Property sale proceeds.

7 Mr. Bencomo's estoppel argument disregards established law  
8 in this circuit from the Ninth Circuit's Golden decision forward.

9 Golden further contends that, even if proceeds are no  
10 longer exempt, the trustee is estopped from claiming  
11 them because he did not notify the bankrupt, before the  
12 six months expired, that he intended to make such a  
13 claim. Because the exemption remained in effect during  
14 the six-month period, and the trustee had no right to  
15 claim the proceeds during that period, we see no reason  
16 for requiring that he notify the debtor of a claim not  
17 yet in existence. Given the clarity of provisions  
18 requiring reinvestment, Golden could not have  
19 reasonably relied upon the trustee's silence as an  
20 indication of a permanent exemption.

21 Golden, 789 F.2d at 701. See, e.g., In re White, 389 B.R. at  
22 701, 705-06; and In re Smith, 342 B.R. at 808:

23 At the time the bankruptcy was filed, the estate held a  
24 contingent, reversionary interest in the [homestead]  
25 sale proceeds. Once Debtors failed to reinvest the  
26 proceeds into another homestead within the statutory  
27 period, the entire interest reverted to the bankruptcy  
28 estate. In other words, the proceeds, stripped of  
29 their exempt status, transformed into **nonexempt**  
30 property, i.e., property of the bankruptcy estate, by  
31 operation of law. At that point, there was no need for  
32 the trustee to pursue an objection to the claimed  
33 exemption because no such exemption existed.  
34 Accordingly, the course of action taken by the trustee,  
35 the prosecution of the turnover motion, was proper.

36 (Emphasis in original.) Mr. Bencomo's estoppel and due process  
37 arguments lack merit.

38 ///

39 ///

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.