NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-06-1399-PaAK
ORLANDO HIDALGO,	Bk. No. LA 06-10288 VK
Debtor.	
HOWARD EHRENBERG, Chapter 7 Trustee,	
Appellant,	**M E M O R A N D U M**[1]
v.	
ORLANDO HIDALGO	
Appellee.	

Argued and Submitted on June 21, 2007
at Pasadena, California

Filed – July 9, 2007

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

Honorable Victoria Kaufman, Bankruptcy Judge, Presiding.

Before: PAPPAS, ALLEY[2] and KLEIN, Bankruptcy Judges.

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[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

[2] The Honorable Frank R. Alley, Bankruptcy Judge for the District of Oregon, sitting by designation.

Howard Ehrenberg, the chapter 7[3] trustee ("Trustee"), appeals the order of the bankruptcy court overruling his objection to Debtor Orlando Hidalgo's claim of a homestead exemption. We AFFIRM.

FACTS

In September 1999, Debtor, his sister Maria Hidalgo, and his niece Idalia Diaz, purchased a home in Los Angeles (the "Property") as joint tenants for $176,500. Debtor, along with his wife and children, sister, niece and nephew, all have lived at the Property since its purchase.

In March 2003, Debtor and Idalia Diaz executed a deed transferring title of the Property solely to Maria Hidalgo. Allegedly, Debtor received no consideration for the transfer. Debtor, in his declaration in support of his claim of exemption, indicated that he transferred the Property to facilitate refinancing of the mortgage on the Property because his sister had a better credit rating. After the transfer, Debtor continued to make the same monthly payment he had prior to transferring title to his sister.

Debtor filed a chapter 7 petition on January 31, 2006. He did not list any interest in the Property in his Schedule A. However, the tax returns he turned over to Trustee reflected that Debtor deducted the interest paid on the mortgage on the Property for 2003 and 2004. When Trustee questioned Debtor as to how, if

[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

he owned no real property, he could claim a tax deduction for mortgage interest, Debtor explained that the 2004 tax deduction was a wedding gift from his sister.

Trustee concluded that Debtor was attempting to hide an ownership interest in the Property. Trustee communicated further with Debtor's attorney, but was unsatisfied with the responses to his inquires about the Property. He commenced an adversary proceeding against Maria Hidalgo on June 12, 2006, to avoid the transfer of the Property to her as a fraudulent conveyance, and to recover the Property for the benefit of the bankruptcy estate.

On July 14, 2006, Debtor filed amended Schedules A and C, now asserting that he held an equitable one-third interest in the Property, and claiming a $75,000 homestead exemption as to his interest pursuant to Cal. Code Civ. Proc. § 704.730. Trustee objected to Debtor's exemption claim, contending that it would be improper to allow Debtor to exempt property that had been concealed from Trustee and creditors. Debtor responded, arguing he was entitled to claim the exemption.

The bankruptcy court conducted a hearing concerning the exemption issue on October 11, 2006. The court informed the parties at the beginning of the hearing that, had Debtor claimed an exemption in his equitable interest in the Property from the outset, it would have been proper under state law. As a result, according to the court, the focus of the hearing was whether Trustee and the bankruptcy estate would be prejudiced by allowing Debtor to amend his exemption schedules, and whether Debtor had engaged in a bad faith attempt to conceal his interest in the Property.

The bankruptcy court heard testimony from Debtor, Trustee, and Jennifer Aragon ("Aragon"), the attorney who represented Debtor until she referred him to a bankruptcy specialist to deal with Trustee's challenges to his exemption. After considering the testimony and evidence, the bankruptcy court announced that it had concluded that Debtor was entitled to claim the exemption. The bankruptcy court determined that Trustee had not satisfied his burden to show that Debtor engaged in bad faith by failing to initially disclose the equitable interest in the Property. Instead, the bankruptcy court determined that Aragon failed to investigate and disclose the facts adequately, and that Debtor did not understand the distinction between legal title and an equitable interest. Moreover, by providing the tax returns showing the mortgage interest deduction, the bankruptcy court concluded that Debtor did disclose his interest in the Property, at least to some extent.

The bankruptcy court and parties next turned their attention to whether Trustee and the bankruptcy estate should be compensated for any prejudice suffered because of the late amendment to Debtor's schedules to claim the homestead exemption. After argument, the bankruptcy court recessed to determine what amount of attorney's fees would be required to compensate the bankruptcy estate. However, during the recess, the parties stipulated that Debtor should pay Trustee $7,500 for any fees and costs incurred by the bankruptcy estate.[4]

[4] Interestingly, the bankruptcy judge later disclosed that she had determined to award fees in the amount of $6,650, had the parties not reached an agreement.

Consistent with its ruling at the hearing, the bankruptcy court entered an order overruling Trustee's objection to Debtor's amended claim of exemption on October 30, 2006. The order provides:

> Debtor shall have an allowed claim of exemption in his equitable interest in the property . . . in the amount of $75,000 conditioned upon payment of the Trustee's administrative costs and fees in the amount of $7500 if the property is sold by the Trustee.
>
> In the event the property is not sold but the estate recovers other assets, the Debtor shall pay the sum of $7500 to the Trustee in satisfaction of administrative costs incurred by the Trustee in connection with the objection to the homestead exemption.

Trustee filed a timely appeal from that order.

JURISDICTION

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

ISSUES

Whether the bankruptcy court abused its discretion in concluding that Debtor did not attempt to amend his schedules in bad faith.

Whether § 522(g) precludes Debtor from claiming the exemption allowed under state law.

STANDARDS OF REVIEW

"The bankruptcy court has no discretion to disallow amended exemptions, unless the amendment has been made in bad faith or

prejudices third parties." Arnold v. Gill (In re Arnold), 252 B.R. 778, 784 (9th Cir. BAP 2000) (citing Martinson v. Michael (In re Michael), 163 F.3d 526, 529 (9th Cir. 1998); Doan v. Hudgins (In re Doan), 672 F.2d 831, 833 (11th Cir. 1982); Magallanes v. Williams (In re Magallanes), 96 B.R. 253, 256 (9th Cir. BAP 1988)). Whether the debtor has the right to claim an exemption is a question of law reviewed de novo, "whereas the issue of a debtor's intent is a question of fact reviewed under the clearly erroneous standard." Id. (citing Coughlin v. Cataldo (In re Cataldo), 224 B.R. 426, 428-29 (9th Cir. BAP 1998); Szymanski v. Herzog (In re Szymanski), 189 B.R. 5, 6-7 (N.D. Ill. 1995)). "Any findings by the bankruptcy court on bad faith or prejudice are reviewed for clear error." In re Arnold, 252 B.R. at 784. "A factual finding is clearly erroneous if the appellate court, after reviewing the record, has a definite conviction that a mistake has been made." Beauchamp v. Hoose (In re Beauchamp), 236 B.R. 727, 729 (9th Cir. BAP 1999)

DISCUSSION

I.

The bankruptcy court's finding that Debtor did not engage in bad faith in amending his real property and exemption schedules was not clearly erroneous.

The bankruptcy court allowed Debtor's claim of a homestead exemption after concluding that the previous omissions in his schedules concerning his interest in the Property were not in bad faith.

Trustee disagrees. He argues that Debtor's failure to list his interest in the Property in his original schedules, taking

the mortgage interest deductions on his tax returns and asserting to Trustee that this was a wedding gift from his sister, and then only later amending his schedules to claim a homestead exemption after Trustee expressed concern, all evidence Debtor's bad faith. Trustee points out that Debtor had multiple opportunities to correct the record to reflect accurately his interest in the Property, and to claim an exemption, yet failed to do so until Trustee commenced an adversary proceeding to avoid a fraudulent transfer. Therefore, Trustee maintains that Debtor should be denied the exemption.

Debtor denies he acted in bad faith, alleges his failure to initially claim the exemption and other actions can be satisfactorily explained, and contends that the bankruptcy court correctly concluded that Debtor should be entitled to the exemption.

Rule 1009(a) provides that a schedule "may be amended by the debtor as a matter of course at any time before the case is closed." Such amendments "are and should be liberally allowed at any time absent a showing of bad faith or prejudice to third parties."[5] Arnold, 252 B.R. at 784 (citing Nelson v. White (In re White), 61 B.R. 388, 394 (Bankr. W.D. Wash. 1986); Andemahr v. Barrus (In re Andermahr), 30 B.R. 532, 533 (9th Cir. BAP 1983)). "The usual ground for a finding of 'bad faith' is the debtor's attempt to hide assets. Arnold, 252 B.R. at 785. The party

[5] The bankruptcy court concluded that Trustee was prejudiced by Debtor's late amendments to his schedules; however, the parties stipulated that payment to Trustee in the amount of $7,500 would cure that prejudice. Tr. Hr'g. 95:15. The parties do not question this conclusion on appeal.

alleging the bad faith bears the burden of proof. See Magallanes, 96 B.R. at 256.[6]

To evaluate whether a debtor has engaged in bad faith by attempting to hide assets, a bankruptcy court must consider the entirety of the evidence. Arnold, 252 B.R. at 785. The mere fact that a debtor omitted an asset from the schedules, standing alone, is insufficient to prove bad faith. Magallanes, 96 B.R. at 256. In addition, "[b]y itself, claiming an exemption late is simply not bad faith." Arnold, 252 B.R. at 786.

Trustee argues that Debtor exhibited bad faith in repeatedly lying to him. As Trustee explained to the bankruptcy court:

> The denial of the exemption is not just because the property was fraudulently conveyed. It's because of the Debtor's action from the first time I met him until I filed my lawsuit, and I don't think that his - - that he was given so many opportunities in very plain language to explain what he understood to be the facts, and I was not only not told what he believed, but I was told lies, and that's the reason why I think he should be denied the exemption is because of the multiple commissions of perjury[.]

Tr. Hr'g. 82:25-83:9 (Oct. 11, 2006). The bankruptcy court, however, did not view the evidence in the same manner as Trustee. The Court asked Trustee: "[I]s it perjury [to indicate in his schedules], 'I didn't own it,' when he's transferred title to his sister? I mean, he's transferred title to his sister. He

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[6] The law is unsettled whether, under these circumstances, bad faith must be proven by a preponderance, or by the heightened standard of clear and convincing evidence. See Arnold, 252 B.R. at 784 n.10 (discussing the split of authority, and questioning whether the Supreme Court's subsequent holding in Grogan v. Garner, 498 U.S. 279 (1991), would impact the earlier case law). Because the bankruptcy court, after acknowledging the split of authority, concluded Trustee had not shown bad faith under the less stringent preponderance of the evidence standard, the Panel need not address the issue here.

doesn't own it." Tr. Hr'g. 83:12-15. The bankruptcy court later stated:

> I think here the preponderance of the evidence is when he said "I don't own the property. I don't own" - - that was a - - legally imprecise but semi-accurate because he wasn't on title, and I don't think he knows how to be legally precise.

Tr. Hr'g. 85:14-19.

The bankruptcy court also was not persuaded by Trustee's argument that Debtor exhibited bad faith by explaining that the mortgage tax deduction was a wedding present from his sister. After a discussion with Debtor's counsel and Trustee, the bankruptcy court concluded that Debtor was entitled to the tax deduction in 2003 because he owned an interest in the property, and it was plausible in 2004 that Debtor considered the tax deduction was a gift from his sister because Debtor was still paying his share of the house payments. Tr. Hr'g. 85:19-88:6.

Specifically addressing the issue of bad faith, the bankruptcy court stated, "I'm just saying is he entitled to amend his claim of exemptions . . . and he is as long as there - - I don't think there's sufficient evidence here of bad faith[.]" Tr. Hr'g. 80:3-6. The court went on:

> Like when he said "I don't own the property," he didn't own the property because he had transferred title to his sister, but he didn't know that he could claim an equitable interest . . . there wasn't a scheme to not claim an equitable interest until there was a fraudulent transfer complaint.

Tr. Hr'g. 80:8-14.

Debtor's initial bankruptcy counsel, Aragon, testified that she decided what information should be included in the bankruptcy schedules based upon her interview of Debtor, and that Debtor had

told her about the arrangement made with his sister to convey title to her to facilitate obtaining a refinance loan on the Property. Tr. Hr'g. 25:25-26:19. Based upon Debtor's statements to her, it was Aragon, not Debtor, who decided he did not own an interest in the Property, but rather "he just lived there as a tenant." Tr. Hr'g. 26:20. When an issue about Debtor's interest was later raised by Trustee, her response to Trustee was based solely on the state of the record title; she made no judgments whether Debtor owned an equitable interest in the Property. Tr. Hr'g. 28:16-17; 19-20. She conceded that she did not examine Debtor's tax returns closely enough to notice that he had claimed a deduction for mortgage interest. As a result, she did not inquire of Debtor about the source of the deduction. Tr. Hr'g. 29:7-30:1. After she had received several communications from Trustee about the Property, Aragon referred Debtor to his present counsel because she believed the case was beyond her range of expertise. Tr. Hr'g. 30:5-10.

In addition to the attorney's omission to schedule Debtor's equitable interest in the Property, evidence was adduced to show that Debtor was not legally sophisticated, likely did not appreciate the distinctions between legal and equitable title, and did not comprehend the significance of omitting the Property from his original schedules. Trustee's counsel questioned Debtor extensively regarding his beliefs as to his ownership interest in the property.

> MS. FRAZER [counsel to Trustee]: But you said you gave the property to your sister?
>
> DEBTOR: It's the only way to fix the house, ma'am.

> MS. FRAZER: And that after you gave the property to your sister, you didn't believe you owned it anymore?
>
> DEBTOR: Well, I do because I'm living there. That's the only place that I - - we have, and my sister, we all do live there, I mean, all the way.
>
> MS. FRAZER: But it was only after you met with Mr. Calsada [Debtor's present counsel] that you decided that you still had some sort of an ownership interest, isn't that correct?
>
> DEBTOR: No.
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> MS. FRAZER: Well, your testimony earlier said you told Ms. Aragon that you didn't own any property.
>
> DEBTOR: Well, on paper, no, but on my heart, yes.

Tr. Hr'g. 44:22-45:10.

Admittedly, there is likely sufficient evidence in the record from which to conclude that Debtor attempted to hide his interest in the Property, and claimed the homestead exemption only after Trustee discovered the true state of affairs. However, the bankruptcy court found that Debtor did not attempt to hide the Property from Trustee, but instead simply did not know how to describe the nature of his interest in the Property in a legally precise manner. Thus, the bankruptcy court concluded that Trustee had not proven that Debtor engaged in bad faith.

While the evidence is equivocal, the bankruptcy court did not commit clear error when it determined Debtor did not engage in bad faith. Beauchamp, 236 B.R. at 729-30 ("If two views of the evidence are possible, the trial judge's choice between them cannot be clearly erroneous."). The bankruptcy court heard the testimony and considered the evidence adduced by the parties at the hearing on October 11, 2006. Even if we disagree with the

bankruptcy court's conclusion, we are required to give special deference to credibility findings of a trial court. Anderson v. City of Bessemer, 470 U.S. 564, 573 (1985). There was evidence submitted to the bankruptcy court that Debtor misunderstood the nature of his interest in the Property. When Debtor retained a new attorney, and his interest was more closely examined by counsel, Debtor's bankruptcy schedules were promptly amended.[7]

The bankruptcy court did not clearly err in finding that Debtor had not attempted to hide his interest in the Property from Trustee. Thus, the bankruptcy court did not err when it determined that Debtor did not engage in bad faith in amending his real property and exemption schedules .

II.

Debtor was not precluded from claiming a homestead exemption by § 522(q).

Trustee contends that although California law provides a broad homestead exemption,[8] under § 522(g)[9] of the Bankruptcy

[7] Assuming Debtor was attempting to hide his interest in the Property, it is difficult for the Panel to understand why he would turn over his tax returns to Trustee showing the mortgage interest deductions. At oral argument, in response to a question about this point, Trustee's counsel argued that there was nothing "voluntary" about Hidalgo's submission of his tax returns to Trustee because, under BAPCPA, a debtor is required to supply returns for the most recent tax year to the trustee. § 521(e)(2)(A)(i). Even so, Trustee had testified that Debtor also voluntarily provided a tax return for the year prior to the one required. Tr. Hr'g 64:11-13 ("She [Aragon] confirmed the story that the deduction was a gift, and she provided me with the prior year's tax return that showed the same deduction.").

[8] The parties do not dispute that, as the bankruptcy court concluded, California law would permit Debtor to claim a

(continued...)

Code, the bankruptcy court erred by declining to hold that Debtor was precluded from claiming such an exemption because he voluntarily transferred the Property to his sister, and then concealed the transfer and his remaining interest in the Property, from Trustee. Although § 522(g) was raised in the written briefs the parties submitted prior to the evidentiary hearing in the bankruptcy court, Trustee did not address the § 522(g) argument during the hearing. Instead, the bankruptcy court summarily concluded at the beginning of the hearing that had Debtor claimed the exemption from the commencement of his case, he would have been entitled to the exemption pursuant to state law. Tr. Hr'g. 5:9-23. The bankruptcy judge explained that she read all the cases the parties had cited in their briefing of the issue, and determined that the exemption was appropriate, leaving the only issue to address during the hearing

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[8](...continued)
homestead exemption in an equitable interest in the Property. See Putnam Sand & Gravel Co., Inc. v. Albers, 92 Cal. Rptr. 636, 639 (Cal. Ct. App. 1971) ("[N]otwithstanding the fraudulent conveyance, the defendants retained an equitable interest in the property which would enable them to file a valid claim of homestead before judgment.").

[9] Section 522(g) provides in relevant part:

> Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 543, 550, 551 or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred if –
> (1)(A) such transfer was not a voluntary transfer of such property by the debtor; and
> (B) the debtor did not conceal such property[.]

to be whether Debtor should be allowed to amend his schedules to claim it. Tr. Hr'g. 6:3-13.

"We may, in the absence of detailed findings, review a trial court's order if a complete understanding of the issues may be obtained from the record as a whole[.]" Harris v. United States Trustee (In re Harris), 279 B.R. 254, 261 (9th Cir. BAP 2002) (citations omitted). "In so doing, we may search the record for evidence supporting the order because we may affirm for any reason supported by the record." Id. (citing Dittman v. California, 191 F.3d 1020, 1027 n.3 (9th Cir. 1999); Polo Bldg. Group, Inc. v. Rakita (In re Shubov), 253 B.R. 540, 547 (9th Cir. BAP 2000)).

In a California bankruptcy case, a debtor may claim property exempt based upon state law. § 522(b)(1)-(3). "Section 522(g), however, limits the ability of a debtor to claim an exemption where the trustee has recovered property for the benefit of the estate." Hitt v. Glass (In re Glass), 164 B.R. 759, 761 (9th Cir. BAP 1994). "The purpose of § 522(g) is to prevent a debtor from claiming an exemption in recovered property which was transferred in a manner giving rise to the trustee's avoiding powers, where the transfer was voluntary or where the transfer or property interest was concealed." Id. at 764. However, in order to invoke § 522(g), the property at issue must have been recovered for the benefit of the bankruptcy estate. Id. at 764-65. Although the trustee need not have recovered the property by any formal means, § 522(g)(1) requires that the property at issue in fact be returned to the bankruptcy estate. Id.

In this case, at the time the bankruptcy court ruled on

Trustee's objection to Debtor's exemption claim, Trustee had commenced an adversary proceeding against Debtor's sister, asserting that the transfer of Debtor's legal interest in the Property to her constituted a fraudulent conveyance, and was therefore subject to avoidance. § 548(a)(1). But that action had not been concluded, Debtor's transfer had not been adjudged to have been fraudulent, nor had Debtor's legal interest in the Property been returned to the estate at the time of the hearing regarding Debtor's homestead exemption claim. It would therefore appear that Trustee's attempt to invoke § 522(g) under these facts was premature. Even so, Trustee relies upon several cases to support his contention that § 522(g) operates to deny Debtor a homestead exemption. We disagree with the argument that the case law compels such a result.

The first case cited for support by Trustee is Trujillo v. Grimmett (In re Trujillo), 215 B.R. 200 (9th Cir. BAP 1997), aff'd, 166 F.3d 1218 (9th Cir. 1999), a decision involving similar facts. There, the debtors deeded their home, without consideration, to their daughter to obtain a loan because the debtors' credit rating prevented them from obtaining the loan themselves. The debtors, however, "retained both possession and control of the house." Id. at 202. The Panel's decision makes clear that the issue to be decided was not whether debtors' exemption claim should be denied, but rather the propriety of "the [bankruptcy court's] amended judgment which found that the property had been fraudulently conveyed." Id. at 205. In other words, while the underlying facts are similar, because Trujillo addressed only issues arising from a transfer avoidance action,

it does not, as Trustee argues, support denying Debtor an exemption prior to a determination whether his transfer of the Property to his sister was in fact fraudulent.

In another case relied upon by Trustee, the debtor "quitclaimed a fee interest in his residence to his son . . . for 'love and affection.'" Glass, 164 B.R. at 760. When he later filed for bankruptcy relief, the debtor did not include the residence in his schedules, disclose the transfer on his statement of financial affairs, or claim an exemption. Id. After the trustee became aware of the property and the debtor amended his schedules to claim an exemption, the trustee objected to the exemption claim pursuant to § 522(g), and gave notice of his intent to seek avoidance of the transfer to the debtor's son. Id. at 761. The son promptly reconveyed the property to the debtor. Id. The issue before the Panel was, under those facts, whether § 522(g) precluded the debtor's exemption claim, since the property was recovered without the necessity of prosecution of an adversary proceeding by the trustee. The Panel held that, for § 522(g) to apply, the recovery of the property by the estate need not result from a formal adversary proceeding, or via a bankruptcy court judgment or order. Id. at 764-65. The Panel explained that:

> [a] trustee, however, must present sufficient facts upon which a bankruptcy court could reasonably conclude that a debtor transferred property in such a manner as to invoke the trustee's avoidance powers . . . , the transfer was voluntary or the debtor knowingly concealed the transfer or an interest in the property, and the property was returned to the estate as the result of the trustee's efforts, not limited to actions directed toward the transferee.

Id. at 765 (emphasis added).

Glass does not support Trustee's argument. Section 522(g) does not prevent Debtor from claiming the homestead exemption here because Debtor's interest in the Property has not at this time, by any means, been "returned to the estate as the result of trustee's efforts . . . ." See id.

Finally, Trustee cites Fox v. Smoker (In re Noblit), 72 F.3d 757, 758 (9th Cir. 1995), for the proposition that "if exempt property is transferred, the debtor has, in essence, waived the exemption." Appellant Trustee's Opening Brief at 6. However, Noblit addressed whether a transferee had standing to assert the debtor-transferor's exemption as a defense to a trustee's action to avoid the transfer. The Ninth Circuit concluded that there was no standing. Noblit, 72 F.3d at 759. The case focused on the personal nature of the exemption to the debtor, but does not address the implications of § 522(g).

Instead, the case law appears clear that § 522(g) operates to prevent a debtor, who has voluntarily transferred property, from later claiming an exemption in that property after it has been recovered by the trustee. While Debtor's legal title to the Property was voluntarily conveyed to his sister, that interest has not yet been returned to the estate, nor has the bankruptcy court deemed the transfer an avoidable one. Under these facts, § 522(g) does not prevent Debtor from claiming the homestead exemption allowed under state law. Indeed, Trustee sought application of § 522(g) prematurely, and the bankruptcy court did not err in refusing to disallow Debtor's exemption.[10]

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[10] There is an additional concern with the application of § 522(g) to these facts, although one not raised by the parties (continued...)

CONCLUSION

The bankruptcy court's finding that Debtor did not engage in bad faith in amending his schedules to list the Property and claiming it exempt as a homestead was not clearly erroneous. Nor did the bankruptcy court err in declining to apply § 522(g) to prevent Debtor from claiming the exemption, prior to Trustee's recovery of the Property.

The bankruptcy court's order overruling Trustee's objection to Debtor's homestead exemption is **AFFIRMED**.

KLEIN, Bankruptcy Judge, concurring:

I join the majority decision solely because the decision to permit the exemption was within the zone of permissible outcomes to which an appellate court owes deference to the trial court under the clear error standard. While I question whether I would have made the same ruling and regard the "wedding gift" story as so preposterous as to be probative of a deceptive state of mind, I cannot say that I have a definite and firm conviction that an error was made with respect to the determination that the debtor was not animated by bad faith in claiming the exemption.

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[10](...continued)
in their briefs. Debtor claimed the homestead exemption only in his remaining equitable interest in the Property, something allowed under California law. Debtor acknowledges that he never transferred his equitable interest to his sister, only record title to the Property. Because he is exempting an interest that has not been transferred, it would seem the provisions of § 522(g) are not triggered and do not prohibit the exemption.

I write separately to be definite and firm that the decision to permit the exemption does not deleteriously affect the trustee's ability to avoid any transfer regarding the property or to object to the debtor's discharge. Cf., Hughes v. Lawson (In re Lawson), 122 F.3d 1237, 1241 (9th Cir. 1997) ("continuing concealment" doctrine permits § 727(a)(2) action to be timely despite long-term concealment of interest in residence).

It is worth noting that an advice 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. First Beverly Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1343 (9th Cir. 1987); Creative Recreational Sys., Inc. v. Rice (In re Rice), 109 B.R. 405, 408-09 (Bankr. E.D. Cal. 1989), aff'd mem., 126 B.R. 822 (9th Cir. BAP 1991). Moreover, the settled rule is that clients are held accountable for the acts and omissions of their attorneys. Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 396-97 (1993); Link v. Wabash R. Co., 370 U.S. 626, 633-34 (1962).

It is alarming that attorney Jennifer Aragon, a member of the California state bar who has represented more than 6,000 bankruptcy debtors, would not understand the distinction between legal title and equitable interests, would not either bother or know how to read a tax return, and would not competently investigate and adequately disclose the facts:

> Q. Is a significant portion of your practice represent[ing] debtors in bankruptcy proceedings?
>
> A. That's true.
>
> Q. And approximately how many debtors do you believe you've represented over the course of your career?

A. Slightly over 6,000.

Hrg. Tr. 10/11/06 25:12-17 (Testimony of Jennifer Aragon).

The very integrity of the bankruptcy system depends upon full, candid, and complete disclosure of assets and financial affairs. Searles v. Riley (In re Riley), 317 B.R. 368, 378 (9th Cir. BAP 2004), aff'd mem., 212 F. App'x 589 (9th Cir. 2006) (§ 727 denial of discharge).

It is of even greater concern that she would presume to advise her client, after being told what her client told her, to omit from the schedules the equitable interest in the residence. A 6000-case bankruptcy attorney who renders such advice and prepares such plainly defective schedules is playing with fire and inviting scrutiny. See 18 U.S.C. §§ 151-57.