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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  
) 15-1378-DTaJu  
) (related appeals)  
FRANCES ELIZABETH PASS, )  
) Bk. No. 13-16171-B-7  
)  
Debtor. )

\_\_\_\_\_  
JAMES E. SALVEN, CHAPTER 7  
TRUSTEE,  
Appellant,

v.

**O P I N I O N**

ALADINO JOSEPH GALLI;  
FRANCES ELIZABETH PASS,  
Appellees.

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

Hon. 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.

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1 DUNN, Bankruptcy Judge:  
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3 Frances Elizabeth Pass and Aladino Joseph Galli commenced a  
4 chapter 13<sup>1</sup> 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  
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26 <sup>1</sup> 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 2014, 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.<sup>2</sup> 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  
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24 <sup>2</sup> 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,<sup>3</sup> respectively. These  
24 protections are available under different circumstances, they

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26 <sup>3</sup> 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.<sup>4</sup> 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  
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26 <sup>4</sup> 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.<sup>5</sup>

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

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24  
25 <sup>5</sup> 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.<sup>6</sup> 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 <sup>6</sup> 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.