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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re: RODRIGO AGUIRRE, Debtor.	BAP No. SC-25-1135-BLN Bk. No. 23-03639-CL7
MARIO MONTES MORA, Appellant, v. RODRIGO AGUIRRE, Appellee.	**MEMORANDUM***

Appeal from the United States Bankruptcy Court
for the Southern District of California
Christopher B. Latham, Chief Bankruptcy Judge, Presiding

Before: BRAND, LAFFERTY, and NIEMANN, Bankruptcy Judges.

INTRODUCTION

Appellant Mario Montes Mora appeals an order overruling his objection to the debtor's claimed homestead exemption under Cal. Code Civ. P. ("CCP") § 704.730. Debtor Rodrigo Aguirre[1] initially claimed a homestead exemption under this provision, but after being told by the chapter 7[2] trustee

* 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] We refer to Mr. Aguirre as "Rodrigo" and his wife as "Jacqueline" since they share the same last name. No disrespect is intended.

[2] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of

("Trustee") and Mora's attorney that he could not do so, Rodrigo's attorney had Rodrigo and Jacqueline, his estranged and nonfiling wife, file a waiver as to any exemptions under CCP § 704.010 et seq., including the more generous homestead exemption under CCP § 704.730. Rodrigo also filed an amended Schedule C to claim a different homestead exemption under CCP § 703.140(b).

Rodrigo later learned from his new attorney that Trustee and Mora's attorney were wrong and that he was always eligible to claim the more generous homestead exemption. Rodrigo filed another amended Schedule C to switch his homestead exemption back to one under CCP § 704.730. Mora objected, arguing that Rodrigo was bound by the waiver and his first amended Schedule C and was equitably estopped from switching his homestead exemption.

The bankruptcy court overruled Mora's objection, determining that Rodrigo and Jacqueline's waiver was ineffective and that Mora had failed to establish equitable estoppel on the facts. We AFFIRM.

FACTS

After a joint business venture failed, Mora sued Rodrigo in California state court. Ultimately, the parties settled. After Rodrigo failed to comply with the settlement terms, a stipulated judgment for $73,417.99 was entered in favor of Mora and against Rodrigo and recorded in San Diego County.

Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

A. The bankruptcy filing, original and first amended schedules

Rodrigo filed an individual chapter 7 bankruptcy case on November 21, 2023. On Schedule A/B, he listed a one-third interest in a residential duplex known as the Ensenada Property. On Schedule C, he utilized the state's "regular exemptions" scheme under CCP § 704.010 et seq. He claimed a $228,816.72 homestead exemption for the Ensenada Property under CCP § 704.730. This left essentially no nonexempt equity for the estate.

One unit of the Ensenada Property is the marital home of Rodrigo and Jacqueline; the other unit is occupied by the other joint owners. Jacqueline has no ownership interest in the Ensenada Property. Rodrigo and Jacqueline have been estranged since June 2023 due to a protective order in effect until June 2026. On the petition date, Rodrigo was living at his business due to the protective order. He intends to return to the Ensenada Property to live with Jacqueline and their children when the order expires.

At a § 341(a) meeting, Trustee and Mora's attorney told Rodrigo that he could not claim a homestead exemption under CCP § 704.730 because he was not residing at the Ensenada Property on the petition date.[3] In response, Rodrigo's former attorney had Rodrigo and Jacqueline sign and file a spousal waiver waiving the right to utilize the regular exemptions scheme. Rodrigo also filed a first amended Schedule C utilizing the state's "special exemptions" scheme under CCP § 703.140(b), which included the less favorable homestead

[3] Neither Trustee nor Mora's attorney deny that they made these statements, but no one disputes that Rodrigo was entitled to claim the CCP § 704.730 homestead exemption on the petition date.

exemption for the Ensenada Property. This left roughly $197,478 in nonexempt equity for the estate.

Trustee then employed counsel to help sell Rodrigo's nonexempt interest in the Ensenada Property. Rodrigo, in turn, moved to convert his case to chapter 13. Trustee and Mora objected, arguing bad faith and that Rodrigo's plan was unconfirmable because he proposed to pay unsecured creditors only $45,836, when there was $197,478 in nonexempt equity in the Ensenada Property based on his claimed homestead exemption under CCP § 703.140(b). The bankruptcy court denied conversion, finding that Rodrigo could not meet the § 1325 liquidation test due to the nonexempt equity.

B. The second amended schedules, Mora's objection, and court's ruling

About 15 months after filing the spousal waiver and the first amended Schedule C, Rodrigo, with new counsel, filed second amended Schedules A/B and C. He now claimed a 50% interest in the Ensenada Property and switched back to the "regular exemptions" under CCP § 704.010 et seq., which included a $699,420 homestead exemption for the Ensenada Property under CCP § 704.730. This again left no nonexempt equity for the estate.

Mora objected to Rodrigo's second amended Schedule C on equitable estoppel grounds. He argued that Rodrigo's filing of the first amended Schedule C and position in the motion to convert demonstrated Rodrigo's intent to utilize the special exemptions and claim the lower homestead exemption. In addition, Rodrigo and Jacqueline had filed a spousal waiver, waiving the right to the regular exemptions and the more generous

homestead exemption under CCP § 704.730. Mora argued that at no time prior did he know that Rodrigo's real intention was to claim the regular exemptions, and that Mora and Trustee were induced to rely on Rodrigo's election to utilize the special exemptions. Mora argued that had he known Rodrigo intended to claim the regular exemptions and the homestead exemption under CCP § 704.730, he would have raised the issue in his §§ 523 and 727 adversary proceeding against Rodrigo, which Mora argued was dismissed based upon the exemptions then being claimed by Rodrigo. Mora also argued that Rodrigo's actions induced Trustee to incur wasteful administrative expenses in an effort to liquidate Rodrigo's nonexempt interest in the Ensenada Property.

Rodrigo argued that Mora's objection on equitable estoppel grounds failed. First, he argued that he and Jacqueline were not required to sign and file a spousal waiver according to the exception in CCP § 704.140(a)(2)(B); they were living separately on the petition date and Jacqueline had no interest in the Ensenada Property. Rodrigo stated that when his former attorney presented them with the spousal waiver, he did not fully understand its purpose and thought it had to do with Jacqueline agreeing that Rodrigo had a 50% interest in the Ensenada Property and that she had no ownership or homestead interest in it. Rodrigo contended that he thought he was required to claim the special exemptions and execute the spousal waiver and file the first amended Schedule C based on what Trustee and Mora's attorney told him regarding the homestead exemption. Rodrigo contended that he had

no intention to switch back to the regular exemptions until his new attorney told him that no spousal waiver was required and that he could always have claimed the regular exemptions. Thus, Rodrigo argued, Mora could not claim that Rodrigo always knew he was going to claim the regular exemptions, or that Rodrigo intended to induce Mora to rely on the possibility that he would never return to the regular exemptions.

Rodrigo also argued that Mora failed to show any prejudice by the changed homestead exemption. Mora had not explained what "issue" he would have raised in the dismissed adversary proceeding had Rodrigo switched back to the regular exemptions while that proceeding was pending, or how this fact would have allowed Mora to state a proper claim under § 523 or § 727. Contrary to Mora's assertion, argued Rodrigo, the complaints were dismissed for failure to state a plausible claim, not because of any exemptions he had claimed or was claiming.

Lastly, Rodrigo argued that if Civil Rule 60(b) applied to the spousal wavier, he wanted an opportunity to file such motion. Rodrigo argued that the error of signing and filing the spousal waiver was not his, and that he should not be punished with the loss of the more favorable homestead exemption that he was entitled to all along.

In reply, Mora argued that Rodrigo had not shown why he should not be bound by the spousal waiver. Simply getting new counsel was not a reason to revisit prior orders and did not support amending the schedules more than a year after Rodrigo had expressly amended them to claim the

special exemptions and had filed the spousal waiver. Mora argued that having a potential malpractice claim against one's attorney did not constitute a "mistake" supporting relief under Civil Rule 60(b). Alternatively, he argued, if Civil Rule 60(b) could apply, Rodrigo's request was untimely.

The bankruptcy court overruled Mora's objection. It determined that the spousal waiver was ineffective as to Rodrigo and Jacqueline, and so Rodrigo was not bound by it. Consequently, the court said it did not need to reach the issue of whether a Civil Rule 60(b) motion was necessary for relief from the spousal waiver. The court further determined that Mora had not met his burden to show that Rodrigo was equitably estopped from switching back to the regular exemptions. This timely appeal followed.

JURISDICTION

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

ISSUES

1. Did the bankruptcy court err in determining that the spousal waiver was ineffective?

2. Did the bankruptcy court err by not applying Civil Rule 60(b) to the spousal waiver?

3. Did the bankruptcy court abuse its discretion by not applying equitable estoppel to sustain Mora's objection?

STANDARDS OF REVIEW

We review the bankruptcy court's interpretation of state exemption

laws de novo. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 333 (9th Cir. BAP 2016). De novo means that we review a matter anew, as if no decision had previously been rendered. *Id*. at 333-34. We review the bankruptcy court's findings of fact with respect to a claimed exemption for clear error. *Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 191 (9th Cir. BAP 2014). Factual findings are clearly erroneous if they are illogical, implausible, or without support in the record. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010).

We review the bankruptcy court's decision whether to apply equitable estoppel for an abuse of discretion. *Parker v. Smith (In re Smith)*, BAP No. EC-16-1140-BJuTa, 2017 WL 1457942, at *4 (9th Cir. BAP Apr. 24, 2017) (citing *Leong v. Potter*, 347 F.3d 1117, 1121 (9th Cir. 2003)). A bankruptcy court abuses its discretion if it applies an incorrect legal standard, misapplies the correct legal standard, or makes factual findings that are illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

DISCUSSION

A. Applicable exemptions law

California has opted out of the federal exemption scheme and permits its debtors only the exemptions allowable under state law. CCP § 703.130. Consequently, California law defines a debtor's right to claim particular exemptions and the amount of those exemptions. *See Law v. Siegel*, 571 U.S. 415, 425 (2014) (noting the scope of a state-created exemption is determined by state law, "which may provide that certain types of debtor misconduct

warrant denial of the exemption."); *Canino v. Bleau (In re Canino)*, 185 B.R. 584, 590 (9th Cir. BAP 1995) (noting that "substantive issues regarding claimed exemptions are governed by California law.").

California debtors can choose from two mutually exclusive exemption schemes: (1) the "regular exemptions" under CCP § 704.010 et seq. available to judgment debtors outside of bankruptcy; or (2) the "special exemptions" under CCP § 703.140(b) available only to bankruptcy debtors. *See* CCP § 703.140(a). The regular exemptions provide a generous homestead exemption, while the special exemptions provide a small homestead exemption but a generous "wildcard" exemption that can be used to protect any asset. *See In re Gomez*, 530 B.R. 751, 754-55 (Bankr. E.D. Cal. 2015) (explaining the two exemption schemes).

California exemptions are broadly and liberally construed in favor of the debtor. *In re Elliott*, 523 B.R. at 192. Rule 1009(a) permits debtors to amend their claims of exemptions "as a matter of course at any time before the case is closed," and Rule 4003(b)(1) gives any creditor or the trustee 30 days to object to the amendment. Nonetheless, amending a Schedule C to claim an exemption is a separate question from whether the exemption is allowable. *Andermahr v. Barrus (In re Andermahr)*, 30 B.R. 532, 534 (9th Cir. BAP 1983); *In re Gonzalez*, 620 B.R. 296, 311-12 (Bankr. C.D. Cal. 2019) (citations omitted).

B. The bankruptcy court did not err in determining that the spousal waiver was ineffective.

In California, when a married debtor files individually, the regular

exemptions apply by default and the debtor may not claim the special exemptions unless both spouses effectively waive the right to claim, while debtor's case is pending, the regular exemptions in any case involving either of them. CCP § 703.140(a)(2)(A);[4] *In re Geisenheimer*, 530 B.R. 747, 750 (Bankr. E.D. Cal. 2015) (discussing the spousal waiver). Thus, with an effective waiver from both spouses, the filing spouse may claim the special exemptions. *Id.* However, a waiver is not required if the spouses are living separate and apart on the petition date and they do not jointly own a property that could be exempted as a homestead under CCP § 704. *See* CCP § 703.140(a)(2)(B).[5]

A spousal waiver under CCP § 703.140(a)(2)(A) has three statutory requirements: (1) both the filing and nonfiling spouse must waive the right to claim the regular exemptions; (2) both waivers must be effective; and (3) the waivers must be in writing. Under California law, a waiver is "the intentional

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[4] CCP § 703.140(a)(2)(A) provides, in relevant part:
If the petition is filed individually . . . for a spouse, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both of the spouses effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them . . . then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

[5] CCP § 703.140(a)(2)(B) provides, in relevant part:
Notwithstanding subparagraph (A), a waiver is not required from a debtor who is living separate and apart from their spouse as of the date the petition . . . is filed, unless, on the petition date, the debtor and the debtor's spouse shared an ownership interest in property that could be exempted as a homestead under Article 4 of this chapter.

relinquishment of a known right after knowledge of the facts." *Roesch v. De Mota*, 24 Cal. 2d 563, 572 (1944). "The pivotal issue in a claim of waiver is the intention of the party who allegedly relinquished the known legal right." *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd.*, 30 Cal. App. 4th 54, 60 (1994). "The burden . . . is on the party claiming a waiver of a right to prove it by clear and convincing evidence that does not leave the matter to speculation, and doubtful cases will be decided against a waiver." *Id.* (citation modified).

The bankruptcy court found that the spousal waiver to forego the regular exemptions was ineffective and not binding. Whether there has been a waiver is a question of fact reversible only for clear error. *See Trujillo v. City of L.A.*, 276 Cal. App. 2d 333, 343 (1969). Mora argues that the spousal waiver was effective because: (1) it was a written expression of Rodrigo and Jacqueline's intent to forego the right to claim the regular exemptions; (2) they evidenced an intent to be bound by signing it; (3) Rodrigo was represented by counsel, and so he made a fully informed and voluntary waiver; and (4) they chose to file it. Mora argues that the bankruptcy court erred in finding that the spousal waiver was ineffective because it was not required by statute. He mischaracterizes the court's ruling.

First, the court found that Rodrigo did not need a spousal waiver to claim the special exemptions. According to CCP § 703.140(a)(2)(B), a spousal waiver is not required where the spouses are living separately and do not jointly own a property that could be exempted as a homestead under CCP

§ 704. That is exactly the situation presented here. Rodrigo and Jacqueline did not live together on the petition date and she had no ownership interest in the Ensenada Property to claim exempt under CCP § 704 in any bankruptcy case. In addition, the court found that Jacqueline's waiver was ineffective because she had no homestead exemption right to waive.

The court also questioned the effectiveness of Rodrigo's waiver because, at the time he signed it, he did not think he had a right to the regular exemptions or the homestead exemption under CCP § 704.730 based on what Trustee, Mora's attorney, and possibly Rodrigo's own attorney had told him. In California, the pivotal issue in determining whether a waiver has occurred is the intent of the party making the waiver. A waiver can only occur if the person intended to give up a "known right after knowledge of the facts." *Roesch*, 24 Cal. 2d at 572. Rodrigo could not give up a right he did not think he had. Further, Rodrigo stated that he thought the spousal waiver had to do with Jacqueline agreeing that he had a 50% interest in the Ensenada Property and that she had no ownership or homestead interest in it. In short, the requisite intent for a knowing waiver was lacking.

An effective spousal waiver under CCP § 703.140(a)(2)(A) requires that *both* waivers be effective. On these facts, the bankruptcy court did not clearly err in finding that the spousal waiver was ineffective for purposes of the statute.

Mora argues that Rodrigo had to seek relief under Civil Rule 60(b), applicable in bankruptcy by Rule 9024, to withdraw the spousal waiver. The

bankruptcy court did not reach this issue because it found that the spousal waiver was ineffective; thus, there was nothing for Rodrigo to seek relief from. Mora relies on *In re Gomez*, 530 B.R. at 757-58, which held that an "effective" spousal waiver under CCP § 703.140(a)(2)(A) binds the debtor and the nonfiling spouse absent relief under Civil Rule 60(b) on a showing of mistake, inadvertence, surprise, or excusable neglect. We need not decide this issue because the spousal waiver here was ineffective.

C. The bankruptcy court did not abuse its discretion by not applying equitable estoppel.

Although the spousal waiver was ineffective, the bankruptcy court still had to determine whether Rodrigo's amended homestead exemption under CCP § 704.730 was allowable in light of Mora's timely objection on the basis of equitable estoppel. The doctrine of equitable estoppel can be invoked to sustain an objection to a California exemption. *Guevarra v. Whatley (In re Guevarra)*, 638 B.R. 120, 129 (9th Cir. BAP 2022) (citing cases); *In re Gonzalez*, 620 B.R. at 310-12. Equitable estoppel "is applicable where the conduct of one side has induced the other to take such a position that it would be injured if the first should be permitted to repudiate its acts." *DRG/Beverly Hills, Ltd.*, 30 Cal. App. 4th at 59. Whether an estoppel exists is a question of fact. *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.*, 40 Cal. 3d 5, 16 (1985).

To successfully invoke equitable estoppel under California law, the objecting party has the burden to show:

> (a) a representation or concealment of material facts (b) made with knowledge, actual or virtual, of the facts (c) to a party

> ignorant, actually and permissibly, of the truth (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it.

Behnke v. State Farm Gen. Ins. Co., 196 Cal. App. 4th 1443, 1462 (2011) (quoting 13 WITKIN SUMMARY OF CAL. LAW § 191, at 527-28 (10th ed. 2005)); *In re Guevarra*, 638 B.R. at 129. The doctrine's inducement element "requires that the party asserting equitable estoppel change her position in reliance on something said or done by the other party, resulting in detriment or prejudice to the party asserting equitable estoppel." *In re Lua*, 529 B.R. 766 (Bankr. C.D. Cal.), *aff'd*, 551 B.R. 448 (C.D. Cal. 2015), *rev'd and remanded on other grounds*, 692 F. App'x 851 (9th Cir. 2017). "Estoppel will not be found unless all elements are satisfied." *Lua v. Miller (In re Lua)*, 692 F. App'x 851, 852 (9th Cir. 2017) (citing *Moore v. State Bd. of Control*, 112 Cal. App. 4th 371, 384 (2003)).

Mora argued that Rodrigo was equitably estopped from switching back to the regular exemptions after having signed and filed the spousal waiver and after having filed the first amended Schedule C claiming the special exemptions. The bankruptcy court disagreed. Mora does not argue that the court applied an incorrect standard of law. Rather, he appears to disagree with the court's findings of fact to determine that equitable estoppel did not apply in this case.

In reviewing the elements of equitable estoppel, the court determined that Mora failed to meet his burden to show that each element was satisfied. The court found that it was uncontroverted that Rodrigo had signed and filed the spousal waiver, filed his first amended Schedule C, and made statements

in litigation all the while believing that he was not entitled to utilize the regular exemptions, including the homestead exemption under CCP § 704.730. As such, the court found that it could not be said that Rodrigo always intended to utilize the regular exemptions. But even if that was his intent, the court found that Mora had not demonstrated any cognizable detrimental reliance. Mora had argued that he relied on Rodrigo's representations in the spousal waiver and first amended Schedule C that Rodrigo was utilizing the special exemptions, and that Mora could have raised the issue of Rodrigo's real intention to utilize the regular exemptions in the adversary proceeding had Mora known the truth. However, the court found that Mora failed to articulate how this would have bolstered his claims under either § 523 or § 727, which left the court "to speculate on how that could be so."

Even if what Mora alleged was true as to Rodrigo's intent to utilize the regular exemptions all along, he did not show how his reliance on Rodrigo's election to claim the special exemptions via the spousal waiver and first amended Schedule C harmed or prejudiced him. Mora never articulated with any precision what he could have pleaded regarding Rodrigo's claimed exemptions that would have prevented his adversary proceeding against Rodrigo from being dismissed with prejudice. As for Mora's allegation that Trustee was induced to incur administrative expenses in reliance on Rodrigo's election to utilize the special exemptions, Trustee did not object to

the second amended Schedule C and Mora lacks standing to raise any argument on his behalf.

Mora argues that this case is factually similar to *Gonzalez*, but he does not explain how it is similar or why that requires a different result. In any event, we disagree. In *Gonzalez*, the bankruptcy court applied equitable estoppel to sustain the trustee's objection to the debtor's amended Schedule C claiming the regular exemptions after having claimed the special exemptions for several reasons not present here. 620 B.R. at 333. There, the debtor owned a home but claimed only personal property exemptions under the special exemption scheme in his initial Schedule C and two amendments thereafter. *Id.* at 302. Later, the debtor litigated to trial the trustee's objection to a claimed exemption for real estate commissions under CCP § 703.140(b), for which there was a final non-appealable order determining that the debtor was not entitled to the exemption under that provision. *Id.* at 305-08. The trustee had also employed a real estate broker, which the debtor did not oppose, and sold the home. *Id.* at 308-09. It was only after the exemption litigation had concluded and just before the trustee sold the home that the debtor filed an amended Schedule C claiming the regular exemptions and claiming for the first time any homestead exemption under CCP § 704.730. *Id.* at 308. By that time, however, the debtor, who always knew that he could choose either California exemption scheme but repeatedly chose to claim the special exemptions and solely for personal property, had induced the trustee to incur substantial litigation costs over the claimed commission exemption and

administrative expenses to sell the home. *Id.* at 322-23, 333. That is simply not this case.

Because the bankruptcy court's findings are plausible and supported by the facts in the record, we see no abuse of discretion in its decision not to apply equitable estoppel.

CONCLUSION

For the reasons stated above, we AFFIRM.