


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 12, 2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No. 17-12445-MKN
)	Chapter 7
LINDA C. STRASBERG,)	
)	Date: March 7, 2018
Debtor.)	Time: 2:30 p.m.

ORDER ON MOTION FOR ABANDONMENT¹

On March 7, 2018, the court heard the Motion for Abandonment (“Motion”) brought by Bank of America, N.A. (“BOA”). BOA appeared through counsel, and Linda C. Strasberg (“Debtor”) appeared in pro se. After arguments were presented, the matter was taken under submission.

BACKGROUND

On May 9, 2017, a voluntary Chapter 7 petition was filed by Debtor. (ECF No. 1). On May 12, 2017, a notice was served to all creditors that the case was assigned for administration to Chapter 7 bankruptcy trustee, Shelley D. Krohn (“Trustee”). (ECF Nos. 5 and 8). The same notice indicated that (1) a meeting of creditors would be held on June 14, 2017, (2) any objections to the Debtor’s discharge or to the dischargeability of debts must be filed by August 14, 2017, and (3) creditors need not file any proofs of claim unless otherwise notified by the

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “NRS” are to provisions of the Nevada Revised Statutes. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure. All references to “FRE” are to the Federal Rules of Evidence.

1 court.²

2 On May 26, 2017, Debtor filed her schedules of assets and liabilities (“Schedules”) along
3 with her Statement of Financial Affairs (“SOFA”).³ (ECF No. 11). On her property Schedule
4 “A/B,” Debtor listed certain real property located at 171 Jeri Drive, Henderson, Nevada 89074
5 (“Residence”). She attested that the fair market value of the Residence was \$341,886. On her
6 Schedule “C,” Debtor claimed the Residence as exempt in the amount of \$0.00 under NRS
7 21.090(1)(j). On her secured creditor Schedule “D,” Debtor listed BOA as having a disputed
8 claim in the amount of \$363,257 secured by a mortgage against the Residence. Part 4, Item 9 of
9 the Debtor’s SOFA discloses two lawsuits pending within one year of the bankruptcy filing.
10 One of those lawsuits is a judicial foreclosure action brought against the Debtor by BOA,
11 denominated Case No. A741174, in the district court for Clark County, Nevada.

12 On July 20, 2017, Debtor filed amended Schedules. (ECF No. 16). On her amended
13 Schedule “C,” Debtor claimed the Residence as exempt for 100% of its fair market value under
14 NRS 21.090(1)(l) and NRS 115.050.

15 On August 4, 2017, BOA filed a motion for relief from stay and for abandonment
16 (“MRAS”) with respect to the Residence. (ECF No. 25). The MRAS alleged that since
17 February 2009, the Debtor has been in default on her loan secured by the Residence, and that she
18 was in arrears in the amount of \$285,917.73 as of July 26, 2017. A hearing on the MRAS was
19 noticed to be held on September 6, 2017. (ECF No. 26).

20 On August 21, 2017, Debtor filed an objection to the MRAS. (ECF No. 29).

21 On August 29, 2017, Debtor filed further amended Schedules. (ECF No. 34). On her
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23 ² The meeting of creditors was continued on numerous occasions (ECF Nos. 14, 15, and
24 22) and was concluded on September 6, 2017. (ECF No. 39).

25 ³ Under FRE 201, the court takes judicial notice of the Schedules, SOFA, and other
26 documents appearing on the docket in this case. See United States v. Wilson, 631 F.2d 118, 119
27 (9th Cir. 1980); Conde v. Open Door Marketing, LLC, 223 F.Supp.3d 949, 970 n.9 (N.D. Cal.
28 2017). Because the Schedules and SOFA are signed under penalty of perjury, the
representations made by the Debtor in those documents constitute judicial admissions of the
matters asserted under FRE 801(d)(2). See In re Martell, 349 B.R. 233, 234 n.1 (Bankr. D. Idaho
2005).

1 amended Schedule "A/B," Debtor listed a potential claim in an unknown amount against BOA,
2 dba BAC Home Loan Services LP fka Countrywide Home Loan Service LP. On her amended
3 Schedule "C," she claimed the potential claim as exempt under NRS 21.090(1)(aa).⁴

4 On September 6, 2017, a hearing on the MRAS was conducted, and the request was
5 denied.⁵

6 On September 11, 2017, Debtor received her bankruptcy discharge pursuant to an Order
7 of Discharge entered by the court. (ECF No. 40).

8 On November 17, 2017, the Trustee filed a notice of assets directing creditors to file
9 proofs of claim. (ECF No. 54). The notice sets forth a deadline of February 20, 2018, for
10 creditors seeking a dividend from the bankruptcy estate to file proofs of claim.⁶

11 On January 26, 2018, BOA filed the instant Motion (ECF No. 56) seeking to compel the
12 Trustee to abandon any interest in the Residence pursuant to Section 554(b). On the same date,
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14 ⁴ On February 9, 2018, Debtor filed further amended Schedules. (ECF No. 60). On her
15 amended Schedule "C," Debtor claimed that her potential claim against BOA is exempt under
16 NRS 21.090(1)(u, v, x, aa, and cc).

17 ⁵ The MRAS was denied without prejudice at the hearing due to the absence of a
18 declaration authenticating the documents offered in support of the motion. A written order
19 denying the MRAS was not entered. The merits of any arguments raised in connection with the
20 MRAS were not reached. In any event, the Debtor's discharge was imminent, and the automatic
21 stay would terminate as to the Debtor pursuant to Section 362(c)(2)(C). Moreover, the Debtor
22 had exempted 100% of the fair market value of the Residence, and the deadline to object to her
23 exemptions under FRBP 4003(b)(1) would elapse 30 days after the conclusion of her meeting of
24 creditors. As mentioned in note 2, supra, the Trustee concluded the Debtor's meeting of
creditors on September 6, 2017. Under Section 522(1), property of the estate that is claimed as
exempt is deemed exempt if no one timely objects. Under those circumstances, the question
exists as to whether property exempted for 100% of its fair market value simply ceases to be
property of the bankruptcy estate for which the automatic stay is terminated under Section
362(c)(1).

25 ⁶ According to the claims register maintained by the clerk of the court, only two creditors
26 filed proofs of claim by the deadline, seeking a distribution from the bankruptcy estate: Discover
27 Bank and the Internal Revenue Service. Discover Bank, however, voluntarily withdrew its proof
28 of claim on September 25, 2017, and does not seek a distribution from the Trustee. The Internal
Revenue Service filed an initial proof of claim and two amended proofs of claim, the last of
which seeks \$728.00 as a priority unsecured claim for personal income taxes. No other proofs of
claim were filed.

1 BOA filed a Notice of Opportunity to Object and for Hearing (ECF No. 57) directing parties in
2 interest to file objections to the Motion within 21 days of service. The proof of service attached
3 to the notice attests that the notice was served on January 26, 2018, to the Debtor's former
4 bankruptcy counsel by electronic notice⁷ and to the Debtor by first class mail.

5 On February 9, 2018, Debtor filed an objection to the Motion (ECF No. 59)⁸, along with
6 a notice scheduling a March 7, 2018 hearing on the objection. (ECF No. 63).⁹

7 On February 12, 2018, the Trustee filed a statement of non-opposition to the Motion,
8 based on her conclusion that the Residence was fully encumbered and that any equity in the
9 Residence was fully exempted by the Debtor through her claim of a homestead. (ECF No. 61).

10 On February 26, 2018, BOA filed a response to the Debtor's objection to the Motion.
11 (ECF No. 68).

12 DISCUSSION

13 The court, having considered the written and oral arguments of counsel and the Debtor,
14 along with the materials appearing in the record, concludes that the Motion must be granted.

15 Section 554(b) authorizes a "party in interest" to seek an order requiring a bankruptcy
16 trustee to abandon any property that is burdensome to the bankruptcy estate, or that is of
17 inconsequential value and benefit to the bankruptcy estate. There is no dispute that the Debtor

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19 ⁷ On August 31, 2017, an order was entered permitting the Ballstaedt Law Firm to
20 withdraw as bankruptcy counsel for the Debtor. (ECF No. 36).

21 ⁸ The objection filed by the Debtor consists of 128 pages that includes 14 pages of
22 written argument, and 114 pages of copies of portions of various documents. On the morning of
23 the hearing in this matter, Debtor hand-delivered what the court concludes is a courtesy copy of
24 the same objection and attachments. While BOA's counsel was not aware of Debtor's delivery
25 of the courtesy copy, the court concludes that no prejudice occurred.

26 ⁹ On the same date, Debtor filed a Certificate of Service attesting that a notice of hearing
27 had been served by first class mail on BOA, the Trustee, and all creditors appearing on the
28 mailing matrix. (ECF No. 66). Also on the same date, Debtor filed a Notice of Objection to
Claim (ECF No. 65) along with a Notice of Objection to Motion for Abandonment of Real
Property (ECF No. 64). It appears that the Debtor is seeking to reduce, modify or eliminate a
claim, but neither document identifies the holder of the claim. A hearing on these matters was
never calendared because a notice of hearing on a specified claim was never filed. On February
26, 2018, however, BOA filed a response. (ECF No. 69).

1 has exempted “100% of the fair market value” of the Residence which she states has a fair
2 market value of \$341,886. The maximum exemption for a homestead in Nevada is \$550,000.
3 See N.R.S. 115.010(2). As previously mentioned, the Trustee has concluded that the Residence
4 is of inconsequential value and benefit to the bankruptcy estate because it is fully encumbered,
5 and it is fully exempt. Because the claimed exemption alone exceeds the value of the Residence,
6 however, it is clear that the Residence has no value to the estate even if it is not encumbered by
7 the BOA secured claim. The grounds for abandonment of the Residence under Section 554(b),
8 therefore, exist.

9 In this instance, Debtor disputes whether BOA has standing to request abandonment of
10 the Residence at all. She maintains that BOA does not have a legally enforceable obligation
11 secured by the Residence, based on the various materials attached to her objection. Nothing in
12 Section 554(b), however, requires BOA to have an enforceable claim in this bankruptcy
13 proceeding. Instead, Section 554(b) only requires that the abandonment request be made by a
14 “party in interest.”

15 On three occasions, Debtor herself has demonstrated that BOA is a party in interest by
16 filing Schedules listing BOA as a secured creditor whose claim is disputed. On two occasions,
17 Debtor has demonstrated that BOA is a party in interest by filing SOFAs listing a judicial
18 foreclosure action commenced by BOA against the Debtor. All of the Schedules and SOFAs
19 were signed by the Debtor under penalty of perjury and voluntarily filed by or on her behalf.¹⁰

20 Under Section 101(12), a “debt” means a “liability on a claim.” Under Section
21 101(5)(A), a “claim” consists of a “right to payment, whether or not such right is reduced to
22 judgment, liquidated, unliquidated, . . . disputed, undisputed, legal, equitable, secured, or
23 unsecured . . .” 11 U.S.C. § 101(5)(A) (emphasis added). Under Section 727(b), a discharge in
24 Chapter 7 applies to “all debts that arose before the date” the bankruptcy petition was filed,
25 “whether or not a proof of claim based on any such debt . . . is filed,” except for the types of
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27 ¹⁰ It is not altogether clear whether the Debtor or her former counsel ever gave the notice
28 to affected parties required by FRBP 1009(a) when she filed amendments to her Schedules and
her SOFA. Nothing on the docket maintained in the case reflects that notice was given.

1 debts specified in Section 523. 11 U.S.C. § 727(b) (emphasis added). Under Section 524(a), the
2 effect of a bankruptcy discharge is to void any judgment and to enjoin any acts to pursue a
3 discharged debt as a “personal liability of the debtor.” 11 U.S.C. § 524(a)(1 and 2) (emphasis
4 added).

5 A bankruptcy discharge does not, however, remove any existing liens against property.
6 Rather, existing liens ride through a bankruptcy unless the liens are set aside. See Farrey v.
7 Sanderfoot, 500 U.S. 291, 297 (1991) (“Ordinarily, liens and other secured interests survive
8 bankruptcy”); Johnson v. Home State Bank, 501 U.S. 78, 84 (1991) (“Rather, a bankruptcy
9 discharge extinguishes only one mode of enforcing a claim - namely, an action against the debtor
10 *in personam* - while leaving intact another - namely, an action against the debtor *in rem.*”)
11 (emphasis in original). See also Prop. Plus Inv., LLC v. Mortg. Elec. Registration Sys., Inc., 401
12 P.3d 728, 732 (Nev. 2017).

13 Under Section 101(5)(A), BOA clearly has a claim against the Debtor regardless of
14 whether the Debtor disputes the validity of the claim. The Trustee notified BOA and all other
15 creditors that they could file a proof of claim if they wished to receive a distribution from the
16 bankruptcy estate, and BOA elected to not file a proof of claim. It was entirely permissible for
17 BOA to not file a proof of claim. See HSBC Bank USA, N.A. v. Blendheim (In re Blendheim),
18 803 F.3d 477, 485 (9th Cir. 2015) (“A creditor with a lien on a debtor's property may generally
19 ignore the bankruptcy proceedings and decline to file a claim without imperiling his lien, secure
20 in the *in rem* right that the lien guarantees him under non-bankruptcy law: the right of
21 foreclosure.”) (emphasis added). See also Spokane Law Enforcement Fed. Credit Union v.
22 Barker (In re Barker), 839 F.3d 1189, 1193 (9th Cir. 2016) (“A secured creditor, who wishes to
23 receive distributions under a Chapter 13 plan, must also file a valid proof of claim . . . However,
24 a secured creditor, who does not wish to participate in a Chapter 13 plan or who fails to file a
25 timely proof of claim, does not forfeit its lien.”).

26 Debtor received her Chapter 7 discharge on September 11, 2017. No suggestion is made
27 that BOA’s claim was encompassed by any of the nineteen exceptions to discharge set forth in
28 Section 523. As a result, BOA is prohibited from pursuing the debt as a personal liability of the

1 Debtor. Because any lien against the Residence was not affected by the discharge, however,
2 BOA is not prohibited from pursuing its in rem rights against the Residence. As the Order of
3 Discharge explains: “This order means that no one may make any attempt to collect a discharged
4 debt from the debtors personally . . . However, a creditor with a lien may enforce a claim against
5 the debtors’ property subject to that lien unless the lien was avoided or eliminated. For example,
6 a creditor may have the right to foreclose on a home mortgage or repossess an automobile.”
7 (Emphasis added).

8 In this case, the Debtor scheduled BOA as a prepetition creditor whose disputed debt has
9 been discharged pursuant to Section 727. No exceptions under Section 523 have been raised,
10 and the debt was discharged regardless of whether BOA filed a proof of claim. BOA’s lien
11 against the Residence, if any, is unaffected by the discharge. Accordingly, BOA is prohibited
12 from pursuing the debt as a personal liability of the Debtor but may pursue its in rem rights
13 against the Residence through foreclosure.¹¹

14 Under these circumstances, the court concludes that BOA is a “party in interest” within
15 the meaning of Section 554(b).¹² Inasmuch as the Residence is of no value or benefit to the
16 bankruptcy estate, abandonment is appropriate.¹³

17 _____
18 ¹¹ The judicial foreclosure proceeding that was pending in state court at the time this
19 Chapter 7 case was commenced was stayed under Section 362(a)(1). The MRAS previously
20 filed by BOA was denied without prejudice and was not renewed. However, pursuant to Section
21 362(c)(3)(C), the automatic stay was terminated as to the Debtor when she received her
22 discharge. An order of abandonment of the Residence will terminate the automatic stay as to the
23 Residence under Section 362(c)(1). If the materials accompanying the Debtor’s objections to the
24 Motion are relevant to the judicial foreclosure proceeding, the instant order is entered without
25 prejudice to the Debtor asserting her legal rights arising from those materials in the foreclosure
26 proceeding.

27 ¹² Indeed, it is difficult to imagine a party that would be more interested in this
28 bankruptcy case, except for perhaps the Debtor.

¹³ Only the Internal Revenue Service has a proof of claim remaining in this Chapter 7
proceeding in the amount of \$728.00. See note 6, supra. A full or partial distribution by the
Trustee in this matter, if at all, should not be difficult. Upon completion of distributions and
closure of the case, any property not liquidated by the Trustee, including the Residence, would
be abandoned to the Debtor administratively, subject to any liens. See 11 U.S.C. § 554(c).
Thus, even if the instant Motion was denied, the Residence is likely to be abandoned

