



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
June 08, 2023

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 21-10230-MKN
	)	Chapter 7
ELIZABETH ANN RAMSEY,	)	
	)	
Debtor.	)	Date: June 7, 2023
	)	Time: 2:30 p.m.
	)	

**ORDER REGARDING OBJECTION TO EUGENE TUMBARELLO AND SHAMROCK PAINTING, INC. PROOF OF CLAIM #1-2<sup>1</sup>**

On June 7, 2023, the court heard the Objection to Eugene Tumbarello and Shamrock Painting, Inc. Proof of Claim #1-2 (“Claim Objection”) brought by the above-captioned debtor. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

Elizabeth Ann Ramsey (“Ramsey”) filed a voluntary Chapter 7 petition on January 19, 2021. (ECF No. 1). The case was assigned for administration to Chapter 7 panel trustee Lenard E. Schwartzer (“Trustee”). Ramsey filed her schedules of assets and liabilities (“Schedules”)

<sup>1</sup> In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the above-captioned 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 “FRBP” are to provisions of the Federal Rules of Bankruptcy Procedure. All references to “NRCP” are to provisions of the Nevada Rules of Civil Procedure. All references to “FRE” are to the Federal Rules of Evidence.

1 and statement of financial affairs on February 2, 2021. (ECF No. 23). On her property Schedule  
 2 “A/B,” she listed as her residence an interest in real property located at 1201 Westlund Drive,  
 3 Las Vegas, Nevada 89102 (“Residence”). On her exemption Schedule “C,” Ramsey claimed a  
 4 homestead in the Residence under Nevada law. Prior to the commencement of the Chapter 7  
 5 proceeding, however, her claim to a Nevada homestead had been disallowed in a civil action  
 6 commenced by creditors Eugene Tumbarello and Shamrock Painting, Inc. (collectively,  
 7 “Tumbarello”) in the Eighth Judicial District Court, Clark County, Nevada (“State Court”).<sup>2</sup> In  
 8 connection with that civil litigation (“State Action”), the State Court also entered a joint and  
 9 several judgment (“State Judgment”) in favor of Tumbarello and against Ramsey and her co-  
 10 defendant, Gregg Chambers. The amount of the State Judgment was \$221,735.99 and was  
 11 recorded as a lien against the Residence as well as an adjacent parcel of real property located at  
 12 1207 Westlund Drive (“1207 Westlund Property”).<sup>3</sup>

13 On April 13, 2021, an order was entered granting a Chapter 7 discharge. (ECF No. 59).

14 On June 21, 2021, an order was entered sustaining Tumbarello’s objection to Ramsey’s  
 15 claim to a Nevada homestead exemption in the Residence (“Homestead Objection Order”).  
 16 (ECF No. 63). The order was not appealed.<sup>4</sup>

17 On August 3, 2022, a disposition was reached in Adversary Proceeding No. 21-01039-  
 18 mkn, whereby Tumbarello sought a determination that the State Judgment against Ramsey was  
 19 nondischargeable under Sections 523(a)(2, 4 and 6) (“Tumbarello Adversary Proceeding”). A  
 20 memorandum decision after trial (“Memorandum Decision”) and a separate judgment  
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22 <sup>2</sup> The court takes judicial notice under FRE 201 of the balance of the materials of public  
 23 record in the State Action. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); Conde v. Open  
 24 Door Mktg., LLC, 223 F. Supp.3d 949, 970 n.9 (N.D. Cal. 2017); Gree v. Williams, 2012 WL  
 25 3962458, at \*1 n.1 (D. Nev. Sept. 7, 2012); Bank of Am., N.A. v. CD-04, Inc. (In re Owner  
Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015).

26 <sup>3</sup> In the State Action, the State Court rejected the claim to a Nevada homestead exemption  
 27 due to fraud by defendants Ramsey and Chambers in the acquisition of the properties.

28 <sup>4</sup> Absent an available homestead or other exemption, Ramsey apparently would have no  
 grounds on which to seek avoidance of Tumbarello’s judicial lien, if any, under Section  
 522(f)(1).

1 (“Adversary Judgment”) (AECF Nos. 57 and 58) were entered in favor of Ramsey on all claims,<sup>5</sup>  
2 thereby permitting a discharge of her personal liability for the amount of the State Judgment.<sup>6</sup>

3 On August 17, 2022, the Trustee filed and served a notice that assets are available for  
4 distribution and setting a deadline of November 15, 2022, for creditors to file proofs of claim.  
5 (ECF No. 70).

6 On August 23, 2022, the Trustee filed an application to employ a real estate broker to  
7 market the Residence (“Broker Application”). (ECF No. 73).

8 On August 26, 2022, an order was entered granting the Broker Application. (ECF No.  
9 76).

10 On August 26, 2022, Ramsey filed a motion to convert her Chapter 7 liquidation  
11 proceeding to a Chapter 13 debt adjustment proceeding (“Conversion Motion”). (ECF No. 77).

12 On September 23, 2022, an order was entered denying the Conversion Motion after  
13 objections were raised by the Trustee and Tumbarello. (ECF No. 93).

14 On November 14, 2022, Tumbarello filed a secured proof of claim in the amount of  
15 \$226,252.34 (“POC 1-2”). Attached to the proof of claim as Exhibits 1 through 8 are copies of  
16 the outstanding State Judgment and related State Court documents recorded against the  
17 Residence, in addition to an itemization of the post-judgment and post-collection amounts  
18 remaining set forth in Exhibit 9.

19 On February 3, 2023, Ramsey filed a Motion to Abandon Real Property Located at 1201  
20 Westlund Drive, Las Vegas, NV 89102 From the Estate and to Stay any Marketing or Sale of  
21 This Property (“Abandonment Motion”) to prevent the Trustee from further efforts to sell the  
22 Residence. (ECF No. 98).

23 \_\_\_\_\_  
24 <sup>5</sup> The court concluded that Tumbarello had failed to prove by a preponderance of the  
25 evidence a claim against Ramsey for actual fraud within the meaning of Section 523(a)(2)(A).  
See Memorandum Decision at 10:5 to 22:19.

26 <sup>6</sup> Ramsey’s discharge of the amount of the State Judgment only bars Tumbarello from  
27 seeking to collect the debt as a personal liability. See 11 U.S.C. §524(a)(2). As discussed at  
28 note 4, supra, because Ramsey does not have a homestead exemption under Nevada law, she also  
cannot seek under Section 522(f)(1) to avoid the judicial lien against the Residence created by  
the State Judgment.

1 On February 6, 2023, the Trustee filed a Motion for Turnover of Real Property  
2 (“Turnover Motion”). (ECF No. 102).

3 On February 7 and 8, 2023, separate orders were entered shortening time so that both the  
4 Abandonment Motion and the Turnover Motion could be heard on an expedited basis on  
5 February 15, 2023. (ECF Nos. 105 and 106).

6 On February 24, 2023, an order was entered denying the Abandonment Motion. (ECF  
7 No. 120).

8 On February 24, 2023, an order was entered granting the Turnover Motion (“Turnover  
9 Order”). (ECF No. 122).

10 On March 8, 2023, a Trustee’s Report to Court and Request for Order for Turnover of  
11 Property was filed. (ECF No. 126).

12 On March 30, 2023, a supplemental order was entered on the Turnover Motion  
13 (“Supplemental Turnover Order”). (ECF No. 127). That order requires Ramsey to deliver  
14 possession of the Residence to the Trustee no later than June 13, 2023, at 5:00 p.m. and to allow  
15 the Trustee reasonable access to the Residence to permit inspection and marketing by the  
16 Trustee’s agents or employees. To allow Ramsey to seek an appellate stay, the Supplemental  
17 Turnover Order also denied any request of the bankruptcy court to stay the provisions of the  
18 order.<sup>7</sup>

19 On April 20, 2023, the Trustee filed a Motion to Sell Real Property, Pay Commission and  
20 Normal Closing Costs (1201 Westlund Drive, Las Vegas, NV 8910) (“Sale Motion”). (ECF No.  
21 130). The Sale Motion sought permission to sell the Residence to Tumbarello for the purchase  
22 price of \$450,000 and to close the sale by June 15, 2023.

23 On May 5, 2023, Ramsey filed the instant Claim Objection and noticed it to be heard on  
24 June 7, 2023. (ECF Nos. 135 and 136). Attached to the Claim Objection are two exhibits: (A) a  
25 copy of POC 1-2; and (B) a copy of a Grant, Bargain, Sale Deed recorded October 27, 2022  
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27 <sup>7</sup> Under FRBP 8002(a)(1), a notice of appeal must be filed within 14 days after entry of a  
28 judgment, order, or decree.

1 (“October 2022 Grant Deed”), from Tumbarello in favor of BNB Holdings L.L.C., transferring  
2 the 1207 Westlund Property<sup>8</sup> for a purchase price of \$355,000.<sup>9</sup>

3 On May 8, 2023, Ramsey filed an opposition to the Sale Motion. (ECF No. 139).

4 On May 11, 2023, the Trustee filed a reply in support of the Sale Motion. (ECF No.  
5 140).

6 On May 22, 2023, the Trustee filed a supplemental reply in support of the Sale Motion.  
7 (ECF No. 143).

8 On May 23, 2023, Tumbarello filed an opposition to the Claim Objection (“Tumbarello  
9 Opposition”). (ECF No. 145). Attached to the opposition is a copy of an order of the State  
10 Court dated November 6, 2022, denying Ramsey’s motion under NRCPC 60(b)(5) for relief from  
11 the prior State Judgment and related orders (“State NRCPC 60(b) Order”). That order reflects that  
12 Ramsey sought relief from the State Judgment based on the bankruptcy court’s subsequent entry  
13 of the Adversary Judgment. The State Court concluded, however, that the latter bankruptcy  
14 judgment did not warrant relief from the monetary award or the denial of the homestead claim  
15 reflected by the prior State Judgment and related orders.<sup>10</sup>

16 On May 26, 2023, an order was entered conditionally granting the Sale Motion (“Sale  
17 Order”). (ECF No. 146). The Sale Motion was granted on the condition that the Trustee could  
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19 <sup>8</sup> There is no apparent dispute that Tumbarello obtained title to the 1207 Westlund  
20 Property on August 1, 2019, by enforcing the State Judgment through an execution sale and that  
21 Ramsey did not regain title by redeeming the property. See Homestead Objection Order at 4:16-  
22 22. There also is no apparent dispute that Tumbarello previously obtained title to the Residence  
on August 1, 2019, by also enforcing the State Judgment through an execution sale, but that  
Ramsey regained title to the Residence on or about July 18, 2020, by redemption. Id. at 4:16-24.

23 <sup>9</sup> Other than the two exhibits attached to the Claim Objection, there are no affidavits,  
24 declarations, or other materials offered by Ramsey as evidence in connection with this matter.

25 <sup>10</sup> Apparently, no one advised the State Court that Ramsey had received her Chapter 7  
26 discharge on April 13, 2021. The State Court correctly surmised, however, that a discharge of  
27 personal liability in bankruptcy does not extinguish a debt, see RS Air, LLC v. NetJets Aviation,  
28 Inc. (In re RS Air, LLC), 2023 WL 3774652, at \*6 (B.A.P. 9th Cir. June 2, 2023), citing Blixseth  
v. Credit Suisse, 961 F.3d 1074, 1082 (9th Cir. 2020), and that liens otherwise survive a  
bankruptcy discharge. See Mitchell v. Select Portfolio Servicing, Inc. (In re Mitchell), 2023 WL  
2770917, at \*1 (9th Cir. Apr. 4, 2023).

1 close the proposed sale to Tumbarello or other purchaser no earlier than June 30, 2023, and that  
2 the Trustee must file a report of any sale with the court.

### 3 DISCUSSION

4 POC 1-2 is signed under penalty of perjury and constitutes prima facie evidence of the  
5 validity and amount of Tumbarello's claim. See FED.R.BANKR. P. 3001(f). An objecting party  
6 must overcome the presumption of validity by presenting sufficient evidence of probative force  
7 equal to the allegations of the proof of claim. See Burke v. Reno-Sparks Indian Colony (In re  
8 Affordable Patios & Sunrooms), 2022 WL 1115413, at \*3 (B.A.P. 9th Cir. Apr. 22, 2022); Reger  
9 v. Essex Bank (In re Landes), 626 B.R. 531, 545 (Bankr. E.D. Cal. 2021).

10 Ramsey suggests that the Adversary Judgment determined that she has no debt to  
11 Tumbarello. See Claim Objection at 3:6 to 4:4. She also argues because of that alleged  
12 determination, there is no debt that would support a valid lien against the Residence. Id. at 4:14-  
13 19. Finally, Ramsey maintains that Tumbarello made a profit on the sale of the 1207 Westlund  
14 Property that should be credited to offset the amount evidenced by POC 1-2. Id. at 4:21-26. In  
15 support of her Claim Objection, Ramsey has offered only a copy of POC 1-2 and a copy of the  
16 October 2022 Grant Deed.

17 The court, having considered the written and oral arguments of counsel as well as the  
18 lengthy history of these proceedings, concludes that the Claim Objection must be overruled.

19 Even if this court takes judicial notice of the only two documents offered in support of  
20 the Claim Objection, neither constitute evidence sufficient to contradict the matters set forth in  
21 the proof of claim. The Adversary Judgment only determined whether Tumbarello had met the  
22 burden of proving actual fraud under Section 523(a)(2)(A) and did not extinguish the debt  
23 established by the State Judgment.<sup>11</sup> The judicial lien against the Residence created by  
24 recordation of the State Judgment survived the Chapter 7 discharge and was never avoided by  
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26 <sup>11</sup> Ramsey apparently attempted to convince the State Court that the Adversary Judgment  
27 warrants vacating the amounts awarded by the State Judgment and vacating the order denying  
28 Ramsey's homestead in the Residence. See State NRCP 60(b) Order at 3:1-10. The State Court  
was not persuaded and denied Ramsey's request for relief. The State Judgment remains in  
effect.

1 Ramsey. And even if the October 2022 Grant Deed establishes that Tumbarello sold the 1207  
2 Westlund Property for \$355,000, there is no evidence establishing the expenses incurred by  
3 Tumbarello after he acquired the same property in August 2019. In other words, there is no  
4 evidentiary basis to conclude that Tumbarello actually profited from the sale of the 1207  
5 Westlund Property or recovered funds in excess of the amount evidenced by POC 1-2.<sup>12</sup>

6 Under these circumstances, Ramsey has failed to overcome the prima facie evidence of  
7 the validity and amount of POC 1-2.

8 **IT IS THEREFORE ORDERED** that the Objection to Eugene Tumbarello and  
9 Shamrock Painting, Inc. Proof of Claim #1-2, brought by Elizabeth Ann Ramsey, Docket No.  
10 135, be, and the same hereby is, **OVERRULED**.

11  
12 Copies sent via BNC to all parties and via CM/ECF ELECTRONIC FILING

13 Copies sent via BNC to:  
14 ELIZABETH ANN RAMSEY  
15 1201 WESTLUND DRIVE  
16 LAS VEGAS, NV 89102

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24 <sup>12</sup> NRCP 60(b)(5) allows a Nevada judgment to be set aside, *inter alia*, when “the  
25 judgment has been satisfied, released or discharged...” See State NRCP 60(b) Order at 2:2-5.  
26 When Ramsey sought relief from the State Court, she could have informed the judge that the  
27 1207 Westlund Property had been sold for more than the amount of the State Judgment and  
28 asserted the same offset argument she raises in her Claim Objection. Perhaps Ramsey could  
have offered additional evidence demonstrating that Tumbarello actually made an excessive  
profit on the sale of the property, i.e., that the amount of the judgment has been satisfied.  
Ramsey apparently did not do so.