



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
June 21, 2021

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 21-10230-MKN
ELIZABETH ANN RAMSEY,) Chapter 7
Debtor.) Date: April 14, 2021
Time: 2:30 p.m.

**ORDER ON CREDITORS EUGENE TUMBARELLO AND SHAMROCK PAINTING
INC.'S OBJECTION TO DEBTOR ELIZABETH ANN RAMSEY'S CLAIM OF
HOMESTEAD EXEMPTION¹**

On April 14, 2021, the court heard Creditors Eugene Tumbarello and Shamrock Painting Inc.'s Objection to Debtor Elizabeth Ann Ramsey's Claim of Homestead Exemption ("Homestead Objection"). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

The instant matter requires consideration of a specific civil action that was pending prior to the commencement of these bankruptcy proceedings and which remains pending in the Eighth Judicial District Court, Clark County, Nevada ("State Court").

¹ 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 "FRE" are to the Federal Rules of Evidence.

1 **A. The State Court Action.²**

2 On October 23, 2017, Eugene Tumbarello and Shamrock Painting, Inc. (collectively
3 “Tumbarello”) filed a civil action against defendants Elizabeth Ramsey (“Ramsey”) and Gregg
4 Chambers (“Chambers”), denominated Case No. A-17-763560-C (“State Court Action”).
5 Tumbarello’s complaint (“State Complaint”) primarily focused on two parcels of real property
6 located at 1201 Westlund Drive and 1207 Westlund Drive, Las Vegas, Nevada 89102. The
7 State Complaint alleged a variety of causes of action, theories or remedies, including deceit,
8 unjust enrichment, declaratory relief, breach of contract, breach of covenant of good faith and
9 fair dealing, civil conspiracy and concert of action, misrepresentation, negligent
10 misrepresentation, violation of contractors licensing statutes, conversion, injunctive relief, quiet
11 title, and constructive trust. After defaults were taken against both defendants, both defendants
12 filed separate motions to set aside the defaults.

13 On March 16, 2018, an order was entered denying without prejudice a motion to set aside
14 default and granting other relief regarding certain real property. Both defendants appealed that
15 order to the Nevada Supreme Court.

16 On March 29, 2018, defendants filed a renewed motion to set aside defaults.

17 On May 17, 2018, the State Court entered an order denying Ramsey’s request to set aside
18 the default but granting Chambers’ request. Both defendants initiated appeals to the Nevada
19 Supreme Court.

20 On December 1, 2018, Tumbarello filed a motion to enforce a settlement reached during
21 the Nevada Supreme Court appeal. The settlement required, *inter alia*, that Chambers and
22 Ramsey execute a promissory note in favor of Tumbarello in the amount of \$200,000, secured by
23

24
25 ² Counsel for the parties in this matter have provided this court with copies of only some
26 of the relevant materials filed in the State Court Action. The court therefore takes judicial notice
27 under FRE 201 of the balance of the materials of public record in the State Court Litigation. See
28 U. S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); Conde v. Open Door Mktg., LLC, 223 F.
Supp. 3d 949, 970 n.9 (N.D. Cal. 2017); Gree v. Williams, 2012 WL 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).

1 the 1201 Westlund Drive and 1207 Westlund Drive properties. The settlement was encompassed
2 by a Memorandum of Understanding signed by the parties on August 15, 2018.

3 On February 10, 2019, both defendants filed an opposition to the settlement enforcement
4 motion.

5 On February 12, 2019, the settlement enforcement motion was heard by the State Court
6 and granted on the record.

7 On March 8, 2019, the State Court entered an order granting Tumbarello's settlement
8 enforcement motion ("Settlement Enforcement Order"). The Settlement Enforcement Order
9 entered a judgment against Chambers and Ramsey ("State Judgment"), in favor of Tumbarello,
10 in the amount of \$221,735.99, and ordered that the judgment amount constitute a deed of trust
11 lien against the 1201 Westlund Drive and 1207 Westlund Drive properties. The Settlement
12 Enforcement Order also directed that the order could be recorded in the county records as a
13 substitute for a prior *lis pendens* against the two real properties.

14 On April 9, 2019, Chambers and Ramsey filed a notice of appeal of, *inter alia*, the
15 Settlement Enforcement Order.

16 On May 27, 2019, Ramsey filed a claim of a homestead exemption with respect to the
17 1201 Westlund Drive property and Chambers filed a claim of a homestead exemption with
18 respect to the 1207 Westlund Drive property.

19 On May 29, 2019, Tumbarello filed objections to the homestead exemptions claimed by
20 both Ramsey and Chambers.

21 On May 30, 2019, Tumbarello filed a further objection to the homestead exemption
22 claimed by Ramsey that added a motion to set aside fraudulent transfer of Ramsey's interest in
23 the 1207 Westlund Drive property to Chambers.

24 On June 4, 2019, both Ramsey and Chambers filed a motion seeking to stay a sheriff's
25 sale of the 1201 Westlund property and the 1207 Westlund property, pending their request for
26 clarification of the Settlement Enforcement Order.

27 On June 4, 2019, both Ramsey and Chambers filed separate responses to Tumbarello's
28 objections to their respective homestead claims.

1 On June 17, 2019, Tumbarello filed an opposition to the motion for stay brought by
2 Ramsey and Chambers.

3 On July 9, 2019, Tumbarello's objections to the homestead exemptions claimed by
4 Ramsey and Chambers were heard and sustained on the record. The motion to stay the sheriff's
5 sale of the 1201 Westlund Drive property and the 1207 Westlund Drive property was granted on
6 the condition that a supersedeas bond be posted in the full amount of the State Judgment on or
7 before July 23, 2019.

8 On July 22, 2019, the State Court entered its written order ("July 22, 2019 Order")
9 denying the respective homestead exemptions claimed by both Ramsey and Chambers, but
10 granting a stay of the sheriff's sales only on the condition that a supersedeas bond in the full
11 State Judgment amount be posted on or before July 23, 2019.³ In the event a bond was not
12 timely posted, no stay would issue preventing a sheriff's sale of the properties.

13 On July 24, 2019, Tumbarello filed a status memorandum indicating that supersedeas
14 bond required by the July 22, 2019 Order had not been posted by Ramsey or Chambers, resulting
15 in an expiration of any stay of the sheriff's sale.

16 On August 8, 2019, a sheriff's certificate of sale was filed indicating that on August 1,
17 2019, the 1201 Westlund Drive property was sold to Tumbarello by a credit bid \$50,000 of its
18 State Judgment. On the same date, a separate sheriff's certificate was filed indicating that the
19 1207 Westlund Drive property also was sold to Tumbarello on August 1, 2019, by a credit bid on
20 \$50,000 of its State Judgment.

21 On May 15, 2020, the Nevada Supreme Court entered an order dismissing the appeal of
22 the Settlement Enforcement Order that had been filed by Chambers and Ramsey.

23 On July 18, 2020, Ramsey apparently redeemed the 1201 Westlund Drive property
24 pursuant to Nevada law and regained title.

25 ³ The State Court's order included the following: "THE COURT FURTHER FINDS that
26 the homestead asserted by Judgment Debtor GREGG CHAMBERS in and to the 1207 Westlund
27 property does not apply and that Judgment Debtor GREGG CHAMBERS has failed to meet his
28 burden to prove that Judgment Debtor is entitled to the claimed exemptions in the 1207
Westlund Property. Maki v. Chong, 119 Nev. 390, 394, 75 P.3d 376, 379 (2003)." July 22,
2019 Order at 3:22-27.

1 On August 7, 2020, Ramsey filed, in pro se, another claim of exemption with respect to
 2 the 1201 Westlund Drive property as well as various items of personal property, including
 3 amounts held in a bank account maintained at Bank of America (“BOA Account”).

4 On August 11, 2020, Tumbarello filed an objection to Ramsey’s re-assertion of the
 5 homestead exemption in the 1201 Westlund Drive property as well as her attempt to exempt an
 6 excessive amount in the BOA Account.

7 On September 21, 2020, Ramsey filed a response to Tumbarello’s objection.

8 On September 22, 2020, Tumbarello’s objection to the re-asserted homestead exemption
 9 as well as the excessive amount in the BOA Account was heard by the State Court and sustained
 10 on the record.

11 On September 30, 2020, the State Court entered an order denying Ramsey’s reasserted
 12 homestead exemption in the 1201 Westlund Drive property as well as her excessive exemption in
 13 the BOA Account.

14 On October 8, 2020, the State Court entered another order denying Ramsey’s re-asserted
 15 homestead exemption in the 1201 Westlund Drive property and excessive BOA Account
 16 exemption (“October 8, 2020 Order”), to which was attached a revised certificate of service
 17 reflecting that the order was served on additional parties.⁴

18 On October 18, 2020, the Ramsey filed a motion for reconsideration of the October 8,
 19 2020 Order with respect to the BOA Account.

22 ⁴ The October 8, 2020 Order entered against Ramsey included the following: “**THE**
 23 **COURT FURTHER FINDS** that this Court has ruled in 2019 that any homestead asserted by
 24 Judgment Debtor ELIZABETH RAMSEY in and to the 1201 Westlund property does not apply
 25 because an individual using fraudulently obtained funds to purchase real property should not be
 26 protected by the homestead exemption because the exemption’s purpose is to provide protection
 27 to individuals who file the homestead exemption in good faith and that Judgment Debtor
 28 ELIZABETH RAMSEY had failed to meet her burden to prove that Judgment Debtor is entitled
 to the claimed exemptions in the 1201 Westlund Property. Maki v. Chong, 119 Nev. 390, 394,
 75 P.3d 376, 379 (2003).” October 8, 2020 Order at 2:12-20. Although Chambers was a party to
 the Settlement Enforcement Order and the July 22, 2019 Order, he was not a participant in the
 October 8, 2020 Order.

1 On November 20, 2020, Tumbarello filed an opposition to the motion for reconsideration
2 with respect to the BOA Account.

3 On December 15, 2020, the motion for reconsideration with respect to the BOA Account
4 was heard by the State Court and denied on the record.

5 On December 24, 2020, the State Court entered an order denying Ramsey's motion for
6 reconsideration with respect to the BOA Account ("December 24, 2020 Order").

7 **B. The Current Bankruptcy Case.⁵**

8 On January 19, 2021, Ramsey filed a voluntary petition commencing the above-captioned
9 Chapter 7 proceeding. (ECF No. 1).⁶ As a result of the filing of the bankruptcy petition, the
10 automatic stay arose under Section 362(a). The case was assigned to Chapter 7 panel trustee
11 Lenard Schwartz ("Chapter 7 Trustee").

12 On January 21, 2021, Ramsey filed a notice of appeal from the December 24, 2020 Order
13 denying the motion for reconsideration as well as the October 8, 2020 Order denying Ramsey's
14 re-asserted homestead exemption.⁷ Ramsey had not obtained relief from the automatic stay nor
15 had the Chapter 7 Trustee authorized the appeal to be filed.

19 ⁵ Ramsey had a prior Chapter 13, denominated Case No. 20-11877-MKN, that was
20 commenced on April 7, 2020 ("Prior Chapter 13 Case"). On July 21, 2020, an order was
21 entered dismissing the case that included a 180-day bar to filing of another bankruptcy petition.
22 On November 6, 2020, Ramsey filed a motion to reopen the Prior Chapter 13 Case, but the
23 motion was denied by an order entered on January 4, 2021. Because the Prior Chapter 13 Case
was dismissed on July 21, 2020, the automatic stay in that proceeding terminated on that date
pursuant to Section 362(c)(2)(B).

24 ⁶ The Chapter 7 petition was a "skeleton" petition inasmuch as it did not include the
25 schedules and statements providing the information required under Section 521(a).

26 ⁷ There is some indication that Ramsey filed her notice of appeal on or about January 28,
27 2021, rather than on January 21, 2021. See 362(c)(3) Order, infra, at 8:1-22 & n.12. In either
28 event, there is no dispute that the notice of appeal was filed in the Nevada Supreme Court after
the Chapter 7 petition was filed.

On February 2, 2021, Ramsey filed her schedules of assets and liabilities (“Schedules”) as well as her statement of financial affairs (“SOFA”).⁸ (ECF No. 23). On her property Schedule “A/B,” Ramsey listed as her residence the same real property located at 1201 Westlund Drive (“Residence”). On her Schedule “C,” Ramsey again claimed the Residence as her homestead under Nevada law. The July 22, 2019 Order by the State Court, as well as the October 8, 2020 Order, however, already had determined that Ramsey was not entitled to claim the Nevada homestead exemption. On her Schedule “E/F,” Ramsey listed Tumbarello as an unsecured creditor holding a disputed claim based on a judgment entered in the State Court Action.

On February 17, 2021, an order was entered on Ramsey’s motion under Section 362(c)(3) to continue the automatic stay (“362(c)(3) Order”). (ECF No. 32). Continuance of the automatic stay was necessary because the Prior Chapter 13 Case was dismissed within one year and the automatic stay would terminate in a subsequent case after 30 days under Section 362(c)(3)(A) unless continued by court order. The 362(c)(3) Order determined that the automatic stay under Section 362(a) would terminate as to Ramsey on February 18, 2021, but remained in effect as to property of the Chapter 7 bankruptcy estate.

On February 24, 2021, the Chapter 7 Trustee concluded Ramsey’s meeting of creditors.

On February 25, 2021, the Chapter 7 Trustee reported that there are no assets available for distribution to creditors in this case. (ECF No. 35).

On March 6, 2021, Ramsey filed a Motion to Lift Automatic Stay Nunc Pro Tunc or to Lift the Stay (“RAS Motion”), along with a notice of hearing, and served creditors in the case. (ECF Nos. 36, 37, and 38). She seeks relief to annul the automatic stay under Section 362(d) so that her filing of the notice of appeal of the October 8, 2020 Order and December 24, 2020 Order would no longer be a violation of the automatic stay. Ramsey would then proceed with her

⁸ Ramsey attested that the Residence was sold at a sheriff’s sale on August 1, 2019, but that she redeemed the property on July 18, 2020. See SOFA, Item 10. If that redemption occurred on July 18, 2020, it would have happened before the Prior Chapter 13 Case was dismissed on July 21, 2020. There is nothing in the record of the Prior Chapter 13 Case indicating that Ramsey obtained prior court authorization to make that expenditure.

1 appeal of those orders to the Nevada Supreme Court.⁹ The RAS Motion was noticed to be heard
2 on April 7, 2021.

3 On March 8, 2021, Tumbarello filed the instant Homestead Objection that was noticed to
4 be heard on April 14, 2021. (ECF Nos. 40 and 49).

5 On March 9, 2021, the Chapter 7 Trustee filed his response to the RAS Motion. (ECF
6 No. 42). The Chapter 7 Trustee does not object to annulment of the automatic stay based on his
7 determination that the outcome of Ramsey's attempted appeal will not affect whether any assets
8 are available for distribution to unsecured creditors.

9 On March 17, 2021, Tumbarello separately commenced Adversary Proceeding No. 21-
10 01039-MKN against Ramsey, seeking a determination that its claims are excepted from
11 discharge under Sections 523(a)(2, 4, and 6) ("523 Action"). (ECF No. 45).

12 On March 24, 2021, Tumbarello filed an opposition to the RAS Motion. (ECF No. 51).

13 On March 24, 2021, Ramsey certified that she has completed the required personal
14 financial management course. (ECF No. 52).

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18 ⁹ The notice of appeal does not encompass the Settlement Enforcement Order, nor does it
19 reference the July 22, 2019 Order. The Nevada Supreme Court already dismissed defendants'
20 appeal of the Settlement Enforcement Order. The latest notice of appeal only encompasses the
21 October 8, 2020 Order as well as the December 24, 2020 Order. The December 24, 2020 Order,
22 however, addressed reconsideration only with respect to the October 8, 2020 ruling denying
23 Ramsey's attempt to exempt an excessive amount in the BOA Account. No reconsideration was
24 sought of the State Court's October 8, 2020 ruling denying Ramsey's attempt to re-assert a
25 homestead exemption in the Residence that previously was denied by the July 22, 2019 Order.
26 There is nothing in the State Court's register of actions indicating that the defendants ever
27 appealed the July 22, 2019 Order. The register of actions indicates that the July 22, 2019 Order,
28 October 8, 2020 Order, and December 24, 2020 Order, were entered after hearings before the
State Court in which Ramsey was represented by counsel, i.e., none were entered by default.
Under these circumstances, it is not entirely clear whether Ramsey has ever filed a timely appeal
of the October 8, 2020 Order with respect to the denial of the re-asserted homestead exemption.
More important, it is unclear whether Ramsey's current appeal could ever disturb the State
Court's July 22, 2019 Order that originally denied Ramsey's claim of a Nevada homestead
exemption in the Residence, especially because numerous actions subsequently occurred as a
result of the July 22, 2019 Order.

1 On March 30, 2021, the Office of the United States Trustee (“UST”) reported that no
 2 presumption of abuse under Section 707(b)(2) has arisen in Ramsey’s Chapter 7 case. (ECF No.
 3 54).

4 On March 31, 2021, Ramsey filed her reply in support of the RAS Motion. (ECF No.
 5 55).

6 On March 31, 2021, Tumbarello filed a supplemental opposition to the RAS Motion.
 7 (ECF No. 56).

8 On March 31, 2021, Ramsey filed an opposition to the Homestead Objection. (ECF No.
 9 57).

10 On April 7, 2021, Tumbarello filed a reply in support of the Homestead Objection
 11 (“Reply”). (ECF No. 58).

12 On April 13, 2021, an order of discharge was entered with respect to prepetition claims
 13 against the Debtor that are not encompassed by the pending 523 Action. (ECF No. 60).

14 DISCUSSION

15 It comes as no surprise that Tumbarello filed the instant Homestead Objection. In
 16 connection with Ramsey’s unsuccessful effort to continue the automatic stay, the court
 17 previously observed:

18 Debtor has claimed an exemption in the Residence based on the
 19 Nevada homestead provisions. She is permitted to do so because
 20 the State of Nevada has opted out of the limited bankruptcy
 21 exemptions otherwise provided under Section 522(d). See NRS
 22 21.090(3). Under FRBP 4003(b)(1), any party in interest, including
 23 a bankruptcy trustee or creditor, may object to a claimed exemption
 24 “within 30 days after the meeting of creditors...is concluded or
 25 within 30 days after any amendment to the...schedules is filed,
 26 whichever is later.” Section 522(l) clearly specifies the importance
 27 of claiming the exemption: “Unless a party in interest objects, the
 28 property claimed as exempt on such list is exempt.” 11 U.S.C.
 §522(l) (emphasis added). It is well-settled that absent a timely
 objection before the 30-day deadline expires, the claimed exemption
 is allowed in bankruptcy even if the exemption lacks a proper legal
basis. See Taylor v. Freeland & Kronz, 503 U.S. 638, 643-644
 (1992)(“The Bankruptcy Court did not extend the 30-day period.
 Section 522(l) therefore has made the property exempt. Taylor
 cannot contest the exemption at this time whether or not Davis had

a colorable statutory basis for claiming it.”). In this instance, the deadline to object to Debtor’s exemptions has not commenced because the meeting of creditors was continued to February 24, 2021, and has not been concluded. More important, Debtor has claimed an exemption in the Residence despite prior rulings by the State Court that she is not entitled to a Nevada homestead exemption. (Emphasis added.)

362(c)(3) Order at 12:4 to 13:15.

There is no dispute that the instant Homestead Objection is timely. There is no dispute that the October 8, 2020 Order and December 24, 2020 Order were entered against Ramsey before she filed the instant Chapter 7 case. There is no dispute that the State Court specifically determined that Ramsey is not entitled to claim the Nevada homestead exemption because fraudulently obtained funds were used to purchase the Residence, citing the Nevada Supreme Court’s decision in Maki v. Chong. See note 4, supra.¹⁰ There is no dispute that Ramsey seeks to appeal the State Court’s determination.

It also should come as no surprise that in other Nevada bankruptcy cases, the Nevada Supreme Court’s decision in Maki v. Chong has been raised by creditors who object to Nevada homestead exemptions claimed by individual debtors. See, e.g., In re Tarkanian, 562 B.R. 424, 447-48 (Bankr. D. Nev. 2014) (FDIC homestead objection overruled where individual debtors used their own funds to increase amount of equity in existing residence); Green v. Weinstein (In re Green), 2017 WL 957151, at *7-9 (B.A.P. 9th Cir. March 10, 2017) (homestead objection sustained where individual debtors acquired residence by using funds embezzled from a trust). Because Nevada exemptions are construed liberally, see Christensen v. Pack (In re Christensen), 149 P.3d 40, 43 (Nev. 2006), the particular facts in the Maki case are especially important.

In Maki, the plaintiff was an inmate in a Nevada state prison. 75 P.3d at 378. He gave his sister a power of attorney allowing her to cash a disability settlement check received from the State of Nevada. Instead of using the funds to hire an attorney to appeal her brother’s criminal

¹⁰ Under the “Rooker-Feldman doctrine,” the bankruptcy court cannot reverse or modify a state court judgment on the merits, particularly on an issue determined under state law. See Pavelich v. McCormick, Barstow, Sheppard, Wayte & Carruth LLP (In re Pavelich), 229 B.R. 777, 782 (B.A.P. 9th Cir. 1999), citing, e.g., Rooker v. Fidelity Trust Co., 263 U.S. 413, 415 (1923) and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483 (1983).

1 sentence, the sister purchased a Nevada residence for herself. She told her brother that she had
 2 cashed his monthly disability checks. She also told her brother that she would not be returning
 3 any of the funds. While still incarcerated, the brother sued his sister in State court for breach of
 4 contract, fraud, and conversion. The sister then recorded a homestead declaration against the
 5 residence. The brother obtained a default judgment. When he attempted to enforce the judgment
 6 through a sheriff's sale of the residence, the district court denied the sale by allowing the sister's
 7 homestead exemption. The Nevada Supreme Court reversed, however, concluding that "the
 8 homestead exemption is inapplicable when the proceeds used to purchase real property can be
 9 traced directly to funds obtained through fraud or similar tortious conduct." *Id.* at 379. It
 10 therefore remanded "for the district court to enter an order consistent with this opinion that [the
 11 sister's] homestead exemption is invalid against [her brother's] default judgment." *Id.* at 380.

12 In the present bankruptcy case, there is no dispute that when Ramsey filed her Chapter 7
 13 petition, she asserted a claim to a Nevada exemption in the Residence that the State Court
 14 already had determined against her. The State Court concluded that Ramsey had purchased the
 15 Residence with funds fraudulently obtained. The State Court therefore applied the Nevada
 16 Supreme Court's decision in Maki to deny Ramsey's homestead claim. The State Court reached
 17 that result in the July 22, 2019 Order, and reiterated that result in the October 8, 2020 Order
 18 when Ramsey re-asserted the same claim. In other words, when she filed her Chapter 7 petition,
 19 Ramsey had no right under Nevada law to claim a homestead exemption in the Residence.

20 It also is important to recognize that the determination of Ramsey's claim to a Nevada
 21 homestead is distinct from whether she can discharge Tumbarello's claims through her Chapter
 22 7. The 523 Action asserts, *inter alia*, that Ramsey engaged in actual fraud that rendered her debt
 23 to be excepted from her Chapter 7 discharge under Section 523(a)(2)(A). In order to establish a
 24 claim for actual fraud under Section 523(a)(2)(A),¹¹ a creditor generally must prove: "(1)

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 26 ¹¹ To be actionable under Section 523(a)(2)(A), the alleged conduct must not involve a
 27 representation respecting the financial condition of the debtor or an insider of the debtor. See
 28 generally Lamar, Archer & Cofrin, LLP v. Appling, 138 S.Ct. 1752, 1763-1764 (2018). If it
 does, the representation must be in writing and the claim must be brought under Section
 523(a)(2)(B).

misrepresentation, fraudulent omission or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct." Turtle Rock Meadows, etc. v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000). The October 8, 2020 Order includes no findings by the State Court addressing the specific elements of a claim for actual fraud. No such findings were necessary, however, because the Nevada Supreme Court's decision in Maki did not require the existence of fraud based on misrepresentations by the plaintiff's sister.¹² Instead, the plaintiff's sister in Maki had misused the power of attorney obtained from her brother to misappropriate his disability settlement payment as well as his monthly disability payments. She actually informed him that she had done so. Thus, there were no elements of misrepresentation or reliance, but only intentional misconduct and damage.

Under these circumstances, any particular factual findings made by the State Court are not determinative of the outcome of the Homestead Objection. Whether any specific factual findings by the State Court would have issue preclusive effect in the 523 Action also is immaterial. As it now stands, the October 8, 2020 Order and December 24, 2020 Order were entered by the State Court prior to the commencement of this bankruptcy case and have not been stayed much less overturned.¹³ Thus, those orders remain in effect. Moreover, even if those orders were not in effect, the Settlement Enforcement Order and July 22, 2019 Order are not

¹² Similarly, a claim based on actual fraud that is nondischargeable under Section 523(a)(2)(A) can include fraudulent schemes that are not effectuated through false representations. See, e.g., Husky International Electronics, Inc. v. Ritz, 136 S.Ct. 1581 (2016) (debtor who participates in a fraudulent transfer scheme is subject to a claim for actual fraud).

¹³ The orders appear to have been entered to aid in the execution of the prior judgment entered against the Debtor under the Settlement Enforcement Order. As discussed at note 9, supra, the notice of appeal does not encompass the Settlement Enforcement Order, nor the July 22, 2019 Order. The Nevada Supreme Court has adopted section 13 of the Restatement (Second) of Judgments with respect to its definition of "final judgment." See Kirsch v. Traber, 414 P.3d 818, 819 (Nev. 2018). Both the Settlement Enforcement Order and the July 22, 2019 Order were final. It appears that the Debtor failed to timely pursue appeals of both orders.

1 subject to collateral attack in this bankruptcy court.

2 Contemporaneously herewith, a separate order has been entered granting the RAS Motion
3 by annulling the automatic stay as of the date that Ramsey filed the notice of appeal of the State
4 Court's October 8, 2020 and December 24, 2020 Order. As a result, she is allowed to pursue her
5 right, if any, to timely appeal those orders. As previously mentioned at note 9, supra, however,
6 the appeal does not challenge the Settlement Enforcement Order nor the July 22, 2019 Order.
7 And as mentioned at note 10, supra, this court cannot review or modify the State Court's
8 determinations in any of the orders. Finally, as discussed at 3, supra, the Settlement
9 Enforcement Order entered a judgment providing Tumbarello with a lien against the Residence
10 to secure payment of the full amount of the State Judgment. Only \$50,000 of the judgment
11 amount was credit bid at the August 1, 2019 sheriff's sale and the remaining amount apparently
12 remains secured by the Residence.

13 Even if Ramsey prevails on her appeal of the October 8, 2020 Order, nothing would
14 prevent Tumbarello from renewing an objection to the homestead claim in this Chapter 7
15 proceeding based on facts, if any, not adjudicated by the State Court. If she does not prevail,
16 however, Ramsey has no available homestead exemption at all under Nevada law to claim in this
17 Chapter 7 proceeding. Moreover, as previously observed, the determination of Ramsey's
18 homestead in the Residence is separate and distinct from the determination of Tumbarello's
19 claims in the 523 Action. In other words, even if Ramsey somehow is able to protect the
20 Residence through the Nevada homestead statute, her debts to Tumbarello still might not be
21 discharged by the Chapter 7.¹⁴

22 Based on the foregoing, the Homestead Objection will be sustained on the current record.
23 Tumbarello cannot execute on its lien against the Residence, however, until such time as the 523
24 Action is completed.

26 ¹⁴ Under Section 522(f)(1), an individual Chapter 7 debtor may avoid a judicial lien only
27 to the extent it impairs an exemption to which the debtor would be entitled. If Ramsey is not
28 entitled to claim the Nevada homestead exemption, she would not be able to avoid the lien
created by the Settlement Enforcement Order.

