



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
February 24, 2023

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 21-10230-MKN
)	Chapter 7
ELIZABETH ANN RAMSEY,)	
)	
Debtor.)	Date: February 15, 2023
)	Time: 2:30 p.m.
)	

ORDER ON MOTION TO ABANDON REAL PROPERTY LOCATED AT 1201 WESTLUND DRIVE, LAS VEGAS, NV 89102 FROM THE ESTATE AND TO STAY ANY MARKETING OR SALE OF THIS PROPERTY¹

On February 15, 2023, the court heard the Motion to Abandon Real Property Located at 1201 Westlund Drive, Las Vegas, NV 89102 From the Estate and to Stay any Marketing or Sale of This Property (“Abandonment Motion”). 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, 2021.² (ECF No. 1). The case was assigned for administration to Chapter 7 panel trustee Lenard

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 “FRE” are to the Federal Rules of Evidence.

² Ramsey had a prior Chapter 13 bankruptcy case, denominated Case No. 20-11877-mkn, that was commenced on April 7, 2020 (“Prior Chapter 13 Case”). On July 21, 2020, an order was entered dismissing the case that included a 180-day bar to filing of another bankruptcy petition. On November 6, 2020, Ramsey filed a motion to reopen the Prior Chapter 13 Case, but the motion was denied by an order entered on January 4, 2021. Because the Prior Chapter 13

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

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

15 On June 21, 2021, an order was entered sustaining Tumbarello’s objection to Ramsey’s claim to a Nevada homestead exemption in the Residence. (ECF No. 63). The order was not appealed.⁵

20 Case was dismissed on July 21, 2020, the automatic stay in that proceeding terminated on that date pursuant to Section 362(c)(2)(B).

22 ³ The court takes judicial notice under FRE 201 of the balance of the materials of public record in the State Action. See 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).

26 ⁴ In the State Action, the State Court rejected the claim to a Nevada homestead exemption due to fraud by the defendants in the acquisition of the properties.

28 ⁵ 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 On August 17, 2021, the Trustee filed and served a notice that assets are available for
2 distribution and setting a deadline of November 15, 2022, for creditors to file proofs of claim.
3 (ECF No. 70).

4 On August 3, 2022, a judgment was entered in Adversary Proceeding No. 21-01039-mkn
5 whereby Tumbarello sought a determination that the State Judgment against Ramsey was
6 nondischargeable under Sections 523(a)(2, 4, and 6). (AECF No. 58). The judgment was
7 entered in favor of Ramsey on all claims, thereby permitting a discharge of her personal liability
8 for the amount of the State Judgment.

9 On August 26, 2022, an order was entered authorizing the Trustee to employ a real estate
10 broker to market the Residence. (ECF No. 76).

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

13 On September 23, 2022, an order was entered denying Ramsey's conversion motion after
14 objections were raised by the Trustee and Tumbarello. (ECF No. 93).

15 On February 3, 2023, Ramsey filed the instant Abandonment Motion to prevent the
16 Trustee from further efforts to sell the Residence. (ECF No. 98).

17 On February 6, 2023, the Trustee filed a separate Motion for Turnover of Real Property
18 ("Turnover Motion"). (ECF No. 102).

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

22 On February 13, 2023, Ramsey filed an opposition to the Turnover Motion. (ECF No.
23 113. On the same date, the Trustee filed an opposition to the Abandonment Motion as well as a
24 reply in support of the Turnover Motion. (ECF Nos. 114 and 115). On the same date,
25 Tumbarello also filed an opposition to the Abandonment Motion. (ECF No. 117).

26 On February 15, 2023, Ramsey filed a reply in support of the Abandonment Motion.
27 (ECF No. 119).

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1 **DISCUSSION**

2 The Residence is property of the Chapter 7 estate under Section 541(a)(1). The
3 Homestead Objection was sustained and the Residence remains property of the Chapter 7 estate.
4 The Trustee is required to administer property of the estate under Section 704(a)(1) “as is
5 compatible with the best interests of parties in interest.”

6 Section 554 governs the abandonment of property of the estate. Among other things, it
7 provides that “On the request of a party in interest and after notice and a hearing, the court may
8 order the trustee to abandon any property of the estate that is burdensome to the estate or that is
9 of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(b) (emphasis added).

10 On her secured creditor Schedule “D,” Ramsey listed five creditors having claims based
11 on real estate mortgages but does not specify the real property involved. Three of the secured
12 claims are specified as being zero in amount, while the amount of the other two claims in favor
13 of Guild Mortgage Company and Midland Mortgage (“Midland”) are stated to be in the amounts
14 of \$222,391 and \$162,625, respectively, with identical amounts also designated to be unsecured.⁶
15 Although Ramsey’s Schedule “E/F” lists nine unsecured claims, all are designated as disputed,
16 unknown in amount, and/or zero in amount. Of those nine unsecured claims, she lists Midland
17 as having two disputed claims in unknown amounts based on mortgages relating to the
18 Residence as well as adjacent property located at 1207 Westlund Drive.⁷ Tumbarello is listed
19 twice as having two disputed claims in unknown amounts based on a judgment entered in the
20 State Court Action.

21 On February 19, 2021, and November 14, 2022, Tumbarello filed an initial proof of claim
22

23 ⁶ As previously mentioned, Ramsey attested that the Residence has a value of \$420,000
24 but does not specify whether Guild Mortgage or Midland’s claims are secured by the Residence.
25 Also, as previously mentioned, Ramsey claimed a Nevada homestead exemption in the available
26 equity of \$285,229.82. That amount is \$134,770.18 less than the value of the Residence. It
27 appears then that the \$134,770.18 figure represents the amount owed to either Guild Mortgage or
28 Midland, secured by the Residence, but likely Midland.

⁷ Ramsey also listed West Star Custom as an unsecured creditor having a disputed claim
in zero amount and also states that the claim relates to a mortgage on real property located at
3228 Robin Circle, Las Vegas, NV 89121.

1 in the amount of \$205,654.77 and then an amended proof of claim in the amount of \$226,252.34.
2 No other proofs of claim were filed. After payment of both timely filed and tardily filed priority
3 unsecured claims under Section 507(a), the next distribution of property of a Chapter 7 estate is
4 to allowed unsecured claims for which proofs of claim are filed on a timely basis, and then for
5 proofs of claim that are tardily filed. See 11 U.S.C. § 726(a)(2).

6 Not surprisingly, Ramsey wants to keep the Residence in the face of Tumbarello's
7 continued efforts to enforce the judicial lien created by the State Judgment. Ramsey correctly
8 observes that Tumbarello is the only creditor that filed a proof of claim and that the Trustee has
9 no valid reason to sell the Residence to distribute the proceeds to Tumbarello. The language of
10 Section 554(b), however, permits but does not require the court to order a bankruptcy trustee to
11 abandon property of the estate only if the specific property is burdensome to the estate, or, is of
12 inconsequential value and benefit to the estate. No evidence has been offered demonstrating that
13 the Residence, valued by Ramsey at \$420,000, is burdensome to the bankruptcy estate.

14 Moreover, for the same reason, no evidence has been offered establishing that the Residence is
15 of inconsequential value. Different inferences might be drawn if there is evidence that the real
16 estate broker has marketed the Residence for a prolonged period of time without drawing
17 interest. Instead, the record suggests that Ramsey actually has interfered with the broker's
18 marketing efforts by removing the broker's lockbox and by changing the locks to the premises.

19 The Trustee's desire to sell the Residence as property of the estate is within his business
20 judgment.⁸ The residential mortgage apparently in favor of Midland or some other lender likely
21 would be satisfied from any sale proceeds prior to the judicial lien in favor of Tumbarello.

22 Whether there are any tardily filed unsecured claims that might be entitled to distribution under
23 Section 726(a)(2)(C) is unknown. The remaining sale proceeds or other assets, if any, may be
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27 ⁸ Although there are guidelines for Chapter 7 trustees from the Office of the United States
28 Trustee as to the administration of single-creditor estates, the guidelines are not binding on the
court and do not supersede the language of the Bankruptcy Code.

1 distributed to Ramsey under Section 726(a)(6).⁹

2 The genesis of these unfortunate results to Ramsey appears to be the activities with her
3 co-defendant that led to the State Action. The State Court determined that Ramsey is not entitled
4 to a Nevada homestead exemption based on indications of fraud. This bankruptcy court,
5 however, determined after trial that Ramsey's personal liability for the State Judgment is
6 dischargeable in Chapter 7. The net result is that Ramsey has her Chapter 7 discharge, but she
7 does not have a homestead in the Residence.

8 **IT IS THEREFORE ORDERED** that the Motion to Abandon Real Property Located at
9 1201 Westlund Drive, Las Vegas, NV 89102 From the Estate and to Stay any Marketing or Sale
10 of This Property, Docket No. 98, be, and the same hereby is, **DENIED**.

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

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13 Copies sent via BNC to:

14 ELIZABETH ANN RAMSEY
15 1201 WESTLUND DRIVE
16 LAS VEGAS, NV 89102

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27 ⁹ Nothing, of course, prevents Ramsey from attempting to purchase the Residence from
28 the bankruptcy estate. Likewise, Tumbarello could make an offer to the Trustee. Either sale
would require court approval after notice and a hearing.