



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 TRUSTEE’S MOTION FOR TURNOVER OF REAL PROPERTY<sup>1</sup>**

On February 15, 2023, the court heard the Trustee’s Motion for Turnover of Real Property (“Turnover 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.<sup>2</sup> (ECF No. 1). The case was assigned for administration to Chapter 7 panel trustee Lenard

<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 “FRE” are to the Federal Rules of Evidence.

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

1 E. Schwartzer (“Trustee”). Ramsey filed her schedules of assets and liabilities (“Schedules”)   
2 and statement of financial affairs on February 2, 2021. (ECF No. 23). On her property Schedule   
3 “A/B,” she listed as her residence an interest in real property located at 1201 Westlund Drive,   
4 Las Vegas, Nevada 89102 (“Residence”). On her exemption Schedule “C,” Ramsey claimed a   
5 homestead in the Residence under Nevada law. Prior to the commencement of the Chapter 7   
6 proceeding, however, her claim to a Nevada homestead had been disallowed in a civil action   
7 commenced by creditors Eugene Tumbarello and Shamrock Painting, Inc. (collectively,   
8 “Tumbarello”) in the Eighth Judicial District Court, Clark County, Nevada (“State Court”).<sup>3</sup> In   
9 connection with that civil litigation (“State Action”), the State Court also entered a joint and   
10 several judgment (“State Judgment”) in favor of Tumbarello and against Ramsey and her co-   
11 defendant, Gregg Chambers. The amount of the State Judgment was \$221,735.99 and was   
12 recorded as a lien against the Residence as well as an adjacent parcel of real property located at   
13 1207 Westlund Drive.<sup>4</sup>

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

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

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

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21   
22 <sup>3</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.   
24 Open Door Mktg., LLC, 223 F. Supp.3d 949, 970 n.9 (N.D. Cal. 2017); Gree v. Williams, 2012   
25 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 <sup>4</sup> In the State Action, the State Court rejected the claim to a Nevada homestead exemption   
27 due to fraud by the defendants in the acquisition of the properties.

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

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

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

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

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

16 On February 6, 2023, the Trustee filed the instant Turnover Motion. (ECF No. 102).

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

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

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

## 26 DISCUSSION

27 The Residence is property of the Chapter 7 estate under Section 541(a)(1). The  
28 Homestead Objection was sustained and the Residence remains property of the Chapter 7 estate.

1 The Trustee is required to administer property of the estate under Section 704(a)(1).  
2 Contemporaneously herewith, an order has been entered denying the Abandonment Motion. As  
3 a result, the Residence still is property of the Chapter 7 estate for which no homestead exemption  
4 applies. As a further result, the Trustee still is obligated to administer the asset.

5 Section 542 requires parties in possession or control of any non-exempt property of a  
6 bankruptcy estate to deliver the property to the assigned bankruptcy trustee or to deliver the  
7 value of the property to the trustee “unless the property is of inconsequential value or benefit to  
8 the estate.” 11 U.S.C. § 542(a). In connection with the Abandonment Motion, the court  
9 concluded that the Residence is not of inconsequential value or benefit to the estate. The same  
10 conclusion applies under Section 542.

11 There is no dispute that Ramsey currently is in possession of the Residence. There is no  
12 dispute that the court has authorized the Trustee to employ a broker to market the Residence.  
13 The Trustee has represented, without contradiction, that Ramsey has changed the locks to the  
14 Residence and also forcibly removed a lockbox used by the broker to, *inter alia*, show the  
15 premises to prospective buyers. There is no apparent dispute that access to the Residence is  
16 essential for the broker to perform the marketing function authorized by the court.

17 Ramsey’s interference, including any damage to the premises or any lockboxes has  
18 significant consequences because the Chapter 7 discharge she received on April 13, 2021, would  
19 not relieve her from any personal liability for such actions. Moreover, any violations of court  
20 orders or similar conduct may result in the Trustee seeking to revoke her discharge under  
21 Sections 727(d)(3) and 727(a)(6)(A).

22 Based on the record, including denial of the Abandonment Motion, the court concludes  
23 that the Turnover Motion should be granted. Given that Ramsey obviously has resided in the  
24 property for a significant period of time, a sufficient amount of time should be allowed for her to  
25 vacate the premises.

26 **IT IS THEREFORE ORDERED** that the Chapter 7 Trustee’s Motion for Turnover of  
27 Real Property, Docket No. 102, be, and the same hereby is, **GRANTED**.

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**IT IS FURTHER ORDERED** that the assigned Chapter 7 trustee shall meet and confer with the Debtor and her counsel **no later than March 6, 2023**, to arrange an appropriate deadline by which the Debtor must vacate the premises located at 1201 Westlund Drive, Las Vegas, Nevada 89102, or make arrangements for continued occupancy. **No later than March 8, 2023**, the trustee must file a statement setting forth the agreed deadline or the agreed arrangement for continued occupancy. In the event the statement reports that no deadline or arrangement has been agreed, the court will set the deadline by additional order.

**IT IS SO ORDERED.**

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

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

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