

  
Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
April 28, 2023

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re: ) Case No.: 22-14310-MKN  
) Chapter 7  
DOUGLAS CLINTON CRAWFORD, )  
) Date: March 22, 2023  
Debtor. ) Time: 2:30 p.m.  
)  
)

**ORDER ON TRUSTEE’S OBJECTION TO CLAIM OF HOMESTEAD EXEMPTION<sup>1</sup>**

On March 22, 2023, the court heard the Trustee’s Objection to Claim of Homestead Exemption (“Homestead Objection”), brought in the above-captioned case. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On December 7, 2022, Douglas Clinton Crawford (“Debtor”) filed a voluntary Chapter 7 petition along with his schedules of assets and liabilities (“Schedules”) and statement of financial affairs. (ECF No. 1). On his property Schedule “A/B,” he listed as his residence an interest in real property located at 213 Desert View St., Las Vegas, Nevada 89107 (“Residence”) with a value of \$1,350,000. On his exemption Schedule “C,” Debtor claimed a 100% homestead in the Residence under Nevada law. A Notice of Chapter 7 Bankruptcy Case was issued, initially

<sup>1</sup> 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” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “NRS” are to the provisions of the Nevada Revised Statutes. All references to “FRBP” are to the provisions of the Federal Rules of Bankruptcy Procedure.

1 scheduling a meeting of creditors (“341 Meeting”)<sup>2</sup> for January 6, 2023. (ECF No. 6). The case  
2 was assigned for administration to Chapter 7 panel trustee Robert E. Atkinson (“Trustee”).

3 On December 7, 2022, Debtor filed a motion for an entry of an order: 1) to avoid  
4 judgment liens impairing Debtor’s homestead exemption; 2) authorizing the assumption of a real  
5 property sale agreement for the Residence; 3) compelling abandonment of property; and 4)  
6 approving the sale of the Residence (“Residence Motion”). (ECF No.7). Debtor filed his  
7 declaration in support of the motion (“First Crawford Declaration”). (ECF No. 8). A request  
8 was made to have the Residence Motion heard on shortened time. The request was granted on  
9 December 9, 2022, which set the Residence Motion for hearing on December 21, 2022. (ECF  
10 Nos. 9 and 12). Various objections and responses were filed prior to the hearing.<sup>3</sup>

11 On December 20, 2022, Debtor filed a notice setting forth a proposed form of order  
12 resolving the objections to the Residence Motion. (ECF No. 28).

13 On December 22, 2022, an order was entered granting the Residence Motion (“Residence  
14 Order”). (ECF No. 33).

15 On January 5, 2023, the Debtor filed another declaration regarding the proposed sale of  
16 the Residence (“Second Crawford Declaration”). (ECF No. 37).

17 On February 2, 2023, the Trustee filed his initial asset report indicating that the 341  
18 Meeting was concluded on January 12, 2023,<sup>4</sup> and further indicating there are assets in this  
19 bankruptcy estate to be administered. (ECF No. 46).

20 On February 10, 2023, the Trustee filed the instant Homestead Objection along with a  
21 supporting declaration of Robert E. Atkinson. (ECF Nos. 47 and 48).

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23 <sup>2</sup> Section 341(a) requires the United States Trustee or the assigned bankruptcy trustee to  
24 hold a meeting of creditors within a reasonable time after a bankruptcy petition is filed.

25 <sup>3</sup> On December 14, 2022, the Trustee filed opposition to a portion of the relief requested  
26 in the Residence Motion. (ECF No. 17). On December 19, 2022, creditor Steven Jones filed an  
27 opposition to the Residence Motion. (ECF No. 20). On December 19, 2022, creditor PennyMac  
Loan Services, LLC filed a limited response to the Residence Motion. (ECF No. 22).

28 <sup>4</sup> Conclusion of the 341 Meeting triggered a 30-day deadline to object to the Debtor’s  
exemptions under FRBP 4003(b)(1).

1 On March 7, 2023, Debtor filed a response to the Homestead Objection along with  
2 another declaration of Douglas Crawford (“Third Crawford Declaration”). (ECF Nos. 57 and  
3 58).

4 On March 8, 2023, Debtor received his Chapter 7 discharge. (ECF No. 60).

5 On March 15, 2023, Trustee Atkinson filed his reply in support of the Homestead  
6 Objection. (ECF No. 62).

### 7 DISCUSSION

8 As a result of the Residence Order, the Debtor completed a sale of the Residence on or  
9 about January 13, 2023, subject to the conditions required by the order. After the payment of  
10 certain liens and encumbrances, Debtor received \$189,050 as the undisputed amount of his  
11 homestead exemption, with the disputed amount of \$107,022.23 being held in trust by his  
12 bankruptcy counsel. The legal dispute centers on the bankruptcy limitations on a homestead  
13 imposed by Section 522(p).

14 Section 522(p)(1) provides in pertinent part as follows:

15 “Except as provided in paragraph (2) this subsection...., as a result of  
16 electing...to exempt property under State or local law, **a debtor may not**  
17 **exempt any amount of interest that was acquired by the debtor during**  
18 **the 1215-day period preceding the date of the filing of the petition** that  
exceeds in the aggregate \$189,050 in value in (A) real or personal property  
that the debtor...uses as a residence...”

19 11 U.S.C. §522(p)(1)(A) (emphasis added).

20 The Trustee’s position is simple: Debtor purchased the Residence on July 2, 2020,<sup>5</sup> and  
21 commenced his voluntary Chapter 7 proceeding 888 days later on December 7, 2022.<sup>6</sup> As a

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22 <sup>5</sup> Debtor attests that he acquired the Residence through a zero down payment Veterans  
23 Administration loan. Title was acquired from Benjamin S. Rudnitsky in favor of Douglas C  
24 Crawford, as Trustee of The Douglas C Crawford Trust, U/A dated May 14, 2018. See Grant,  
25 Bargain, Sale Deed, attached as Exhibit “1” to Third Crawford Declaration. As the Residence  
26 was not acquired through proceeds from the sale of a prior principal residence, the exception  
under Section 522(p)(2)(B) to the limitations of Section 522(p)(1) does not apply. Compare In re  
Narita, 2008 Bankr.LEXIS 5174, at \*13-14 (Bankr. D. Nev. Jan. 10, 2008).

27 <sup>6</sup> If the Debtor had delayed filing his Chapter 7 petition for 327 days, i.e., to October 31,  
28 2023, there apparently would be no dispute that the Residence would have been acquired outside  
of the 1215-day period. Whatever the circumstances that resulted in the filing prior to expiration

1 result, the Trustee maintains that the exemption available to the Debtor under Nevada law is  
2 limited by bankruptcy law to the \$189,050 that he already has received.<sup>7</sup> As a further result, the  
3 \$107,022.23 held in the trust account of the Debtor's bankruptcy counsel is non-exempt property  
4 of the bankruptcy estate.<sup>8</sup>

5 Debtor's position is not so simple. He maintains that after he purchased the Residence on  
6 July 2, 2020, for the amount of \$902,294, it appreciated in value to \$1,285,000 at the time it was  
7 sold on or about January 13, 2023. Debtor argues that the appreciation in value of \$385,706  
8 should inure to his benefit and should not be subject to the cap imposed by Section 522(p)(1).

9 Having considered the written argument presented by the parties, particularly the  
10 authorities cited and the exhibits attached to the various declarations submitted by the Debtor,  
11 the court concludes that the Trustee's objection must be sustained.

12 Application of the Nevada homestead statute in light of Section 522(p)(1) was addressed  
13 by the Ninth Circuit in Greene v. Savage (In re Greene), 583 F.3d 614 (2009). The circuit panel  
14 concluded that the Chapter 7 debtor had acquired his residence more than 1215 days prior to  
15 commencement of the proceeding. As a result of that conclusion, the Ninth Circuit reversed this  
16 bankruptcy court's decision that sustained the Chapter 7 trustee's objection under Section  
17 522(p)(1). The circuit panel found that certain words in Section 522(p)(1) are ambiguous, such  
18 as "amount," "interest," and "acquire," see id. at 622, and then proceeded to determine whether

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20 of that period, there is no dispute that the bankruptcy estate was created on the day the Debtor  
21 selected to file his voluntary petition. In other words, the estate was created on the date chosen  
22 by the Debtor. One of the consequences of that choice is prescribed by Section 522(p).

23 <sup>7</sup> There is no apparent dispute that the Debtor recorded a homestead declaration on  
24 August 10, 2022, i.e., approximately 88 days before filing his Chapter 7 petition. Under NRS  
25 115.010, a homestead is limited to equity in a residence not exceeding \$605,000. The  
26 undisputed amount already received by the Debtor (\$189,050) and the disputed amount held by  
27 counsel (\$107,022.23) total far less than the maximum homestead otherwise available to a  
28 Nevada resident.

<sup>8</sup> The abandonment provisions of the Residence Order excluded the disputed amounts  
that would be resolved by the Homestead Exemption. In other words, the disputed amounts are  
non-exempt property of the Chapter 7 estate if the Trustee prevails, or are exempt property of the  
Debtor if the Debtor prevails.

1 the debtor's recordation of a homestead declaration within the 1215-day period constituted an  
2 acquisition of an interest in the debtors' residence. The Ninth Circuit concluded that the debtor's  
3 acquisition of the homestead occurred when he purchased the real property in 1994 rather than  
4 when he recorded a homestead declaration in 2004. As a result, the 1215-day requirement of  
5 Section 522(p)(1) did not apply when the Debtor filed his Chapter 7 proceeding in 2005.<sup>9</sup>

6 The Trustee's position, the language of the statute, and the circuit's decision in Greene  
7 reflects a straightforward determination of an unambiguous temporal event, i.e., whether the  
8 debtor's acquisition of the residence occurred "during the 1215-day period preceding the date of  
9 the filing of the petition." If the subject residence is not acquired during the pre-bankruptcy  
10 period, it is unnecessary to determine the amount of the interest "that exceeds in the aggregate  
11 \$189,050 in value." Under such circumstances, it is immaterial whether the debtor's residence  
12 appreciates in value, or even depreciates in value.<sup>10</sup> If the subject residence is acquired during  
13 the pre-bankruptcy period, the exemption is still capped at \$189,050 in value irrespective of  
14 whether the residence appreciates or depreciates in value.<sup>11</sup>

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16 <sup>9</sup> In Caldwell v. Nelson (In re Caldwell), 545 B.R. 605 (B.A.P. 9th Cir. 2016), the  
17 Bankruptcy Appellate Panel for the Ninth Circuit concluded, *inter alia*, that the conveyance of  
18 homestead property from a limited liability company controlled by the Nevada individual debtor  
19 to the debtor's family trust was not an interest in the homestead property acquired by the debtor  
20 under Section 522(p). Unlike the situation in Caldwell, the Debtor in the instant case purchased  
21 the homestead property from a third-party and thereby acquired property within the meaning of  
22 Section 522(p). See note 5, supra,

23 <sup>10</sup> Nevada's homestead is capped at \$605,000 of the equity in the residence. See  
24 Nev.Rev.Stat. 115.010. Some States have no cap on the value of an individual debtor's  
25 homestead. See, e.g., Florida – unlimited (Fla.Const.Art. X, §4); Texas - unlimited (Tex. Const.  
26 art. XVI, §§ 50, 51); Oklahoma – unlimited (31 Okla.Stat. Ann. § 2). Other States have caps far  
27 below \$189,050 of equity in the residence. See, e.g., Kentucky - \$5,000 (Ky. Rev. Stat. Ann. §  
28 427.060); Hawaii - \$20,000 (Hawaii Rev. Stat. § 651-92(a)); Utah - \$45,100 (Utah Code Ann. §  
78B-5-503). And some States have no homestead exemption at all. See, e.g., New Jersey and  
Pennsylvania,

26 <sup>11</sup> In Kane v. Zions Bankcorporation, N.A. (In re Kane), 2022 WL 4591787 (N.D. Cal.  
27 Sep. 29, 2022), the bankruptcy court and the district court on appeal concluded that the Chapter 7  
28 debtor acquired an interest in his homestead when title was transferred one day before the  
bankruptcy petition was filed. As a result, the exemption cap under Section 522(p) applied. Id.  
at \*12.

1 While the Debtor apparently had a variety of reasons for voluntarily commencing his  
2 Chapter 7 proceeding on December 7, 2022, see Second Crawford Declaration at ¶¶ 2, 3 and 4,  
3 and Third Crawford Declaration at ¶¶ 6, 7, 8, 9, 10 and 13, those reasons do not prevent the  
4 application of Section 522(p). Despite the wide variations in the homestead amounts available  
5 under different State laws, see note 10, supra, individual debtors still choose the time for seeking  
6 voluntary bankruptcy relief.<sup>12</sup> In this instance, the Debtor voluntarily capped his Nevada  
7 homestead at \$189,050 when he filed the Chapter 7 petition.<sup>13</sup>

8 **IT IS THEREFORE ORDERED** that the Trustee’s Objection to Claim of Homestead  
9 Exemption, Docket No. 47, be, and the same hereby is, **SUSTAINED**.

10 **IT IS FURTHER ORDERED** that the balance of the proceeds from the sale of the  
11 subject real property, currently held in trust by Debtor’s counsel, shall be remitted to the Chapter  
12 7 trustee no later than **ten calendar days** from the entry of this Order.

13  
14  
15 Copies sent via CM/ECF ELECTRONIC FILING

16 Copies sent via BNC to:  
17 DOUGLAS CLINTON CRAWFORD  
18 1601 SOUTH SANDHILL ROAD, UNIT 183  
19 LAS VEGAS, NV 89104

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22 <sup>12</sup> Because property of a Chapter 7 bankruptcy estate may fluctuate in value, the assigned  
23 trustee’s exercise of discretion to liquidate estate property may not occur at a time convenient to  
24 a debtor. This possibility can be avoided or minimized. For example, an order of abandonment  
25 of the subject property under Section 554 may be sought by the assigned Chapter 7 trustee, any  
26 creditors, or even an impatient debtor. Alternatively, an individual debtor can seek other  
27 bankruptcy relief under Chapter 11 or Chapter 13 to maintain control over the disposition of  
28 estate property, including a managed sale of property that is appreciating in value, or an  
immediate liquidation of property that is decreasing in value.

<sup>13</sup> If the Debtor had waited until October 31, 2023, see note 6, supra, Section 522(p)  
would not have applied, the \$605,000 homestead would not have been limited, and the Trustee  
simply may have abandoned the property.