

1 FOR PUBLICATION

2 **UNITED STATES BANKRUPTCY COURT**
3 **EASTERN DISTRICT OF CALIFORNIA**

4 IN RE TODD JAMES OLIVER,)
5 dba T. James Construction, dba) Case No. 22-20811-C-7
6 James Built Construction Inc.,)
7) DCN No. PGM-1
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28)
Debtor.)

9 **OPINION**

10 CHRISTOPHER M. KLEIN, Bankruptcy Judge:

11 In this case of early impression, the debtor's motion for an
12 order compelling abandonment of an exempt homestead on the theory
13 of inconsequential value and benefit to the estate under 11
14 U.S.C. § 554(b) is denied as premature on account of § 522(q).

15 The value and benefit to the estate remains uncertain
16 because § 522(q)(1)(B)(ii) could limit the claimed \$626,400
17 exemption to \$189,050 if pending adversary proceedings alleging
18 fraud and fiduciary fraud establish there is debt arising from
19 "fraud, deceit, or manipulation in a fiduciary capacity."

20 Depending on the outcome of that open question of law, the
21 trustee might have more than \$250,000 available to pay claims if
22 the § 522(q) cap, which was dormant in California until the state
23 increased its homestead exemption in 2021, applies.

24 As the time for any "party in interest" to object to
25 exemptions under § 522(q) does not, per Federal Rule of
26 Bankruptcy Procedure 4003(b)(3), expire until the case is closed,
27 abandonment will be under § 554(c) incident to case closure.

28 The motion to compel abandonment under § 554(b) is DENIED.

1 Facts

2 Chapter 7 debtor Todd Oliver elected to exempt his residence
3 in Soda Springs, Placer County, California, for \$626,400 under
4 new California exemptions effective in 2021.¹

5 He valued the property at \$825,000, subject to consensual
6 liens of \$379,155 and to two judgment liens totaling \$134,339.

7 In lien avoidance proceedings under § 522(f), the judgment
8 lienors were given time to gather evidence probative of whether
9 the property is his residence and its value exceeded the
10 \$1,005,555 apparently needed to preserve a judgment lien. When
11 such evidence was not forthcoming, the liens were ordered avoided
12 as impairing the claimed exemption under the § 522(f) calculus on
13 the assumption the exemption is \$626,400.

14 Two pending adversary proceedings seek to except debts from
15 discharge on counts under 11 U.S.C. §§ 523(a)(2) and (a)(4).

16 Meanwhile, the debtor filed the instant motion to compel
17 abandonment of his exempt property pursuant to § 554(b) as being

18
19 ¹Cal. Code Civ. Pro. § 704.730 provides:

20 (a) The amount of the homestead exemption is the greater
of the following:

21 (1) The countywide median sale price for a
22 single-family home in the calendar year prior to the
calendar year in which the judgment debtor claims the
23 exemption, not to exceed six hundred thousand dollars
(\$600,000).

24 (2) Three hundred thousand dollars (\$300,000).

25 (b) The amounts specified in this section shall adjust
annually for inflation, beginning on January 1, 2022, based
26 on the change in the annual California Consumer Price Index
for All Urban Consumers for the prior fiscal year, published
by the Department of Industrial Relations.

27 Cal. Code Civ. Pro. § 704.730 (2021). The 2022 adjusted exemption
28 range is \$312,200 to \$626,400; in 2023, \$339,196 to \$678,391.

1 of inconsequential value and benefit to the estate. He reasons
2 that more than 30 days have transpired since the last amendment
3 to Schedule C and that no objection to his claim of exemption was
4 filed within the deadline prescribed by Rule 4003(b)(1).

5

6

Jurisdiction

7 Jurisdiction is founded on 28 U.S.C. § 1334(a). A motion to
8 compel abandonment of property of the estate is a core
9 proceeding. 28 U.S.C. § 157(b)(2)(A).

10

11

Analysis

12 The fly in the ointment is 11 U.S.C. § 522(q)(1)(B)(ii),
13 which preempts and caps California's recently-increased homestead
14 exemption at \$189,050 for debtors with debt arising from "fraud,
15 deceit, or manipulation while acting in a fiduciary capacity."

16

17 The issue is not peculiar to California, which measures its
18 maximum exemption by "countywide median sale price for a
19 single-family home in the calendar year prior to the calendar
20 year." The State of Washington has recently-enacted a similar
21 homestead exemption measured by the "county median sale price of
22 a single-family home in the preceding calendar year," which could
23 exceed the exemption cap. Rev. Code Wash. § 6.13.030 (2021).

24

25 Paucity of precedent regarding a phenomenon migrating into
26 the Ninth Circuit warrants more extensive analysis than is usual.

27

28

I

The Statutory Context

The 2005 Amendments to the Bankruptcy Code, commonly known

1 as BAPCPA, included a package that included three new subsections
2 to § 522 in order to address perceived abuses of exemptions.

3 By these amendments Congress exercised its Constitutional
4 authority under the Bankruptcy Clause at Article I, Section 8, to
5 preempt state-law exemptions with which it had not previously
6 interfered. U.S. Const. Art. 1, § 8.

7
8 A

9 Exemption Planning

10 The first provision, § 522(o),² is a quasi fraudulent
11 transfer provision addressed to abusive exemption planning
12 transfers infected by actual intent to hinder, delay, or defraud
13 creditors made within the 10 years preceding bankruptcy. The
14 reduction of an exemption on account of a § 522(o) violation
15 turns on actual intent and does not require that the debtor have
16 relocated from another state. 11 U.S.C. § 522(o).

17
18 ²Section 522(o) provides:

19 (o) For purposes of subsection (b)(3)(A), and notwithstanding
20 subsection (a), the value on an interest in –

21 (1) real or personal property that the debtor or a
22 dependent of the debtor uses as a residence;

23 (2) a cooperative that owns property that the debtor or
24 a dependent of the debtor uses as a residence;

25 (3) a burial plot for the debtor or a dependent of the
26 debtor; or

27 (4) real or personal property that the debtor or a
28 dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to
any portion of any property that the debtor disposed of in the
10-year period ending on the date of the filing of the petition
with intent to hinder, delay, or defraud a creditor and that the
debtor could not exempt, or that portion that the debtor could
not exempt, under subsection (b), if on such date the debtor had
held the property so disposed of.

11 U.S.C. § 522(o).

1 B

2 Bankruptcy Tourism

3 The second added subsection, § 522(p),³ addressed abusive
4 bankruptcy tourism to remedy the so-called “mansion loophole”
5 that figured prominently in legislative debate.

6 It had become regarded as a notorious abuse that individuals
7 facing large liabilities would relocate from low-exemption states
8 to high-exemption states, such as Florida or Texas, and purchase
9 mansions as a homestead before filing a bankruptcy case.

10 New subsection § 522(p) prescribes an inflation-adjusted
11 exemption cap (presently \$189,050) for interests in property

12 _____
13 ³Section 522(p) provides:

14 (p) (1) Except as provided in paragraph (2) of this subsection
15 and sections 544 and 548, as a result of electing under
16 subsection (b) (3) (A) to exempt property under State or local law,
17 a debtor may not exempt any amount of interest that was acquired
18 by the debtor during the 1215-day period preceding the date of
19 the filing of the petition that exceeds in the aggregate [now
20 \$189,050] in value in –

18 (A) real or personal property that the debtor or a dependent
19 of the debtor uses as a residence;

19 (B) a cooperative that owns property that the debtor or a
20 dependent of the debtor uses as a residence;

20 (C) a burial plot for the debtor or a dependent of the
21 debtor; or

21 (D) real or personal property that the debtor or a dependent
22 of the debtor claims as a homestead;

22 (2) (A) The limitation under paragraph (1) shall not apply to
23 an exemption claimed under subsection (b) (3) (A) by a family
24 farmer for the principal residence of such farmer.

24 (B) For purposes of paragraph (1), any amount of such
25 interest does not include any interest transferred from a
26 debtor’s previous principal residence (which was acquired prior
27 to the beginning of such 1215-day period) into the debtor’s
28 current principal residence, if the debtor’s previous and current
residences are located in the same State.

11 U.S.C. § 522(p).

1 "acquired" within 1215 days preceding the bankruptcy case filing
2 by persons who move from another state. 11 U.S.C. § 522(p).

3 This provision complemented a revision of § 522(b)(3) that
4 saddles those who change domicile with the exemptions of their
5 former domicile for up to two years. 11 U.S.C. § 522(b)(3)(A).

6
7 C

8 Abusive Exemption of Debt Arising From Misconduct

9 The third provision, § 522(q),⁴ prescribes the same \$189,050

10
11 ⁴Section 522(q) provides:

12 (q)(1) As a result of electing under subsection (b)(3)(A) to
13 exempt property under State or local law, a debtor may not exempt
14 any amount of an interest in property described in subparagraph
15 (A), (B), (C), and (D) of subsection (p)(1), which exceeds in the
16 aggregate [now \$189,050] if –

17 (A) the court determines, after notice and a hearing,
18 that the debtor has been convicted of a felony (as defined
19 in section 3156 of title 18), which under the circumstances,
20 demonstrates that the filing of the case was an abuse of the
21 provisions of this title; or

22 (B) the debtor owes a debt arising from –

23 (i) any violation of the Federal securities laws (as
24 defined in section 3(a)(47) of the Securities Exchange Act
25 of 1934), any State securities law, or any regulation or
26 order issued under Federal securities laws or State
27 securities laws;

28 (ii) fraud, deceit or manipulation in a fiduciary
capacity or in connection with the purchase and sale of any
security registered under section 12 or 15(d) of the
Securities Exchange Act of 1934 or under section 6 of the
Securities Act of 1933;

(iii) any civil remedy under section 1964 of title
18; or

(iv) any criminal act, intentional tort, or willful
or reckless misconduct that caused serious physical injury
or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of
an interest in property described in subparagraphs (A), (B), (C)
and (D) of subsection (p)(1) is reasonably necessary for the
support of the debtor and any dependent of the debtor.

1 exemption cap as § 522(p), but does not depend on when interests
2 in property are acquired and applies to everyone, not just
3 persons relocating from another state. It is designed to close
4 the "mansion loophole" for persons who commit specified forms of
5 misconduct and features a savings clause to ameliorate harsh
6 consequences for debtors and dependents. 11 U.S.C. § 522(q).⁵

7
8 II

9 Early Debates Regarding Construction

10 The background and legislative history of the 2005 additions
11 to § 522 came into focus in the course of the first substantial
12 controversy regarding their terms.

13 The phrase "as a result of electing under subsection
14 (b) (3) (A) to exempt property under State or local law" that is in
15 §§ 522(p) and (q) stirred debate about whether Congress had
16 succeeded in closing the dysfunctional "mansion loophole."

17 One school invoked "plain meaning" to contend that "result
18 of electing" meant that the cap on exemptions could not apply in
19 states that had exercised the § 522(b) (2) authority to prohibit
20 use of the § 522(d) federal exemptions.⁶ In re McNabb, 326 B.R.

21
22 _____
11 U.S.C. § 522(q).

23 ⁵The House Judiciary Committee Report on BAPCPA and
24 § 522(q) (1) (B) (ii) & (iii) noted "concerns that former Enron
25 Chairman Kenneth Lay would be entitled to an unlimited homestead
exemption in his native Texas should he file for Bankruptcy."
H.R. REP. No. 109-31(1) at 595 (2005).

26 ⁶A state's power to "opt-out" of the federal bankruptcy
27 exemptions at § 522(d) is at § 522(b) (2):

28 (b) (2) Property listed in this paragraph is property that
is specified under subsection (d), unless the State law that

1 785 (Bankr. D. Ariz. 2005). It reasoned that no "election" occurs
2 when there is only one possible exemption choice. However, the
3 paradigm "mansion loophole" example is in such a jurisdiction.

4 The other school contended the cap applies in all states. To
5 hold otherwise, based on the history of the "mansion loophole,"
6 would defeat the plain purpose of the exemption cap. E.g., In re
7 Virissimo, 322 B.R. 201, 207 (Bankr. D. Nev. 2005).

8 In 2006, Judge Markell, rebutting McNabb, detailed the
9 history of the "mansion loophole" abuse in the context of rules
10 of statutory construction to conclude that the phrase "result of
11 electing" may have been inept draftsmanship but could not be
12 construed so as to defeat Congress' avowed purpose of closing the
13 loophole. In re Kane, 336 B.R. 477, 479-85 (Bankr. D. Nev. 2006).

14 The view stated in Kane gains support from recognition of
15 fallacy in the McNabb reasoning in which one exemption "election"
16 was overlooked. The key is the threshold provision in § 522(b)(1)
17 that an individual debtor "may exempt" property from property of
18 the estate.⁷ Virissimo, 322 B.R. at 207. As the word "may" is
19 permissive, not mandatory, it follows that every claim of
20 exemption entails "electing" to exempt property.

21 _____
22 is applicable to the debtor under paragraph (3) (A)
23 specifically does not so authorize.

24 11 U.S.C. § 522(b)(2).

25 ⁷The first sentence of § 522(b)(1) provides:

26 (b)(1) Notwithstanding section 541 of this title, an
27 individual debtor may exempt from property of the estate the
28 property listed in either paragraph (2) or in the
alternative, paragraph (3) of this subsection.

11 U.S.C. § 522(b)(1).

1 In short, the fallacy of false choice infects McNabb. One
2 cannot ignore the election preliminary to every claim of
3 exemption. There is always a § 522(b)(1) "election" to exempt or
4 not exempt, regardless of whether the state has opted out of
5 § 522(d) exemptions. Nor is the "no-exemption" election absurd;
6 debtors may elect to forego exemptions for various reasons.

7 The weight of modern trial-court authority supports the
8 Kane-Virissimo analysis.

9 The Bankruptcy Appellate Panel and at least one District
10 Court in this circuit have approved the Kane-Virissimo view that
11 § 522(p) and § 522(q) apply in all states. E.g., Caldwell v.
12 Nelson (In re Caldwell), 545 B.R. 605, 609 (9th Cir. BAP 2016);
13 Kane v. Zions Bancorporation, N.A., ___ F. Supp. 3d ___, Bankr. L.
14 Rep. ¶ 83,821, 2022 Westlaw 4591787, at *6-*8 (N.D. Cal. 9/29/22)
15 (Orrick, D.J.), notice of appeal filed, 9th Cir. No. 22-16674.

16 This court agrees and holds that the exemption caps in
17 § 522(p) and § 522(q) apply in California bankruptcy cases.

18

19 III

20 § 522(q) Misconduct Issues

21 Unlike the 522(p) 1215-day exemption cap, which has been the
22 subject of cases involving timing issues and the meaning of
23 "acquire," the terms of the § 522(q) exemption cap for bad acts
24 have only occasionally been addressed in reported cases.

25

26 A

27 Cross-References in § 522(p) and § 522(q)

28 What is the effect of the cross-reference in § 522(q) to the

1 1215-day § 522(p) cap that applies to bankruptcy tourists?

2 The syntax of the two subsections reveals that the cross-
3 references in § 522(q) (1) to paragraphs (A), (B), (C), and (D) of
4 § 522(p) (1) operate merely to designate the property to which the
5 permanent cap of § 522(q) applies. Specifically, the property
6 affected by a § 522(q) cap is the same property that is subject
7 to the § 522(p) (1) 1215-day temporary cap.

8 The cross-references do not, however, tether § 522(q) to
9 1215-day provision of § 522(p) in any other respect. The § 522(q)
10 exemption cap applies to all homesteads wherever situated. To
11 hold otherwise would invalidate and leave § 522(q) meaningless.

12
13 B

14 Uncertain Meanings of Misconduct

15 The bad acts that trigger the § 522(q) (1) permanent cap on
16 exemptions are a hodge-podge of five little-explored categories:

17 (1) abusive filing of a bankruptcy case after being
18 convicted of a felony;

19 (2) debt from any violation of federal or state
20 securities laws and regulations or orders issued under them;

21 (3) debt from fraud, deceit, or manipulation in a
22 fiduciary capacity or in connection with the purchase or
23 sale of any security register under specified sections of
24 the Securities Exchange Act of 1934 or the Securities Act of
25 1933;

26 (4) debt from any civil remedy for racketeering; and

27 (5) debt from any criminal act, intentional tort, or
28 willful or reckless misconduct that caused serious physical
injury or death to another individual within the preceding
five years.

11 U.S.C. § 522(q) (1).

There is a savings clause at § 522(q) (2) permitting the
§ 522(q) (1) exemption cap to be exceeded to the extent

1 "reasonably necessary for the support of the debtor and any
2 dependent of the debtor."⁸

3

4 1

5 There is authority under § 522(q) (1) (A) construing what
6 "under the circumstances" constitutes an "abuse" of title 11
7 following a felony conviction. In re Cotton, 647 B.R. 767 (Bankr.
8 W.D. Wash. 2022) (Washington exemption).

9

10 2

11 Violation of securities laws for purposes of
12 § 522(q) (1) (B) (i) has been addressed in a Texas decision. In re
13 Bounds, 491 B.R. 440 (Bankr. W.D. Tex. 2013).

14

15 3

16 The § 522(q) (1) (B) (ii) clause regarding "fraud, deceit, and
17 manipulation in a fiduciary capacity" was addressed in an Enron
18 executive's bankruptcy. In re Presto, 376 B.R. 554, 586-601
19 (Bankr. S.D. Tex. 2007).

20

21 4

22 The § 522(q) (1) (B) (iii) clause regarding "any civil remedy
23

24

⁸Section 522(q) (2) provides:

25

26 (q) (2) Paragraph (1) shall not apply to the extent the
27 amount of an interest in property described in subparagraphs
28 (A), (B), (C), and (D) of subsection (p) (1) is reasonably
necessary for the support of the debtor and any dependent of
the debtor.

28

11 U.S.C. § 522(q) (2).

1 under section 1964 of title 18," which relates to racketeering,
2 does not yet appear in reported decisions.

3

4 5

5 The First Circuit construed the § 522(q) (1) (B) (iv) clause
6 regarding "any criminal act, intentional tort, or willful or
7 reckless misconduct that caused serious physical injury or death
8 to another individual in the preceding 5 years." Larson v. Howell
9 (In re Larson), 513 F.3d 325 (1st Cir. 2008), aff'g 340 B.R. 444
10 (Bankr. D. Mass 2006) (negligent homicide conviction).

11

12 C

13 § 522(q) (2) Savings Clause

14 The savings clause of § 522(q) (2) for sums exceeding the
15 § 522(q) (1) cap regarding what is "reasonably necessary for the
16 support of the debtor and any dependent of the debtor" has been
17 construed in a few cases. E.g., Bounds, 491 B.R. at 452-54;
18 Presto, 376 B.R. at 598-600.

19

20 D

21 Fraud, Deceit, or Manipulation in a Fiduciary Capacity

22 The provision of particular pertinence to this case is
23 § 522(q) (1) (B) (ii) prescribing a \$189,050 exemption cap if the
24 debtor owes a debt "arising from" - "fraud, deceit or
25 manipulation in a fiduciary capacity."

26 Whether the provision, which also is in § 548(e) (2) (B),
27 encompasses the issues in the two pending adversary proceedings
28 alleging causes of action under § 523(a) (2) and § 523(a) (4) is an

1 open question as to which this court expresses no view.

2 Key questions will need to be resolved in the usual
3 adversary manner:

4 What constitutes the requisite "fraud"?

5 What constitutes the requisite "deceit"?

6 What constitutes the requisite "manipulation"?

7 What constitutes the requisite "fiduciary capacity"?

8 Does "in a fiduciary capacity" modify "fraud" or "deceit"?

9 Although similarities of language with § 523(a)(2) and
10 § 523(a)(4) are intriguing, one would need to consider the
11 implications of why Congress did not merely clone them.

12 Answers to those questions must await decisions made in the
13 usual case-by-case adversary manner.

14

15 IV

16 Procedure and Burdens

17 Although the paucity of § 522(q) precedent regarding
18 substantive provisions leaves much uncertain, it is possible to
19 be more definite about procedure and burdens.

20

21 A

22 Deadline to Make § 522(q) Objections

23 Rule 4003(b)(3) permits an objection to exemption under
24 § 522(q) to be made by any party in interest at any time before
25 the case closes.⁹

26

27 ⁹Rule 4003(b)(3) provides:

28 (b)(3) An objection to a claim of exemption based on
§ 522(q) shall be filed before the closing of the case. If

1 The expiration of the normal deadline under Rule 4003(b)(1)
2 – usually 30 days after meeting of creditors or last amendment to
3 claim of exemption¹⁰ – does not affect the § 522(q) deadline.

4 In other words, open season on § 522(q) theories for
5 limiting exemptions to the exemption cap does not expire before
6 the case closes.

7 The prolonged opportunity to object under § 522(q) means
8 that an order under § 554 authorizing or compelling abandonment
9 cannot be trusted to be final before the case closes.¹¹ Until
10 then, there is the risk that someone will surface with a § 522(q)
11 objection. When there is pending litigation that alleges some
12 trigger elements of § 522(q), the prudent course is for the court
13 to decline to order a § 554 abandonment before the case closes.

14 Closure of the case, by operation of § 554(c), includes
15

16 an exemption is first claimed after a case is reopened, an
17 objection shall be filed before the reopened case is closed.

18 Fed. R. Bankr. P. 4003(b)(3).

19 ¹⁰Rule 4003(b)(1) provides:

20 (b)(1) Except as provided in paragraphs (2) and (3), a
21 party in interest may file an objection to the list of
22 property claimed as exempt within 30 days after the meeting
23 of creditors held under § 341(a) is concluded or within 30
24 days after any amendment to the list or supplemental
25 schedules is filed, whichever is later. The court may, for
26 cause, extend the time for filing objections if, before the
27 time to object expires, a party in interest files a request
28 for an extension.

25 Fed. R. Bankr. P. 4003(b)(1).

26 ¹¹If it were to be determined that the \$189,050 exemption
27 cap applies, then it may be possible for the judgment lien
28 creditors whose liens were avoided in this case on the premise a
\$626,400 exemption applies to ask the court to revisit the
questions of avoiding the respective liens.

1 abandonment of all correctly scheduled property not otherwise
2 administered. 11 U.S.C. § 554(c).¹²

3

4

B

5

Standing

6 Any party in interest has standing to make a § 522(q)
7 objection to exemptions. Fed. R. Bankr. P. 4003(a)(1).

8

9 In addition to the plaintiffs in the pending adversary
10 proceedings, the trustee may object, and any other party in
11 interest could object.

12

13 One rationale for liberal standing is that the \$189,050
14 exemption cap against a \$626,400 exemption claim could make
15 \$437,350 available as property of the estate, which case could
16 translate to a substantially increased dividend.

17

18

C

19

Burdens

20 Shifting burdens apply in objections to exemptions in
21 California bankruptcy cases.

22

23

1

24 The applicable burden of proof for exemptions claimed under
25 California law is allocated by California statute governing
26 judgment enforcement.

27

28 ¹²Trap for unwary: property of the estate that has not been
scheduled remains property of the estate, essentially forever. 11
U.S.C. § 554(d); cf., In re Dunning Bros., 410 B.R. 877 (Bankr.
E.D. Cal. 2009) (case reopened in 2009 to administer unscheduled
property in case filed in 1936).

1 In general, the claimant of the exemption has the burden of
2 proof of entitlement to a homestead exemption. Cal. Code Civ.
3 Pro. § 703.580(b).¹³

4 The burden, however, is on the objector if the records of
5 the county tax assessor reflect a property tax claim of
6 homeowners exemption or disabled veterans exemption. Cal. Code
7 Civ. P. § 704.780(a)(1).¹⁴

8

9

2

10 In the context of § 522(q), after it is established there is
11 entitlement to a homestead exemption, an objector asserting the
12 § 522(q) exemption cap has the burden to prove the predicate for
13 capping the exemption. Here, that would entail proof of the
14 "fraud, deceit, or manipulation in a fiduciary capacity" required
15 by § 522(q)(1)(B)(ii).

16

17 ¹³Cal. Code Civ. Pro. § 703.580(b) provides:

18 (b) At a hearing under this section, the exemption claimant
19 has the burden of proof.

20 Cal. Code Civ. Pro. § 703.580(b).

21 ¹⁴Cal. Code Civ. Pro. § 704.780(a)(1) provides:

22 (1) If the records of the county tax assessor indicate
23 that there is a current homeowner's exemption or disabled
24 veteran's exemption for the dwelling claimed by the judgment
25 debtor or the judgment debtor's spouse, the judgment
26 creditor has the burden of proof that the dwelling is not a
27 homestead. If the records of the county tax assessor
28 indicate that there is not a current homeowner's exemption
or disabled veteran's exemption for the dwelling claimed by
the judgment debtor or the judgment debtor's spouse, the
burden of proof that the dwelling is a homestead is on the
person who claims that the dwelling is a homestead.

28

Cal. Code Civ. Pro. § 704.780(a)(1).

1

3

2 Finally, the § 522(q) (2) safety valve permitting an upward
3 adjustment of the cap for necessary support is in the nature of
4 an affirmative defense.

5 If the cap is determined to apply, then the exemption
6 claimant has the burden of persuasion and correlative risk of
7 nonpersuasion on the question of the “amount reasonably necessary
8 for the support of the debtor and any dependent of the debtor.”
9 11 U.S.C. § 522(q) (2).

10 The record in this case is silent about whether the Placer
11 County Tax Assessor’s records reflect the debtor has claimed a
12 homeowner’s tax exemption or a disabled veteran’s exemption.

13

14

4

15 The provision of Rule 4003(c) purporting to allocate the
16 burden of proof to exemption objectors cannot trump California’s
17 statutory allocations of burdens for state law exemptions.

18

19

a

20 Rule 4003(c), to the extent it displaces state-law burdens
21 with respect to exemptions provided by state law, offends the
22 Bankruptcy Rules Enabling Act, which forbids rules that modify
23 any substantive right. 28 U.S.C. § 2075.

24

25 The Supreme Court’s 2000 ruling that bankruptcy does not
26 alter the burden imposed by underlying substantive law clarified
27 that burden of proof is substantive, not procedural. Raleigh v.
28 Ill. Dept. of Revenue, 530 U.S. 15 (2000). Although the status of
burden of proof as procedural or substantive may have been

1 uncertain before Raleigh, after 2000 the law is: "the burden of
2 proof is an essential element of the claim itself; one who
3 asserts a claim is entitled to the burden of proof that normally
4 comes with it." Raleigh, 530 U.S. at 21.

5 To the extent Rule 4003(c) modifies the burden of proof for
6 exemptions claimed under state law, the rule violates the
7 prohibition on modifying substantive rights. In other words,
8 regardless of Rule 4003(c), state law exemptions control the
9 burdens of proof governing state law exemptions. Anderson v.
10 Nolan (In re Nolan), 2022 Westlaw 327927, *2 (9th Cir. 2022),
11 aff'g 2021 Westlaw 528679, *3, (C.D. Cal. 2021), aff'g 618 B.R.
12 860 (Bankr. C.D. Cal. 2020).

13 When in 2005 Congress imposed exemption caps on state-law
14 exemptions, it did not modify basic proof rules regarding state-
15 law exemptions.

16

17

b

18 After Raleigh and the recognition of the infirmity of Rule
19 4003(c), California state-law exemptions have been construed by
20 bankruptcy courts as subject to the burdens of proof prescribed
21 by state law, which generally place the burden on the person
22 claiming the exemption. E.g., In re Pashenee, 531 B.R. 834, 837
23 (Bankr. E.D. Cal. 2015); In re Tallerico, 532 B.R. 774, 780-81
24 (Bankr. E.D. Cal. 2015). Accord, e.g., Bhangoo v. Engs Comm. Fin.
25 Co. (In re Bhangoo), 634 B.R. 80, 85 (9th Cir. BAP 2021); Diaz v.
26 Kosmala (In re Diaz), 547 B.R. 329, 337 (9th Cir. BAP 2016),
27 cited with approval Nolan, supra (9th Cir. 2022).

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Conclusion

The debtor's motion to compel abandonment of his homestead property pursuant to § 554(b) is DENIED as premature because the deadline under Rule 4003(b)(3) for any party in interest to object that the \$189,050 § 522(q) exemption cap applies to limit the debtor's \$626,400 exemption does not expire until the case closes. Pending litigation implicates § 522(q)(1)(B)(ii). If the exemption cap does apply, then the subject property could be of consequential value and benefit to the estate.

Dated: March 23, 2023



United States Bankruptcy Judge