UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 20, 2025 at 10:30 a.m.

1.	**24-24573-E-7** **BLL-1**	**PHILLIP KATTENHORN** **Richard Hall**	**CONTINUED MOTION TO AVOID LIEN OF BMO HARRIS BANK N.A.** **2-10-25 [38]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on February 10, 2025. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

May 20, 2025 Hearing

The court continued the hearing and set a briefing schedule for the Parties to supplement the record in this case due to the unique nature of the facts. On April 11, 2025, Debtor filed his supplemental brief. Docket 63. Debtor states:

> 1. California exemptions are liberally construed in favor of the debtor. *Elliott v. Weil* (*In re Elliott*), 523 B.R. 188, 192 (9th Cir. BAP 2014). Suppl. Brief at 1:25-26, Docket 63.

2. Under § 522(f), the court must determine whether the debtor would have been entitled to the exemption in the absence of the lien. *Id.* at 2:116-18.

3. CCP § 704.920 provides that "[a] dwelling in which an owner or spouse of an owner resides may be selected as a declared homestead pursuant to this article by recording a homestead declaration in the office of the county recorder of the county where the dwelling is located." "Dwelling" as used in CCP § 704.920 is defined in CCP § 704.910(c) as "any interest in real property that is a `dwelling' as defined in Section 704.710." Suppl. Brief at 3:3-8.

4. Nothing in CCP § 704.920 addresses the issue of community property or separate property having an impact on homestead exemption and in fact refers to "any interest in real property". Suppl. Brief at 3:14-17.

5. Pursuant to California law, the factors a court should consider in determining residency for homestead purposes are (1) physical occupancy of the property and (2) the intention with which the property is occupied. *In re Bruton*, 167 BR 923, 926 (1994). A debtor temporarily absent from the property on the date of the bankruptcy petition can claim a homestead exemption in that property. *In re Pham*, 177 BR 914, 919 (1994). Suppl. Brief 3:18-23.

6. CCP § 704.720(d) permits Debtor to claim a homestead exemption in the Property. Suppl. Brief 4:8-15.

7. California state case law supports a finding that if the home is the separate property of one spouse but is the primary residence of both spouses, both can benefit from the homestead exemption. *Id.* at 5:14-16.

Creditor's Supplemental Opposition

Creditor filed an Opposition on April 25, 2025. Docket 65. Creditor states:

1. CCP § 704.720(d) only permits a former spouse to claim the homestead exemption in community property, not property held in a joint tenancy. Opp'n at 2:10-22.

For this assertion Creditor references a statement from the legislative history for the Bill that enacted California Code of Civil Procedure § 704.720(d) as interpreted by a District court in Maryland construing California law.

2. Creditor directs the court to the decision of the U.S. District court in Maryland in *Clark v. Zvi Guttman*, 2013 WL 812017 (D. Md. Mar. 4, 2013) as being instructive in determining the proper application of California Code of Civil Procedure § 704.720(d). The debtor in *Clark,* like Phillip in this matter, attempted to rely on CCP 704.720(d) to support his claimed exemption even though he was not living at his ex-residence. *Id.* at *2. The

District Court in *Clark* realized the potential for abuse of Section 720(d), noting that a former spouse of a debtor "could forever obtain an exemption, even long after the final resolution of a divorce, so long as the debtor continued to be a joint tenant in a former dwelling where the debtor's former spouse lives. Such a result does not appear to have been the intent of the California legislature" *Id.* at *2. Opp', 3:10-16.

In citing to this District Court of Maryland Decision, the Creditor appears to miss a very significant sentence or two in the Decision, which the court addresses below.

3. Phillip, like the debtor in *Clark*, never had a "community property ownership" in the Property that needed protection while the Kattenhorn's divorce was pending. Furthermore, there is no evidence that Phillip was a victim of domestic abuse which necessitated his departure from the Property. Phillip and Mary Kattenhorn have slow-walked the finalization of their divorce and failed to finalize a financial resolution associated with that divorce in an effort to do an end around their creditors. Phillip should not enjoy an indefinite homestead exemption in the Property, which is not, and never was, community property. *Id.* at 3:18-25.

Debtor's Reply

Debtor filed a Reply to the Opposition on May 5, 2025. Docket 67. Debtor states:

1. Debtor is not attempting to claim an indefinite homestead exemption, rather the exemption is claimed pending the final distribution of marital assets. *Id.* at 2:2-5.

2. Judge Clement only decided the issue of transmutation, not that the Moore/Mardsen analysis is not applicable. Under the Moore/Mardsen analysis, the Property may be determined to be community property.

DISCUSSION

The court appreciates that the Parties have narrowed their focus and presented law to the court that would either permit or disallow Debtor to claim a homestead exemption in the Property. As an initial matter, the court issues this ruling from the perspective that "[c]ourts 'adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor.'" *Tarlesson v. Broadway Foreclosure Investments, LLC*, 109 Cal. Rptr. 3d 319, 321 (Cal. Ct. App. 2010) (citing *Amin v. Khazindar*, 5 Cal.Rptr.3d 224 (2003)). It is also undisputed that if a dwelling is owned by the judgment debtor as a joint tenant or tenant in common, then each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own interest. Cal. Code Civ. P. § 704.820.

The issue before the court is not whether the Property is community or separate property, but whether California Code of Civil Procedure § 704.720(d) would permit Debtor to claim the homestead exemption in the Property. California Code of Civil Procedure § 704.720(d) states:

> (d) If a judgment debtor is not currently residing in the homestead, but his or her separated or former spouse continues to reside in or exercise control over possession of the homestead, that **judgment debtor continues to be entitled to an exemption under this article until entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse**, or until a later time period as specified by court order. Nothing in this subdivision shall entitle the judgment debtor to more than one exempt homestead. Notwithstanding subdivision (d) of Section 704.710, for purposes of this article, "spouse" may include a separated or former spouse consistent with this subdivision.

(Emphasis added). Looking at the plain language of the statute, it creates a deadline where the out of possession spouse can continue to claim a homestead exemption in the residence in which that spouse and the former spouse resided together prior to commencing the dissolution proceeding. That deadline is when there is a judgment or enforceable agreement that has divided all of the community property of the parties. The statute does not say, for examples:

A. If a judgment debtor is not currently residing in the community property homestead . . . .;

B. [o]r his or her separated or former spouse continues to reside in or exercise control over possession of the community property homestead, . . .; or

C. that judgment debtor continues to be entitled to an exemption under this article in the community property homestead until the entry of a judgment or other legally enforceable agreement dividing the community property . . . .

Both Parties appeal to California Code of Civil Procedure § 704.720(d) to support their positions. Debtor argues this provision allows him to claim a homestead exemption in the Property, and Creditor argues that since the Property is not community Property, this provision does not allow Debtor to claim the exemption. Creditor relies heavily on *Clark* to support its position. Creditor asserts that *Clark v. Zvi Guttman*, 2013 WL 812017 (D. Md. Mar. 4, 2013), a District Court case out of Maryland interpreting California law, tends to show that Debtor may not claim a homestead exemption in the Property.

In reading *Clark,* the court notes there are clear distinctions when compared to the facts of this case. There, the debtor, Clark, and his ex-spouse purchased their home as joint tenants in 1984 when they were married. *Clark,* 2013 WL 812017 at *1. In 1998 or 1999, Clark separated from his wife and moved out. His former wife and son still resided in the residence. *Id.* Clark filed for divorce in 2001 in Orange County and was granted the divorce on August 1, 2008. *Id.* There was no court-ordered final distribution of marital assets because the parties stipulated to diving assets. When he left the real property, Clark took sole possession of a boat and television. The rest of the couple's personal community property was left with his wife and was understood to be hers alone. *Id.*

In discussing the relevance of California Code of Civil Procedure § 704.720(d), the court in *Clark* states:

> Clark argues that the bankruptcy court erroneously construed § 704.720(d) as applying only to homesteads held as community property. Clark argues that even

> though Redwood Lane was held as a joint tenancy, because no "judgment or other legally enforceable agreement" dividing the Clarks' community property was entered, Clark can claim a homestead exemption for Redwood Lane. The trustee agrees that homesteads held as joint tenancies can qualify for an exemption under § 704.720(d) but only where "divorcing parties still ha[ve] any community property left for the California divorce court to divide." (Appellee's Br. at 6).
>
> Thus, the parties are largely in agreement on the operation of California law in this instance, and their dispute turns on whether the exemption's time limit for Clark to claim a homestead exemption for a non-resident spouse ("until entry ...") had accrued. The trustee's interpretation of the exemption—that it applies only where there is any community property left to divide—more logically comports with the exemption's text and purpose.

Clark, 2013 WL 812017 at *2.

The District Court in the *Clark* Decision goes even further in making it clear that the proposition that Creditor cites that Decision for is not "warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law:"

> The cases Clark cites are inapposite to the particular facts of this case. They all support Clark's undisputed proposition that **California's homestead exemption applies equally to community property and joint tenancies held by spouses or former spouses**. What the cases do not suggest is that § 704.720(d) applies where there is no community property left to divide. *See Clark*, 2012 WL 3597410 at *4 ("**[Clark] testified that he and Ms. Clark together own no community property** and he signed an affidavit confirming Redwood Lane is owned ... in joint tenancy."). . . [b]ut **the crucial fact relevant to the present case is that, in *Arrendondo–Smith*, the debtor's divorce was still pending when she filed for bankruptcy and, at the time, there was community property left to be divided.** *See id.* at 415, 417–18 ("Debtor's divorce action was still pending in California at the time this bankruptcy case was filed and, as such, she is considered married to her Spouse for the purpose of this analysis."). Because **§ 704.720(d) inherently requires that a non-resident debtor seeking a homestead exemption has community property left to divide with his or her former spouse,** and because Clark had divided any community property that existed in his marriage long before he filed for bankruptcy, the bankruptcy court correctly sustained the trustee's objection to his homestead exemption claim.

It is clear that the District Court in the *Clark* Decision the court concluded that since there was no community property left to divide in that case, that court held that California Code of Civil Procedure § 704.720(d) did not apply and Clark could not claim a homestead exemption in the real property.

In this case now before the court, the Property was originally acquired January 14, 2008, when Mr. and Ms. Kattenhorn were not married to each other. Decl. ¶ 4, Docket 40. The Kattenhorns were married on February 14, 2009, and took possession of the Property as a joint tenancy. *Id.* at ¶ 5. The record shows that the Kattenhorns were separated sometime in 2023, approximately one year prior to filing this case.

The record also shows that Debtor was compelled to leave the Property by a court order from the underlying family court case. Debtor's testimony at the 341 Meeting is consistent with this sentiment, Debtor testifying he was either homeless or "couch-surfing" after the separation and order from the family law court. Ex. 11 at 28-29, Docket 49. Debtor also states in the Motion to Avoid that the related family law case is presently stayed pending the resolution of this bankruptcy case, or by an order from this court. Mot. 2:2-5, Docket 38. Of note, Debtor testifies that the only assets left to be divided in the family law case include the Property and the lots known as Assessor Parcel Nos. 052-020-023 and 052-020-050 (collectively "Lots"). Ex. 11 at 29, Docket 49.

The *Clark* Decision stands for the proposition that when no community property is left to be divided, a debtor may not appeal to California Code of Civil Procedure § 704.720(d) to claim a homestead exemption in real property occupied by a former spouse that is owned as a joint tenancy. There was no community property left to be divided in *Clark*.

Here, there is community property left to be divided. The remaining community property to be divided are the Lots. The Chapter 7 Trustee Ethan Birnberg ("Trustee") filed a Motion to Approve Stipulated Agreement dividing the Lots as community property evenly between the estates of Mr. and Ms. Kattenhorn. The court granted the Motion to Approve Stipulated Agreement on March 7, 2025, that would have divided the community property Lots. Docket 47. However, a condition of the March 7, 2025 order was that Judge Clement in Ms. Kattenhorn's case also approve the stipulated agreement. Order at ¶ 5, Docket 47. Judge Clement has not approved the stipulated agreement as of the court's review of the Docket on May 13, 2025.

Therefore, there is community property left to be divided. The court finds that Debtor can claim the homestead exemption in the Property, regardless of whether the Property is community property or separate property, California Code of Civil Procedure § 704.720(d) permitting Debtor to claim the homestead exemption until all community property has been divided.

Creditor would take the position that married persons owning real property as joint tenants can only claim their homestead exemption if both spouses reside in the real property while they are going through a divorce. This construction would deprive divorced or separated persons of the homestead exemption when one spouse is forced to vacate the premises pending resolution of the divorce proceedings if the homestead property was owned as a joint tenancy. Such a construction could not have been intended by the California legislature. California Code of Civil Procedure § 704.720(d) was clearly enacted to protect persons forced to leave the home pending a final distribution of marital assets, as is the case here.

Creditor expresses concerns that Debtor is attempting to claim the homestead exemption in property he does not live in for an indefinite period of time. The court would note that the homestead exemption can only be claimed in this type of circumstance when all community property has not yet been divided. That is the case here, there being community property left to be divided. There is a clear final date the Debtor is entitled to claim the homestead exemption. If a creditor believes that the "ex-spouses" are "playing games," such creditor would go to the state court to enforce its rights.

Ruling

A judgment was entered against Debtor in favor of Creditor in the amount of $333,402.82. Exhibit D, Dckt. 41. An abstract of judgment was recorded with Placer County on July 19, 2023, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $650,000 as of the petition date. Schedule A at 11, Docket 1. Debtor claims a one-half interest in the Property in the amount of $325,000. *Id.* The unavoidable consensual liens that total $108,000 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 20, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $600,000 on Schedule C. Schedule C at 17, Docket 1.

For these reasons, the Motion is granted. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

REVIEW OF MOTION

This Motion requests an order avoiding the judicial lien of BMO Bank, N.A. ("Creditor") against property of the debtor, Phillip Kattenhorn ("Debtor") commonly known as 3905 Cedar Mist Lane, Auburn, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $333,402.82. Exhibit D, Dckt. 41. An abstract of judgment was recorded with Placer County on July 1, 2023, that encumbers the Property. *Id.*

CREDITOR'S OPPOSITION

Creditor filed an Opposition on March 12, 2025. Docket 48. Creditor is asserting that Debtor is not entitled to claim a homestead exemption in the Property for the following reasons:

1. California law defines "homestead" as the principal dwelling (1) in which the judgment debtor or judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Opp'n 3:26-3:3.

2. Neither Debtor nor his spouse resided continuously in the Property; Debtor was not residing at the Property on the Petition Date and that he was essentially "homeless". Mary Kattenhorn is Debtor's ex-spouse, not current spouse, and so he cannot claim the homestead exemption by virtue of her continuously residing in the Property. *Id.* at 4:23-5:5.

3. The property is not community property. Judge Clement has issued a ruling, which is currently on appeal, finding that the Property is not community property as Debtor and Ms. Kattenhorn never entered into a valid transmutation agreement transmuting the nature of the Property to community Property after being married.

4. The court should limit the application of Cal. Code Civ. P. § 704.720(d) and find that Debtor cannot claim the homestead exemption under this

subsection, either, in accordance with *Clark v. Zvi Guttman*, 2013 WL 812017 (D. Md. Mar. 4, 2013). *Id.* at 5:15-24.

DEBTOR'S REPLY

Debtor filed a Reply to the Opposition on March 18, 2025. Docket 54. Debtor requests an evidentiary hearing to prove Debtor is entitled to claim his homestead exemption. Debtor states that:

1. The only argument before this court related to community property/interest is to the real property being community property/interest based on California law related to commingling and a Moore/Marsden calculation. *See In re Marriage of Moore*, 28 Cal.3d 366 (1980) and *Marriage of Marsden* 181 Cal. Rptr. 910 (1982). Reply 2:7-11.

2. Debtor plans to show that Phillip Kattenhorn could not and cannot live in his homestead due to a restraining order by the California Family Court by a personal restraining order and the standard Automatic Temporary Restraining Orders (ATRO's), California Family Code 2040(b), which are currently in place in the family law case. *Id.* at 2:15-19.

3. An evidentiary hearing in which testimony from both Phillip Kattenhorn and Mary Kattenhorn will establish the community was so intertwined that they cannot provide a tracing and have conceded to each other that their interests in property is community property and their behavior supports it as community property. *Id.* at 3:19-23.

DISCUSSION

For purposes of this Motion, the parties spend much time discussing the nature of the Property and whether it can be claimed as exempt as community property. However, the nature of the property does not appear to be the determinative factor in whether Debtor can claim the exemption in this case.

Federal law allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b). 11 U.S.C. § 522(b)(2) and (3)(A) state:

(b)

> (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize. . .
>
> (3) Property listed in this paragraph is—
>
> > (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located

> in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

These two sections read together show the law allows a state to opt out of the federal exemption scheme entirely.

California has made such an election. *See* Cal. Code Civ. P. § 703.130. Therefore, a debtor filing bankruptcy who is domiciled in California must use the California exemptions, including the homestead exemption. A critical aspect to claiming the homestead exemption is where a given debtor is domiciled. *In re Urban*, 375 B.R. 882, 888 (B.A.P. 9th Cir. 2007) ("The state law that is applicable to the debtor is determined by where the debtor was domiciled for the 730 days (two years) immediately preceding the filing of bankruptcy.") (internal quotations omitted).

In *Lew v. Moss*, 797 F.2d 747, 749-750 (9th Cir. 1986), the Ninth Circuit Court of Appeals provides the following discussion on determination of domicile in connection with determining whether there was federal diversity jurisdiction (emphasis added and this court restructuring, shown in the *indented italic text*, the third paragraph to put the nonexclusive list of factors on separate lines for ease of review by the Parties):

> Second, a person is "domiciled" in a location where he or she has established a **"fixed habitation** or abode in a particular place, and **[intends] to remain there permanently or indefinitely**.'" *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940) (quoting *Pickering v. Winch*, 48 Ore. 500, 87 P. 763, 765 (1906)); 1 J. Moore, Moore's Federal Practice para. 0.74(3.-3), at 707.58-60 (1985) [hereinafter Moore's]. . .
>
> Finally, a person's old domicile is not lost until a new one is acquired. *Barber v. Varleta*, 199 F.2d 419, 423 (9th Cir. 1952); see also Restatement (Second) of Conflicts §§ 18-20 (1971) (and examples provided). A change in domicile requires the confluence of (a) **physical presence at the new location** with (b) **an intention to remain there indefinitely**. *See Owens*, 115 F.2d at 162; 13B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3613, at 544-45 (1984 & Supp. 1986) [hereinafter Wright & Miller].
>
> Courts in other jurisdictions have recognized additional principles relevant to our present analysis. The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including:
>
> *current residence,*
> *voting registration and voting practices,*
> *location of personal and real property,*
> *location of brokerage and bank accounts,*
> *location of spouse and family,*
> *membership in unions and other organizations,*
> *place of employment or business,*
> *driver's license and automobile registration, and*
> *payment of taxes.*

> Wright & Miller, *supra* § 3612, at 529-31 (citing authorities). *See also Bruton v. Shank*, 349 F.2d 630, 631 n.2 (8th Cir. 1965); *S.S. Dadzie v. Leslie*, 550 F. Supp. 77, 79 n.3 (E.D. Pa. 1982); *Mizell v. Eli Lilly & Co.*, 526 F. Supp. 589, 592-93 (D. S.C. 1981); *Griffin v. Matthews*, 310 F. Supp. 341, 342-43 (M.D. N.C. 1969), aff'd, 423 F.2d 272 (4th Cir. 1970). The courts have also stated that domicile is evaluated in terms of "objective facts," and that "'statements of intent are entitled to little weight when in conflict with facts.'" *Freeman v. Northwest Acceptance Corp.*, 754 F.2d 553, 556 (5th Cir. 1985) (quoting, *Hendry v. Masonite Corp*., 455 F.2d 955, 956 (5th Cir.), cert. denied, 409 U.S. 1023, 93 S. Ct. 464, 34 L. Ed. 2d 315 (1972)); *Korn v. Korn*, 398 F.2d 689, 691-92 n.4 (3rd Cir. 1968).

In 2024, the Ninth Circuit reviewed the concept of domicile, again noting that it has both a physical and subjective intent requirement, stating:

> "'Domicile' is, of course, a concept widely used in both federal and state courts for jurisdiction and conflict-of-law purposes, and its meaning is generally uncontroverted." *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 104 L. Ed. 2d 29, 109 S. Ct. 1597 (1989). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986)). "A person residing in a given state is not necessarily domiciled there . . . ." *Id*. A person generally assumes the domicile of his or her parents, and she may have only one domicile at a time. *See Lew*, 797 F.2d at 750-51. Domicile may be changed by being physically present in the new jurisdiction with the intent to remain there. *See Mississippi Band*, 490 U.S. at 48; Kanter, 265 F.3d at 857. Thus, domicile includes a subjective as well as an objective component, although the subjective component may be established by objective factors.

Von Kennel Gaudin v. Remis, 379 F.3d 631, 636-637 (9th Cir. 2004).

The distinction between "residence" and "domicile" for purposes of 11 U.S.C. § 522 is discussed in 4 Collier on Bankruptcy (16th Edition) ¶ 522.06, which includes:

> "Domicile" as used in section 522 means more than mere residence.[16] Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code[17] indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there.[18] It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change of domicile. The fact that the debtor, therefore, has resided elsewhere during the 730-day period will not defeat the applicability of the law of the state where the debtor keeps the principal home.[19] It may be, however, that under the laws of the state of the debtor's domicile that the debtor must also reside within the state to obtain its exemption privileges.[20]

. . .
The facts on which the question of domicile will be decided are those existing at the time of the filing of the petition and a subsequent change by the debtor will have no effect upon this determination.[26]

[16] The determination of the debtor's domicile is governed by federal common law. *See Farm Credit Bank of Wichita v. Hodgson (In re Hodgson)*, 167 B.R. 945 (D. Kan. 1994) (federal law applies in order to insure uniform nationwide application of bankruptcy laws); *In re Mendoza*, 597 B.R. 686, 688 (Bankr. S.D. Fla. 2019) (citing Treatise); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989) (term "domicile" in federal statute shall be interpreted under federal law absent clear expression by Congress that state law definition is applicable).

[17] See 11 U.S.C. § 101.

[18] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); *see also Lowenschuss v. Selnick (In re Lowenschuss*), 171 F.3d 673, 684, 41 C.B.C.2d 1049 (9th Cir. 1999) (debtor satisfied both physical presence and intent requirements for establishing domicile), *cert. denied*, 528 U.S. 877, 120 S. Ct. 185, 145 L. Ed. 2d 156 (1999); *In re Mendoza*, 597 B.R. 686 (Bankr. S.D. Fla. 2019) (noncitizen debtors who were lawfully residing in Florida and intended to permanently reside there if their asylum application was granted were domiciled in Florida).

[19] *In re Porvaznik*, 456 B.R. 738 (Bankr. M.D. Pa. 2011) (debtor's domicile remained unchanged even though she resided during the 730-day period in another state where her husband was stationed as a member of the military); *Smith v. Wellberg (In re Wellberg*), 4 C.B.C.2d 1007, 12 B.R. 48 (Bankr. E.D. Va. 1981) (domicile is not affected or changed by entry into the armed forces).

[20] *See In re Chandler*, 362 B.R. 723 (Bankr. N.D. W. Va. 2007) (debtor may claim federal exemptions because Georgia opt-out statute is not applicable to nonresidents); *In re Volk*, 7 C.B.C.2d 1096, 26 B.R. 457 (Bankr. D. S.D. 1983). (debtors who were nonresidents of South Dakota were not prohibited from claiming exemptions under the federal exemption system because the South Dakota opt-out provision provided only that residents of South Dakota were barred from claiming exemptions under section 522(d)); *see also In re Calhoun*, 47 B.R. 119 (Bankr. E.D. Va. 1985) (debtors' interest in real estate in Kansas under installment purchase agreement was a real property interest under Kansas law, and to claim that interest as exempt, they must comply with Virginia exemption statute, which required recording of homestead deed in county where the property was located).

. . .

[26] *White v. Stump*, 266 U.S. 310, 45 S. Ct. 103, 69 L. Ed. 301 (1924).

4 Collier on Bankruptcy P 522.06.

What has not been discussed before the court is when Debtor's ability in this case to claim his homestead in the Property expired, if ever. It is uncontroverted that Debtor resided at the Property since acquiring the Property in 2009 until the state court judge ordered Debtor to leave the premises on October 10, 2021. It may be that Debtor would still be residing at the Property absent such an order, his intent being to remain residing in the Property. It would seem that if the only thing preventing Debtor from remaining physically on the premises is the restraining order, then Debtor has not changed his domicile for purposes of claiming the exemption.

It is also uncontroverted that the Property has not yet been equitably divided between Debtor and Ms. Kattenhorn. Where Debtor may not have yet changed domiciles, it is not clear to the court, as Creditor suggests, Debtor is unable to claim a homestead exemption in the Property, regardless of the fact whether the Property is community property or not.

The court continues the hearing, and orders the Parties to file supplemental pleadings addressing the Debtor's rights to claim a homestead exemption in the Property, other then if it would be community property. The issue of community property is being adjudicated in the Debtor's to be ex-spouse's Bankruptcy Case - Mary Kattenhorn, Chapter 7 Case 22-21649, Adversary Proceeding 23-02082.

The hearing on the Motion to Avoid Judicial Lien is continued to 10:30 a.m. on May 20, 2025.

The Movant Debtor shall file and serve Supplemental Pleadings addressing the Debtor's right to claim a homestead exemption, as separate property, on or before April 11, 2025. Creditor shall file and serve Supplemental Opposition Pleadings on or before April 25, 2025; and a Reply, if any, shall be filed and served on or before May 2, 2025.

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Name of Debtor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Phillip Kattenhorn, California Superior Court for Sacramento County Case No. 34-2021-00310484-CU-CO-GDS, recorded on July 19, 2023, Document No. 2023-0037798-00, with the Placer County Recorder, against the real property commonly known as 3905 Cedar Mist Lane, Auburn, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2. 24-24573-E-7 SHR-2 | **PHILLIP KATTENHORN** **Richard Hall** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **2-4-25 [33]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and other parties in interest on February 4, 2025. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is overruled.

BMO Bank, N.A. ("Creditor") objects to Phillip Kattenhorn's ("Debtor") claimed homestead exemption under California law in the real property commonly known as 3905 Cedar Mist Lane, Auburn, California ("Property"). Creditor objects on the basis that:

1. California law defines "homestead" as the principal dwelling (1) in which the judgment debtor or judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

2. Neither Debtor nor his spouse resided continuously in the Property; Debtor was not residing at the Property on the Petition Date and that he was essentially "homeless". Mary Kattenhorn is Debtor's ex-spouse, not current spouse, and so he cannot claim the homestead exemption by virtue of her continuously residing in the Property.

3. The property is not community property. Judge Clement has issued a ruling, which is currently on appeal, finding that the Property is not community property as Debtor and Ms. Kattenhorn never entered into a valid transmutation agreement transmuting the nature of the Property to community Property after being married.

4. The court should limit the application of Cal. Code Civ. P. § 704.720(d) and find that Debtor cannot claim the homestead exemption under this subsection, either, in accordance with *Clark v. Zvi Guttman*, 2013 WL 812017 (D. Md. Mar. 4, 2013).

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

As the court stated in the related Motion to Avoid Judicial Lien, DCN: BLL-1, Civil Minutes for the May 20, 2025 hearing, and incorporates hereto to this Ruling:

> As an initial matter, the court issues this ruling from the perspective that "[c]ourts 'adopt a liberal construction of the law and facts to promote the beneficial purposes of the homestead legislation to benefit the debtor.'" *Tarlesson v. Broadway Foreclosure Investments, LLC*, 109 Cal. Rptr. 3d 319, 321 (Cal. Ct. App. 2010) (citing *Amin v. Khazindar*, 5 Cal.Rptr.3d 224 (2003)). It is also undisputed that if a dwelling is owned by the judgment debtor as a joint tenant or tenant in common, then each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own interest. Cal. Code Civ. P. § 704.820.
>
> The issue before the court is not whether the Property is community or separate property, but whether California Code of Civil Procedure § 704.720(d) would permit Debtor to claim the homestead exemption in the Property. California Code of Civil Procedure § 704.720(d) states:
>
> > (d) If a judgment debtor is not currently residing in the homestead, but his or her separated or former spouse continues to reside in or exercise control over possession of the homestead, that **judgment debtor continues to be entitled to an exemption under this article until entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse**, or until a later time period as specified by court order. Nothing in this subdivision shall entitle the judgment debtor to more than one exempt homestead. Notwithstanding subdivision (d) of Section 704.710, for purposes of this article, "spouse" may include a separated or former spouse consistent with this subdivision.
>
> (Emphasis added). Looking at the plain language of the statute, it creates a deadline for the out of possession spouse can continue to claim a homestead exemption in the residence in which that spouse and the former spouse resided together prior to commencing the dissolution proceeding. That deadline is when there is a judgment

or enforceable agreement that has divided all of the community property of the parties. The statute does not say, for examples:

> A. If a judgment debtor is not currently residing in the community property homestead . . . .;
>
> B. [o]r his or her separated or former spouse continues to reside in or exercise control over possession of the community property homestead, . . .; or
>
> C. that judgment debtor continues to be entitled to an exemption under this article in the community property homestead until the entry of a judgment or other legally enforceable agreement dividing the community property . . . .

Both Parties appeal to California Code of Civil Procedure § 704.720(d) to support their positions. Debtor argues this provision allows him to claim a homestead exemption in the Property, and Creditor argues that since the Property is not community Property, this provision does not allow Debtor to claim the exemption. Creditor relies heavily on *Clark* to support its position. Creditor asserts that *Clark v. Zvi Guttman*, 2013 WL 812017 (D. Md. Mar. 4, 2013), a District Court case out of Maryland interpreting California law, tends to show that Debtor may not claim a homestead exemption in the Property.

In reading *Clark,* the court notes there are clear distinctions when compared to the facts of this case. There, the debtor, Clark, and his ex-spouse purchased their home as joint tenants in 1984 when they were married. *Clark,* 2013 WL 812017 at *1. In 1998 or 1999, Clark separated from his wife and moved out. His former wife and son still resided in the residence. *Id.* Clark filed for divorce in 2001 in Orange County and was granted the divorce on August 1, 2008. *Id.* There was no court-ordered final distribution of marital assets because the parties stipulated to diving assets. When he left the real property, Clark took sole possession of a boat and television. The rest of the couple's personal community property was left with his wife and was understood to be hers alone. *Id.*

In discussing the relevance of California Code of Civil Procedure § 704.720(d), the court in *Clark* states:

> Clark argues that the bankruptcy court erroneously construed § 704.720(d) as applying only to homesteads held as community property. Clark argues that even though Redwood Lane was held as a joint tenancy, because no "judgment or other legally enforceable agreement" dividing the Clarks' community property was entered, Clark can claim a homestead exemption for Redwood Lane. The trustee agrees that homesteads held as joint tenancies can qualify for an exemption under § 704.720(d) but only where "divorcing parties still ha[ve] any community property left for the California divorce court to divide." (Appellee's Br. at 6).

> Thus, the parties are largely in agreement on the operation of California law in this instance, and their dispute turns on whether the exemption's time limit for Clark to claim a homestead exemption for a non-resident spouse ("until entry ...") had accrued. The trustee's interpretation of the exemption—that it applies only where there is any community property left to divide—more logically comports with the exemption's text and purpose.

Clark, 2013 WL 812017 at *2.

The District Court in the *Clark* Decision goes even further in making it clear that the proposition that Creditor cites that Decision for is not "warranted by existing law or by a nonfrivolous argument to extend, modify, or reverse existing law, or to establish new law:"

> The cases Clark cites are inapposite to the particular facts of this case. They all support Clark's undisputed proposition that **California's homestead exemption applies equally to community property and joint tenancies held by spouses or former spouses**. What the cases do not suggest is that § 704.720(d) applies where there is no community property left to divide. *See Clark*, 2012 WL 3597410 at *4 ("**[Clark] testified that he and Ms. Clark together own no community property** and he signed an affidavit confirming Redwood Lane is owned ... in joint tenancy."). . . [b]ut **the crucial fact relevant to the present case is that, in *Arrendondo–Smith*, the debtor's divorce was still pending when she filed for bankruptcy and, at the time, there was community property left to be divided.** *See id.* at 415, 417–18 ("Debtor's divorce action was still pending in California at the time this bankruptcy case was filed and, as such, she is considered married to her Spouse for the purpose of this analysis."). Because **§ 704.720(d) inherently requires that a non-resident debtor seeking a homestead exemption has community property left to divide with his or her former spouse,** and because Clark had divided any community property that existed in his marriage long before he filed for bankruptcy, the bankruptcy court correctly sustained the trustee's objection to his homestead exemption claim.

It is clear that the District Court in the *Clark* Decision the court concluded that since there was no community property left to divide in that case, that court held that California Code of Civil Procedure § 704.720(d) did not apply and Clark could not claim a homestead exemption in the real property.

In this case now before the court, the Property was originally acquired January 14, 2008, when Mr. and Ms. Kattenhorn were not married to each other. Decl. ¶ 4, Docket 40. The Kattenhorns were married on February 14, 2009, and took possession of the Property as a joint tenancy. *Id.* at ¶ 5. The record shows that the

Kattenhorns were separated sometime in 2023, approximately one year prior to filing this case.

The record also shows that Debtor was compelled to leave the Property by a court order from the underlying family court case. Debtor's testimony at the 341 Meeting is consistent with this sentiment, Debtor testifying he was either homeless or "couch-surfing" after the separation and order from the family law court. Ex. 11 at 28-29, Docket 49. Debtor also states in the Motion to Avoid that the related family law case is presently stayed pending the resolution of this bankruptcy case, or by an order from this court. Mot. 2:2-5, Docket 38. Of note, Debtor testifies that the only assets left to be divided in the family law case include the Property and the lots known as Assessor Parcel Nos. 052-020-023 and 052-020-050 (collectively "Lots"). Ex. 11 at 29, Docket 49.

As opposed to the ruling in the *Clark* Decision stands for the proposition that when no community property is left to be divided, a debtor may not appeal to California Code of Civil Procedure § 704.720(d) to claim a homestead exemption in real property occupied by a former spouse that is owned as a joint tenancy. There was no community property left to be divided in *Clark*.

Here, there is community property left to be divided. The remaining community property to be divided are the Lots. The Chapter 7 Trustee Ethan Birnberg ("Trustee") filed a Motion to Approve Stipulated Agreement dividing the Lots as community property evenly between the estates of Mr. and Ms. Kattenhorn. The court granted the Motion to Approve Stipulated Agreement on March 7, 2025, that would have divided the community property Lots. Docket 47. However, a condition of the March 7, 2025 order was that Judge Clement in Ms. Kattenhorn's case also approve the stipulated agreement. Order at ¶ 5, Docket 47. Judge Clement has not approved the stipulated agreement as of the court's review of the Docket on May 13, 2025.

Therefore, there is community property left to be divided. The court finds that Debtor can claim the homestead exemption in the Property, regardless of whether the Property is community property or separate property, California Code of Civil Procedure § 704.720(d) permitting Debtor to claim the homestead exemption until all community property has been divided.

Creditor would take the position that married persons owning real property as joint tenants can only claim their homestead exemption if both spouses reside in the real property while they are going through a divorce. This construction would deprive divorced or separated persons of the homestead exemption when one spouse is forced to vacate the premises pending resolution of the divorce proceedings if the homestead property was owned as a joint tenancy. Such a construction could not have been intended by the California legislature. California Code of Civil Procedure § 704.720(d) was clearly enacted to protect persons forced to leave the home pending a final distribution of marital assets, as is the case here.

> Creditor expresses concerns that Debtor is attempting to claim the homestead exemption in property he does not live in for an indefinite period of time. The court would note that the homestead exemption can only be claimed in this type of circumstance when all community property has not yet been divided. That is the case here, there being community property left to be divided. There is a clear final date the Debtor is entitled to claim the homestead exemption. If a creditor believes that the "ex-spouses" are "playing games," such creditor would go to the state court to enforce its rights.

The court determines, as addressed above, that Debtor can claim the homestead exemption in the Property as provided in California Code of Civil Procedure § 704.720(d). Therefore, the Objection is overruled.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by BMO Bank, N.A. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled.