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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE:	)	Case No. CV 07-5279-VAP
ROGER N. FEARING AND	)	USBC Case No. SV 00-10940-KT
CHRISTINE E. FEARING	)	
DEBTORS,	)	<b>[Motion filed on August 18,</b>
	)	<b>2008]</b>
<hr/> ROGER N. FEARING AND	)	
CHRISTINE E. FEARING,	)	<b>ORDER AFFIRMING BANKRUPTCY</b>
	)	<b>COURT'S ORDERS AND</b>
Plaintiff,	)	<b>DISMISSING APPEAL</b>
v.	)	
DAVID SEROR, CHAPTER 7	)	
TRUSTEE,	)	
	)	
Defendants.	)	
<hr/>	)	

The Court has received and considered all papers filed in support of and in opposition to the Appeal from the Bankruptcy Court's Orders denying Debtors Roger N. Fearing and Christine E. Fearing's Motion to Alter and Amend the Bankruptcy Court's Order Granting Chapter 7 Trustee's Motion for Summary Judgment. This Appeal, filed by Roger N. Fearing and Christine E. Fearing, is appropriate for resolution without hearing. See Fed. R.

1 Civ. P. 78; Local Rule 7-15. For the reasons set forth  
2 below, the Court affirms the Bankruptcy Court's Order.

3  
4 **I. BACKGROUND**

5 Debtors Roger N. Fearing and Christine Fearing  
6 ("Appellants") filed a petition for protection under  
7 Chapter 11, 11 U.S.C. § 1101, et seq., on January 28,  
8 2000. (Appellants' Opening Br. Appendix ("Appellants'  
9 App.") at 0038-0039.) They claimed as exempt property a  
10 "claim against CSUN [California State University  
11 Northridge] and others for personal injury (wife),"  
12 "which they valued at \$100,000, and a claim for "workers  
13 compensation benefits - wife's injury," which they valued  
14 at \$40,000. (Id. at 0047-0048.) On Schedule A attached  
15 to their petition, Appellants stated the value of their  
16 residence was \$500,000 and the amount of secured claims  
17 against the house was \$912,771. (Id. at 0128.)  
18 Appellants filed an amended Schedule A stating the value  
19 of the house was \$560,000 and the amount of secured  
20 claims against it was \$944,771. (Id.) In Schedule C  
21 attached to their petition, Appellants claimed a  
22 homestead exemption of \$75,000. (Id.)

23  
24 On December 21, 2001, the Bankruptcy Court entered  
25 its "Order of Confirmation of First Amended Plan of  
26 Reorganization (As Modified)." (Id. at 0204.) In  
27 pertinent part, the Order stated as follows:

1 "8. Notwithstanding any reference in the PLAN, as  
2 filed, to the treatment accorded to the FTB, the PLAN  
3 is hereby amended by substituting therefor, the terms  
4 of Exhibit "4" hereto, the Letters of August 8, 2001  
5 and August 14, 2001 from Anthony Sgherzi, Esq. To  
6 Robert Yespan, Inc.<sup>1</sup>

7  
8 9. Notwithstanding any reference in the PLAN, as  
9 filed, to the treatment accorded to the IRS, the PLAN  
10 is hereby amended by substituting therefor the terms  
11 of Exhibit "5" hereto being the Stipulation sent by  
12 Mary Schewatz to Robert M. Yaspan, and the  
13 modifications contained in the Letter of Robert M.  
14 Yaspan to Mary Schewatz, dated October 23, 2001,  
15 attached hereto as Exhibit "6".<sup>2</sup> (Id. at 0206-  
16 0207.)

17 ///

18 \_\_\_\_\_  
19 <sup>1</sup> Paragraph 7 of Exhibit 4, referred to by the  
20 Bankruptcy Court's Order, stated: "With respect to the  
21 Franchise Tax Board's secured claim filed in this case,  
22 the total unpaid balance of the claim will be immediately  
23 due and payable upon sale or refinance of the property  
securing the claim, or, transfer to anyone other than one  
of the debtors." (Appellee's Opening Br. at 5;  
Appellee's Supplemental Excerpts of Record ("Appellee's  
App.") 42.)

24 <sup>2</sup> Paragraph 4 of Exhibit 5, referenced by the  
25 Bankruptcy Court's Order stated: "[T]he secured claim of  
26 the IRS shall be paid in full in cash or certified check  
27 within 6 months of the effective date of the Plan. The  
28 debtors anticipate that the payment will be made out of  
the proceeds from the sale of their home. However, the  
debtors may use other means to pay the secured claim in  
full within 6 months." (Appellee's Opening Br. at 5-6;  
Appellee's App. at 47.)

1 Under the terms of the approved Plan, the Plan would  
2 be funded by several alternative sources, including the  
3 sale or refinancing of Appellants' house and Ms.  
4 Fearing's potential settlement with the California State  
5 University, Northridge, estimated at \$100,000. (Id. at  
6 0196.)

7  
8 On January 28, 2003, the Bankruptcy Court granted the  
9 Chapter 7 Trustee's motion for an order approving the  
10 sale of the Fearing residence ("Sale Order"). (See  
11 Appellant App. at 0241, 0052; Appellee App. at 014.) The  
12 order approved the sale of the property to Samuel and  
13 Aileen Jones for \$775,000.00 "free and clear of all  
14 liens, interests and claims; disputed liens, interests  
15 and claims; and all liens, interests and claims not of  
16 record...." (Id. at 0054.) The Bankruptcy Court also  
17 issued an "Order Denying Debtors' Motion to Require  
18 Trustee to Abandon Debtors' Home" ("Abandonment Order")  
19 on January 28, 2003. (See Appellee App. at 014.)

20  
21 Appellants filed a notice of appeal from the sale  
22 order on February 7, 2003 with the Bankruptcy Court, as  
23 well as an emergency motion for a stay pending appeal.  
24 (Id.) The Bankruptcy Court denied the emergency motion  
25 on February 11, 2003. (Id.) On February 12, 2003,  
26 Appellants filed an emergency motion for a stay pending  
27 appeal with the United States Bankruptcy Appellate Panel

28

1 of the Ninth Circuit ("BAP"). (Id.) Pursuant to 28  
2 U.S.C. § 158(c)(1), the Trustee filed an election to have  
3 the appeal heard by the United States District Court, the  
4 Honorable Judge Timlin. (Id.)

5  
6 Appellants filed a notice of appeal from the Sale  
7 Order and an appeal of the Abandonment Order on March 10,  
8 2003 and March 12, 2003, respectively, with Judge Timlin.  
9 (Id.) The Trustee filed a motion to dismiss the appeal  
10 from the Sale Order as moot. (Id.) Judge Timlin denied  
11 Appellant's emergency motion for stay pending appeal as  
12 moot and granted the Trustee's motion to dismiss the  
13 appeal as moot on May 14, 2003. (Id.)

14  
15 On June 10, 2003, the Trustee filed a motion to  
16 dismiss the Appellants' appeal to the Abandonment Order  
17 as moot. (Id.) On September 30, 2003, Judge Timlin  
18 granted the motion to dismiss the appeal as moot because  
19 the property was already sold to good faith purchasers,  
20 pursuant to 11 U.S.C. § 363(m); thus, the property was  
21 "no longer the Trustee's property to abandon." (Id. at  
22 018.)

23  
24 Appellants appealed from the order denying the  
25 emergency stay and the dismissal of their appeal of the  
26 Bankruptcy Court's order approving the sale of their  
27 residence as moot, to the Ninth Circuit Court of Appeals.

28

1 (See id. at 020.) On July 18, 2005, the Ninth Circuit  
2 affirmed Judge Timlin's September 30, 2003 order  
3 dismissing the Appellants' appeal and the abandonment  
4 motion as moot. (See id. at 020-023.) The Ninth  
5 Circuit's opinion hinged on Appellants' failure to obtain  
6 a stay during their appeal, resulting in the sale of the  
7 residence. (Id.) The Ninth Circuit declined to  
8 dismantle the sale, finding the District Court did not  
9 err when it affirmed the Bankruptcy Court's finding that  
10 the buyers of the property were "good faith purchasers,"  
11 within the meaning of 11 U.S.C. § 363(m). (Id.) The  
12 Ninth Circuit did not reach the merits of Appellants'  
13 arguments about the validity of the Bankruptcy Court's  
14 order approving the sale of the residence because it  
15 found the underlying appeal moot. (Id.) Appellants  
16 filed a petition for a writ of certiorari with the United  
17 States Supreme Court; it was denied on January 6, 2006.  
18 (See id. at 024.)

19

20 Before the flurry of Appellants' appeals, the Trustee  
21 filed a Complaint for Declaratory Relief with the  
22 Bankruptcy Court on September 24, 2003. (See Appellant  
23 App. at 0001.) The Complaint sought a judicial  
24 declaration whether or not Appellants were entitled to be  
25 paid any portion of the proceeds from the sale of the  
26 residence, specifically the \$75,000 the Appellants claimed  
27 as their homestead exemption. (See id. at 0005.)

28

1           On March 16, 2006, Appellants filed a "Motion for  
2 Adequate Protection, and That Trustee be Made to Prove,  
3 on the Record, That This Court Has Jurisdiction Over This  
4 Proceeding." (Appellant App. at 0189.) The Bankruptcy  
5 Court denied Appellants' motion on May 9, 2007.  
6 Appellants then filed a motion for reconsideration, which  
7 was denied on May 30, 2007. (See Appellant Opening Br.  
8 at 5.)

9  
10           On July 28, 2006, the Bankruptcy Court granted the  
11 Trustee's motion for summary judgment and entered the  
12 following declaratory judgment: "Defendants Christine E.  
13 Fearing and Roger N. Fearing are not entitled to any  
14 portion of the proceeds from the Trustee's sale of the  
15 real property located at 23240 Burbank Boulevard,  
16 Woodland Hills, California 91367." (Appellee App. at 01-  
17 02.) Appellants filed a "Motion to Alter or Amend  
18 Judgment" on August 4, 2006. (See id. at 06-07;  
19 Appellant App. at 0299.) Finding no basis to alter or  
20 amend the judgment, the Bankruptcy Court denied the  
21 motion on May 30, 2007. (Id.)

22  
23           The Fearings appeal from that Bankruptcy Court  
24 judgment. (See Appellants' Opening Br. at 5.)  
25 Appellants filed their Opening Brief and Appendices on  
26 August 18, 2008. Appellee David Seror filed his Opening  
27 Brief and "Supplemental Excerpts of Record" on September  
28

1 3, 2008. Appellants filed their Reply on September 17,  
2 2008.

3

4 **II. JURISDICTION AND STANDARD OF REVIEW**

5 Title 28 U.S.C. § 158(a) governs the jurisdiction of  
6 a federal district court to entertain an appeal from a  
7 bankruptcy court; it provides in pertinent part: "The  
8 district courts of the United States shall have  
9 jurisdiction to hear appeals . . . from final judgments,  
10 orders, and decrees."

11

12 The reviewing court reviews the bankruptcy court's  
13 conclusions of law de novo. See Siriani v. Northwestern  
14 Nat'l Ins. Co., 967 F.2d 302, 303-04 (9th Cir. 1992).  
15 Findings of fact, however, are reviewed for clear error.  
16 See id. Under this standard, "a reviewing court cannot  
17 reverse unless it has a definite and firm conviction that  
18 the court below committed a clear error of judgment in  
19 the conclusion it reached upon a weighing of the relevant  
20 factors." See In re Sunnymead Shopping Ctr. Co., 178  
21 B.R. 809, 814 (B.A.P. 9th Cir. 1995).

22

23 **III. DISCUSSION**

24 First, Appellants argue that the Bankruptcy Court's  
25 "Order Approving Sale" was entered in error and that the  
26 Bankruptcy Court did not have jurisdiction to enter the  
27 order. (See Appellant's Opening Br. at 20.) This Court,  
28

28



1 the Honorable Robert J. Timlin, already has reviewed  
2 these issues, and the Ninth Circuit has affirmed its  
3 ruling. (See Appellee's App. at 29-39.) The "law of the  
4 case" doctrine bars Appellants' argument. See Moore v.  
5 Jas. H. Matthews & Co., 682 F.2d 830, 834 (9th Cir.  
6 1982); Disimone v. Browner, 121 F.3d 1262, 1266 (9th Cir.  
7 1997); United States v. United States Smelting Refining &  
8 Mining Co., 339 U.S. 186, 198 (1950).

9

10 Next, Appellants argue in these appeals that the  
11 Bankruptcy Court erred in failing to apply California  
12 exemption law procedures for selling property subject to  
13 the homestead exemption. (See Appellants' Opening Br. at  
14 28.) According to Appellants, they claimed a \$75,000  
15 homestead exemption when they filed for Chapter 11  
16 bankruptcy and they are entitled to recover at least that  
17 value from the bankruptcy estate. (Id.) As stated  
18 above, the propriety of the sale of the homestead was an  
19 issue that has already come before the Court and thus  
20 will not be considered again; the law applying to the  
21 sale of the homestead falls within the prior ruling on  
22 the overall propriety of the sale.<sup>3</sup>

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24

25 <sup>3</sup> Appellants also argue the Trustee acted improperly  
26 in bringing a "Motion for Approval to Sell" instead of by  
27 a "required Adversary Proceeding." (Appellants' Opening  
28 Br. at 25-27.) This argument, again asking the Court to  
re-evaluate an aspect of the propriety of the underlying  
sale of the residence, also falls under the "law of the  
case" doctrine and is barred.


1 In any event, as discussed in the Court's Order  
2 regarding Appellants' appeal in Case Number 07-5276,  
3 Appellants are not entitled to any proceeds from the  
4 bankruptcy estate because there is no remaining value  
5 after the order of priority is applied to the  
6 distribution of the assets. Furthermore, the Bankruptcy  
7 Court correctly and without error found that there was no  
8 equity in the Fearing residence at the time the exemption  
9 was claimed, and thus the claim was valueless and  
10 Appellants are not entitled to proceeds of the sale. See  
11 In re Hyman, 123 B.R. 342, 346 (9th Cir. BAP 1991); In re  
12 Gavin, 110 B.R. 446, 450 (9th Cir. BAP 1990); In re  
13 Bruton, 167 B.R. 923, 926 (Bankr. S.D. Cal. 1994).

14  
15 The Court AFFIRMS the Bankruptcy Court's denial of  
16 Appellants' Motion to Alter or Amend its Order Granting  
17 Trustee's Motion for Summary Judgment and Entry of  
18 Declaratory Judgment.

19  
20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court affirms the  
22 Bankruptcy Court's Order denying Appellants' Motion to  
23 Alter or Amend Order Granting Chapter 7 Trustee's Motion  
24 for Summary Judgment.

25  
26 Dated: October 21, 2008

  
\_\_\_\_\_  
VIRGINIA A. PHILLIPS  
United States District Judge