

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HINDS & SHANKMAN, LLP,

Plaintiff,

v.

RICHARD LAPIDES, et al.,

Defendants.

Case No.: CV 18-10731-CJC(SKx)

ORDER DISMISSING CASE

I. INTRODUCTION

Plaintiff Hinds & Shankman, LLP (“H&S”) brings this action against Defendants Richard A. Lapidés, Janis Lapidés, and Does 1 through 10. (Dkt. 33 [Second Amended Complaint, hereinafter “SAC”].) Before the Court are the parties’ responses to the Court’s Order to Show Cause as to why the case should not be dismissed because H&S’s

1 requested relief is not available as a matter of law. (Dkt. 55.) For the following reasons,
2 this case is **DISMISSED** because H&S’s requested relief is barred by the Texas
3 Constitution’s homestead exception.¹

4 5 **II. BACKGROUND**

6
7 This lawsuit arises out of Defendants’ alleged obligation to pay H&S’s attorneys’
8 fees and costs incurred in connection with a Chapter 7 bankruptcy case. H&S is a
9 California limited liability partnership with its principal place of business in Torrance,
10 California. (SAC ¶ 1.) Richard A. Lapidés (“Richard”) and Janis Lapidés (“Janis”) are a
11 married couple who are residents of Spicewood, Texas. (*Id.* ¶¶ 2–4.)

12
13 In 1987, nonparty Jay Johnson sold Richard a piece of real property in La Cañada
14 Flintridge, California. (*Id.* ¶ 9.) Prior to the sale, Johnson had claimed that the raw land
15 had water available to it for future development. (*Id.*) Later, Richard discovered Johnson
16 had lied, sued him, and obtained a final judgment of over \$1 million against Johnson.
17 (*Id.*) Richard then attempted to collect on this judgment. (*Id.*) Unfortunately for
18 Richard, on April 5, 2001, Jay and Debra Johnson filed a voluntary Chapter 7 case in the
19 United States Bankruptcy Court for the Central District of California. (*Id.*) The
20 Bankruptcy Court appointed Rosendo Gonzalez as the Trustee. (*Id.* ¶ 9.)

21
22 The Trustee employed H&S as the estate’s general counsel and special litigation
23 counsel to represent the Trustee in various causes of action against the debtors, their
24 business entities, and the debtors’ relatives. (*Id.* ¶ 11.) The estate, however, apparently
25 lacked funds to pay for this legal representation. The Trustee approached Richard and
26 asked him if he would be willing to help pay for the prosecution of two adversary
27

28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15.

1 proceedings. In September 2004, Richard agreed to pay H&S's attorneys' fees and costs
2 associated with the adversary proceedings. (*Id.* ¶ 12; *see also id.* Ex. 1.)

3
4 In 2014, the Bankruptcy Court held a trial on the Trustee's claims in the two
5 consolidated adversary proceedings. (SAC ¶ 16.) The Bankruptcy Court found against
6 the Trustee. (*Id.*) In June 2017, H&S filed an application for fees and expenses incurred
7 in the adversary proceedings with the Bankruptcy Court. (*Id.* ¶ 18.) H&S also sought a
8 money judgment against Richard for the amount of the fees and costs. (*Id.*) The matter
9 proceeded to arbitration and, after a trial, the arbitrator ruled in H&S's favor. (*Id.* ¶¶ 20–
10 21; *see id.* Ex. 3.) H&S then filed a petition before the Bankruptcy Court to confirm the
11 award of fees and costs, and the Bankruptcy Court entered a judgment against Richard on
12 December 21, 2018 for a total of \$785,687.97 for damages, plus interest, and \$70,491.91
13 for costs. (*Id.* ¶ 22; *see id.* Ex. 4.)

14
15 The instant dispute concerns Richard's sale of two properties in California and
16 subsequent purchase of property in Texas, allegedly done to avoid H&S's recovery on its
17 fee award. The first property at issue is located at 5500 La Forest Drive in La Cañada,
18 California. (*Id.* ¶ 23.) Around 1994, Richard transferred his entire ownership interest in
19 the La Forest Drive property to his wife, Janis. (*Id.* ¶ 24.) On May 19, 2016, Janis sold
20 her interest in the La Forest Drive property to Margarita Kazaryan for \$850,000. (*Id.*
21 ¶ 25.) The second property at issue is located at 5107 Castle Road in La Cañada,
22 California. (*Id.* ¶ 26.) On July 17, 2017, Richard and Janis, who jointly owned the Castle
23 Road property, sold it for \$1,150,000 to Brandon and Cori Cipes. (*Id.* ¶ 27.) H&S
24 alleges that Richard and Janis used the proceeds from these two sales to purchase real
25 property located at 23704 Replica Road in Spicewood, Texas, for \$1,210,096 on August
26 4, 2017. (*Id.* ¶¶ 25, 28.) Richard and Janis allegedly purchased the Texas real property
27 to avoid paying Richard's obligation to H&S. (*Id.* ¶ 29.) Purchasing real property in
28 Texas allowed them to take advantage of Texas's homestead exemption laws, which

1 exempt the entire value of the Texas real property from collection. (*Id.*) The transfer
2 allegedly rendered Richard and Janis insolvent and without nonexempt assets against
3 which H&S could lawfully execute to recover its judgment. (*Id.*)
4

5 On December 28, 2018, H&S filed this action in federal court, claiming that
6 Defendants fraudulently transferred their assets by selling their property in California and
7 purchasing property in Texas. (Dkt. 1 [Complaint].) H&S seeks a relief in the form of
8 “freezing the transferred equity from the liquidation of the [California properties] and
9 then making this equity available to satisfy the Plaintiff’s judgment against
10 [Defendants].” (Dkt. 48 [Opp. to Defs.’ Mot. to Dismiss] at 5.) Defendants contend that
11 such relief is barred by the Texas Constitution’s homestead exception. *See* Tex. Const.
12 Art. 16, § 50(a). The Court ordered the parties to show cause as to why the case should
13 not be dismissed because H&S’s requested relief is not available as a matter of law.
14 (Dkt. 55.)
15

16 **III. DISCUSSION**

17

18 At issue here is whether the Texas Constitution exempts a homestead from the
19 claims of creditors when such homestead was acquired using non-exempt funds with the
20 specific intent of hindering creditors. The Texas Constitution provides that:

- 21
- 22 (a) The homestead of a family, or of a single adult person, shall be, and is hereby
23 protected from forced sale, for the payment of all debts except for:
- 24 (1) the purchase money thereof, or a part of such purchase money;
- 25 (2) the taxes due thereon;
- 26 (3) an owelty of partition imposed against the entirety of the property by a
27 court order or by a written agreement of the parties to the partition, including
28 a debt of one spouse in favor of the other spouse resulting from a division or
an award of a family homestead in a divorce proceeding;

1 (4) the refinance of a lien against a homestead, including a federal tax lien
2 resulting from the tax debt of both spouses, if the homestead is a family
3 homestead, or from the tax debt of the owner;

4 (5) work and material used in constructing new improvements thereon, if
5 contracted for in writing, or work and material used to repair or renovate
6 existing improvements thereon

7 (6) an extension of credit that:

8 (A) is secured by a voluntary lien on the homestead created under a
9 written agreement with the consent of each owner and each owner's
10 spouse;

11 (7) a reverse mortgage; or

12 (8) the conversion and refinance of a personal property lien secured by a
13 manufactured home to a lien on real property, including the refinance of the
14 purchase price of the manufactured home, the cost of installing the
15 manufactured home on the real property, and the refinance of the purchase
16 price of the real property.

17 *See* Tex. Const. Art. 16, § 50(a).

18
19 “The purpose of the homestead exemption is to provide a secure home for the
20 family against creditors.” *Salomon v. Lesay*, 369 S.W.3d 540, 554 (Tex. App. 2012).
21 Given this important purpose, Texas courts have been instructed to construe the
22 exemption liberally, *see Inwood N. Homeowners’ Ass’n, Inc. v. Harris*, 736 S.W.2d 632,
23 635 (Tex. 1987), even though such liberal construction “sometimes directly assist[s] a
24 dishonest debtor in wrongfully defeating his creditor,” *Long Bell Lumber Co. v. Miller*,
25 240 S.W.2d 405, 406 (Tex. App. 1951). The homestead exemption “shields a family or
26 single adult person’s homestead from all but eight types of liens held by enumerated
27 creditors.” *Marincasiu v. Drilling*, 441 S.W.3d 551, 558 (Tex. App. 2014). “Any liens
28

1 against a homestead that are not specifically listed in the Texas Constitution are void.”
2 *Id.* at 558–59.

3
4 Defendants argue that because Texas’s homestead exemption does not contain an
5 exception for a lien arising from the alleged fraudulent transfer of nonexempt funds into
6 the homestead, the relief H&S seeks is unavailable as a matter of law. The Court agrees.
7 The Texas Constitution “provides prophylactic protection from all but the few
8 specifically enumerated types of constitutionally permitted liens against homesteads.”
9 *Kendall Builders, Inc. v. Chesson*, 149 S.W.3d 796, 807 (Tex. App. 2004). When a party
10 attempts to attach a type of lien to a homestead that is not among the enumerated
11 exceptions, the lien is void. *See Saloman*, 369 S.W.3d at 556 (holding that the “lien on
12 the [homeowner’s] residential property for child support arrearages does not fall under
13 any of the constitutional categories of debt for which a lien may attach to homestead
14 property” and is therefore void). Because the type of lien H&S seeks also does not
15 appear in the specifically enumerated list, it cannot be attached to Defendant’s
16 homestead.

17
18 Courts have been unwilling to expand the exceptions to Texas’s homestead
19 exemption beyond its text even when, as here, the exemption is utilized as a tool to hinder
20 creditors. In *In re Reed*, a debtor sold \$34,500 worth of nonexempt personal property just
21 before filing for bankruptcy and applied the proceeds from the sales towards the
22 liquidation of liens on his homestead. *See* 12 B.R. 41, 42 (Bankr. N.D. Tex. 1981). The
23 trustee sought to claw back these funds, claiming that the homestead exemption did not
24 apply given the debtor’s fraudulent intent to frustrate his creditors. *Id.* The court
25 disagreed and found that “Texas law has jealously protected the homestead from forced
26 sale except under [the] very limited conditions” enumerated in the Texas Constitution.
27 *Id.* at 43. Similarly, in *In re Moody*, the debtor made a series of property transfers in
28 order to maximize the land he could claim as a homestead under Texas law in

1 anticipation of filing for bankruptcy. *See* 77 B.R. 566, 575 (S.D. Tex. 1987). The Court
2 held that, although these conveyances were clearly motivated by a desire to frustrate
3 creditors, the homestead exemption barred the court from ordering foreclosure on the
4 property at issue. *See id.* H&S’s claims are barred for the same reason.
5

6 In an attempt to bypass the text of homestead exemption, H&S relies on a line of
7 Texas cases in which courts have imposed constructive trusts on real property being used
8 as a homestead. Such reliance is misplaced. These cases stand for the proposition that
9 “the homestead protection afforded by the Texas Constitution was never intended to
10 protect stolen funds.” *Bransom v. Standard Hardware, Inc.*, 874 S.W.2d 919, 928 (Tex.
11 App. 1994) (imposing constructive trust on the proceeds of the sale of a homestead that
12 was originally purchased with embezzled funds); *see also Byrom v. Penn*, 2016 WL
13 4447698, at *1 (Tex. App. Aug. 24, 2016) (affirming order compelling the sale of a
14 homestead purchased with funds that an executor misappropriated from his mother’s
15 estate). In these cases, the impingement on the defendant’s homestead right was justified
16 by the fact that the property transferred to the homestead never belonged to the defendant
17 in the first place. *See Baucum v. Texam Oil Corp.*, 423 S.W.2d 434, 442 (Tex. Civ. App.
18 1967). This rationale is inapplicable to Defendants here, because there is no allegation
19 that the funds they used to purchase the Texas property were stolen or misappropriated.
20 Rather, the funds used to purchase the Texas homestead came from Defendants’ sales of
21 the two California properties which they owned. (*See* SAC ¶¶ 25–28.)
22

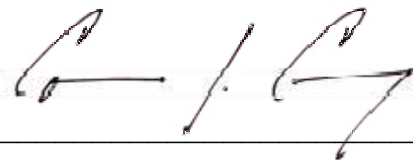
23 Finally, although not binding authority, the Florida Supreme Court’s decision in
24 *Havoco of America, Ltd. v. Hill* lends further support to Defendants’ position. *See* 790
25 So. 2d 1018 (Fla. 2001). There, the court was asked whether, under the Florida
26 Constitution, a debtor’s homestead is exempt from the claims of creditors when such
27 homestead was acquired using non-exempt funds with the specific intent of hindering
28 creditors. *See id.* Like the Texas Constitution, Florida’s Constitution provides that—

1 outside of specifically enumerated exceptions—a homestead is exempt from forced sale
2 by any court. Fla. Const. art. X, § 4. In *Havoco*, a debtor from Tennessee purchased a
3 property in Florida using nonexempt funds in an attempt to shield his assets from a
4 judgment creditor. *See* 790 So. 2d at 1019. The Court first noted that Florida’s
5 homestead exemption had long been construed liberally given its public policy
6 implications. *See id.* at 1020. In light of this, the court declined to broaden the
7 exceptions to the homestead exemption beyond those expressly enumerated. *See id.* at
8 1028. It held that the homestead exemption still applies where a debtor transfers
9 nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud
10 creditors. *Id.* Given the similarities between the Texas and Florida homestead
11 exemptions, the Court finds the reasoning of the Florida Supreme Court to be relevant
12 and persuasive to the issue presented here. Accordingly, the Court finds that Texas’s
13 homestead exemption—like Florida’s—applies even when a debtor acquires the
14 homestead using nonexempt funds with the intent of hindering its creditors.

15
16 **IV. CONCLUSION**

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18 For the foregoing reasons, the Court finds that Texas’s homestead exemption bars
19 it from ordering H&S’s requested relief. Accordingly, this case is **DISMISSED** in its
20 entirety.

21
22
23 DATED: October 8, 2019



24
25 **CORMAC J. CARNEY**
26 **UNITED STATES DISTRICT JUDGE**
27
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