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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TAMER SALAMEH, an individual, et  
al.,

Plaintiffs,

vs.

TARSADIA HOTEL, a California  
Corporation, et. al.,

Defendants.

CASE NO. 09cv2739-GPC(BLM)

**ORDER DENYING PLAINTIFF  
SALAMEH'S EX PARTE MOTION  
TO REQUEST HOMESTEAD  
EXEMPTION**

**[Dkt. No. 544.]**

On December 27, 2016, Plaintiff Tamer Salameh filed an amended ex parte motion to request homestead exemption. (Dkt. No. 544.) On January 3, 2016, Defendants/Judgment Creditors 5th Rock, LLC and MKP One ("Judgment Creditors") filed an opposition. (Dkt. No. 546.) Pursuant to the Court's order, Plaintiff filed a reply on January 6, 2017. (Dkt. Nos. 547, 548.) Based on the reasoning below, the Court DENIES Plaintiff Salameh's ex parte motion to request homestead exemption.

**Discussion**

On January 16, 2015, Judgment Creditors filed an abstract of judgment against Plaintiff Salameh based on the Court's order filed on July 31, 2014 awarding Judgment Creditors' attorneys' fees in the amount of \$405,371.25 against numerous named Plaintiffs. (Dkt. Nos. 245, 250, 343.) On February 29, 2015, Judgment Creditors recorded the abstract of judgment with the San Diego County Recorder's office for the

1 total amount of judgment. (Dkt. No. 546-1, Minassian Decl., Ex. A.) On September  
2 21, 2016, Salameh recorded a Homestead Declaration with the San Diego County  
3 Recorder's office. (Dkt. No. 544-2, Salameh Decl., Ex. 1.)

4 On January 19, 2016, Judgment Creditors filed a motion for order of sale of  
5 property against Salameh. (Dkt. No. 500.) Salameh filed bankruptcy on February 4,  
6 2016. (Dkt. No. 510.) As a result, on March 23, 2016, the Court denied Judgment  
7 Creditors' motion for order of sale due to the automatic stay triggered by the  
8 bankruptcy petition. (Dkt. No. 518.) On June 15, 2016, Salameh's debts were  
9 discharged and he was able to maintain his home. (Dkt. No. 544-2, Salameh Decl. ¶  
10 10; id., Ex. 4.)

11 Due to financial hardships and unemployment, Salameh has been unable to pay  
12 his mortgage for six or more months. (Dkt. No. 544-2, Salameh Decl. ¶ 12.) As a  
13 result, the loan servicer recorded a notice of default and election to sell his home on  
14 September 13, 2016. (Id. ¶ 13; id., Ex. 6.) Because there is equity in the home beyond  
15 what is owed to the lender, and in order to contribute to the Judgment and maintain the  
16 equity of the home for living expenses, Salameh sought to list his home for sale. (Id.  
17 ¶ 14.) Judgment Creditors' attorney declined to stipulate to a homestead of \$175,000.  
18 (Id.) On October 25, 2016, Salameh listed his home located at 1038 Pavo Ct., San  
19 Marcos, CA 92078 for sale. (Id. ¶ 15.) After a reduction in the sales price, Salameh  
20 accepted an offer and is now in escrow and set to close on January 18, 2017. (Id. ¶¶  
21 16, 17.) Escrow is requesting direction on how to distribute the proceeds. (Id. ¶ 18.)

22 Plaintiff Salameh seeks ex parte relief asking the Court to order the application  
23 of homestead exemption of \$175,000. Judgment Creditors oppose arguing that neither  
24 the declared homestead nor the automatic homestead apply.

25 "Homestead laws are designed to protect the sanctity of the family home against  
26 a loss caused by a forced sale by creditors." Amin v. Khazindar, 112 Cal. App. 4th  
27 582, 588 (2003). "This strong public policy requires courts to adopt a liberal  
28 construction of the law and facts to promote the beneficial purposes of the homestead

1 legislation to benefit the debtor.” Id.

2 A homestead exemption may be asserted in two ways. Title Trust Deed Serv.  
3 Co. v. Pearson, 132 Cal. App. 4th 168, 174 (2005). One is through a recording a  
4 homestead declaration pursuant to California Code of Civil Procedure section 704.920,  
5 which protects the property from execution by certain creditors to the extent of the  
6 amount of the exemption. Id. Recording a homestead declaration applies to a  
7 voluntary sale.<sup>1</sup> Id. However, in order to obtain the protection under a declared  
8 homestead, the homestead declaration must be recorded prior to the date of recording  
9 of the abstract of judgment. See Cal. Code Civ. Proc. § 704.950.<sup>2</sup>

10 Here, Salameh seeks the protection under the homestead declaration as he seeks  
11 to sell his home in a voluntary sale. However, the homestead declaration was recorded  
12 on September 21, 2016 which is after the recorded date of the abstract of judgment of  
13 February 29, 2015. Therefore, Salameh cannot obtain the protection from a homestead  
14 declaration.<sup>3</sup>

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16 <sup>1</sup>California Code of Civil Procedure section 704.960 states,

17 (a) If a declared homestead is voluntarily sold, the proceeds of sale are  
18 exempt in the amount provided by Section 704.730 for a period of six  
months after the date of sale.

19 Cal. Code Civ. Proc. § 704.960(a).

20 <sup>2</sup>Section 704.950 provides,

21 (a) Except as provided in subdivisions (b) and (c), a judgment lien on  
22 real property created pursuant to Article 2 (commencing with Section  
23 697.310) of Chapter 2 does not attach to a declared homestead if both  
of the following requirements are satisfied:

24 **(1) A homestead declaration describing the declared homestead**  
25 **was recorded prior to the time the abstract or certified copy of the**  
**judgment was recorded to create the judgment lien.**

26 **(2) The homestead declaration names the judgment debtor or the**  
spouse of the judgment debtor as a declared homestead owner.

27 Cal. Code Civ. Proc. § 704.950 (emphasis added).

28 <sup>3</sup>In reply, Salameh concedes he cannot seek a declared homestead and seeks an  
automatic homestead exemption. (Dkt. No. 548 at 2, 5.)

1 The second way to assert a homestead exemption is through an automatic  
2 homestead exemption, also known as a “residential exemption” provided in California  
3 Code of Civil Procedure section 704.720.<sup>4</sup> An automatic homestead exemption does  
4 not require the recordation of any document and is automatic and “available when a  
5 party has continuously resided in a dwelling from the time that a creditor’s lien attaches  
6 until a court’s determination in a forced sale process that the exemption does not  
7 apply.” Amin, 112 Cal. App. 4th at 588-89. “In California . . . the automatic  
8 homestead exemption protects a debtor only in the context of a forced lien sale.” In re  
9 Wilson, 90 F.3d 347, 351 (9th Cir. 1996). For the automatic exemption, “the judgment  
10 creditor is required to obtain a court order for sale of the real property homestead.”  
11 Amin, 112 Cal. 4th at 589. Further, the court of appeal has held that the automatic  
12 homestead exemption does not apply to proceeds of a trustee’s sale pursuant to a power  
13 of sale under a deed of trust. Spencer v. Lowery, 235 Cal. App. 3d 1636, 1637 (1991).

14 In reply, Plaintiff shifts course acknowledging that he cannot obtain a declared  
15 homestead exemption, and now seeks an automatic homestead exemption of \$175,000<sup>5</sup>  
16 arguing that the foreclosure proceeding initiated by the loan servicer is a forced or  
17 involuntary sale pursuant to section 704.720(b). (Dkt. No. 548 at 5.) Plaintiff contends  
18 that the foreclosure proceedings is an involuntary one because “it has been initiated  
19 pursuant to a first-in-line lienholder’s foreclosure proceedings to satisfy Plaintiff’s  
20 default on his outstanding mortgage.” (Dkt. No. 548 at 3.) He further states, without  
21 providing proof, that the “mortgagee has applied for a court order to force a sale of  
22 Plaintiff’s homestead and has given proper notice of both the default and the  
23 application of a forced sale.” (Id.)

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25 <sup>4</sup>Section 704.720 states, “[i]f a homestead is sold. . . the proceeds of sale . . . are  
26 exempt in the amount of the homestead exemption provided in Section 704.730.” Cal.  
Code Civ. Proc. § 704.720(b).

27 <sup>5</sup>The parties dispute whether Salameh is entitled to the maximum exemption of  
28 \$175,000 under section 704.730; however, the Court need not address the amount of  
exemption since Plaintiff has not demonstrated he is entitled to either a declared  
homestead or an automatic homestead exemption.

1 Without providing proof that the loan servicer has obtained a court order to force  
2 a sale, the automatic homestead exemption does not apply. According to the  
3 documents presented in the ex parte motion, the notice of default and letter informed  
4 Plaintiff that the mortgage has been referred to foreclosure proceedings pursuant to  
5 California Civil Code section 2924.9. (Dkt. No. 544-2, Salameh Decl., Ex. 6 at 36.)  
6 Civil Code section 2924.9 is a provision under the non-judicial foreclosure process, a  
7 procedure to foreclose without a court order. See Valbuena v. Ocwen Loan Serv.,  
8 LLC, 237 Cal. App. 4th 1267, 1272 (2015). Moreover, the notice of default states that  
9 the property may be sold “without any court action.” (Dkt. No. 544-2, Salameh Decl.,  
10 Ex. 6 at 33, 38.) Furthermore, the court of appeal has held that the proceeds from a  
11 foreclosure on a deed of trust is not exempt under the automatic homestead exemption.  
12 See Spencer, 235 Cal. App. 3d at 1639. Thus, Plaintiff has not demonstrated he is  
13 entitled to relief in this ex parte application.

14 **Conclusion**

15 Based on the foregoing, the Court DENIES Plaintiff Salameh’s ex parte motion  
16 to request homestead exemption.

17 IT IS SO ORDERED.

18  
19 DATED: January 10, 2017

20   
21 HON. GONZALO P. CURIEL  
22 United States District Judge  
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