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**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION**

12 In re:

13 MARIA TERESA MELENDEZ REY,

14  
15  
16  
17 Debtor(s).

Case No.: 2:22-bk-14119-WB

CHAPTER 13

**MEMORANDUM OF DECISION**

Date: May 17, 2023

Time: 1:30 PM

Courtroom: 1375

18  
19 On March 10, 2023, creditor Peter Urquijo (“Creditor”) filed a Motion (the  
20 “Objection”) objecting to the homestead exemption claimed by the debtor, Maria  
21 Teresa Melendez Rey (“Debtor”), in real property located at 1922-1924 Bunker  
22 Avenue, El Monte, California 91733 (the “Property”). Debtor filed an opposition  
23 on March 22, 2023 and Creditor filed a reply on March 29, 2023. The Court was  
24 asked to determine whether Debtor was entitled to claim the entire Property as part  
25 of her homestead exemption. The Property consists of a single parcel of land with  
26 one assigned assessor’s parcel number. There are two buildings located on the  
27 Property each with a separate address. Debtor resides in the house on 1922 Bunker  
28 Avenue. Two separate tenants occupy the duplex on 1924 Bunker Avenue.

1 A hearing was held on April 5, 2023. Appearances were as noted on the  
2 record. The Court considered the pleadings, arguments raised at the hearing, and  
3 the record as a whole and took the matter under submission. At the continued  
4 hearing held on May 17, 2023, the Court sustained the Creditor's Objection and  
5 determined that only 1922 Bunker Avenue and one-half of the garage are covered  
6 by Debtor's homestead exemption. The Court's memorandum of decision now  
7 follows.

8 **I. FACTUAL BACKGROUND**

9 Debtor commenced a voluntary chapter 7<sup>1</sup> case on July 29, 2022.<sup>2</sup> On her  
10 schedules, Debtor listed an interest in the Property and scheduled it as having a  
11 value of \$930,000.00. She characterized the Property as her residence and as being  
12 two houses on a single parcel. Debtor scheduled the Property as exempt in the  
13 amount of \$626,400.00 pursuant to California Code of Civil Procedure §  
14 704.730(a)(3). Encumbrances against the Property totaled \$583,518.00.  
15

16 Creditor obtained an order for a Rule 2004 exam of Debtor and for  
17 production of documents, which was conducted on December 21, 2022. At the  
18 examination, Debtor testified she moved into her home on 1922 Bunker Avenue in  
19 2017 and has lived there since. Situated on 1924 Bunker Avenue is a six-bedroom,  
20 two bath home that can be divided into a duplex featuring two adjacent residences  
21 each with three-bedrooms and one bath. Debtor stated that the duplex was built  
22 shortly after purchasing the Property in 1997 with her then husband. The two  
23 structures are separated by a fence and have separate driveways, entrances,  
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25 <sup>1</sup> Unless specified otherwise, all chapter and section references are to the Bankruptcy  
26 Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy  
27 Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

28 <sup>2</sup> On November 30, 2022, Debtor filed a motion convert her case to one under chapter 13.  
On February 8, 2023, after hearing and argument, the Court entered the order converting  
Debtor's case with the caveat that if the chapter 13 case is not completed Debtor's case will be  
reconverted to chapter 7.

1 parking, utilities and mailboxes. Debtor has never resided in the duplex. Prior to  
2 entering either unit of the duplex, Debtor must give written notice to the tenant.  
3 Debtor has not entered the duplex since 2020. A two-car garage is attached to the  
4 duplex. Debtor utilizes one-half of the garage for storing supplies and rents the  
5 other half to one of the tenants. At the time of Debtor's bankruptcy filing, there  
6 were two separate tenants (one in each unit) residing in the duplex.<sup>3</sup>

7 In March 2023, Creditor filed an Objection to Debtor's homestead  
8 exemption, objecting to Debtor's claimed exemption in both the 1922 Bunker  
9 Avenue residence and the 1924 Bunker Avenue duplex. Creditor argued that  
10 because the 1924 Bunker Avenue duplex and appurtenant land is not necessary for  
11 Debtor's full use and enjoyment of her home, she is not entitled to claim a  
12 homestead exemption in the entire Property.

## 13 **II. DISCUSSION**

14 California has opted out of the federal exemption scheme and permits its  
15 debtors only the exemptions allowable under state law. CCP § 703.130.  
16 Consequently, while the federal court decides the merits of state exemptions, the  
17 validity of the claimed state exemption is controlled by California law. *Phillips v.*  
18 *Gilman (In re Gilman)*, 887 F.3d 956, 964 (9th Cir. 2018); *Kelley v. Locke (In re*  
19 *Kelley)*, 300 B.R. 11, 16 (9th Cir. BAP 2003) *citing LaFortune v. Naval Weapons*  
20 *Ctr. Fed. Credit Union (In re LaFortune)*, 652 F.2d 842, 846 (9th Cir. 1981)).  
21 Accordingly, we apply California law in determining whether Debtor's homestead  
22 exemption covers the 1924 Bunker Avenue duplex and appurtenant land.  
23

24 In California, there are two types of homestead exemptions: (1) a declared  
25 homestead exemption, which a party must record; and (2) an automatic homestead  
26 exemption. The automatic homestead exemption is what is at issue in this case.  
27 Pursuant to California Code of Civil Procedure § 704.710, an automatic homestead  
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<sup>3</sup> In 2021, Debtor received approximately \$4,141.00 per month in rental income.

1 exemption may be claimed in “the principal dwelling (1) in which the judgment  
2 debtor or the judgment debtor’s spouse resided on the date the judgment creditor’s  
3 lien attached to the dwelling, and (2) in which the judgment debtor or the judgment  
4 debtor’s spouse resided continuously thereafter until the date of the court  
5 determination that the dwelling is a homestead.” CCP § 704.710(c). The word  
6 “dwelling” as used in the statute “means a place where a person *resides* and may  
7 include...[a] house together with the outbuildings and the land upon which they are  
8 situated.” CCP § 704.710(a) (emphasis added).

9       The automatic homestead exemption can only be claimed by a debtor (or the  
10 debtor’s spouse) who resides in the homestead property at the time of a forced  
11 judicial sale of the dwelling. *In re Cumberbatch*, 302 B.R. 675, 678 (Bankr. C.D.  
12 Cal. 2003). “The filing of a bankruptcy petition constitutes a forced sale for  
13 purposes of the automatic homestead exemption.” *Diaz v. Kosmala (In re Diaz)*,  
14 547 B.R. 329, 334 (9th Cir. BAP 2016) (citing *In re Kelley*, 300 B.R. at 21). The  
15 party claiming the automatic homestead exemption has the burden of proof on  
16 the existence of the exemption. CCP § 703.580(b). On the petition date, CCP  
17 § 704.730(a) permitted a \$600,000.00 homestead exemption. CCP § 704.730(a).

18       Debtor contends that Creditor’s reliance on the requirement that the 1924  
19 Bunker Avenue duplex must be necessary for Debtor’s full use and enjoyment of  
20 her home is based on obsolete authority that is at odds with a plain reading  
21 of California Code of Civil Procedure § 704.710. Debtor argues that pursuant to  
22 the statutory definition of “dwelling” and “homestead”, because she has  
23 continuously resided in her home (at 1922 Bunker Avenue) on a single lot of land  
24 which contains an outbuilding (at 1924 Bunker Avenue) currently being rented to  
25 tenants, the entirety of the Property is her “dwelling” and entitled to the homestead  
26 exemption.

27       While a plain reading of the statute does not contain a restriction that the  
28 duplex must be “necessary for the use and enjoyment” of Debtor’s dwelling in

1 order to be included in her homestead, the Court cannot ignore the judicial import  
2 of more than a century and a half of decisions finding use and enjoyment central to  
3 the construction of the homestead exemption. *See Gregg v. Bostwick*, 33 Cal. 220,  
4 228 (1867) (holding there must be some use, dedication and appropriation of the  
5 land as a home, to constitute a valid homestead claim; if only a part of the land is  
6 used and appropriated as the family home, the remainder forms no part of the  
7 homestead claim); *In re Estate of Fath*, 132 Cal. 609, 613 (1901) (purpose  
8 of homestead law is to provide a home where the owner of the homestead may  
9 reside and enjoy the comforts of a home); *Morrison v. Barham*, 184 Cal.App.2d  
10 267, 272–74 (1960) (purpose of homestead law is to give the homesteader the right  
11 to the “undisturbed use, possession, and enjoyment of the property”). “It has been  
12 held that where two separate houses stand upon the real property sought to be  
13 impressed with a homestead, only one of which is occupied as a dwelling by the  
14 claimant, the other being rented to tenants, an attempt to dedicate both as a  
15 homestead is inoperative.” *Vincenzini v. Fiorentini*, 2 Cal.App.2d 739, 741 (1934).

16 More recently, the Ninth Circuit Bankruptcy Appellate Panel (“BAP”) in *In*  
17 *re Bond*, 2006 WL 6810941, at \*5 (9th Cir. BAP (Cal.) 2006) stated that “[t]here is  
18 no legal limitation on the amount of land or the number of lots that can be declared  
19 as homestead, the only test is whether the property is actually used as the family  
20 residence and whether the surrounding property claimed is necessary or convenient  
21 for the enjoyment of the family home.” 2006 WL 6810941, at \*5, *citing* 5 HARRY  
22 D. MILLER & MARVIN B. STARR, CAL. REAL ESTATE § 13:11 (3d ed. 2000)  
23 (“MILLER & STARR”). The BAP stated, in agreement with the Miller & Starr  
24 treatise, while there is no formula for determining the propriety of the use of the  
25 surrounding property claimed, it cannot be protected by the homestead if is it  
26 neither necessary nor convenient for the enjoyment of the home. *Id.* The Court  
27 finds that the 1924 Bunker Avenue duplex and appurtenant land and one-half of  
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1 the garage are not necessary for the use and enjoyment of Debtor’s home and are  
2 not entitled to the homestead exemption.

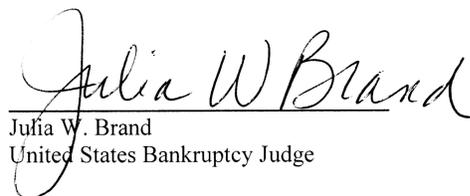
3 Debtor further argues that because the Property is a single lot that is  
4 indivisible and cannot be sold piecemeal the entirety constitutes Debtor’s  
5 “dwelling” under CCP § 704.710(c). This argument is without merit. Courts have  
6 long entertained causes and proceedings to determine what portion of the land  
7 described in the declaration of homestead is needed for the declarant’s convenient  
8 use and what portion thereof is “excess land”. *Wagner v. Ulrich*, 204 Cal. 452,  
9 453(1938), *see Gregg v. Bostwick*, 33 Cal. 220; *Guernsey v. Douglas*, 171 Cal. 329  
10 (1915); *Lorenz v. Hunt*, 91 Cal.App. 78 (1928); *Estate of Schmelz*, 259 Cal.App.2d  
11 440 (1968). As noted by Judge John Minor Wisdom, the “patina of old cases does  
12 not affect their quality.” *Consol. Rail Corp. v. Metro–North Commuter R.R.*, 638  
13 F.Supp. 350, 356 (Sp. Ct. RRRRA 1986).

14 **III. CONCLUSION**

15 For the foregoing reasons, Creditor’s Objection is sustained. The 1924  
16 Bunker Ave duplex and appurtenant land and one-half of the garage are not part of  
17 Debtor’s exempt homestead. The Court shall enter an order consistent with this  
18 memorandum of decision.

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25 Date: June 30, 2023

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27 Julia W. Brand  
28 United States Bankruptcy Judge