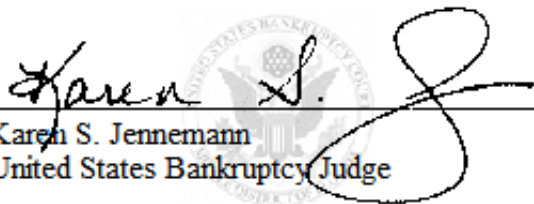


ORDERED.

Dated: October 20, 2021



Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.fmb.uscourts.gov

In re)	
)	
Hasmukh Patel and)	Case No. 6:18-bk-00036-KSJ
Niruben Patel,)	Chapter 7
)	
Debtors.)	
)	

**ORDER ON CROSS MOTIONS FOR
SUMMARY JUDGMENT AND OVERRULING
TRUSTEE’S OBJECTION TO DEBTORS’ HOMESTEAD EXEMPTION**

Over three years ago, the Chapter 7 Trustee, Richard B. Webber, II, filed a notice abandoning any interest in administering real property claimed as exempt homestead by the Debtors, Hasmukh and Niruben Patel.¹ Based on testimony during the trial in a related adversary proceeding, the Trustee has changed his position, seeks to withdraw his Notice of Abandonment, and has filed an Objection to Debtors’ Homestead Real Property Claimed as Exempt (the “Objection”).² The Trustee and the

¹ Doc. No. 21. The home is located at 2800 Fellwood Lane, Melbourne, Florida 32904 (the “Homestead Property”).

² Doc. No. 62.

Debtors have filed cross motions for summary judgment.³ Finding that the Trustee has failed to show fraud or newly discovered evidence to warrant revocation of abandonment, the Court grants summary judgment for the Debtors, overrules the Trustee's Objection, and denies the Trustee's motion for summary judgment.

The Debtors filed for Chapter 7 bankruptcy on January 4, 2018.⁴ They claimed the Homestead Property as exempt on their Schedule C.⁵ On February 8, 2018, the Trustee held and concluded a creditors' meeting required by 11 U.S.C. § 341 (the "341 Meeting"). This 341 Meeting allowed the Trustee and creditors to ask Mr. and Mrs. Patel about their assets and financial circumstances.

Here, counsel for a creditor and the Trustee specifically asked Mr. Patel about his primary residence:

Mr. LaFalce: Do you -- the residence that you listed in your Schedules, is that the only residence that you reside at?

Mr. Patel: That's the only -- my primary residence, yes.

Mr. LaFalce: Okay.

The Trustee: What's the address?

Mr. Patel: 2800 Fellwood Lane, Melbourne, Florida.

Mr. LaFalce: Do you or have you ever resided at the Econ[o] Lodge Hotel?

Mr. Patel: Yes, I do.

Mr. LaFalce: You do currently?

Mr. Patel: Move back and forth because that's where I work so . .

Mr. LaFalce: Okay. How much time do you say -- how often do you I guess reside at the hotel rather than your residence?

Mr. Patel: Because of the job, reason I probably stay more at the Econo than the home but I, back and forth, come back and, you know, stay at my house. Stay in the business property basically.

The Trustee: Just to save travel time?

³ Doc. Nos. 73 and 74.

⁴ Doc. No. 1.

⁵ Doc. No. 1 at 17.

Mr. Patel: Yeah.
The Trustee: Okay.
Mr. Patel: It's 200 miles.
The Trustee: That's a long way.
Mr. Patel: Yeah.
The Trustee: Okay.⁶

Mrs. Patel was not asked any relevant questions.

On March 12, 2018, seeking no further information from the Debtors,⁷ the Trustee filed a Notice of Abandonment with fourteen days' negative notice stating the Trustee abandoned all right, title, and interest in the Debtors' Homestead Property as the property was encumbered by liens which exceeded its value, or the Homestead Property was of nominal value to the bankruptcy estate.⁸ No party objected to the Trustee's Notice of Abandonment.

At a trial in a related adversary proceeding conducted in March 2021,⁹ Mr. Patel testified he lives and works at the Econo Lodge, the Debtors' daughter's hotel, which is 200 miles away from the Homestead Property.¹⁰ Mrs. Patel similarly testified that, although they have the Homestead Property in Melbourne, Florida, they currently

⁶ Doc. No. 73, Ex. A (ellipsis in original); *accord* Doc. No. 74, Ex. 3.

⁷ For example, the Trustee could have sought a separate examination of the Debtors under Fed. R. Bankr. P. 2004.

⁸ Doc. No. 21.

⁹ In January 2020, the Trustee commenced an adversary proceeding against Mr. Patel, Florida Family Hospitality, LLC ("FFH"), and the Debtors' daughter, Lisa Patel, asserting that FFH is owned by Mr. Patel, not his daughter, and that FFH is Mr. Patel's "alter ego" or "nominee." Complaint, *Webber v. Patel*, 6:20-ap-00002-KSJ (Bankr. M.D. Fla. Jan. 3, 2020). After a trial, the Court entered a final judgment in favor of the Defendants. Memorandum Opinion, *Webber v. Patel*, 6:20-ap-00002-KSJ (Bankr. M.D. Fla. July 30, 2021), Doc. No. 140; Final Judgment in Favor of the Defendants, *Webber v. Patel*, 6:20-ap-00002-KSJ (Bankr. M.D. Fla. July 30, 2021), Doc. No. 141. The Trustee appealed; that appeal remains pending. *Webber v. Patel*, 6:21-cv-01355-CEM (M.D. Fla. filed Aug. 18, 2021).

¹⁰ Transcript Regarding Hearing Held 3-8-21 at 67:1-5, 82:5-16, *Webber v. Patel*, 6:20-ap-00002-KSJ, Doc. No. 125.

reside at the distant hotel to manage the hotel property for their daughter.¹¹ Neither of the Debtors disclaimed their Homestead Property as their permanent residence.

After hearing this testimony, on March 23, 2021, the Trustee, believing there is an inconsistency between the Debtors' testimony at the 341 Meeting and the trial, filed his Objection claiming the Homestead Property is not exempt.¹² The Trustee argues that his Objection is based "on newly discovered evidence of fraud by the Debtors."¹³ The Trustee and the Debtors have filed cross motions for summary judgment;¹⁴ no factual disputes exist.

Federal Rule of Civil Procedure 56(a), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7056, provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."¹⁵ The moving party must establish the right to summary judgment.¹⁶ "Facts are material if, under applicable law, they would affect the outcome of the suit."¹⁷ A dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."¹⁸ Once the moving party has met its burden, the burden shifts to

¹¹ Transcript Regarding Hearing Held 3-9-21 at 142:13-23, 143:19-144:5, *Webber v. Patel*, 6:20-ap-00002-KSJ, Doc. No. 126.

¹² Doc. No. 62.

¹³ Doc. No. 62.

¹⁴ Doc. Nos. 73 and 74.

¹⁵ Fed. R. Civ. P. 56(a).

¹⁶ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Find What Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011).

¹⁷ *Welch v. Regions Bank (In re Mongelluzzi)*, 591 B.R. 480, 489 (Bankr. M.D. Fla. 2018) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)); accord *Find What Inv. Grp.*, 658 F.3d at 1307.

¹⁸ *Anderson*, 477 U.S. at 248; accord *Find What Inv. Grp.*, 658 F.3d at 1307.

the nonmovant to show evidence raising a genuine issue of material fact for trial.¹⁹ In determining summary judgment, “facts must be viewed in the light most favorable to the nonmoving party only if there is a ‘genuine’ dispute as to those facts.”²⁰ Here, no factual disputes have been raised. Therefore, adjudication of the Objection by way of summary judgment is appropriate.

Abandonment divests the estate of control of the abandoned property and reverts title in the debtor.²¹ “Because abandonment takes the property out of the estate and reverts it in the debtor, the revocation of abandonment of an asset is not taken lightly. Abandonment of assets pursuant to a notice of § 554(a) or (b) is generally considered ‘strictly’ irrevocable.”²² Courts have stated that a “narrow exception” to the “strictly irrevocable” rule exists where the trustee has been “given incomplete or false information, thereby foregoing a proper investigation of the asset.”²³

“In determining whether it is appropriate to revoke abandonment of assets, courts have applied Federal Rule of Civil Procedure (‘Rule’) 60(b), made applicable by Federal Rule of Bankruptcy Procedure (‘Bankruptcy Rule’) 9024.”²⁴ Rule 60(b) provides that a court may relieve a final judgment for certain reasons, including “newly discovered evidence that, with reasonable diligence, could not have been discovered

¹⁹ *Boyle v. City of Pell City*, 866 F.3d 1280, 1288 (11th Cir. 2017).

²⁰ *Scott v. Harris*, 550 U.S. 372, 380 (2007).

²¹ *In re Argiannis*, 156 B.R. 683, 688 (Bankr. M.D. Fla. 1993).

²² *In re Fuller*, 624 B.R. 852, 858 (Bankr. S.D. Ind. 2020) (citing *Woods v. Kenan (In re Woods)*, 173 F.3d 770, 778 (10th Cir. 1999)).

²³ *Id.* (citing *Catalano v. Comm’r*, 279 F.3d 682, 686 (9th Cir. 2002); *In re Lusher*, No. 18-71772, 2019 WL 4553432, at * 3 (Bankr. C. D. Ill. Sept. 19, 2019)).

²⁴ *In re Blount*, 624 B.R. 590, 600 (Bankr. D.N.J. 2020) (citing *Frost v. Reilly (In re Reilly)*, No. 09-41356, 2013 WL 135179, at *4 (D.N.J. Jan. 8, 2013)).

in time to move for a new trial under Rule 59(b)” and “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.”²⁵

The Court finds no fraud by the Debtors or any newly discovered evidence to justify a revocation of the Trustee’s abandonment. Three years ago, the Trustee had an opportunity to investigate the Debtors’ financial affairs and pursue any objection to the Debtors’ exemptions, including the Homestead Property. At the 341 Meeting, Mr. Patel credibly and honestly testified that he would commute to and from the Homestead Property but that he mostly stayed at the “business property,” meaning his daughter’s hotel, the Econo Lodge.²⁶ He honestly stated he mostly lived at the hotel because of the distance from his home. The Trustee could have posed follow-up questions, pursued a Rule 2004 examination, propounded other discovery, or objected to the Debtors’ claimed homestead exemption. But he chose not to, instead filing his notice abandoning any estate interest in the Homestead Property.

At the trial in the related adversary proceeding in March 2021, the Debtors’ testimonies are remarkably like Mr. Patel’s testimony at the 341 Meeting. They still consider the Homestead Property their home but live and work at the hotel 200 miles from their home. There is no contradiction or fraud. Nothing new was disclosed at trial that would justify the Trustee’s revocation of his abandonment. The Trustee has

²⁵ Fed. R. Civ. P. 60(b).

²⁶ Doc. No. 73, Ex. A; Doc. No. 74, Ex. 3.

failed to show fraud or newly discovered evidence to warrant revocation of abandonment.

And, even if the Court reached the substance of the Trustee's Objection, I do not find the Debtors' forfeited their homestead exemption by living and working at the Econo Lodge. Under Florida law, to constitute abandonment, a debtor must state an intention to abandon the homestead property and must have an intent not to return.²⁷ Abandonment is determined case-by-case.²⁸ "Absence from the homestead that is involuntary or compulsory, or which arises out of health, financial, or family reasons, does not constitute a relinquishment of the homestead rights."²⁹ The Debtors live at the Econo Lodge because it is necessary for their jobs and therefore have not relinquished their homestead rights. So, even if the Trustee could revoke his prior abandonment, the Court still would overrule his Objection to the Debtors' claim to exempt the Homestead Property.

Accordingly, it is

ORDERED:

1. Debtors' Motion for Summary Judgment (Doc. No. 73) is **GRANTED**.
2. Trustee's Motion for Summary Judgment (Doc. No. 74) is **DENIED**.
3. Trustee's Objection to Debtors' Homestead Real Property Claimed as Exempt (Doc. No. 62) is **OVERRULED**.

²⁷ *In re Beebe*, 224 B.R. 817, 820 (Bankr. N.D. Fla. 1998).

²⁸ *Id.*

²⁹ *In re Ballato*, 318 B.R. 205, 210 (Bankr. M.D. Fla. 2004); accord *In re Beebe*, 224 B.R. at 820 ("Mere absence from the homestead for financial reasons does not constitute abandonment.").

4. Debtors' homestead exemption for property at 2800 Fellwood Lane, Melbourne, Florida 32904 is valid, enforceable, and protected from all claims of creditors other than as permitted under Article X of the Florida Constitution.

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The Clerk will serve a copy of this Order on all interested parties.