

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Stephen Law - Petitioner

Vs.

United States Court of Appeals for the Ninth Circuit – Respondent

On Petition for a Writ of Certiorari to

The United States Court of Appeal for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented for Review:

1. Does the 9th Circuit Court of Appeals' memorandum directly conflict with an opinion by other Circuit Court of Appeals and the Supreme Court?
2. Does the Bankruptcy Court would allow the surcharge to extent to debtor's constitutionally protected homestead property?

List of Parties

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Alfred H. Siegel- Chapter 7 trustee,
2. Lili Lin of China
3. Peter C. Chow, Esq. Chow & Hamilton – Counsel for Lili Lin of China,
4. Andrew Smyth, Esq. - former Counsel for Lili Lin of China
5. Unites States Bankruptcy Court, Central District of California,
6. U. S. Bankruptcy Appellate Penal of the Ninth Circuit,

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

[X] For cases from **federal court:**

The opinion of the United States court of appeals for the ninth circuit at Appendix A to the petition is unpublished.

The opinion of the United States Bankruptcy Appellate Panel of the Ninth Circuit at Appendix B to the petition is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Ninth Circuit decided my case was June 6, 2011. A timely filed petition for rehearing was denied by the Court of Appeals on April 18, 2012, and a copy of the order denying rehearing appears at Appendix C. Petitioner files present Petition for Writs of Certiorari within 90 days after the 9th Circuit denying the petition for rehearing pursuant to the rules 13.1, and under 28 U.S.C. section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The issues of the petition involved the Constitutional provision such as 11 U.S.C. section 341; 541; Fed.Rule Bankr.P. 2003(a); 4003; 522(d) and (l), a typical case of *Taylor v. Freeland & Kronz*, 503 U.S. 638(1992), as well as the case of *In re Mazon* 368 B.R. 906 (Bankr. M.D. Fla.2007) and *In re Chauncey* 454 F. 3d 1292(11 Cir.2006).

REASON FOR GRANTING THE WRIT

For protect our country's Constitution and lawful civil Codes, bankruptcy Codes which protect Debtor's constitutionally homestead property which IS compelling reasons exist for the exercise of the Supreme Court's discretionary jurisdiction. More important, the 9th Circuit court of appeals and its BAP and the Bankruptcy Court's decisions are in totally conflict with the decisions of other Circuit Court of Appeals and the Supreme Court, the importance of the present case not only to the petitioner but also to others similarly situated; and the ways the decision of the lower courts in petitioner's case was erroneous. There are also a question of debtor's real property's equity of \$316,652.00 should belong to debtor who paid for all the payments until trustee sold the house or bankruptcy Estate. Up to this date, this issue has not been resolved.

I.

STATEMENT OF THE CASE

On or about September 1988, Petitioner/Debtor, Stephen Law aka Zhanjun Luo, ("Petitioner" or "Debtor") bought a residential property commonly known as 16150 La Monde Street, Hacienda Heights, California. (The "Property")

On or about August 1989, Petitioner filed a Homestead Exemption in the county.

On or about March 1998, debtor could not get any loan from any Bank in the States because of his first bankruptcy filing of 1995 and because his credit report rating. There was only one way to get the personal loan from outside of the States. Therefore, petitioner decided to get the personal loan of \$168,000 from Lili Lin of China ("Lin of China", petitioner's old friend) and recorded the Deed of Trust in the Los Angeles County in behalf of Lin of China who did not have any personal knowledge regarding any of

lawsuits of petitioner, but wired the funds to petitioner's California Federal Bank accounts. Petitioner made regular payments to Lin of China.

On January 5, 2004, petitioner filed the chapter 7 bankruptcy petition in the bankruptcy court as case LA04-10052TD. Debtor listed the home property as value of **\$363,348.00**. Trustee Alfred Siegel ("Trustee") failed to file any of objections to debtor's homestead exemption.

On or about January 5, 2006, trustee filed a motion to surcharge debtor's homestead exemption without proper served debtor.

On February 1, 2006, the court ordered trustee to reserving the surcharge motion to debtor at less 24 days before the hearing which continued to March 22, 2006.

On February 28, 2006, the trustee sent and faxed a letter to debtor and Lin of China offering settlement of \$100,000 for both debtor's homestead exemption and Lin of China's mortgage loan lien which is about \$280,000 according trustee's escrow closing statement. Debtor and Lin of China rejected the offer because of the exemption and Lin's Lien is totally over \$355,000 which far exceed trustee's offer, but made very good faith and reasonable counteroffer of \$265,000 but it was declined by the trustee.

On or about March 9, 2006, after debtor moved out his house which he has paid for more than two years' house payments since the bankruptcy, trustee entered into an agreement with his Lili Lin of California, ("Lin of Artesia" - a judgment debtor of petitioner) caused debtor's property wrongful be sold for \$680,000, petitioner's property equity was **\$316,652.00** and the remaining in the bankruptcy Estate account was about **\$500,000.00** after pay off all the costs.

On May 15, 2006, debtor filed a Notice of Appeal re the bankruptcy court's order granting trustee's first surcharge motion to debtor's homestead exemption.

On December 29, 2006, the Bankruptcy Appellate Panel ("BAP) issued a Memorandum on debtor's appeal, case CC-06-1180 and stated as follow:

*For purposes of this appeal and for the sake of completeness, we assume, without deciding, that Lili Lin of China has standing to appeal because of the risk that the **trustee will attempt to dissipate the sale proceeds without having first obtained a judicial determination establishing Lili Lin of China's lien status in those proceeds.** It is plain that Lili Lin of China remains entitled to assert her claim to the 1999 Note and DOT.*

*Similarly, it is apparent that **the court was merely shifting litigation expenses to the debtor in fashion designed to punish the debtor for his litigation activity.** The court explained that the debtor's conduct "has been the direct cause of the expenses that have been incurred by the trustee" and that "additional expenses are going to be incurred by the estate in defending [the debtor's] appeals." **While we do not quarrel with those observations they do not warrant denial of a homestead exemption that was claimed from the outset of the case.***

*In context, we have the **definite and firm conviction** that the \$75,000 surcharge of a \$75,000 exemption in this instance is not warranted by Latman or by Arnold. Accordingly, the order surcharging the debtor's \$75,000 homestead exemption by \$75,000 will be reversed. The order surcharging the debtor's \$75,000 homestead exemption by \$75,000 is **REVERSED**. (Memo of BAP case CC-06-1180)*

On December 30, 2006, by good faith effort, Debtor emailed and faxed a letter to Trustee's attorney and requested the Trustee to pay \$75,000 without intervention of the court. Trustee failed to respond and refused to do so.

On February 7, 2007, since trustee has refused to pay, debtor has no alternative, but forced to file his **first motion** for an order to pay debtor's homestead exemption.

On February 28, 2007, the court denied debtor's first homestead payment motion based on the ground that the court lack jurisdiction because trustee had filed an appeal to the court of appeals for the 9th Circuit.

On March 6, 2007, debtor filed a Notice of Appeal, re the court denying debtor's **first motion** for payment of homestead exemption.

On October 5, 2007, in the case CC-07-1127, the BAP issued a Memorandum, **again** reversed and remand the court's order denying Debtor's first motion for directing the trustee to pay debtor's claimed homestead exemption of \$75,000 and stated that:

*The debtor appealed the Surcharge Order to the Bankruptcy Appellate Panel (BAP No. CC-06-1180-KMoB). The Panel reversed the Surcharge Order on the ground that there were no extraordinary circumstances present justifying the surcharge of the debtor's entire homestead exemption. Although the debtor's conduct toward the bankruptcy court and the trustee had been both resistant and antagonistic, his proven conduct **did not equate with bad faith**. Consequently, an equitable **surcharge of his homestead exemption was not appropriate under current Ninth Circuit case law**.*

***An unopposed homestead exemption claim is analogous to a judgment.** In the absence of an order granting an extension of time, once the period to object to a claimed exemption expires, a party-in-interest is time-barred from challenging the validity of the exemption claim, **and the property claimed as exempt is exempt.**¹² *Smith v. Kennedy (In re Smith)*, 235 F.3d 472, 475 (9th Cir. 2000).*

*"[D]eadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." *Smith*, 235 F.3d at 476 (quoting *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992)) (emphasis added). Similar to an unstayed judgment, **an unopposed homestead exemption claim stands final**.*

*Here, the trustee did not challenge the validity of the debtor's claimed homestead exemption within the prescribed period. Thus, the debtor's right to his homestead exemption became final; **the \$75,000 of value in his residence that the debtor claimed as exempt is exempt**. *Taylor*, 503 U.S. at 643-44.*

Because the debtor's claimed homestead exemption is final, the bankruptcy court had the authority to act on the Homestead Payment Motion, notwithstanding the appeal of the Surcharge Order.

*The bankruptcy court **could and should have** made a determination and issued an order with respect to the Homestead Payment Motion – **but it declined to do so**. Therefore, we remand the Homestead Payment Motion to the bankruptcy court for further proceedings. (BAP. CC-07-1127 Memo)*

To comply with BAP's order, Appellant filed a **second motion** for an Order to pay Debtor's Claimed Homestead Exemption in the court on October 11, 2007.

On November 7, 2007, the court repeat denied Debtor's **second Motion** for payment of Homestead refused to comply with the orders of BAP of CC-06-1180 and CC-07-1127 which directing the court to issue an appropriate order notwithstanding the appeal of the surcharge order pending before the Ninth Circuit.

On November 19, 2008, the court entered an order denying Debtor's **second motion** for payment of homestead. Debtor appealed the order to BAP case CC-08-1002.

On January 30, 2008, the continued Status Conference and the Court's Order to show Cause in the adv. 07-1102 (Trustee's Declaratory Relief Action) which against Lin of China came on for hearing before the Honorable Thomas B. Donovan in the Bankruptcy Court. Peter C. Chow appeared on behalf of Lin of China. Steven Gubner appeared for Trustee, Debtor appeared in pro per. Peter Chow stated to the Court that he had met Lili Lin in Hong Kong on December 2007 and Lin of China showed him her Chinese government Identification, and she gave him a copies of identification, and he was retained by Lin of China and filed a Substitution of Attorney in the Court, Lin of China applied a Immigration visa to the USCIS (U.S. Citizenship and Immigration Services of U.S. Department of Homeland Security) by the USCIS rules, she could not get a visitor visa to the United States, but he has the original Deed of Trust and the Note. The Court asked Peter Chow handed him the original Deed of Trust and the Note and examined the original Deed of Trust and Note for few minutes then ordered the Status Conference and OSC continue to April 3, 2008.

On or about March 3, 2008, Peter Chow as attorney of record of Lin of China filed a Response to the Court's OSC and provided additional 9 exhibits to prove Lin of China did loan \$168, 000 to the debtor.

On March 27, 2008 and April 10, 2008, Lin of Artesia filed a New Declaration in the bankruptcy Court and admitted that her birthday is February 8, 1963. (Lin of China's birthday is November 22, 1947) She has resided in City of Artesia, California since December 2003. (Lin of China has resided in China) She did not loan debtor Stephen Law (aka Zhanjun Luo) the sum of \$168,000 as set forth in the Note and DOT, nor have she ever loaned him any money. She has never seen the original DOT or Note, and she never has possession of the original DOT and the Note. Further, Lin of Artesia admitted that although Lili Lin was listed on the Note and Deed of Trust as the beneficiary and the trustee, but she does not believe that debtor, Stephen Law gave her any of the interest on the said Deed of Trust and the Note, therefore, **she does not believe that she is a beneficiary nor the Trustee of the said Trust Deed and the Note.** (See bankruptcy court record as Lin of Artesia's Declaration)

Therefore, the old declaration of February 23, 2005 of Lin of Artesia and the Stipulation Agreement between Trustee and Lin of Artesia to sell the house are null and void, Lin of China is the only one real beneficiary and trustee of the DOT and Note.

On April 3, 2008, the court ordered dismissed trustee's adversary declaratory judgment action which against Lin of China for lack of progress by the trustee.

On April, 3, 2008, in the case of CC-08-1002, the BAP **again**, ruled in favor of debtor and directing the court that:

*Nor does the math support the proposition that it is necessary first to resolve the ownership of the Lin Lien: using the trustee's figures, as November 2008 he will be holding \$159,000 proceeds of the sale, after payoff of the Lin Lien. **He has not established any right to surcharge the debtor's homestead in any amount, nor even brought a motion to do so since we reversed his earlier attempt.** Nor is it at clear that the trustee is entitled to recover any fees as the successor of Lili Lin of Artesia, even if she is ultimately determined to be the real Lili Lin, and the assignment of her deed of trust is effective.*

We see no reason why the court should not direct the disbursement of debtor's homestead exemption to him in 60 days, less the amount of any surcharge motion supported with evidence prima facie establishing the propriety of a surcharge in that amount, and except to the extent that the trustee can establish that payment of the homestead would impair his ability to pay Lili Lin of China on the deed of trust were she to prevail. (Memo of BAP CC-08-1002)

On April 10, 2008, Debtor was forced to file his **Third Motion** for an Order to pay Debtor's Homestead Exemption pursuant to the direction of BAP.

On April 24, 2008, the trustee filed his **Second Motion** surcharge debtor's homestead exemption. Debtor filed an Opposition. Trustee filed a reply.

On May 21, 2008, the hearing of both motions of debtor and trustee were held in the bankruptcy court, trustee again requested continue the motions because **he did not have enough evidence**, trustee stated in the court that he want to take depositions of Andrew Smyth, Lin of China's former attorney and Peter Chow, Lin of China's present attorney, and the Debtor. The Judge Donovan again granted trustee's request and the motions were continued to September 17, 2008.

On September 17, 2008, in the bankruptcy court, trustee again request continue of the motion because **he did not have enough evidence**, he want to submit all the transcripts to the court. Judge Donovan again granted his request, and the motions were finally set on November 5, 2008.

On October 22, 2008, trustee filed his supplemental Memorandum of Points and Authorities and exhibits including only 32 pages of 232 pages of transcript of two days deposition of Debtor. No transcripts of Andrew Smyth and Peter Chow were filed.

On October 22, 2008, Debtor also filed and served his Supplemental evidence in support of his **Third motion** for homestead exemption with 11 new exhibits including documents of Subpoena to County Records Research Inc. and a responses from Mr.

Robert M. Cowan, the **Director of U.S. Citizenship and Immigration Services Center** (“USCIS”) of United States Department of Homeland Security to Debtor’s subpoenaed request for documents of Lili Lin of China for Immigrant Petition for Relative. The USCIS’s respond documents clear show that Lili Lin of China’s Immigrant Petition is pending in the USCIS, and the Case Status Search report of October 21, 2008 clear show that Lili Lin’s Immigrant Petition was received by U.S. government on June 6, 2007, and is pending in the USCIS of the Department of Homeland Security. Now the **United States government has the record of Lin of China.**

Therefore, it is absolutely abundantly clear that Lili Lin of China has been lived in China; trustee’s allegation no such person Lili Lin is totally absolutely silly, ludicrous.

On November 5, 2008, the both motions of Debtor’s third claim homestead Exemption and trustee’s second surcharge homestead motion were held in the bankruptcy court. The court granted trustee’s motion based on that Lin of China’s DOT is fraudulent and because of trustee spent a lot of money to the surcharge issue and shifting litigation expenses to the debtor **in a fashion designed to punish the debtor for his litigation activity and protection of his constitutional rights.**

On January 14, 2009, in the case 07-55200, Court of Appeals for the Ninth Circuit issued a Memorandum decision affirmed BAP’s decision against trustee’s appeal re issue of Lili Lin of China’s lien and reversing bankruptcy court’s order granting trustee’s surcharge debtor’s homestead exemption motion, and stated that:

The BAP properly reversed the bankruptcy court’s order granting the trustee’s surcharge motion because, without an adequate accounting of what litigation expenses should be reimbursed from Law’s exemption, the order appears to shift litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity. (Memorandum of COA 9th Circuit. 07-55200)

Obviously, the 9th Circuit believed that there are no such fraudulent of deed of trust in this case and shifting litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity was wrong.

On February 20, 2009, more than **three months** after the hearings of surcharge motion, the court issued a Memorandum re trustee's second motion to surcharge debtor's homestead exemption **based** on trustee's Supplemental request for judicial notice in support of the motion which was filed on November 20, 2009, fifteen (15) days after the order was announced on November 5, 2009. **This is wrong trial procedure.**

On March 2, 2009, Debtor filed a Notice of Appeal re second surcharge motion.

On October 22, 2009, the BAP issued a Memorandum affirming bankruptcy court's second surcharge motion. (BAP CC-09-1077, Appendix B)

On November 8, 2009, appellant filed a Notice of Appeal to 9th Circuit.

On June 6, 2011, the Court of Appeals for the 9th Circuit issued a Memorandum affirming BAP's decision. (COA. case 09-60046, Appendix A)

On June 17, 2011, Petitioner filed petition for rehearing.

On April 18, 2012, the 9th Circuit denied petition for rehearing. (Appendix C)

II.

NINTH CIRCUIT'S MEMORANDUM IS DIRECTLY CONFLICT WITH AN OPINION BY OTHER CIRCUIT COURT & SUPREME COURT

A. BAP's memorandum is conflict with his owned three decisions in favor of debtor and trustee's second surcharge motion is res judicate

The bankruptcy court ordered granting trustee's second surcharge motion based on fraud and no such person of Lin of China who loan money to debtor. But the court never has a trial on Lin of China, and never has finding of facts conclusion of law,

judicial determination judgment on Lin of China's lien, and trustee's action against Lin of China was dismissed by the court which appeared abused his discretion.

In addition, the BAP is in fact reversed the orders but in his other opinion that the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct. **This is also absolutely incorrect** and all conflict with his owned three decisions.

The BAP quoted a case *Onubah v. Zamora* 375 B.R. 549 (9th Cir. BAP 2007) which the debtor refused to cooperate turnover his residence to trustee who paid \$20,000 in legal fees, \$5,000 for services of U.S. Marshal, \$1,873.40 to change the locks, and \$23,544.78 for removal and storage of Onubah's household good. Trustee then surcharged the homestead exemption.

To the contrary, in the present case, debtor has paid for more than two years house payments since the bankruptcy filing, kept the house in excellent condition and voluntarily turns it over to the trustee; therefore the house was sold for **\$680,000.00** The estate received about **\$500,000.00** after all the costs. Debtor should have equity about **\$316,652.00** in the estate. The estate paid \$120,000 to the creditor Cau-Min Li, the only one creditor estate paid. The trustee and his attorneys carved up rest of **\$410,200.00** for their benefits only. (Estate eared interest about \$30,200.00) Now, the trustee and his attorneys took all the money from Debtor even Debtor's down payment of \$50,000 of 24 years ago and the homestead exemption of \$75,000. **That is absolutely unfair, unjust. No such case in the bankruptcy history.**

Therefore, the BAP is misquoted the case Onubah which is totally, absolutely not apply to the instant case.

In addition, the estate has more than \$159,000 surplus for Debtor's homestead exemption as the BAP stated in his Memorandum of CC-08-1002 re the Court denying debtor's second motion for homestead and ruled in favor of debtor directing that:

Nor does the math support the proposition that it is necessary first to resolve the ownership of the Lin Lien: using the trustee's figures, as November 2008 he will be holding \$159,000 proceeds of the sale, after payoff of the Lin Lien. He has not established any right to surcharge the debtor's homestead in any amount, nor even brought a motion to do so since we reversed his earlier attempt.

Res judicata precludes the parties from re-litigating the same issues of fact or law that is necessary to a judgment that has been entered. Parties are also precluded from relitigating issues that were, or could have been raised in the action. Kremer v. Chemical Constr. Corp., 456 U.D. 461, 72 L. Ed. 2d 262, 102S. Ct. 1883, 28 Fair Empl. Prac. Cas. (BNA) 1412, 28 Empl. Prac. Dec. (CCH) 32674 (1982). Therefore, trustee's motion is mere re-litigating the same issue so that it is res judicata.

The law of the case should not constrain appellate review of a lower court's decision unless a party fails to challenge that decision in an *actual* appeal. *See id.* at 992–93; *see also Capps v. Sullivan*, 13 F.3d 350, 353 (10th Cir. 1993) (declining to review an issue because the parties did not contest it in their prior appeal); Laffey v. Nw. Airlines, Inc., 740 F.2d 1071, 1090 (D.C. Cir. 1984) (explaining that when a party fails to challenge a decision in its first appeal, that appeal affirms the lower court's decision for purposes of the law of the case). If no appeal is taken, as was the case here, the opposite doctrine is that of issue preclusion. *See generally* Charles Alan Wright et al., 18A Federal Practice and Procedure § 4433 (2d ed. 2002); *see also id.* 18B Federal Practice and Procedure § 4478.6, at 819 (“If no one appeals on any issue, the judgment of the trial court moves into the realm of res judicata.”) The doctrine of issue preclusion “comes into play when an issue involved in a prior decision is the same issue involved in a subsequent action.” *See Mabry v. State Bd. of Community Colleges & Occupational Educ.*, 813 F.2d 311, 316 (10th Cir. 1987).

Obviously, trustee's first and second surcharge motions based on the same grounds by falsely charged debtor for fraud without any of new evidence and merely re-

litigated the same issue which has been reversed by the BAP on December 29, 2006, and affirmed by the court of appeal of 9th Circuit on January 14, 2009.

The BAP is also wrong here. Although the BAP allow trustee may re-file his surcharge motion but *any such relief should be supported by **specific findings of fact and appropriate conclusions of law** regarding the debtor's conduct, including an **adequate explanation** why any surcharge based on specific damages or expenses incurred by the estate should be reimbursed from the debtor's exemptions.*" Trustee only presented same exhibits as his first surcharge motion except 32 pages of 232 pages of the transcript of debtor's two days deposition and the court has not **first obtained a judicial determination establishing Lili Lin of China's lien status in those proceeds.** (See BAP CC-06-1180)

B. Bankruptcy Court cannot allow the surcharge to extent to debtor's Constitutionally protected homestead property

In re Mazon, 368 B.R. 906 (Bankr. M.D. Fla. 2007), the debtors failed to disclose in their bankruptcy schedules nonexempt assets valued at approximately \$615,000.00. Further, after filing bankruptcy, the debtors dissipated those assets, therefore keeping them out of the trustee's reach. Upon learning of the debtors' **misconduct**, the chapter 7 trustee filed a motion to surcharge the debtors' exempt assets, including their homestead property. The court agreed with the trustee that the debtors' failed to schedule and turnover estate assets and therefore the trustee could equitably surcharge the debtors' statutorily exempt property. The court, however, would not allow the surcharge to extend to the debtors' constitutionally protected homestead property. The Mazon court did not surcharge the homestead property because none of the dissipated estate assets

could be traced into the debtor's homestead. The court further pointed to the case of *In re Chauncey*, 454 F.3d 1292 (11th Cir. 2006) which reaffirmed that an equitable lien may only be imposed under Florida Law when money used to obtain an interest in the homestead property is obtained by fraud or egregious conduct. *Id.* At 912.

It is widely accepted that property deemed exempt from a debtor's bankruptcy estate reverts in the debtor. See 11 U.S.C. S 522(l); see also *In re Brown*, 178 B.R. 722, 726-27 (Bankr. E.D. Tenn. 1995) (citing cases to that effect), *Owen v. Owen*, 500 U.S. 305, 308 (1991) (when property becomes exempt, it is "withdrawn from the estate (and hence from the creditors) for the benefit of the debtor"); *In re Bell*, 225 F.3d at 215-216.

In *Taylor*, the Supreme Court emphasized its concern with keeping the bankruptcy process moving by insisting on firm, explicit deadlines. See 503 U.S. at 644. As a matter of policy, this should work no great hardship, even in the conversion of bankruptcy proceedings from Chapter 11 to Chapter 7. The purpose of the creditors meeting is to question the debtor about his debts, and to examine him about his claimed exemptions. Furthermore, should this process become unduly cumbersome, the trustee or creditors may simply object to any exemptions that remain nor under-explained. That did not happen in this case. Because the meeting of creditors concluded, at the latest, thirty days after it was adjourned indefinitely, because conversion does not restart the time to object, and because property that is exempted vests in the debtor upon the creditor and trustee's failure timely to object. *Once the period to object to a claimed exemption expires, a party-in-interest is time-barred from challenging the validity of the exemption claim, and the property claimed as exempt is exempt.*¹² *Smith v. Kennedy (In re Smith)*, 235 F.3d 472, 475 (9th Cir. 2000). “[D]eadlines may lead to unwelcome

results, but they prompt parties to act and they produce finality.” *Smith*, 235 F.3d at 476 (quoting *Taylor v. Freeland & Kronz*, 503 U.S.638, 644 (1992)) Similar to an unstayed judgment, ***an unopposed homestead exemption claim stands final.***

Therefore, debtor respectfully requests the Supreme Court following the decisions of *Smith*, *Taylor*, *Mazon* and *Owen v. Owen* cases reversing the surcharged orders.

In addition, the Bankruptcy court of Central District of California in case SV05-14975 issued 13 pages Memorandum Decision order denying Trustee’s surcharge motion.

The court stated that:

“Of all the published opinions granting surcharge of a Debtor’s exemption, there are real only two general categories of case that have permitted surcharge (1) those permitting surcharge as form of sanctions; (2) those permitting surcharge as a form of offset, As will be shown, neither form of surcharge is appropriate in this case.

a. Sanctions-Based Surcharges

A number of cases have permitted surcharge of a debtor’s exemption as form of sanction. In In re Swanson, 207 B.R. 76 (Bankr.D.N.J. 1997), the court held that the trustee was entitle to deduct from the debtor’s homestead damages incurred because of the debtor’s contempt. In In re Stinson, 221 B.R. 726, 732 (Bankr.E.D. Mich. 1998), the court allowed the complete surcharge of debtor’s exemption in settlement proceeding where the debtor wrongfully procured settlement without the trustee’s authorization. The court reasoned that this was reasonable given that the trustee might have been able to get more out of the settlement. Finally, in In re Karl, 313 B.R. 827.832 (Bankr.W.D. Mo.2005) the court allowed a surcharge of the homestead exemption for attorney’s fees and costs as form of sanction for contempt. Under the facts of the above cases, applying 11 U.S.C. section 105(a) to surcharge exemptions is justified because it is a mere application of the court’s contempt power. Just as the court can compel the debtor in contempt to pay another party out of his or her own funds, the court can compel the debtor to make this payment in the form of a surcharge. The policy concerns behind 11 U.S.C. section 522(k) are outweighed by the court’s need to maintain order and decorum and ensure proper function of the system.

b. Offset-Based Surcharges

A number of cases have permitted surcharge of a debtor’s exemption as form of offset. For example, in In re Karl, 313 B.R. 827, 832) Bankr. W.D. Mo2004), the court allowed the surcharge of the debtor’s homestead exemption in the amount of the value of the debtor’s unauthorized post-petition transfer. The court treated the post-petition as if it were an advance on the debtor’s exemption, and surcharges the exemption accordingly. Similarly, in In re Bogan, 302 B.R. 524, 529(bankr.W.D.

Pa.2003) the court granted a surcharge of all of the debtor's exemptions where the debtor had embezzled \$400,000 from her employer while in bankruptcy and had failed to provide an explanation of where these funds went. The court held that, under these facts, it would be an abuse of the bankruptcy process to allow any exemption. The logic seems to be that because the debtor retained the benefit of these illicit funds outside of the control of the trustee, it would be inappropriate to give the debtor a double benefit by allowing her to claim exemptions as well. Finally, Latman v. Burdette, 366F.3d 744(9th Cir. 2004), which the Trustee heavily relies upon, also falls into this category.

In the instant case, neither two of form of surcharge is appropriate in this case.

There is no either sanction-based or offset-based surcharge in this case. Even if the court's authority to surcharge an exemption does extend beyond the two categories of cases, it does not extend so far as to reach the facts of this case.

The Code contains specific provisions governing exemptions. *See* 11 U.S.C. § 522.

Generally, if the debtor claims property as exempt and "a party in interest" does not object, that property is exempt from property of the estate. *See* § 522(d); *see also* Fed. R. Bankr. P. 4003. Furthermore, the Code contains a limited number of exceptions to the rule that exempted property cannot be used to satisfy pre-petition debts or **administrative expenses**. *See* § 522(c), (k).). Scrivner v. Mashburn (*In re Scrivner*) 370 B.R. 346,352-354 (10th Cir BAP2007)

The homestead exemption of \$75,000 just likes debtor's house down payment of 24 years ago. Accordingly, the focus must be upon how the money is *obtained* and not upon how the money is *used*. In re Cameron, 359 B.R. 818, 822 (Bankr. M.D. Fla. 2006) (citing In re Johnson, 336 B.R. 568, 572 (Bankr. S.D. Fla. 2006). Money lawfully obtained that is thereafter improperly used does not support the imposition of an equitable lien against homestead property. *Id.*

C. Debtor's appeals are not frivolous there are no misconduct by the debtor

The bankruptcy court and the BAP citing debtor's appeals are frivolous and his misconduct incurred trustee spent more time and fund to file the Declaratory action against Lin of China. As matter of fact, it was BAP required trustee to obtain an appropriate judicial determination on Lin of China's lien. Furthermore, because BAP reversed the court order granting trustee's first surcharge motion that incurred trustee spent a lot of fund to answer debtor's three motions for payment of homestead exemption and filing second surcharge motion. This is most ridiculous and ludicrous sophistry in the law litigation history. **Since it was the BAP and the Court of Appeal reversed bankruptcy court's three orders, is it the surcharge shall be imposed on BAP and Court of Appeal?**

The BAP's Memorandum of October 5, 2008 stated that *Although the debtor's conduct toward the bankruptcy court and the trustee had been both resistant and antagonistic, his proven conduct **did not equate with bad faith***. The court also repeated in the hearings that debtor's conduct is not bad faith and he did prevail in some of issues in the Bankruptcy Appellate Panel, and Court of Appeals.

In addition, debtor has rights to appeal as well as the trustee has rights to appeal BAP's judgment. Debtor did prevail some of the issues on the appeals such as the BAP reversed the court's order granting trustee's first surcharge motion, and the BAP reversed and remand the court orders denying debtor's first motion for an order directing trustee to pay debtor's homestead exemption, and BAP ruled in favor of debtor for his second motion for homestead exemption and directing the Court that:

*Nor does the math support the proposition that it is necessary first to resolve the ownership of the Lin Lien: using the trustee's figures, as November 2008 he will be holding \$159,000 proceeds of the sale, after payoff of the Lin Lien. **He has not established any right to surcharge the debtor's homestead in any amount, nor even brought a motion to do so since we reversed his earlier attempt.** Nor is it at clear that the trustee is entitled to recover any fees as the successor of Lili Lin of Artesia, even if she is ultimately determined to be the real Lili Lin, and the assignment of her deed of trust is effective.*

*It is unclear how the trustee could claim **any fees** under that provision for work done prior to his becoming the beneficiary on 19 May 2005. And the fight since seems largely to be over who the original beneficiary was, with excursions into whether debtor's exemption should be surcharged. **It is highly doubtful that any of the trustee's attorneys' fees relating to those issues can be properly construed as affecting "the rights or powers of Beneficiary or Trustee" under the deed of trust** – there has been no challenge to its enforceability or the amount due.*

We see no reason why the court should not direct the disbursement of debtor's homestead exemption to him in 60 days, less the amount of any surcharge motion supported with evidence prima facie establishing the propriety of a surcharge in that amount, and except to the extent that the trustee can establish that payment of the homestead would impair his ability to pay Lili Lin of China on the deed of trust were she to prevail. (BAP CC-08-1002)

Obviously, debtor's appeals are not bad faith or frivolous or misconduct.

As matter of facts, trustee's two appeals to the court of appeals and his numerous of motions are frivolous all have been denied such as his motion to dismiss debtor's appeal; motion for sanction against Lin of China, motion for modify court order, motion for consolidation, motion for request to enter default against Lin of China, and motion to suspend the appeal and the Declaratory action against Lin of China was dismissed. How the debtor's appeals are frivolous or in bad faith?

As matter of facts, litigant is not debtor's job, debtor just want to make fair settlement, therefore, he made numerous of good faith settlement offers to trustee before the appeals commence and after the BAP ruled in favor of debtor, but unfortunate, trustee refused to take the offers but insist to file two appeals to the 9th Circuit and the

Declaratory action in the court. Trustee is very very greedy, his attorney Ezra/Brutzkus/Gubner LLP ("EBG") took \$250,000 on his first interim application on April 3, 2008 and then the Judge Donovan again granted his final interim application for \$472,124.19 which application did not service on the Debtor on November 3, 2010. (See BAP CC-10-1499) Trustee and his attorneys want to take all of funds of \$530,000.00 to their packet without to pay any of creditors including debtor. More importantly, there are no creditor would get any of the benefit for selling debtor's real property. **This is the main point of the case.** The trustee to sell debtor's real property only for his benefit and his attorney fees and trustee's misconducts are in bad faith.

III.

CONCLUSION

Based on all the grounds have been given above. Petitioner respectfully requests the Supreme Court grant the Petition and reverse the lower courts' decisions, and directing the bankruptcy court enter an order to pay petitioner \$75,000 homestead exemption forthwith, and order debtor's real property's equity of \$316,652.00 should belong to debtor who paid for all the payments until trustee sold the house and remand the case to a Judge other than Judge Donovan for further proceeding because Judge Donovan has personal prejudice against petitioner who does not has fair hearings and trial before Judge Donovan.

Dated: July 4, 2012

Respectfully submitted,

/s/ Stephen Law

Stephen Law

Petitioner pro se

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Stephen Law - Petitioner

VS.

United States Court of Appeals for the Ninth Circuit – Respondent

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Stephen Law
12563 Benson Ave.
Chino, CA 91710
Tel: (626) 226-8548
Petitioner Pro se

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[X] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States Court of Appeals for the Ninth Circuit.

United States District Court, Central District of California.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

/s/ Stephen Law
Signature

AFFIDAVIT OR DECLARATION

IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Stephen Law, am the petitioner in the above entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor, and I believe I am entitled to redress.

- For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during The past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ None	N/A	\$ None	N/A
Self-employment	\$ None	N/A	\$ None	N/A
Income from real property (such as rental income)	\$ None	N/A	\$ None	N/A
Interest and dividends	\$ None	N/A	\$ None	N/A
Gifts	\$ None	N/A	\$ None	N/A
Alimony	\$ None	N/A	\$ None	N/A
Child Support	\$ None	N/A	\$ None	N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ None	N/A	\$ None	N/A
Disability (such as social security, insurance payments)	\$ None	N/A	\$ None	N/A
Unemployment payments	\$ 327.00	N/A	\$ None	N/A
Public-assistance (such as welfare)	\$ None	N/A	\$ None	N/A

Other (specify): family support \$ 400.00 N/A \$ 400.00 N/A
Total monthly income: \$ 727.00 N/A \$ 400.00 N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
None	N/A	N/A	N/A

3. List your spouse's employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	N/A

4. How much cash do you and your spouse have? \$249.35
 Below, state any money you or your spouse have in the bank accounts or in any other financial institution.

Financial Institution	Type of account	Amount you have	Amount your spouse has
Bank of America	Checking	\$249.35	N/A

5. List the asset, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<input type="checkbox"/> Home Value: None	<input type="checkbox"/> Other real estate Value: None
<input checked="" type="checkbox"/> Motor Vehicle #1 Year, make & model: Lease of Honda Accord Value: None	<input type="checkbox"/> Motor Vehicle #2 Year, make & model: None Value: None
<input type="checkbox"/> Other assets Description: None Value: None	

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or Your spouse money	Amount owed to you	Amount owed to your spouse
Alfred Siegel, Chapter 7 trustee	\$ 1,441.50 (Costs of Appeals)	N/A
Shong-Ching Tong	\$ 493.99 (Court Judgment)	N/A
Yei-Hwei Tong	\$1,158.30 (Court Judgment)	N/A

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
None	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 270.00	N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, Water, sewer, and telephone)	\$ 35.00	N/A
Home maintenance (repairs and upkeep)	\$ None	N/A
Food	\$ 50.00	N/A
Clothing	\$ 10.00	N/A
Laundry and dry-cleaning	\$ 8.00	N/A
Medical and dental expenses	\$ 9.00	N/A
Transportation (not including motor vehicle payments)	\$ 30.00	N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 3.00	N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ None	N/A
Life	\$ None	N/A
Health	\$ None	N/A
Motor Vehicle	\$ 40.64	N/A
Other: _____	\$ None	N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ None	N/A
Installment payments		
Motor Vehicle	\$ 248.62	N/A
Credit card(s)	\$ 22.00	N/A

Department store(s)	\$ None	N/A
Other: _____	\$ None	N/A
Alimony, maintenance, and support paid to others	\$ None	N/A
Regular expenses for operation of business, profession, Or farm (attach detailed statement) _____	\$ None	N/A
Other (specify): _____	\$ None	N/A
Total monthly expenses: _____	\$ 726.26	N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number: N/A

11. Have you paid – or will you be paying – anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? N/A

If yes, state the person's name, address and telephone number: N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Because of my poverty I am unable to pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 4, 2012.

/s/ Stephen Law
(Signature)

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Stephen Law - Petitioner

Vs.

United States Court of Appeals for the Ninth Circuit – Respondent

PROOF OF SERVICE

I, Bing Li, do swear or declare that on this date, July 5, 2012, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR A WRIT OF CERTIORARI and MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The name and addresses of those served are as follows:

U. S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA94119-3939

Alfred Siegel - Chapter 7 Trustee
15233 Ventura Blvd. 9th Floor
Sherman Oaks, CA91403

U.S. Bankruptcy Appellate Panel of 9th Circuit
125 South Grand Ave.
Pasadena, CA91105

I declare under penalty of perjury that the forgoing is true and correct.
Executed on July 5, 2012.

/s/ Bing Li
Signature