

<p>FILED</p> <p>JUL 19 2024</p> <p>UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF CALIFORNIA</p>
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NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

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In re:)	
ARMIDA CASTANEDA RAMIREZ,)	Case No. 19-23509
Debtor.)	
J. MICHAEL HOPPER,)	Adv. Pro. 2019-2075
Plaintiff,)	
v.)	
FERMIN CASTANEDA,)	
Defendant.)	

**MEMORANDUM ON CORRECTING CLERICAL ERROR IN JUDGMENT
PER FEDERAL RULE OF CIVIL PROCEDURE 60(a)**

CHRISTOPHER M. KLEIN, Bankruptcy Judge:

This Court's Judgment avoiding and recovering a transfer of a fractional property interest and preserving it for the benefit of the estate was incomplete in its description of the rights and liabilities of the parties.

The transcript of the oral findings confirms the intent was to have the effect of declaring that the avoided undivided interest has the status of property of the estate, that the rights of the Chapter 7 Trustee are functionally as co-owner with whatever sale powers are available under 11 U.S.C. § 363, and that the Trustee enjoys the rights of the debtor under a bilateral contract between the Debtor and Defendant Fermin Castenada that provides for use, maintenance, and eventual sale of the property.

The written judgment was imprecise. Subsequent confusion

1 about the Trustee's rights warrants correcting the Judgment.

2 A "clerical error" in a judgment that is in the nature of a
3 blunder in execution may be corrected by a court sua sponte to
4 conform to the Court's original intent at any time, with or
5 without notice, under Civil Rule 60(a) and Bankruptcy Rule 9024.

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Procedural History

8 Judicial notice is hereby taken of the facts and record in:
9 J. Michael Hopper v. Fermin Castaneda, Adv. No. 19-2075, filed
10 June 21, 2019; the Reporter's Transcript of oral findings after
11 trial made October 7, 2020 (Dkt. #82); and the Judgment rendered
12 thereon on October 19, 2020 (Dkt. #76).

13 Debtor Armida Castaneda Ramirez filed a chapter 7 case No.
14 19-23509 on May 31, 2019, 114 days after she transferred to her
15 separated spouse, Fermin Castaneda, her undivided half interest
16 in the former marital residence in Springfield, Virginia.

17 The transfer by Armida was in the form of a General Warranty
18 Deed dated February 6, 2019 and recorded March 14, 2019.

19 At the time of the February 6 transfer, there was extant a
20 Property Settlement and Separation Agreement ("PSSA") executed
21 December 3, 2018, that required eventual sale of the residence by
22 mutual agreement, with net profits to be divided equally. In the
23 meanwhile, Fermin was allowed exclusive use and possession of the
24 residence with contractual duties to pay all mortgage, utility,
25 maintenance, and repair costs, and to hold Armida harmless
26 thereon. PSSA ¶ 9 (Dkt. #16).

27 As the February 6 deed did not comply with the integration
28 clause in the PSSA, it did not modify the PSSA. PSSA ¶ 16.

1 Chapter 7 Trustee J. Michael Hopper sued under a fraudulent
2 transfer theory to avoid the February 6 transfer and recover the
3 property interest for the benefit of the estate.

4 After trial, this Court ordered the transfer avoided,
5 recovered, and preserved for the benefit of the estate.

6 The Trustee's four-count Complaint sought to avoid the
7 transfer and recover it for the estate.

8 In Count 1, the Trustee alleged Avoidance and Recovery of
9 Fraudulent Transfer under 11 U.S.C. § 548(a)(1) and § 550, for
10 which he requested a judgment avoiding the transfer and
11 "declaring the Trustee's title to the Subject Property to be
12 superior to the Defendant's title." Complaint ¶¶ 9-12.

13 In Count 2, the Trustee alleged the Defendant had
14 possession, custody, and control of the subject property which is
15 property of the estate that is not of inconsequential value or
16 benefit to the estate and requested a judgment "compelling an
17 under-oath accounting and turnover of the Subject Property or the
18 proceeds thereof." Complaint ¶¶ 13-16.

19 Counts 3 and 4 invoked § 544 trustee strong-arm powers,
20 alleging avoidance under two sections of California's Uniform
21 Voidable Transfer Act, Cal. Civ. Code §§ 3439.04 and 3439.05, and
22 recovery under § 550 with a declaration that the Trustee's title
23 is "superior to the Defendant's title." Complaint ¶¶ 17-21.

24 At trial, the defense questioned Trustee's powers over real
25 property held under a tenancy by the entirety and, in any
26 event, contended that the net value of the property was too
27 inconsequential to warrant permitting the Trustee to recover it.

28 Findings were rendered orally on the record pursuant to

1 Civil Rule 52(a)(1) on October 7, 2020.

2 On Count 1, alleging avoidance and recovery under §§ 548 and
3 550, the Court ruled in favor of the Trustee. It explained that
4 the effect of the transaction was to leave the Trustee as owner
5 of an undivided interest in the residence as a tenant in common;
6 that the contractual terms of the PSSA with respect to the
7 residence were valid and remain in effect; and that under the
8 doctrine of Hyman v. Plotkin (In re Hyman), 967 F.2d 1316, 1320-
9 21 (9th Cir. 1992), the Trustee at an appropriate time could
10 market and sell the estate's interest pursuant to § 363 so long
11 as the price would yield net value to the estate.

12 The ensuing Judgment entered October 19, 2020, however,
13 merely ordered avoidance under § 548 and recovery under § 550,
14 noting that (as is automatic under § 551) the transfer is
15 preserved for the benefit of the estate. Mea culpa. It ignored
16 the request in the pleadings to declare the rights of the parties
17 and did not accurately state the rights of the Trustee as had
18 been explained in the oral findings.

19 Count 2 for immediate turnover and accounting was dismissed
20 as premature in view of Fermin's rights to exclusive use subject
21 to his duties under the PSSA pending eventual sale, either by
22 consent under the PSSA or under § 363.

23 Counts 3 and 4 under the California's Uniform Voidable
24 Transfer Act were dismissed as cumulative in light of the
25 avoidance and recovery under §§ 548 and 550.

26 The ambiguities in the Judgment surfaced after the Trustee
27 learned Fermin had violated the PSSA by not making mortgage
28 payments required by PSSA paragraph 9 during the period February

1 2023 through June 2023. The Trustee, who had been acting as
2 successor to the Debtor's rights under the PSSA and as owner of
3 the avoided undivided interest, sued to force a sale.

4 The complaint alleged claims for relief for: (1) breach of
5 the PSSA contract; (2) sale of co-owned property; and (3)
6 accounting and turnover. J. Michael Hopper v. Fermin Castenada,
7 Adv. No. 2023-02057, filed July 26, 2023.

8 The defenses raised at the ensuing trial exposed the
9 confusing defects in the form of the Judgment in No. 19-02075.
10 The defects included lack of clarity about the effect of the
11 avoidance, recovery, and preservation of the avoided transfer for
12 the benefit of the estate as making the Trustee a co-owner under
13 a tenancy in common and lack of clarity about the rights and
14 liabilities of the parties.

15 The solution is to correct the original Judgment to state
16 what this Court intended.

17 In addition to this Court's own recollection, the analysis
18 is aided by the transcript of the oral findings.

19

20 Correcting the Judgment

21 I

22 Rule 60(a) Corrections

23 Federal Rule of Civil Procedure 60(a), as incorporated by
24 Federal Rule of Bankruptcy Procedure 9024, authorizes this Court
25 to "correct a clerical mistake or a mistake arising from
26 oversight or omission whenever one is found in a judgment, order,
27 or other party of the record" and to act "on its own, with or
28 without notice." Fed. R. Civ. P. 60(a), incorporated by Fed. R.

1 Bankr. P. 9024;¹ 11 CHAS. A. WRIGHT, ET AL., FEDERAL PRACTICE & PROCEDURE
2 § 2854 (2023); 12 MOORE'S FEDERAL PRACTICE § 60.11[1][c] (2023);

3 Correcting a mistake under Rule 60(a) entails exercising
4 discretion to give effect to the Court's original intent in
5 entering the judgment or order. Tattersalls, Ltd. v. DeHaven, 745
6 F.d 1294, 1297-99 (9th Cir. 2014); Garamendi v. Henin, 683 F.3d
7 1069, 1077-81 (9th Cir. 2012); Robi v. Five Platters, Inc., 918
8 F.2d 1439, 1445 (9th Cir. 1990); Blanton v. Anzalone, 813 F.2d
9 1574, 1577 (9th Cir. 1987); In re Bestway Prods., Inc., 151 B.R.
10 530, 534-35 (Bankr. E.D. Cal. 1993), aff'd, 165 B.R. 339 (9th
11 Cir. BAP 1994).

12 This Court's Judgment needs to be corrected under Rule 60(a)
13 in two respects that have produced confusion.

14 The transcript of this Court's oral findings confirms that
15 the corrections are implementing what was intended at the time.
16 This Court is not changing its mind.

17
18 A

19 Clerical Error

20 First, there was a simple clerical error. By an outright
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23 ¹Rule 60(a) provides:

24 (a) Corrections Based on Clerical Mistakes; Oversights
25 and Omissions. The court may correct a clerical mistake or a
26 mistake arising from oversight or omission whenever one is
27 found in a judgment, order, or other part of the record. The
28 court may do so on motion or on its own, with or without
notice. But after an appeal has been docketed in the
appellate court and while it is pending, such a mistake may
be corrected only with the appellate court's leave.

Fed. R. Civ. P. 60(a), incorporated by Fed. R. Bankr. P. 9024.

1 blunder in execution, the form of the Judgment refers to the
2 avoided transfer as a "Deed of Trust," rather than a "Deed."
3 Although the Judgment identifies the particulars of the avoided
4 transfer, the arcane peculiarities of title searches could lead
5 to unnecessary confusion on other fronts. Hence, correction of
6 the clerical error is appropriate.

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Mistake from Oversight or Omission

10 Second, there was a mistake arising from oversight or
11 omission for which Rule 60(a) permits correction. Absent a
12 pending appeal, the Court "at any time" may act on its own
13 motion, with or without notice. Fed. R. Civ. P. 60(a),
14 incorporated by Fed. R. Bankr. P. 9024.

15 Here, the Complaint sought avoidance on multiple counts, a
16 § 550 recovery, an accounting, and a declaration of the rights of
17 the parties. In its oral findings deciding Adversary No. 19-2075.
18 This Court described, but did not include in the Judgment, the
19 consequences of avoidance on the rights of the parties.

20 The operative terms of Judgment were that the transfer "is
21 hereby avoided pursuant to 11 U.S.C. § 548(a)(1)(B) and ordered
22 preserved for the benefit of the estate pursuant to 11 U.S.C.
23 § 550." The intended consequences reach beyond that simple
24 statement and should have been better articulated.

25 First, preservation of the avoided transfer for the benefit
26 of the estate "pursuant to 11 U.S.C. § 550" was intended to mean
27 that the transferred interest in property was "recovered, for the
28 benefit of the estate," within the meaning of § 550(a) and,

1 hence, became "property of the estate" over which the Trustee has
2 all available powers under 11 U.S.C. § 363.

3 Second, title reverted to the status quo before the avoided
4 transfer - to wit, tenancy by the entirety under the deed
5 recorded August 13, 2007, which would (in light of later events
6 including express waiver of spousal rights in connection with a
7 permanent separation) be treated by Virginia courts as tenancy in
8 common. Tr. 10/7/2020 at 12-13 & 19-20.

9 Third, by preservation of the avoided transfers for the
10 benefit of the estate "pursuant to § 550," the Trustee both
11 recovers and succeeds to the rights of Armida with respect to the
12 property pursuant to PSSA paragraph 9. It follows that
13 functionally the co-tenants are Fermin Castenada and J. Michael
14 Hopper, as Trustee of the chapter 7 bankruptcy estate of Armida
15 Castanada Ramirez (or any successor bankruptcy Trustee).

16 Fourth, the rights of the Trustee with respect to Armida's
17 undivided one-half interest are superior to the rights of Fermin
18 in that same recovered one-half interest.

19 Fifth, by the Trustee's succession to Armida's rights under
20 the PSSA, Fermin has a contractual duty to keep the Trustee
21 advised of developments regarding the property. Tr. 10/7/2020
22 (Defense counsel: "I'm fine with the PSSA being the property of
23 the estate.").

24 Sixth, concomitantly, the Trustee is obliged to honor
25 Fermin's rights under the PSSA so long as Fermin performs his
26 PSSA duties.

27 Seventh, there having been no showing regarding the
28 existence of net equity in the property and no showing of a

1 reason not to honor Fermin's rights under the PSSA so long as he
2 was not in default of his duties, it was premature, under the
3 doctrine of Hyman v. Plotkin, 967 F.2d 1316 (9th Cir. 1992), to
4 authorize the Trustee to proceed to market the recovered interest
5 in the real property.

6 Eighth, the dismissal of the remaining counts was an
7 inconsequential clearing of the books in the interest of
8 achieving finality in light of Rule 7054(a) regarding multiple
9 claims.² As the Judgment provided for avoidance under
10 § 548(a)(1)(B) and recovery "pursuant to § 550," it was not
11 regarded as necessary to decide the state-law voidable transfer
12 claims or to make any further order regarding § 550 recovery.

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14 II

15 In retrospect, this Court should have included in the
16 Judgment a more detailed description of the rights and
17 liabilities of the parties.

18

19 ²Rule 7054(a) incorporates Civil Rule 54(b), which provides:

20 (b) Judgment on Multiple Claims or Involving Multiple
21 Parties. When an action presents more than one claim for
22 relief - whether as a claim, counterclaim, crossclaim, or
23 third-party claim - or when multiple parties are involved,
24 the court may direct entry of a final judgment as to one or
25 more, but fewer than all, claims or parties only if the
26 court expressly determines that there is no just reason for
27 delay. Otherwise, any order or other decision, however
28 designated, that adjudicates fewer than all the claims or
the rights and liabilities of fewer than all the parties
does not end the action as to any of the claims or parties
and may be revised at any time before the entry of a
judgment adjudicating all the claims and all the parties'
rights and liabilities.

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Fed. R. Civ. P. 54(b), incorporated by Fed. R. Bankr. P. 7054(a).

1 Confusion about those consequences has unduly complicated
2 adversary proceeding, No. 23-2057 in which Trustee seeks to
3 exercise his powers with respect to property of the estate.

4 At the close of trial in No. 23-2057, this Court informed
5 the parties on the record that it was considering acting under
6 Rule 60(a). No opposition was expressed.

7 Accordingly, a Corrected Judgment will issue giving effect
8 to the original intent of this Court when it rendered findings of
9 fact and conclusions of law in the prior adversary proceeding.

10 The Corrected Judgment will make clear that the avoided
11 transfer that was recovered and preserved for the benefit of the
12 estate functioned to place the Trustee in the shoes of the debtor
13 with respect to the PSSA provisions regarding the former marital
14 home, that Fermin has a duty to keep the Trustee informed of the
15 status of his performance of his duties under the PSSA, and that
16 the Trustee is entitled to pursue all rights afforded by
17 bankruptcy and nonbankruptcy law.

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19 Conclusion

20 For the reasons stated herein, a Corrected Judgment in No.
21 2019-2075 shall be entered in a separate document.

22 SO ORDERED.

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26 Date: July 19, 2024

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28 UNITED STATES BANKRUPTCY JUDGE

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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

J. Russell Cunningham
1830 15th St
Sacramento, CA 95811

David Ashley Smyth
3478 Buskirk Ave., #1000
Pleasant Hill, CA 94523