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Bankruptcy Court Properly Invalidated Transfer of Mexican Coastal Villa Owned by Debtors

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Bankruptcy court properly invalidated transfer of Mexican coastal villa owned by debtors. Bankruptcy court's post-judgment imposition of contempt sanctions for failing to transfer Mexican coastal villa was proper.

Kismet Acquisition, LLC v Icenhower (In re Icenhower) (9th Cir 2014) 757 F3d 1044

Kismet Acquisition, LLC v Diaz-Barba (In re Icenhower) (9th Cir 2014) 755 F3d 1130

THE EDITOR'S TAKE: The steps that these parties went through to keep the property away from their creditor—and the efforts the creditor had to invest to undo it all—makes for an exciting and informative story, but also gives attorneys helpful information about the consequences of resident Americans dealing with real estate located in another country and then going bankrupt locally. The points worth taking away from these opinions are:

When a resident has contracted to purchase property elsewhere, American law will control if he or she thereafter files bankruptcy in the United States, even though the original purchase contract provided for a Mexican forum and Mexican law in resolving any disputes.

Despite the fact that a transfer of title may require the consent of a foreign government for full completion, a domestic bankruptcy court nevertheless has the authority to order the parties before it to execute the appropriate transfer documents (for whatever good they will do) and the foreign government need not necessarily be required to join in the action. In personam jurisdiction over the local parties in the court may solve the problem of absence of in rem jurisdiction over the foreign real estate outside the court.

Real estate transfers that were made to defraud creditors or were made postpetition without authorization may be avoided by an American bankruptcy court even though it was foreign real estate that was transferred.

How much of this is true in nonbankruptcy state court litigation is probably much harder to predict.—*Roger Bernhardt*