

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:05-bk-4071-ABB
Chapter 7

YOGESH B. DESAI and
SHEELA Y. DESAI,

Debtors.

MEMORANDUM OPINION GRANTING
DEBTORS' AMENDED MOTION TO
AVOID LIEN OF CITY OF ALTAMONTE SPRINGS

This matter came on for hearing on June 6, 2005 on the debtors' Amended Motion to Avoid Lien of City of Altamonte Springs (Doc. No. 15) and the Objection to Motion to Avoid Lien of City of Altamonte Springs (Doc. No. 12). The issue is whether the City's lien filed against the debtor's homestead is avoidable. After reviewing the pleadings and considering the parties' arguments and the applicable law, the lien filed by the City of Altamonte Springs by virtue of a Final Judgment is avoidable.

FINDINGS OF FACT

On November 26, 2003, the City of Altamonte Springs ("the City"), a municipal government entity, obtained a judgment against the debtors for \$1,000 bearing interest at 6% per annum, arising from numerous false alarms which occurred at the debtor's homestead property over a six month period.

The debtors' homestead property is located at 1304 Hampshire Place Circle, Altamonte Springs, Florida 32714. The legal description for the property is: LEG LOT 32 HAMPSHIRE PLACE PB 46 PGS 18 & 19. The judgment was recorded in the Public Records of Seminole County, Florida on December 8, 2003 at O.R. Book 5125, Page 1272.

The debtors filed for relief under Chapter 7 of the Bankruptcy Code on April 15, 2005, and the property at issue is claimed as exempt in Schedule C of the petition. The debtor argues the judgment encumbers the exempt homestead property and should be avoided. The City claims 11 U.S.C. §523(a)(19)(B)(i) renders judgments owed to a municipality nondischargeable, the judgment is against the debtors personally and not related to the real property, and argues that Section 522(f)(1) contemplates release of debts only specific to real property being exempted by debtors. The City also

argues Section 522 (d)(1) restricts the exemption to \$15,000 while the debtors have alleged the property to be worth \$140,000.00, and allowing the lien would not impair the exemption.

At the hearing held on June 6, 2005, both parties were invited to submit proposed findings of fact and conclusions of law for the court's review. Neither party complied.

CONCLUSIONS OF LAW

Section 522(f)(1) of the Bankruptcy Code provides in part that in order to avoid a lien: (1) the lien is a judicial lien (2) the lien impairs an exemption to which the debtor would have been entitled to but for the lien at issue (3) the lien is fixed against an interest of the debtor in property. Owen v. Owen, 500 U.S. 305, 309 (U.S. 1991). As the City obtained a judgment against the debtors, the lien is judicial. 11 U.S.C. §101(36).

In order to determine whether the lien impairs an exemption to which the debtor would have been entitled and whether the lien is fixed against an interest of the debtor, one must look to Article X, Section 4, of the Florida Constitution which provides that homestead property "shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for payment of taxes, and assessments thereon, obligations contracted for the purchase, improvement, or repair thereof, or obligations contracted for ...labor performed on the realty..." A judgment lien meeting these criteria is unenforceable on Florida homestead real property from the time the property has acquired the status of homestead until the property loses its homestead status. In re Lowe, 250 B.R. 422 (Bankr.M.D.Fla.2000).

Although the lien is legally unenforceable by virtue of the protection provided by the Florida Constitution, the lien still creates a cloud on the title by the fact the lien was recorded in the public records. Recording even an unenforceable lien is sufficient to impair the debtor's homestead exemption and fix against the interest of the debtor. *See, In re Thornton*, 186 B.R. 155, 157 (Bankr.M.D.Fla.1995); In re Watson, 116 B.R. 837, 838 (Bankr.M.D.Fla.1990); In re Calandriello, 107 B.R. 374, 375-76 (Bankr.M.D.Fla.1989), *aff'd*, 174 B.R. 339 (M.D.Fla.1992); Lowe at 425.

The City argues as a municipality, its judgment is not avoidable. The City relies upon Section 523(a)(19) of the Bankruptcy Code which is

not applicable, as it is a dischargeability provision concerning securities violations which have not been alleged. Section 523(a)(7) of the Bankruptcy Code provides an individual debtor may not discharge a debt:

[T]o the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of filing of the petition;

11 U.S.C. §523(a)(7).

Article X Section 4 of the Florida Constitution exempts homestead property from a lien arising from this type of judgment, even if the City carries its burden of proof in an adversary proceeding that the debt is nondischargeable pursuant to Section 523(a)(7).

The dischargeability provisions of the Bankruptcy Code do not govern the question of whether a judgment is avoidable under the Bankruptcy Code, unless the debt comes within the debts Congress specifically excepted from Section 522(c), none of which apply to this case. See In re Ash, 166 B.R. 202 (Bankr.D.Conn.1994) citing Walters v. United States Nat'l Bank of Johnstown, 879 F.2d 95, 97 (3d Cir. 1989); In re Liming, 797 F.2d 895, 898 (10th Cir. 1986); In re Evaul, 152 B.R. 31, 32 (Bankr.W.D.N.Y.1993); In re Gartrell, 119 B.R. 405, 406 (Bankr.W.D.N.Y. 1990) (judicial lien securing allegedly nondischargeable debt under § 523(a)(7) may be avoided); In re Hampton, 104 B.R. 527, 528 (Bankr.M.D.Ga.1989); In re Hulvey, 102 B.R. 703, 705 (Bankr.C.D.Ill.1988); In re Pipes, 78 B.R. 981, 983 (Bankr.W.D.Mo.1987).

Further, Section 522 does not require a judgment lien for a debt that is specifically related to the property, nor limit the debtors to the federal exemption since Florida has opted out of the federal exemption. See In re Evaul, 152 B.R. 31, 32 (Bankr.W.D.N.Y.1993); and In re Allen, 217 B.R. 945, 948 (Bankr.M.D.Fla.1998). Accordingly, it is

ORDERED, ADJUDGED and DECREED

That the Objection to Motion to Avoid Lien of City of Altamonte Springs is **OVERRULED**; and it is further

ORDERED, ADJUDGED and DECREED

That the debtors' Amended Motion to Avoid Lien of City of Altamonte Springs is **GRANTED**, and the lien against the debtors' homestead property located at:

1304 HAMPSHIRE PLACE CIRCLE,
ALTAMONTE SPRINGS, FLORIDA
32714
LEGAL DESCRIPTION: LEG LOT 32
HAMPSHIRE PLACE PB 46 PGS 18 & 19

by virtue of the Final Judgment obtained by the City of Altamonte Springs in Case No. 03-SC-3554 entered against the debtors as recorded in the Public Records of Seminole County, Florida, at O.R. Book 5125, Page 1272 is **AVOIDED**.

DONE AND ORDERED in Orlando, Florida,
this 20th day of July, 2005.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge