

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:07-bk-04679-ABB
Chapter 7

TIMOTHY VERN SCHWEIZER,

Debtor.

ORDER

This matter came before the Court on the Verified Motion to Avoid Lien of Capitol Indemnity Corporation (Doc. No. 49) and the Verified Motion to Avoid Lien of NC Two, LP (Doc. No. 50) filed by Timothy Vern Schweizer, the Debtor herein ("Debtor"), seeking to avoid the liens of the creditors Capitol Indemnity Corporation ("Capitol") and NC Two, LP ("NC Two"). NC Two and Capitol filed oppositions (Doc. Nos. 54, 55) to the Debtor's Motions. An evidentiary hearing was held on August 18, 2008 at which the Debtor, counsel for the Debtor, counsel for NC Two, and counsel for Capitol appeared. The parties, pursuant to being granted leave, filed post-hearing briefs (Doc. Nos. 62, 63, 64). The Debtor strayed far beyond his Motions in his post-hearing brief (Doc. No. 62) raising new causes of action, including an 11 U.S.C. Section 547 preference allegation.

Homestead Exemption Claim

The Debtor, by and through his former legal guardian Sharon R. Watson, filed this individual Chapter 7 case on October 1, 2007 (Doc. No. 1). The Debtor owns approximately 320 contiguous acres of real property located in Lake County and Marion County, Florida ("Property") valued by the Debtor at \$3,562,500.00 in Schedule A (Doc. No. 19, Schedule A). He acquired the Property in March 2003 and recorded deeds in Lake and Marion Counties in March 2003. He resides on the Property and asserts a portion of the Property constitutes exempt homestead property.

The Debtor did not claim an exemption in the Property in his original Schedule C (Doc. No. 19). He filed an Amended Schedule C (Doc. No. 26) claiming 159.74 acres as exempt

homestead property pursuant to the Florida homestead exemption of Article X, Section 4(a) of the Florida Constitution and Fla. Stat. Sections 222.01, 222.02, and 222.05. He values the 159.74 acres at \$2,400,000.00 and values his exemption claim at \$2,400,000.00 in Amended Schedule C.

Article X, Section 4(a) of the Florida Constitution provides for a homestead exemption:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family.

[FLA. CONST.](#) art. X, § 4(a)(1).

The Chapter 7 Trustee filed an objection to the Debtor's homestead exemption claim (Doc. No. 30) asserting the acreage

designated as homestead property includes all land that is subject to development and accessible by public road. The remaining acreage is protected wetlands land and has no roadway frontage. The Trustee asserts the Debtor's allocation of the alleged homestead property was denied by the Florida State Court in prepetition litigation and the allocation is barred by *res judicata*. She contends the exemption is improper in that the parcels claimed as exempt homestead property are not contiguous.

An Order was entered on December 3, 2007 (Doc. No. 34) abating the Trustee's exemption objection to allow her an opportunity to obtain additional information regarding the Property including valuation and wetlands protection information.

NC Two objects to the Debtor's homestead exemption claim on the basis the Florida State Court determined prepetition the portion of the Property constituting homestead property and the Debtor's allocation of homestead property in his Amended Schedule C is contrary to such State Court determination (Doc. No. 33).

Judgment Liens

The Property is encumbered by liens held by NC Two and Capitol arising from Florida State Court judgments issued prepetition and recorded in the land records of Lake and Marion Counties prepetition.

NC Two commenced a foreclosure action against the Debtor prepetition in the Circuit Court of the Fifth Judicial Circuit in and for Lake County, Florida captioned NC Two, L.P. v. Tim Schweizer, et al., Case No. 2005-CA-273 ("State Court Litigation"). Capitol was a cross-claimant in the State Court Litigation. The Debtor was represented by counsel in the State Court Litigation.

A Final Judgment and Order was entered by the Florida State Court on November 2, 2006 ("Final Judgment") in favor of NC Two granting NC Two's motion to set a foreclosure sale, determining the amount and priority of its lien, and granting its Motion to Approve and Adopt NC's Supplemental Methodology for Distribution of Real Property Owned by Tim Schweizer. The Final Judgment provides:

...

4. NC holds a lien for the total sum, superior to any claim or estate of the defendants on the real property in Lake County, Florida, owned by defendant, Tim Schweizer (the "Real Property"). A legal description of the Real Property is attached hereto as Exhibit A

5. *One-hundred sixty (160) acres of the Real Property have been deemed by this Court to be Tim Schweizer's homestead.*

6. NC and cross-claimant, [Capitol], are entitled to foreclose on that portion of the Real Property in excess of 160 acres. [Capitol] also holds a lien on the Real Property; however, [Capitol's] interest in the Real Property is inferior and subordinate to the interest of NC.

7. NC's Supplemental Methodology for Distribution of Real Property Owned by Tim Schweizer includes an original diagram of the Real Property and proposes that the portions of the Real Property which are both outlined and contained [*sic*] diagonal lines would be subject to foreclosure and that the remaining portions of the Real Property would be designated as Tim Schweizer's homestead. A copy of this diagram is attached hereto as Exhibit B.

NC Two's Exh. No. 1 at ¶¶4-7 (*emphasis added*).

An Exhibit "A" is attached to and incorporated into the Final Judgment setting forth legal descriptions of five parcels and containing a diagram of the Property setting forth homestead boundary lines. The State Court retained jurisdiction "to enter further Orders that

are proper including without limitation writs of possession and deficiency judgment.” *Id.* at ¶13.

The Debtor’s Motion to Cancel Foreclosure Sale, Set Aside Order Re-setting Foreclosure Sale and Final Judgment was denied by the State Court’s Order entered on July 2, 2007, with the exception the State Court amended a mathematical error in the legal description of the of the Property “which inadvertently provided [the Debtor] with approximately 123 acres of property instead of 160 acres.” The July 2, 2007 Order concluded: “It is further Ordered that the Defendant is entitled to an additional 37 acres of real property as contemplated in the Court’s previous orders.” Doc. No. 33, Exh. C.

NC Two’s foreclosure sale was reset for October 2, 2007 by the State Court’s August 28, 2007 Order Re-Setting Foreclosure Sale (Doc. No. 32), which provides:

A copy of the new legal description which reflects the accurate boundaries of the subject real property which is subject to foreclosure in accordance with the Final Judgment is attached hereto as Exhibit A.

August 28, 2007 Order at ¶ 2. Exhibit A sets forth legal descriptions of four parcels of real property. The State Court retained jurisdiction “to enter further Orders that are proper including without limitation writs of possession and deficiency judgment.” *Id.* at ¶7.

The foreclosure sale was stayed by the Debtor’s bankruptcy filing. The Debtor did not appeal the Final Judgment, the July 2, 2007 Order, or the August 28, 2007 Order. The Final Judgment, July 2, 2007 Order, and August 28, 2007 Orders constitute final, nonappealable orders.

11 U.S.C. Section 522(f)

The liens of NC Two and Capitol constitute judicial liens. The Debtor contends their liens impair his homestead exemption and seeks to avoid the liens on the portion of the Property containing his homestead, as defined by the Debtor in Amended Schedule C, pursuant to

11 U.S.C. Section 522(f). Section 522(f) provides, in part:

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); .

....

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor’s interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under

subparagraph (A)
with respect to other
liens.

....

11 U.S.C. §§ 522(f)(1), 522(f)(2) (2005).¹

NC Two and Capitol object to the Debtor's lien avoidance motions asserting the Florida State Court determined in the State Court Litigation the portion of the Property constituting homestead property and to which portion of the Property their liens affix. They contend the Debtor is barred from seeking avoidance of their liens pursuant to the Rooker-Feldman doctrine.

The Rooker-Feldman Doctrine

The *Rooker-Feldman* doctrine is a doctrine of jurisdiction which bars federal courts from sitting as appellate courts for state court judgments.² The doctrine "is confined to cases . . . brought by state-court losers complaining of . . . state court judgments rendered before the [federal] proceedings commenced and inviting [federal court] review and rejection of those judgments." Exxon Mobil v. Saudi Basic Indust., Corp., ___ U.S. ___, 125 S. Ct. 1517, 1521-22, 161 L.Ed.2d 454 (2005).

The Eleventh Circuit Court of Appeals defined the doctrine in Goodman v. Sipos, 259 F.3d 1327 (11th Cir. 2001):

The Rooker-Feldman doctrine provides that federal courts, other than the United States Supreme Court, have no authority to review the final judgments of state courts. The doctrine extends not only to constitutional claims presented or adjudicated by a state court, but also to claims that are "inextricably intertwined" with a state court

judgment. A federal claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.

Goodman, 259 F.3d at 1332 (*citation omitted*).

The Final Judgment, the July 2, 2007 Order, and the August 28, 2007 Order entered in the State Court Litigation constitute non-appellable final orders entered by a state court. The State Court determined and designated the portion of the Property constituting the Debtor's homestead property. No party challenged the designation. The parties had a reasonable opportunity to litigate any issues relating to the designation of the Debtor's homestead property in the State Court Litigation. If the State Court erred in entering the Judgment and Orders, or if a party was dissatisfied with the State Court's determinations, relief was available to the parties in the Florida appellate courts.

The Debtor is now attempting to re-define his homestead property. His re-definition of his homestead property in Amended Schedule C contradicts the homestead allocation determined by the State Court in the State Court Litigation. The *Rooker-Feldman* doctrine prevents this Court from acting in an appellate manner with regards to the State Court's determination of his homestead property. The Final Judgment, July 2, 2007 Order, and August 28, 2007 Order must stand pursuant to the *Rooker-Feldman* doctrine. The Debtor's Motions to avoid the liens of NC Two and Capitol are due to be denied.

Objections to Debtor's Homestead Exemption Claim

The Chapter 7 Trustee's and NC Two's objections to the Debtor's homestead exemption claim in Amended Schedule C overlap with this lien avoidance matter. The Chapter 7 Trustee's and NC Two's objections are based on the State Court's homestead allocation. The determination of the Debtor's lien avoidance Motions resolves the exemption objections. The Chapter 7 Trustee's and NC Two's objections to the Debtor's homestead exemption claim are due to be sustained.

¹ Section 523(a)(5) relates to a domestic support obligation, which is not the type of debt involved in this matter.

² The doctrine emanates from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476-82 (1983).

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the Debtor's Verified Motion to Avoid Lien of Capitol Indemnity Corporation (Doc. No. 49) and Verified Motion to Avoid Lien of NC Two, LP (Doc. No. 50) are hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that the Chapter 7 Trustee's and NC Two's Objections to the Debtor's homestead exemption claim (Doc. Nos. 30, 33) are hereby **SUSTAINED**; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's interest in the Property is exempt as homestead property pursuant to Article X, Section 4(a) of the Florida Constitution as allocated by the Final Judgment, July 2, 2007 Order, and August 28, 2007 Order entered by the Florida State Court in the State Court Litigation.

Dated this 23rd day of October, 2008.

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