

ORDERED.

Dated: June 29, 2022


Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Glenroy Rolle,

Case No. 2:21-bk-00758-FMD
Chapter 13

Debtor.

_____ /

**ORDER GRANTING DEBTOR'S VERIFIED MOTION
TO AVOID JUDICIAL LIEN OF ALYCIA GOURLEY**

Prior to their marriage, Debtor and his wife purchased a home, taking title as joint tenants with right of survivorship. The couple later married and had a child together; years later, they separated. While Debtor resided outside the family home, a creditor obtained and recorded a judgment against Debtor.

Later, Debtor filed a bankruptcy case. Although Debtor was not living in the family home on the petition date, he claimed the home as his exempt homestead property under article 10, section 4 of the Florida Constitution. The issue before the

Court is whether Debtor may avoid the judgment creditor's lien under 11 U.S.C. § 522(f)(1)(A)¹ as impairing an exemption to which he would have been entitled.

The Court concludes that (1) Debtor owned an interest in the home before the judgment was recorded, and (2) Debtor is entitled to claim the home as exempt in his bankruptcy case. Therefore, the recorded judgment impairs the homestead exemption to which Debtor would have been entitled and may be avoided under § 522(f)(1)(A).

I. FACTS

The relevant facts are not in dispute. In 2013, prior to their marriage, Debtor and his spouse ("Katarzyna") purchased a home in Lee County, Florida (the "Home"), taking title as joint tenants with right of survivorship. They later married and have a daughter together; after 2014, Debtor, Katarzyna, and their child resided in the Home.

In August 2019, Debtor and Katarzyna separated; Debtor leased – and resided in – a rental home (the "Rental House"). However, Katarzyna and the couple's daughter continued to live in the Home. At trial, Katarzyna testified that she and their daughter have lived continuously at the Home since 2014.

¹ Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

In November 2020, Debtor initiated a dissolution of marriage action against Katarzyna, but no order of dissolution was ever entered.

In December 2020, Alycia Gourley (“Ms. Gourley”) obtained a judgment against Debtor. In January 2021, Ms. Gourley recorded a certified copy of the judgment in the Lee County public records (the “Judgment Lien”).²

On June 9, 2021 (the “Petition Date”), Debtor, while still residing in the Rental House, filed a Chapter 13 bankruptcy petition. After the Petition Date, Debtor and Katarzyna reconciled, and Debtor returned to the Home, where they currently reside with their daughter.

Shortly after filing his bankruptcy petition, Debtor filed a motion under § 522(f)(1)(A) to avoid the Judgment Lien.³ Ms. Gourley contends that Debtor may not claim the Home as his exempt property and, therefore, cannot avoid the Judgment Lien for three reasons. First, because Debtor vacated the Home before Ms. Gourley recorded her judgment; second, Debtor took numerous actions between August 2019 and June 2021 evidencing his intent to live elsewhere; and third, Debtor did not live at the Home on the Petition Date.

² Doc. No. 60, ¶¶ 9, 23; Gourley’s Exhibit 2.

³ Doc. No. 25.

The parties filed a joint Stipulation of Facts,⁴ Debtor filed a Trial Brief,⁵ and the Court conducted a trial on March 9, 2022.⁶

II. DISCUSSION

Under § 522(f)(1)(A), a debtor may avoid a judicial 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 applicable state or federal law.⁷ Section 522(f)(1) has the “broad purpose of protecting the debtor’s exempt property.”⁸

For a debtor to avoid a lien under § 522(f)(1)(A), he must prove two elements: (a) that the lien attached or “fixed” to property that he already owned, and (b) that the lien impaired an exemption to which he would have been entitled, hypothetically, under state law.⁹

A. The Judgment Lien fixed on Debtor’s interest in property.

To avoid a lien under § 522(f)(1)(A), a debtor must first prove that a judicial lien attached or “fixed” to an interest of the debtor in property. To satisfy this

⁴ Doc. No. 60.

⁵ Doc. No. 62.

⁶ Doc. No. 65.

⁷ 11 U.S.C. § 522(f)(1)(A).

⁸ *In re Pettengill*, 635 B.R. 842, 844 (Bankr. S.D. Fla. 2021) (quoting *Farrey v. Sanderfoot*, 500 U.S. 291, 297, 111 S. Ct. 1825, 114 L. Ed. 2d 337 (1991)).

⁹ *In re Badalamenti*, 632 B.R. 862, 866 (Bankr. M.D. Fla. 2021) (citations omitted).

element, the debtor must have owned the property interest before the judgment was recorded.¹⁰

Here, Debtor and Katarzyna purchased the Home in 2013. Debtor never transferred his interest in the Home, and he owned the Home jointly with Katarzyna on the date that the Judgment Lien was recorded in the public records. The Court concludes that Debtor owned an interest in the Home before the Judgment Lien attached and the lien fixed on his interest.

B. The Judgment Lien impairs Debtor's homestead exemption.

Second, to avoid a lien under § 522(f)(1)(A), a debtor must prove that the lien impairs an exemption to which he would have been entitled under state law. Generally, the relevant date for determining a debtor's claim of homestead exemption is the date of the bankruptcy petition (the "Petition Date").¹¹

Here, Debtor admits that he did not reside at the Home on the Petition Date,¹² but he contends, first, that he never abandoned the Home as his homestead, and second, that since 2014, Katarzyna and their daughter have lived at the Home without interruption.¹³

¹⁰ *Id.* at 867.

¹¹ *Id.* at 867-68.

¹² Doc. No. 60, ¶¶ 16, 31.

¹³ Doc. No. 62, ¶¶ 7, 12.

Under article 10, section 4 of the Florida Constitution, exempt property includes “a homestead, . . . 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.”¹⁴

To qualify for Florida’s constitutional homestead exemption, a judgment debtor must have an ownership interest in the residence, and the owner *or the owner’s family* must actually use and occupy the home and intend to live there permanently. Once these two requirements are established, there is little that a homeowner can do to lose the homestead exemption, and an objecting party bears a heavy burden to show that a debtor is not entitled to the exemption.¹⁵

In *Beltran v. Kalb*,¹⁶ a husband and wife owned a home that was undisputedly their homestead. The couple divorced; under their marital settlement agreement, they continued to own the home as tenants in common with the wife retaining sole occupancy. After the divorce, a creditor of the husband obtained and recorded a judgment against him. Many years later, the wife passed away, the creditor executed on its judgment, and the husband’s interest in the property was sold at a sheriff’s

¹⁴ Art. X, § 4(a)(1), Fla. Const. (emphasis added).

¹⁵ *Bank of America, N.A. v. Elnicki*, 2020 WL 6870740, at *5 (M.D. Fla. Sept. 22, 2020) (citations omitted).

¹⁶ 63 So. 3d 783 (Fla. 3d DCA 2011).

sale. The trial court denied the husband's motion to set aside the sheriff's sale, and the husband appealed.¹⁷

Florida's Third District Court of Appeal held that the Florida Constitution does not require that an owner claiming the homestead exemption reside on the property. The court stated, "*it is sufficient that the owner's family reside on the property;*" "[t]he fact that exclusive use and possession of the marital residence is awarded to the wife in a dissolution action *does not extinguish* the husband's homestead;" and "[h]omestead status continues until the homestead is abandoned or alienated in the manner provided by law."¹⁸

In the absence of evidence that the husband and his family had abandoned the homestead property, the Third DCA held that (1) the husband's interest in the property maintained its homestead character at all times, (2) the husband held a homestead interest in the property when the creditor recorded its judgment, and (3) the creditor's judgment was not enforceable against the husband's interest in the property.¹⁹

Here, although Debtor did not live in the Home on the date the Judgment Lien was recorded or on the Petition Date, the evidence establishes that (1) Katarzyna and

¹⁷ *Beltran v. Kalb*, 63 So. 3d at 784-85.

¹⁸ *Id.* at 787 (emphasis supplied). *See also Coy v. Mango Bay Prop. and Inv., Inc.*, 963 So. 2d 873 (Fla. 4th DCA 2007).

¹⁹ *Beltran v. Kalb*, 63 So. 3d at 787.

their daughter lived at the Home continuously since 2014, (2) Katarzyna and their daughter lived at the Home on the Petition Date, (3) Debtor currently lives at the Home with Katarzyna and their daughter, and (4) neither Debtor nor his family abandoned the Home as their homestead.

Therefore, the Court concludes that, on the Petition Date, Debtor was entitled to claim the Home as exempt homestead and that the Judgment Lien impairs the homestead exemption to which he otherwise would have been entitled.

III. CONCLUSION

Under article 10, section 4 of the Florida Constitution and the holding in *Beltran*, the Court concludes that the Judgment Lien was “fixed” on Debtor’s property and that the Judgment Lien impaired an exemption to which Debtor would have been entitled but for the lien. Therefore, the Judgment Lien is avoidable under § 522(f)(1)(A).

Accordingly, it is

ORDERED:

1. Debtor’s *Verified Motion to Avoid Judicial Lien of Alycia Gourley* (Doc. No. 25) is **GRANTED**.
2. On the fifteenth day after entry of this Order, Debtor’s counsel may submit an order avoiding the Judgment Lien.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.