

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:

Jeffrey George Saad,

Debtor.

Case No. 2:21-bk-01481-FMD
Chapter 13

**ORDER (1) DENYING TBF FINANCIAL LLC'S
MOTION FOR SUMMARY JUDGMENT ON DEBTOR'S MOTION TO
AVOID JUDICIAL LIEN, AND (2) GRANTING DEBTOR'S VERIFIED
MOTION TO AVOID JUDICIAL LIEN ON EXEMPT PROPERTY**

During their marriage, Debtor and his wife purchased a home in Collier County, Florida, taking title as husband and wife as tenants by the entireties. In 2011, the parties divorced, and Debtor's wife was awarded the home, where she continues to reside. Although Debtor moved to a rental property, he did not execute a deed or transfer the home to his former wife.

In 2019, a creditor recorded a judgment against Debtor in the Collier County public records. In October 2021, Debtor remarried his wife, and he has resided in the home since at least that time. In November 2021, Debtor filed a Chapter 7 case and 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 is entitled and may be avoided under § 522(f)(1)(A).

I. FACTS²

Debtor and his wife ("Lynne") were married in 1986. In 2005, they purchased a home in Collier County, Florida (the "Home"), taking title as husband and wife as tenants by the entireties and residing in the Home.

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

² See Doc. Nos. 33, 34, 86, 110.

Years later, Lynne sought the dissolution of their marriage. In 2011, a court order was entered dissolving the marriage and awarding the Home to Lynne. However, Debtor did not execute a deed transferring his interest in the Home to Lynne, nor did he ever transfer his interest in the Home to any other party.

Lynne continued to live in the Home after the divorce and has never resided anywhere other than the Home since 2005. Around the time of divorce, Debtor leased and began living in an apartment (the “Apartment”). At some point after the 2011 divorce, Debtor began staying at the Home with Lynne on a part-time basis, but he maintained possession of the Apartment.

In 2011, TBF Financial, LLC (“TBF”) obtained a judgment against Debtor in New Jersey state court, and in November 2019, TBF recorded the judgment in the Collier County public records (the “Judgment Lien”).

In November 2020, TBF’s attorney deposed Debtor; Debtor testified that he resided at the Apartment at that time and had lived there for the prior eight years. However, in this bankruptcy case, Debtor asserts that he had resumed living with Lynne in the Home in March 2020. He also asserts that he suffered a severe stroke in July 2020.

In September 2021, Debtor's lease agreement for the Apartment terminated, and in October 2021, Debtor and Lynne remarried.

In reliance on Debtor's testimony at his November 2020 deposition, TBF levied on Debtor's one-half ownership interest in the Home and a Sheriff's sale was set for November 9, 2021. However, prior to the scheduled Sheriff's sale, on November 3, 2021 (the "Petition Date"), Debtor filed a Chapter 7 bankruptcy case and scheduled the Home as his exempt homestead property under article 10, section 4 of the Florida Constitution. The parties do not dispute that Debtor resided at the Home with Lynne on the Petition Date.

In January 2022, Debtor converted his Chapter 7 case to a Chapter 13 case and filed a motion to avoid the Judgment Lien under § 522(f)(1)(A)³ on the grounds that the Judgment Lien impairs his homestead exemption.

In its motion for summary judgment on Debtor's motion to avoid the Judgment Lien, TBF contends (1) that Debtor did not live at the Home when the Judgment Lien attached; (2) that after their divorce—and on the date that

³ Doc. No. 86. While the case was pending as a Chapter 7, TBF filed a motion for relief from the automatic stay in order to proceed with the sale of Debtor's one-half interest in the Home (Doc. No. 19). TBF thereafter filed a motion for summary judgment (Doc. No. 58) on its stay relief motion. When Debtor converted his case to a Chapter 13, the parties' dispute was presented to the Court in the context of Debtor's motion to avoid the Judgment Lien.

the Judgment Lien attached to the Home – Debtor and Lynne did not own the Home as tenants by the entirety; and (3) that Lynne’s claim that the Home is *her* exempt homestead does not preclude enforcement of the Judgment Lien against Debtor’s interest. Therefore, TBF contends that the Judgment Lien may not be avoided under § 522(f)(1)(A).⁴

On April 20, 2022, the Court conducted a hearing on TBF’s motion for summary judgment. At the hearing, TBF’s counsel conceded that Debtor’s residence in the Home on the Petition Date likely supports his claim of homestead exemption. However, he argued that Debtor’s motion to avoid the Judgment Lien should be denied on equitable grounds because of Debtor’s prior inconsistent deposition testimony regarding his occupancy of the Home. Alternatively, TBF contends that Debtor’s non-exempt property should be surcharged for the prepetition legal fees incurred by TBF in its attempt to execute on the Judgment Lien.⁵

For the reasons set forth below, the Court will deny TBF’s motion for summary judgment, grant Debtor’s motion to avoid the lien, and deny TBF’s request for a surcharge.

⁴ Doc. Nos. 96, 97.

⁵ Doc. No. 115.

II. ANALYSIS

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.⁶ The section has the “broad purpose of protecting the debtor’s exempt property.”⁷ For a debtor to avoid a lien under § 522(f)(1)(A), he must prove two elements: (1) that the judicial lien attached or “fixed” to property that he already owned, and (2) that the lien impaired an exemption to which he would have been entitled, hypothetically, under state law.⁸

A. The Judgment Lien fixed on Debtor’s 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 element, the debtor must have owned the property interest before the judgment was recorded.⁹

Here, Debtor and Lynne purchased the Home in 2005, Debtor never transferred his interest in the Home, and, as TBF recognizes in its summary

⁶ 11 U.S.C. § 522(f)(1)(A).

⁷ *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)).

⁸ *In re Badalamenti*, 632 B.R. 862, 866 (Bankr. M.D. Fla. 2021) (citations omitted).

⁹ *In re Badalamenti*, 632 B.R. at 867.

judgment motion, “Debtor, at all material times, retained a 50% ownership” interest in the Home.¹⁰ The Court finds that (1) Debtor owned an interest in the Home before TBF recorded its judgment in November 2019; and (2) the Judgment Lien fixed on Debtor’s interest in the Home. Therefore, Debtor has satisfied the first element for avoidance of a judicial lien under § 522(f)(1)(A).

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

Second, to avoid a judicial 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 to determine a debtor’s claim of homestead exemption is the date of the bankruptcy petition.¹¹

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*.”¹² To qualify for Florida’s constitutional homestead exemption, an individual must have an ownership interest in the residence, and the owner or the owner’s family must actually

¹⁰ Doc. No. 97, ¶ 10.

¹¹ *In re Badalamenti*, 632 B.R. at 867-68.

¹² Art. 10, § 4, Fla. Const. (emphasis added).

use and occupy the home and intend to live there permanently. Once that is established, there is little 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.¹³

The bankruptcy court's ruling in *In re Badalamenti*¹⁴ is directly on point. There, the debtor purchased a lot, built a home on the lot, and resided in the home. Years later, the debtor moved out of the home to live with his fiancé, but he continued to own the home. While the debtor was living with his then-wife, a creditor recorded a judgment against him in the public records of the county where the home was located. Later, the debtor and his wife divorced and he moved back to the home. When the debtor filed a bankruptcy case, he claimed the home as exempt under Florida's homestead law and filed a motion to avoid the creditor's judicial lien under § 522(f)(1)(A). The judgment creditor objected on the ground that the debtor did not live in the home on the date that the judgment was recorded.¹⁵

¹³ *Bank of America, N.A. v. Elnicki*, 2020 WL 6870740, at *5 (M.D. Fla. Sept. 22, 2020) (citations omitted).

¹⁴ 632 B.R. 862 (Bankr. M.D. Fla. 2021).

¹⁵ *In re Badalamenti*, 632 B.R. at 864-66.

The bankruptcy court found, first, because the debtor owned the home before the judgment was recorded, the creditor's judgment lien had "fixed" on the home, and second, because the debtor resided in the home on the date of his bankruptcy petition, the judgment lien impaired an exemption to which the debtor would have been entitled. Therefore, the bankruptcy court concluded that the debtor had satisfied the required elements for avoidance of a judicial lien under § 522(f)(1)(A), granted the debtor's motion, and avoided the creditor's judicial lien.¹⁶

The Court concurs with the bankruptcy court's ruling in *Badamenti* and, applying its analysis to the facts presented here, finds that because Debtor owned the Home jointly with Lynne and resided there on the Petition Date, he may claim the Home as his exempt homestead.

In addition, regardless of whether Debtor resided at the Home on the Petition Date, his ownership interest in the Home and Lynne's continuous residency at the Home is sufficient for the Home to qualify as Debtor's homestead.

¹⁶ *Id.* at 868.

TBF acknowledges that Lynne's interest in the Home "likely qualifies as [her] homestead property."¹⁷ Consequently, even if Debtor's individual homestead claim could be challenged on the "equitable grounds" argued by TBF, Debtor may claim his interest in the Home as exempt under Florida law based on Lynne's ownership of the Home as her homestead.

In *Beltran v. Kalb*,¹⁸ 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 sale. The trial court denied the husband's motion to set aside the sheriff's sale, and the husband appealed.¹⁹

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*

¹⁷ Doc. No. 97, ¶ 35.

¹⁸ 63 So. 3d 783 (Fla. 3d DCA 2011).

¹⁹ *Beltran v. Kalb*, 63 So. 3d at 784-85.

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."²⁰

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.²¹

Here, although Debtor and Lynne were divorced between 2011 and 2021, and Debtor leased and occupied the Apartment during some of that ten-year period, the evidence establishes (1) that Debtor and Lynne bought the Home as a married couple in 2005, (2) that Debtor owned a one-half interest in the home since 2005, through and including the Petition Date, (3) that Lynne has

²⁰ *Id.* at 787 (emphasis supplied). See also *Coy v. Mango Bay Property and Investments, Inc.*, 963 So. 2d 873 (Fla. 4th DCA 2007).

²¹ *Beltran v. Kalb*, 63 So. 3d at 787.

lived in the Home continuously from 2005 through the Petition Date, and (4) that Debtor and Lynne, as a married couple, lived together at the Home on the Petition Date. Therefore, the Court concludes that Debtor's interest in the Home was exempt homestead on the Petition Date, and that TBF's judicial lien impairs the homestead exemption to which he otherwise would have been entitled.

C. There are no equitable grounds for denying Debtor's Motion.

Under certain circumstances, a creditor may have equitable defenses to a lien avoidance motion, including laches, fraud, detrimental reliance, or prejudice.²² When considering such equitable defenses, Courts generally evaluate a combination of factors, such as the debtor's conduct, the extent and motivation for any delay by the debtor in seeking lien avoidance, and the manner in which the creditor pursued its lien before the debtor's bankruptcy petition. One factor standing alone, such as prejudice to the creditor, is not typically sufficient to defeat a lien avoidance motion.²³

²² *In re Bradley*, 369 B.R. 147, 154 (Bankr. S.D.N.Y. 2007) (quoting *In re Wilding*, 475 F.3d 428, 433 (1st Cir. 2007)).

²³ *In re Bradley*, 369 B.R. at 154-56.

Although TBF acknowledges that Debtor resided at the Home on the Petition Date, it contends that Debtor should not be permitted to claim the benefit of the homestead exemption because his testimony at his November 2020 deposition—that he had been living at the Apartment for the prior eight years—is inconsistent with Debtor’s current sworn statement in which he states that he has actually resided with Lynne at the Home since March 2020.²⁴

But Debtor attested in his post-petition sworn statement that he was recovering from a severe stroke at the time of the deposition.²⁵ The record does not show that his inaccurate testimony was motivated by bad faith or fraudulent purpose. In addition, TBF has not established that Debtor engaged in any other fraudulent or reckless conduct that would render it inequitable to void the Judgment Lien. Although TBF alleges that Debtor and Lynne acted in concert to establish the Home as Debtor’s homestead on the Petition Date, it is clear that Debtor and Lynne initially purchased the Home as their marital property and never abandoned it, that Debtor lived in the Home on the Petition

²⁴ Doc. No. 97, p. 30, Doc. No. 110, ¶ 11. TBF contends that Debtor’s deposition testimony was false; Debtor contends he had suffered a stroke shortly before the deposition.

²⁵ Doc. No. 110, ¶ 13.

Date, and that he is entitled to claim the Home as exempt homestead in his bankruptcy case.

D. There is no basis to support a surcharge.

Finally, TBF asks the Court to surcharge Debtor for the legal fees and expenses it incurred—in reliance on Debtor’s inaccurate testimony at the November 2020 deposition—in its prepetition attempt to execute on the Judgment Lien.

Generally, courts may impose a surcharge on a debtor or the debtor’s property if “exceptional circumstances” are present, such as where the debtor engaged in fraud or other misconduct that affected the creditor’s recovery on its claim.²⁶ For example, courts have found that they may surcharge a debtor’s exempt property if the debtor engaged in inequitable conduct that prevented the creditor from collecting its debt from non-exempt assets. However, the type of “exceptional misconduct” warranting a surcharge on a debtor’s exempt property generally involves unjustified and repeated dishonesty or refusal to comply with a court order.²⁷

²⁶ *In re Thomas*, 2013 WL 6502836, at *2 (Bankr. N.D. Fla. August 8, 2013).

²⁷ *In re Thomas*, 2013 WL 6502836, at *3.

Here, the single incident that caused TBF to incur the prepetition legal fees and expenses—Debtor’s inaccurate deposition testimony—occurred a year prior to the Petition Date and while Debtor was affected by serious health concerns. The Court finds that Debtor’s conduct did not create the type of “exceptional circumstances” that support a surcharge against Debtor for the costs.

III. CONCLUSION

Based on this record, the Court finds that Debtor owned an interest in the Home before TBF recorded its judgment, that Debtor and Lynne lived in the Home on the Petition Date with the intent to remain there permanently, and that Debtor and Lynne never abandoned the Home. Therefore, under article 10, section 4 of the Florida Constitution and the rulings in *Badalamenti* and *Beltran*, the Court concludes that the Judgment Lien was “fixed” on Debtor’s Home and impaired an exemption to which Debtor would have been entitled but for the lien. Therefore, the Judgment Lien is subject to avoidance under § 522(f)(1)(A).

Accordingly, it is

ORDERED:

1. Debtor's *Verified Motion to Avoid Judicial Lien of TBF Financial, LLC on Exempt Property* (Doc. No. 86) is **GRANTED**.
2. Creditor TBF Financial LLC's *Motion for Summary Final Judgment against Debtor Jeffrey Saad on Debtor's Motion to Avoid Judicial Lien* (Doc. No. 97) is **DENIED**.
3. On the fifteenth day after entry of this Order, Debtor's counsel may submit an order avoiding the judicial lien of TBF Financial, LLC on Debtor's exempt homestead property.

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