

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No. 8:04-bk-22184-PMG
Chapter 7

TRENTON J. REICHARDT,
and DIANA LOUISE REICHARDT,
a/k/a Diana Brawer,
a/k/a Diana McHenry,

Debtors.

**ORDER ON MOTION TO AVOID JUDICIAL
LIEN OF CYNTHIA DeLEHMAN**

THIS CASE came before the Court for a final evidentiary hearing to consider the Motion to Avoid Judicial Lien of Cynthia DeLehman. The Motion was filed by the Debtors, Trenton J. Reichardt and Diana L. Reichardt.

In the Motion, the Debtors seek the avoidance of the judicial lien of Cynthia DeLehman, to the extent that the lien impairs the Debtors' homestead exemption. The Motion was filed pursuant to §522(f)(1) of the Bankruptcy Code.

Background

The Debtor, Trenton Reichardt, was previously married to Cynthia DeLehman.

On August 10, 2001, Trenton Reichardt filed a dissolution of marriage proceeding in the Circuit Court for Hillsborough County, Florida, Case No. 01-DR-11307.

On October 15, 2003, the Circuit Court entered a Final Money Judgment in favor of Cynthia DeLehman, formerly known as Cynthia Reichardt, and against the Debtor, Trenton Reichardt, in the dissolution of marriage case. The Final Money Judgment was in the amount of \$11,937.91.

On October 22, 2003, the Final Money Judgment was recorded in the public records of Hillsborough County, Florida at O.R. Book 13234, Page 1426.

On December 3, 2003, the Final Money Judgment was recorded in the public records of Pinellas County, Florida at O.R. Book 13245, Page 838.

The Debtors filed their petition under Chapter 7 of the Bankruptcy Code on November 16, 2004.

On their Schedule of Assets filed in the bankruptcy case, the Debtors listed certain real property located at 1772 Biarritz Circle, Tarpon Springs, Florida, as their homestead.

On their Schedule C, the Debtors claimed the Biarritz Circle property as exempt pursuant to Article X, Section 4 of the Florida Constitution. No objections to the claimed exemption were filed within the time permitted by Rule 4003(b) of the Federal Rules of Bankruptcy Procedure.

The Debtors assert that the recording of the Final Money Judgment in the public records of Pinellas County in December of 2003 created a lien against their homestead, and that the lien may be avoided pursuant to §522(f)(1) of the Bankruptcy Code.

Section 522(f)(1)

Section 522(f)(1) of the Bankruptcy Code, as applicable to this case, provides:

11 USC §522. Exemptions

...

(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—

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement.

11 U.S.C. §522(f)(1)(Emphasis supplied).

To avoid a lien under §522(f)(1)(A), the debtor must establish (1) that a judicial lien has been fixed on the property at issue, (2) that the debtor has an interest in the property, and (3) that the judicial lien impairs an exemption that is available to the debtor under applicable law.

The only exception contained in the statute relates to judicial liens that secure a debt for maintenance or support that is owed to a former spouse or child of the debtor. In re Adell, 321 B.R. 573, 579 (Bankr. M.D. Fla. 2005)(citing In re Willoughby, 212 B.R. 1011, 1014 (Bankr. M.D. Fla. 1997)).

Application

In this case, the Court finds that all of the elements required for the avoidance of a judicial lien are present, and that the judicial lien of Cynthia DeLehman (DeLehman) should be avoided pursuant to §522(f)(1) of the Bankruptcy Code.

A. The statutory requirements

A Final Money Judgment was entered in favor of DeLehman in the Circuit Court of Hillsborough County.

The Judgment was subsequently recorded in the public records of Pinellas County, Florida, at O.R. Book 13245, Page 838.

The recordation of the Judgment created a lien on all real property owned by the Debtor in Pinellas County pursuant to §55.10 of the Florida Statutes.

The Debtors own real property located at 1772 Biarritz Circle, Tarpon Springs, Florida.

Consequently, the recordation of the Judgment in Pinellas County created a lien against the Debtors' Biarritz Circle property.

The Debtors reside at 1772 Biarritz Circle, and intend to continue residing at that address, with their daughter. (Transcript, pp. 117-19).

The property located at 1772 Biarritz Circle constitutes the Debtors' homestead, and is therefore exempt under Article X, Section 4 of the Florida Constitution.

Accordingly, the Court finds that the judicial lien of DeLehman impairs the Debtors' homestead exemption within the meaning of §522(f)(1) of the Bankruptcy Code.

B. The exception

Additionally, the Court finds that DeLehman's judicial lien does not fall within the exception to avoidance set forth in subsection (f)(1)(A)(i) of §522. In other words, the debt evidenced by the Final Money Judgment is not a debt for alimony, maintenance, or support.

The amount of the Judgment represents the amount awarded to DeLehman in connection with the equitable distribution of certain of the parties' marital assets. Specifically, in the Final Judgment of Dissolution of Marriage, the Divorce Court awarded DeLehman the sum of \$11,937.91 as her equitable share of a motorcycle and trailer, a television, a miniature race car, a Volkswagen, and a bank account. That amount was later included in the Final Money Judgment as a debt that continued to be owed by the Debtor to DeLehman in connection with the equitable distribution of the parties' marital assets.

With respect to this issue, it is significant that the Divorce Court denied DeLehman's request for alimony in the Final Judgment of Dissolution of Marriage for the following reasons:

The marriage was a short-term marriage. The parties having married on October 21, 1997, and having separated in June or July of 2001, a marriage of approximately three years nine months. In a short-term marriage, there is a rebuttable legal presumption against awarding permanent periodic alimony, and that presumption was not overcome by the Wife. Moreover, no rehabilitative alimony is awarded because there is no evidence of a rehabilitation plan presented to the Court. Finally, the Court has not awarded "bridge the gap" alimony because the parties have been separated since approximately July 2001, a period of 19 to 20 months, during which time the Wife has apparently been able to make the transition from married life to single life without any support from the Husband. Accordingly, the Wife's claim for alimony is denied.

(Final Judgment of Dissolution of Marriage, paragraph 3).

In view of the foregoing, the Court is satisfied that the award of \$11,937.91 to DeLehman is based on the equitable distribution of certain of the parties' marital assets, and is not in the nature of alimony, maintenance or support. In re Lowe, 250 B.R. 422, 426-27 (Bankr. M.D.Fla. 2000).

Accordingly, DeLehman's lien does not fall within the exception to avoidance set forth in §522(f)(1)(A)(i) of the Bankruptcy Code.

C. DeLehman's Response

Finally, the Court recognizes that DeLehman filed a written Response to the Debtors' Motion, and asserted that "the lien is for the debt owed by the Defendant/Debtor, which pursuant to 11 U.S.C. 523(a)(6), the Plaintiff/Respondent requests debt not be discharged." (Doc. 25).

DeLehman's Response does not defeat the Debtors' request for avoidance of the lien. Contemporaneously with this Order, the Court is entering a separate Opinion determining that the debt evidenced by the Final Money Judgment is not nondischargeable pursuant to §523(a)(6). Even if the debt reflected in the Final Money Judgment were determined to be nondischargeable, however, the lien would nevertheless be subject to avoidance under the statute. In re Willoughby, 212 B.R. at 1018("Section 522(f) has always been available for debtors to protect their exemptions by avoiding liens even if the underlying debts securing those liens remain enforceable and are not discharged.").

D. Conclusion

The Debtors have established all of the elements required by §522(f) for the avoidance of a judicial lien. The lien created by the recordation of the Final Money Judgment is avoidable pursuant to §522(f)(1) of the Bankruptcy Code.

Accordingly:

IT IS ORDERED that:

1. The Motion to Avoid Judicial Lien of Cynthia DeLehman, filed by the Debtors, Trenton J. Reichardt and Diana L. Reichardt, is granted.

2. The lien evidenced by the recordation of the Final Money Judgment in the public records of Pinellas County, Florida at O.R. Book 13245, Page 838, is avoided as to the property legally described as:

Lot 13, Block 1, TARPON TRACE, according to the plat thereof, as recorded in Plat Book 112, page 50 to 52 of the Public Records of PINELLAS County, Florida

and located at the street address of 1772 Biarritz Circle, Tarpon Springs, Florida.

DATED this 16th day of June, 2006.

BY THE COURT

/s/ Paul M. Glenn
PAUL M. GLENN
Chief Bankruptcy Judge